

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,

Karnataka Real Estate Regulatory Authority,
1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound,
3rd Cross, Mission Road, Bengaluru-560027

PROCEEDINGS OF THE AUTHORITY BEFORE BENCH-6

PRESIDED BY MRS. NEELMANI N RAJU, HON'BLE MEMBER

Dated 7TH MARCH 2023

COMPLAINT NO: CMP/UR/220316/0009125

COMPLAINANT.....

**MR. ASHISH BHASIN
NO.20, PRAGATHI VIHAR
NEW SAHASTRADHARA ROAD
DEHRADUN-248001.
DISTRICT: DEHRADUN
STATE: UTTARAKHAND**

(In Person THROUGH SKYPE)

V/S

RESPONDENT.....

**M/S MAXWORTH REALTY INDIA LIMITED
NO.22/1, RAILWAY PARALLEL ROAD
NEHRU NAGAR
BANGALORE-560020.**

**(BY MRS.B.P. SHOBHA &
MR.K.V. SUBRAMANI, ADVOCATES)**

J U D G E M E N T

1. This complaint is filed under section 31 of the RERA Act against the project **"MAX ORCHIDS PHASE III"** developed by M/s Maxworth Realty India Limited at Dyavarahalli Village, Kundana Hobli, Devanahalli Taluk, Bangalore Rural District for the relief of refund with interest.
2. This project is not registered under RERA.

Brief facts of the complaint are as under:-

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3. The complainant had booked a plot No.159 measuring 30' x 40' vide booking form in the project of respondent on 19/5/2013 and has paid an amount of Rs.2,16,000/- (Rupees Two Lakh Sixteen Thousand only) to the respondent on various dates out of the sale consideration amount of Rs.7,20,000/- (Rupees Seven Lakh Twenty Thousand only). The respondent has not executed the agreement of sale. Whereas the respondent in the draft agreement of sale sent to the complainant had promised to register the plot within 18 (eighteen) months from the date of agreement. The complainant requested the respondent for refund of the amount paid by him, but the respondent has stopped answering the calls. The respondent has failed to abide by the terms and conditions mentioned in the booking form and has not refunded the amount to the complainant. Hence, this complaint.
4. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its counsel and has not filed any statement of objections nor has produced any documents on its behalf. Despite several opportunities given, the respondent has not filed its memo of calculation.
5. This matter was heard on 13/10/2022, 02/11/2022, 12/01/2023 and 28/02/2023. The case was finally posted for orders on 28/02/2023.
6. In support of his claim, the complainant has uploaded in all 5 documents such as copies of agreement for sale, booking form, Payment receipts issued by the respondent, statement of account issued by HDFC Bank and IDBI Bank and memo of calculation for refund with interest as on 06/10/2022.
7. Heard arguments of both sides.



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8. On the above averments, the following points would arise for our consideration:

1. Whether the complainant is entitled to the relief claimed?
2. What order?

8. My findings on the above points are as under:

1. In the Affirmative
2. As per final order for the following:

FINDINGS

9. **My findings on Point No.1:-** From the materials placed on record, it is apparent that in spite of accepting substantial sale consideration amount towards the sale of a plot to the complainant, the respondent has neither handedover the plot nor has refunded the amount to the complainant till date. Thus, the respondent has failed to abide by the terms and conditions as agreed. There seems to be no possibility of handing over the possession of the plot to the complainant in near future.

10. In case the allottee wishes to withdraw from the project the promoter is liable without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, flat, building as the case may be with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.

11. Therefore, as per **section 18(1)** of the Act, the promoter is liable to return the amount received along with interest and compensation if the promoter fails to complete or provide possession of an apartment/plot etc., in accordance with sale agreement.

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12. From the averments of the complaint and the terms and conditions in the booking form, it is obvious that the complainant has paid a substantial sale consideration amount to the respondent. Though the respondent vide his receipt dated 24/5/2013, 26/3/2014 and 5/7/2014 has acknowledged the receipt of the amount from the complainant, the respondent has failed to keep up his promise as agreed. Having accepted the said amount and failure to keep up promise to hand over possession of the plot to the complainant, certainly entitles the complainant herein for refund with interest.
13. The complainant has submitted his memo of calculation as on 06/10/2022 claiming refund with interest for Rs.3,98,033/- (Rupees Three Lakh Ninety Eight and Thirty Three only). Despite several opportunities given to the respondent has failed to file their memo of calculation. This conduct of the respondent clearly goes to show that he has taken the complainant for a ride and deprived him of owning his own plot. A thorough verification of the documentary evidence furnished by the complainant reveals that his claim is genuine.
14. Though the respondent has appeared before the Authority in response to the notice through its counsel, further he has not taken any interest to participate in the proceedings by filing statement of objections and producing documents on his behalf. The respondent has not at all disputed the claim of the complainant in any manner. Therefore, the claim of the complainant remained unchallenged and it is corroborated with the cogent evidence. These being the facts, in the absence of any resistance by the respondent, there is no option left to this Authority except to accept the claim of the complainant.

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15. Therefore, it is incumbent upon the respondent to refund the amount with interest which is determined as under:

Interest Calculation Till 30/04/2017 (Before RERA)					
S.NO	DATE	AMOUNT PAID BY CUSTOMER	NO OF DAYS	NO OF DAYS TILL	INTEREST @9%
1	24-05-2013	50,000	1437	30-04-2017	17,716
2	26-03-2014	1,20,000	1131	30-04-2017	33,465
3	05-07-2014	46,000	1030	30-04-2017	11,682
4				TOTAL INTEREST (I1)	62,863

Interest Calculation From 01/05/2017 (After RERA)							
S.NO	DATE FROM 01/05/2017	AMOUNT PAID BY CUSTOMER	NO OF DAYS	NO OF DAYS TILL	MCLR INTEREST X%	INTEREST RATE X+2%	INTEREST @X+2%
1	01-05-2017	2,16,000	1984	06-10-2022	8.15	10.15 as on 01-05-2017	1,19,170
2	TOTAL AMOUNT	2,16,000				TOTAL INTEREST (I2)	1,19,170

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 06-10-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
2,16,000	1,82,033	0	3,98,033

16. Accordingly, the point raised above is answered in the Affirmative.

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17. My answer to Point No.2:- In view of the above discussion, I proceed to pass the following:-

ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. **CMP/UR/220316/0009125** is hereby allowed. Respondent is directed to pay a sum of Rs.3,98,033/- (Rupees Three Lakh Ninety Eight Thousand and Thirty Three only) **towards refund with interest** calculated at 9% from 24/05/2013 to 30/04/2017 and MCLR + 2% from 01/05/2017 till 06/10/2022 to the complainant within 60 days from the date of this order. The interest due from 07/10/2022 up to the date of final payment will be calculated likewise and paid to the complainant. The complainant is at liberty to initiate action for recovery in accordance with law if the respondent fails to pay the amount as per the order of this Authority.

No order as to the costs.


(Neelmani N Raju)
Member, KRERA