

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 17th AUGUST 2023

PRESIDED BY HON'BLE MEMBER SMT. NEELMANI N RAJU

COMPLAINT NO.: CMP/UR/220826/0009937

COMPLAINANT.....

**SHOBHA S
NO.399, 2ND B CROSS
3RD STAGE, 3RD BLOCK
BASAVESHWARANAGAR
BENGALURU-560079.**

(IN PERSON)

V/S

RESPONDENT.....

**MAXWORTH REALTY INDIA LIMITED
KMP HOUSE
12/2, NEAR SHIVANANDA CIRCLE
MADHAV NAGAR
BANGALORE-560001.**

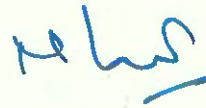
**(BY MRS.B.P. SHOBHA &
MR.K.V. SUBRAMANI, ADVOCATES)**

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 SPLENDOR**" developed by **M/s. Maxworth Realty India Limited** at Nagarabhavi near Mallathahalli Lake, Bangalore Urban for the relief of refund with interest.
2. This project is not registered under RERA.

Brief facts of the complaint are as under:-

3. The complainant had booked a flat bearing No.B 102 for a total sale consideration of Rs.47,66,580/- (Rupees Forty Seven Lakh Sixty Six Thousand Five Hundred and Eighty only) in the project of respondent



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vide Booking Form dated 26 January 2014 and has paid an amount of Rs.10,00,000/- (Rupees Ten Lakh only) to the respondent duly acknowledged vide receipt Nos.BLR/13-14/7194 dated 26/1/2014 and BLR/13-14/7436 dated 3/2/2014. The complainant submits that the respondent had assured that the construction work will commence in March/April 2014. The complainant further submits that she has not heard about the commencement of construction as on 17/10/2016 as such she requested for refund of money with interest and exit from the project. The complainant submits that there was no response from the respondent for telephone calls/emails. Though the complainant had sent a letter to the respondent through registered post, it was returned to the complainant. Thus, the complainant has approached this Hon'ble Authority and prays for direction to the respondent to make refund of full amount with interest. Hence, this complaint.

4. After registration of the complaint, in pursuance of issue of several notices, the respondent did not appear before the Hon'ble Authority either through its counsel or its representative. On issue of summons, counsel for the respondent appeared before the Authority but did not file any statement of objections nor produced any documents on their behalf.
5. In support of her claim, the complainant has produced copies of documents such as Booking Form, Payment Receipts, email correspondence and memo of calculation as on 6/4/2023.
6. This complaint was heard on 21/12/2022, 7/2/2023, 16/3/2023, 6/4/2023, 15/6/2023, 25/7/2023 and 8/8/2023. Heard arguments of both sides.
7. **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?



8. My answer to the above points are as under:-

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

REASONS

9. **My answer to Point No.1:-** Admittedly, the complainant has paid Rs.10,00,000/- on various dates to the respondent for booking of Flat No.B-102 in the project of respondent in January 2014. Thereafter, the complainant came to know that the respondent did not start the construction work as promised. Therefore, the complainant has requested the respondent to refund her amount along with interest and exit from the project to which the respondent has not responded till date.
10. From the averments of the complaint and documents furnished by the complainant, it is obvious that the respondent has failed to start construction work as promised in March/April 2014 and has failed to respond to the calls/emails/letter sent by the complainant. The respondent has also not refunded the amount to the complainant till date.
11. During the process of the hearing, the Hon'ble Authority has noticed that despite several notices were sent to the respondent they did not appear before the Authority for the hearings either in person or through their counsel/representative. The Authority directed the office to send summons to the respondent. The summons dated 17/3/2023 was received in the respondent's office under dated acknowledgement (30/3/2023). The counsel for the respondent appeared for the hearing on 6/4/2023 and later failed to appear before the Authority.
12. Though the respondent has appeared before the Hon'ble Authority through its counsel in response to the summons served,

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further the respondent has not taken interest to participate in the proceedings by filing statement of objections and producing documents on its 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 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.

13. 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 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."

14. 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."

15. 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.
16. 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.
17. Having regard to all these aspects this Authority concludes that the complainant is entitled for refund of booking amount as claimed vide her memo of calculation as on 6/4/2023.
18. Therefore, it is incumbent upon the respondent to refund the amount with interest which is determined as under:

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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	26-01-2014	2,00,000	1190	30-04-2017	58,684
2	03-02-2014	8,00,000	1182	30-04-2017	2,33,161
3		10,00,000		TOTAL INTEREST (I1)	2,91,845

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	10,00,000	2166	06-04-2023	8.15	10.15 as on 01-05-2017	6,02,326
2	TOTAL AMOUNT	10,00,000				TOTAL INTEREST (I2)	6,02,326

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 06-04-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
10,00,000	8,94,171	0	18,94,171

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

20. **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/220826/0009937** is hereby allowed.

Handwritten signature

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The respondent is directed to pay a sum of Rs.18,94,171/- (Rupees Eighteen Lakh Ninety Four Thousand One Hundred and Seventy One only) towards refund with interest calculated at the rate of 9% from 26/1/2014 to 30/04/2017 and at MCLR + 2% from 01/05/2017 to 06/04/2023 to the complainant within 60 days from the date of this order.

The interest due from 06/04/2023 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

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