

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು  
**Karnataka Real Estate Regulatory Authority Bangalore**  
ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್,  
3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027

**BEFORE ADJUDICATING OFFICER**  
**PRESIDED BY SRI K. PALAKSHAPPA**  
**DATED 25<sup>th</sup> September 2020**

<b>Complaint No.</b>	<b>CMP/180214/0000470</b>
<b>Complainant</b>	Venkatesha Reddy KT D. NO. 50, 7 <sup>th</sup> Cross, Prakruthinagar, Kogilu Road, Bengaluru-560064 In person
<b>Opponent</b>	Max worth Realty India #12/2, Yamuna Bai Road, Madhava Nagar Bengaluru-560020 Rep. by its chairman & MD, Keshava K. Sri K.S. And Associates Advocate for respondent

**JUDGMENT**

1. The complainant has filed this complaint no. CMP/180214/0000470 under Section 31 of RERA Act against the project "MAX MEADOWS 111", developed by 'Promoter K. Keshava., seeking for the relief as under:

*Respected Sir, this is with lot of pain i am writing to seek your help to get my advance money paid to Max Worth Realty India Limited. I wanted to buy 4 plots from them on 8th June 2013. Two plots in my name, one plot in my wife name and one in my mothers name. We paid advance of rs. 50,000 for each of the four plots with expected registration in 3-6 months. Price for each plot was agreed for 9Laks. Advance amount agreed was 50000 per plot. With repeated approach to Max Worth team for registration, no use. They have been saying registration is expected in next 6 months. I*

*P. S. S. S.*  
25/09/2020

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*requested them to return money by cancelling my application on 9th Sep 2016. Maxworth agreed for the same and assured to return money in 6 months. Maxworth has not paid back money so far after repeated requests. I have visited them multiple times to request my money back. I am in need of urgent money and i have taken person loan from bank for my need inspite of money being with maxworth for more than 58 months. I requested advocate to issue notice to Maxworth. Advocate issued the notice and the same was not received by maxworth. I am looking for help from your esteemed organization to get the justice to my pain and loss. I have high hopes on your organization and looking forward for your help. I have uploaded all the documents including the bank cheque details. I am available for any further communication. Kindly help me*  
Thanks and Regards, Venkatesha Reddy KT, Lavina Reddy, CS Kamalamma

*Relief Sought from RERA: Return of Advance amount along with interest*

2. After registering the complaint notice has been issued to the parties, the complainant has appeared in person where as the respondent has appeared through his advocate and filed his objections.
3. This case was filed against the unregistered project and hence some action has been initiated by the Secretary against the developer regarding violation S.3 of the Act.
4. With regard to disposal of complaint the case was transferred to Adjudicating Officer and notice has been issued to the parties. When the matter was posted to 02/04/2020 but on account covid-19, it was ordered to stop the hearing in open court. Further from 24/03/2020 till 17/05/2020 lock down was declared and as such hearing was not possible. Further as per office note, the personal hearing was deferred and as such the parties have been called for

*John*  
*24/05/2020*

hearing through Skype ON 12/08/2020. The developer has filed his objections in the office on 06/08/2020.

5. Heard the parties.

6. The point that arise for my consideration is

- Whether the complainant proves that he is entitled for refund of his amount?
- If so, what is the order?

7. My answer is affirmative for the following

### **REASONS**

8. This Complaint is filed for the relief of refund of the amount mainly on the ground that there is no completion of the project. The Complainant has paid Rs. 2 Lakh as booking amount in the year 2013. The description of his case is as under:

*The Developer has contented in his Objection statement as under:*

*It is submitted that the total sale consideration amount for four plots are (each site 10,80,000 x 4 ) 43,20,000/- and price fixed with mutual consent. Out of total sale consideration amount of Rs. 43,20,000/- the complainant has paid only Rs.2,00,000/- as advance amount i.e 4.62% of total consideration amount. It is further submitted that the prerequisite condition for execution Assignment agreement is a minimum payment of 30% of the total consideration amount. But till today the complainant not paid 30% of the total consideration amount. But, the complainant alleges that no registration was done till date. This reveals the Malafide intention of the complainant to harass the respondent.*

*Done  
28/8/2020*

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*Therefore the complaint is liable to be dismissed on this ground alone.*

*Extract of the terms and conditions of booking form dated 8/6/2013.*

*Clause 10: "Sale agreement will be executed only on 30% payment of the total sale consideration."*

*It is submitted that as per JDA dated 5/11/2011, the clause 1.2 clearly reveals that the respondent is only permitted to enter upon schedule property by way of license to develop the same and the legal possession of schedule property shall continue to vest with the first parties mentioned in JDA dated 5/11/2011.*

*Extract of clause 1.2.*

*" Such permission given by the party to the second party to enter into the schedule property shall however but be constructed as the delivery of possession under sec 53A Transfer of property act or as S transfer within the meaning of section 2 of the Income-Tax Act, 1961.*

*The legal possession of schedule property shall continue to vest with the first party. The second party is only permitted to enter upon scheduled property by way of license to develop the same.*

*Further, it is submitted that Sri.S.C. Muniraju, and others, the owners of property bearing Sy No. 148, mentioned in the above said JDA dated 5/11/2011, meantime entered into another agreement with one person named Sri. Gallappa. And restrained the respondent to enter the property for continuing his residential layout developmental work. Therefore the respondent failed a case against Sri. S.C. Muniraju, and others, the owners of property bearing Sy.No 148 in Senior*

*Den  
22/09/2020*

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Civil Judge at Bangalore Rural District at Bangalore, for specific performance and permanent injunction against the owners. Case OS no 63/2013. The case is still pending before the Hon'ble Senior Civil Judge at Bangalore Rural District at Bangalore. In the said case OS no 63/2013, the Hon'ble senior district court gave the order for not alienate and to maintain the status quo on 21/12/2013. Hence the delay in continuation of the project. The continuation of the project is behind the control of the respondent. The certified copy Judgement dated 21/12/2013 produced herewith for kind perusal of this authority.

