

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

Dated 23RD AUGUST 2023

PRESIDED BY HON'BLE MEMBER SMT. NEELMANI N RAJU

COMPLAINT NO.: CMP/00157/2023

COMPLAINANT.....

**PRAVEEN KUMAR R
NO.8, 1ST A CROSS
R K PLAZA, BRR LAYOUT
DODDA BANASVADI
KALYANANAGAR
BANGALORE-560043.**

(IN PERSON)

V/S

RESPONDENT.....

- 1. KESAVA K
NO.22/1, 2ND FLOOR
RAILWAY PARALLEL ROAD
NEHRUNAGAR
BENGALURU-560020.**
- 2. M/s. MAX SIDDHANTH PROPERTIES
NO.22/1, 2ND FLOOR
RAILWAY PARALLEL ROAD
NEHRUNAGAR
BENGALURU-560020.**

(EX-PARTE)

*** * * * ***

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-JAGRUTHI PHASE-I"** developed by M/S. MAX SIDDHANTH PROPERTIES at Sy.No.144/2A, 144/2B, 83/225,

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Kuthaganahalli Village, Sarjapura Hobli, Anekal Taluk, Bangalore Urban District for the relief of refund with interest and compensation for mental agony.

2. This project is not registered under RERA.

Brief facts of the complaint are as under:-

3. The complainant has purchased a plot bearing No.171 measuring 30' x 40' in the project of the respondent for a total sale consideration of Rs.11,40,000/- (Rupees Eleven Lakh Forty Thousand only) which has been duly acknowledged by the respondents vide their receipts dated 13/1/2013, 27/2/2013, 22/11/2013, 22/6/2015, 13/6/2018 (three), and 7/11/2019. The respondents have also executed sale deed of the above said plot in favour of the complainant on 13/06/2018.
4. The complainant submits that he has paid entire sale consideration amount to the respondents but till today there is no development works going on in the project. The complainant further submits that the project is completely stalled and also that the project has not been registered under RERA. The complainant also submits that the Local Planning Authority has also not sanctioned Layout Plan. Thus the complainant has approached this Hon'ble Authority and prays for direction to the respondents to make refund of full amount with interest. Hence, this complaint.
5. After registration of the complaint, in pursuance of issue of several notices, the respondents have not appeared before the Hon'ble Authority either through their counsel or representative and have not filed any documents on their behalf.
6. The respondents failed to appear before the Authority and never attended the hearings. Finally paper publication was issued in local Kannada daily newspaper "**HOSA DIGANTHA**" on 13/06/2023 for the appearance

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of the respondents. In spite of newspaper publication, the respondents did not appear before the Authority and hence, have been placed as **EX-PARTE**.

7. The complainant has submitted Sale Deed, payment receipts, 13 photographs of the Layout, newspaper publication published in "Hosa Digantha" Kannada daily dated 13/06/2023 and memo of calculation for refund with interest as on 25/07/2023.
8. This matter was heard on 16/3/2023, 30/5/2023, 18/7/2023 and 25/7/2023. The case was finally posted for orders on 25/07/2023.
9. This complaint was heard on 21/2/2023, 5/4/2023, 31/5/2023, 6/6/2023 and 13/7/2023. Heard arguments of the complainant side.
10. **On the above averments, the following points would arise for my consideration:-**
 1. Whether the complainant is entitled for the relief claimed?
 2. What order?

11. **My answer to the above points are as under:-**
 1. In the Affirmative.
 2. As per final order for the following -

REASONS

12. **My answer to Point No.1:-** Admittedly, the complainant has paid Rs.11,40,000/- on various dates to the respondents for purchase of Plot No.171 in the project of respondents and that the sale deed was executed on 13/6/2018. Thereafter, the complainant came to know that the respondents did not develop the layout as promised. Therefore, the complainant has requested the developer to refund his amount along with interest to which the respondents have not responded till date.

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13. From the averments of the complaint and documents furnished by the complainant, it is obvious that the respondents have not refunded the amount to the complainant till date. The Hon'ble Authority has also noticed that despite several notices were sent to the respondent they did not attend the hearings either in person or through their counsel/representative. The Hon'ble Authority has also noticed that even the summons which were sent to the respondents have been returned stating that 'not found at the address'.
14. During the process of the hearing, the Authority instructed the complainant to produce photographs of the present status of the project. The complainant has submitted the photographs as directed which was perused by the Hon'ble Authority.
15. The complainant has submitted a prayer for amending relief sought in the complaint to refund with interest and the Authority accepts the same accordingly.
16. Though the notice and summons have been served on the respondents, they failed to appear before the Authority to participate in the proceedings. The respondents have 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 cogent evidence. These being the facts, the Authority accepts the claim of the complainant.
17. At this juncture, my attention is drawn towards the decision of Hon'ble Supreme Court in Appeal No.6750-57/2021, M/s Newtech Promoters v/s The State of Uttar Pradesh it is held that:

"Section 18(1) of the Act spells out the consequences if the promoter fails to complete or is unable to give possession of an apartment, plot or building either in terms of the agreement for sale or to complete

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the project by the date specified therein or on account of discontinuance of his business as a developer either on account of suspension or revocation of the registration under the Act or for any other reason, the allottee/home buyer holds an unqualified right to seek refund of the amount with interest at such rate as may be prescribed in this behalf."

18. In the Judgement reported in Civil Appeal No.3581-3590 of 2020 at Para No.23 between M/s Imperia Structures Ltd v/s Anil Patni and another by the Hon'ble Supreme Court it is held that:

"In terms of section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the project. Such right of an allottee is specifically made "without prejudice to any other remedy available to him". The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to section 18(1) contemplates a situation where the allottee does not intend to withdraw from the project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is upto the allottee to proceed either under section 18(1) or under proviso to section 18(1). The case of Himanshu Giri came under the later category. The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the project or claim return on his investment."