Hon'ble MahaRera in complaint no. CC006000000000180, saga, Nikam and Aur Vs space Builders Pvt Ltd. Held that, when the delay in delivery of possession was due to an interim order by the Hon'ble high court in a PIL, directing the planning authorities to maintain status quo, by not issuing occupancy certificate to certain projects, it was held to be a reason beyond the control of the respondent.

Hon'ble MahaRera in complaint no. CC006000000000089, venkata Phanindra Kumar vs Akshar Space and Others held that, if the delay is caused by any event of force Majure or for resons beyond the control of the promoter, held that the said circumstances in this case wherein the delay is caused on the part of the government, revenue authority or any other local authority/body the date of possession shall be extended accordingly.

Therefore the complainant is liable to be dismissed on this ground alone.

It is submitted that as per agreed terms and conditions of Booking Form dated 8/6/2013, "Clause -12 cancellation without a valid reason 15% of booking amount will be

*[Handwritten signature]*  
25/09/2013



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*deducted towards service and transport charges." It is submitted that the cancellation request was sent by the complainant without valid reason and the demand to refund the full amount us against the agreed terms of booking forms and bad motives. It is evident that Complainant trying to unjustly enrich through judicial machinery.*

9. In view of the same it is submitted that the complaint is not maintainable. I would say that the stand taken by the developer proves the relationship and transaction. Now the only question arisen for my consideration as to forfeiture of amount as contended by the developer in his objection statement.
10. I would say that the right of forfeiture does arise only when the developer is also in a right path. He has not completed the project which was under litigation. The amount was booking amount paid in the year 2013 and now we are in the year 2020. No efforts have been made by the developer to complete the project but reminding the terms of the agreement to the complainant. Further the decision referred by him will help him if the case is one for delay compensation. Has he complied with the other terms of the agreement? Answer is no. Further so for as forfeiture is concerned it is said by the Maha Rera Appellatge tribunal as -----

11. Relying upon the principle laid down in the case of Central Intand Water Vs. Broio Nath Ganguly & Ann On 06.04.7986 (7986 AIR SCR (2) 278), the Hon'ble Supreme Court, while deciding the case in favour of an allottee, held the view in Pioneer Urban Land and fnfrastructure Vs. Govindan Raghavan in Civil Appeal No.72238 of 2078 on 02.04'20Tgsignifying that court will not enforce an unreasonable, unfair contract or an unreasonable and unfair

*Dr. S. S. Srinivas*

*clause in a contract where contracting parties are not equal in bargaining power and where a man has no choice or rather a meaningful choice but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form.... as a part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rule may be' In view of this judgment, Respondent cannot be allowed to act disadvantageously to the Interests of Appellant who was not made aware of interpretations and implications of ex-facie ambiguous, one-sided and inequitable terms used by Respondent in Application Form/Allotment letter which Appellant had no choice but to sign on dotted line in a prescribed or standard form.*

12. The opinion of the appellate tribunal was based upon the observation made by the Apex Court and the principle is very much applicable to the case on hand. The terms of agreement were never honoured by the developer but trying to expect the same from the side of buyer alone which is not correct. Therefore the terms of agreement have not been carried out by himself then the developer shall not expect the compliance from the buyer. In view of the same the observation made by the apex court is exactly applicable the present case and as such I have no any reason to dismiss the case of the complainant. I say that as per the observation made by the Apex court the agreement shall not be applied only for the purpose of forfeiture and hence, the plea of the developer falls on the ground. Further the developer shall return the same along with applicable interest from the date of payment because the said amount with the developer since 2013 which was being used by the developer for the development of his project but unfortunately it was not completed even today.

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13. Before passing the final order I would like to say that as per Section 71(2) of RERA the complaint shall be disposed off by the Authority within 60 days from the date of receipt of the complaint. Here the complaint has been filed against the unregistered project and as such the Secretary has initiated the action against the developer for violation of S.3 of the Act and later the present complaint was transmitted Adjudicating Officer and notice has been issued. It was posted to 2/04/2020 for objections. In the meanwhile on account of natural calamity COVID 19 the whole nation was put under lock down completely from 24/03/2020 till 17/05/2020 and as such this judgment could not be passed and as such it is with some delay. With this observation, I proceed to pass the following.

**ORDER**

- The Complaint filed by the complainant bearing No. CMP/180214/0000470 is hereby allowed.
- The developer is directed to return Rs. 2,00,000/- along with simple interest @ 9% from the date of payment till 30/04/2017 and @ 2% above the MCLR of SBI from May 2017 till realization.
- Intimate the parties regarding the order.

(Typed as per dictated, corrected, verified and pronounced on 25/09/2020).

  
**K. PALAKSHAPPA**  
Adjudicating Officer