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19. 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.
20. 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 etc., in accordance with sale agreement.
21. Having regard to all these aspects this Authority concludes that the complainant is entitled for refund of booking amount as claimed vide his memo of calculation as on 25/07/2023.
22. 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	17-01-2013	50,000	1568	30-04-2017	19,331
2	05-03-2013	20,000	1517	30-04-2017	7,481
3	04-05-2013	20,000	1457	30-04-2017	7,185
4	04-05-2013	20,000	1457	30-04-2017	7,185
5	04-06-2013	20,000	1426	30-04-2017	7,032
6	04-07-2013	20,000	1396	30-04-2017	6,884
7	05-08-2013	20,000	1364	30-04-2017	6,726
8	04-09-2013	20,000	1334	30-04-2017	6,578
9	04-10-2013	20,000	1304	30-04-2017	6,430
10	06-11-2013	20,000	1271	30-04-2017	6,267
11	04-12-2013	20,000	1243	30-04-2017	6,129
12	04-01-2014	20,000	1212	30-04-2017	5,976

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13	04-02-2014	20,000	1181	30-04-2017	5,824
14	04-03-2014	20,000	1153	30-04-2017	5,686
15	04-04-2014	20,000	1122	30-04-2017	5,533
16	05-05-2014	20,000	1091	30-04-2017	5,380
17	04-06-2014	20,000	1061	30-04-2017	5,232
18	04-07-2014	20,000	1031	30-04-2017	5,084
19	05-08-2014	20,000	999	30-04-2017	4,926
20	04-09-2014	20,000	969	30-04-2017	4,778
21	08-10-2014	20,000	935	30-04-2017	4,610
22	05-11-2014	20,000	907	30-04-2017	4,472
23	04-12-2014	20,000	878	30-04-2017	4,329
24	05-01-2015	20,000	846	30-04-2017	4,172
25	04-02-2015	20,000	816	30-04-2017	4,024
26	04-03-2015	20,000	788	30-04-2017	3,886
27	06-04-2015	20,000	755	30-04-2017	3,723
28	05-05-2015	20,000	726	30-04-2017	3,580
29	04-06-2015	20,000	696	30-04-2017	3,432
30	04-07-2015	20,000	666	30-04-2017	3,284
31	18-08-2015	20,000	621	30-04-2017	3,062
32	04-09-2015	20,000	604	30-04-2017	2,978
33	06-10-2015	20,000	572	30-04-2017	2,820
34	04-11-2015	20,000	543	30-04-2017	2,677
35	04-12-2015	20,000	513	30-04-2017	2,529
36	11-01-2016	26,000	475	30-04-2017	3,045
37		7,56,000		TOTAL INTEREST (I1)	1,92,270

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 INTERE ST X%	INTEREST RATE X+2%	INTEREST @X+2%
1	01-05-2017	7,56,000	2276	25-07-2023	8.15	10.15 as on 01-05-2017	4,78,483

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H/W

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2	08-06-2018	50,000	1873	25-07-2023	8.45	10.45 as on 01-06-2018	26,812
3	06-07-2018	20,000	1845	25-07-2023	8.45	10.45 as on 01-07-2018	10,564
4	06-08-2018	20,000	1814	25-07-2023	8.45	10.45 as on 01-08-2018	10,387
5	08-09-2018	20,000	1781	25-07-2023	8.65	10.65 as on 01-09-2018	10,393
6	06-10-2018	20,000	1753	25-07-2023	8.7	10.7 as on 01-10-2018	10,277
7	06-11-2018	20,000	1722	25-07-2023	8.7	10.7 as on 01-11-2018	10,096
8	06-12-2018	20,000	1692	25-07-2023	8.7	10.7 as on 01-11-2018	9,920
9	06-01-2019	20,000	1661	25-07-2023	8.75	10.75 as on 10-12-2018	9,783
10	06-02-2019	20,000	1630	25-07-2023	8.75	10.75 as on 10-01-2019	9,601
11	06-03-2019	20,000	1602	25-07-2023	8.75	10.75 as on 10-02-2019	9,436
12	06-04-2019	20,000	1571	25-07-2023	8.75	10.75 as on 10-03-2019	9,253
13	06-05-2019	20,000	1541	25-07-2023	8.7	10.7 as on 10-04-2019	9,034
14	06-06-2019	20,000	1510	25-07-2023	8.65	10.65 as on 10-05-2019	8,811
15	06-07-2019	20,000	1480	25-07-2023	8.65	10.65 as on 10-06-2019	8,636
16	06-08-2019	20,000	1449	25-07-2023	8.6	10.6 as on 10-07-2019	8,416

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17	06-09-2019	2,000	1418	25-07-2023	8.45	10.45 as on 10-08-2019	811
18	07-10-2019	34,000	1387	25-07-2023	8.35	10.35 as on 10-09-2019	13,372
19	04-11-2019	18,000	1359	25-07-2023	8.25	10.25 as on 10-10-2019	6,869
20	TOTAL AMOUNT	11,40,000				TOTAL INTEREST (I2)	6,60,954

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 25-07-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
11,40,000	8,53,224	0	19,93,224

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

24. **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/00157/2023** is hereby allowed.

The respondents are directed to pay a sum of Rs.19,93,224/- (Rupees Nineteen Lakh Ninety Three Thousand Two Hundred and Twenty Four only) towards refund with interest calculated at the rate of 9% from 17/01/2013 to

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30/04/2017 and at MCLR + 2% from 01/05/2017 to 25/07/2023 to the complainant within 60 days from the date of this order.

The interest due from 25/07/2023 till 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