

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-4

PRESIDED BY MR. H.C. KISHORE CHANDRA, HON'BLE CHAIRMAN

DATED 17TH DAY OF AUGUST 2023

COMPLAINT NO. CMP/UR/201029/0006978

COMPLAINANT:

VIMAL KUMAR L
NO: 16/3/2, 1ST MAIN
MARENAHALLI
VIJAYANAGAR
BENGALURU URBAN-560040

(IN PERSON)

V/s

RESPONDENTS...

KESAVA K
CHAIRMAN & MANAGING
DIRECTOR
M/s MAXWORTH REALTY
INDIA LIMITED
KMP HOUSE, #12/2
YAMUNA BAI ROAD
MADHAVANAGAR
BENGALURU URBAN-560001

(EX-PARTE)

PROJECT NAME

MAX MARVEL PHASE-III

JUDGEMENT

1. This complaint has been filed under section 31 of the RERA Act against the project "MAX MARVEL PHASE III" developed by "M/s

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MAXWORTH REALTY INDIA LIMITED for the relief of refund of amount with interest.

2. The promoter has developed this project situated at Maragondanahalli Village, Kundana Hobli, Devenahalli Taluk.
3. This project is not registered in RERA. The Authority has passed an interim order dated 6/10/2022 with a direction to the respondent to register the project as required under section 3 of the RERA Act within two weeks from the date of this orders. In spite of this, the respondent has not yet registered the project.
4. **Brief facts of the complaint are as under:** The complainant herein had booked a sited bearing No.282 in the project "**MAX MARVEL PHASE III**" of the respondent by entering into an Assignment Agreement dated 6/7/2013 for a total sale consideration of Rs.6,72,000/- (Rs. Six lakhs seventy two thousand only). The complainant has paid an amount of Rs.1,00,000/- on 1/12/2013, Rs.1,01,600/- on 27/4/2013 altogether Rs.2,01,600/- to the respondent which has been duly acknowledged by him. The respondent was required to hand over the possession to the complainant within 6 months i.e. by 6/1/2014 as per the Assignment Agreement dated 6/7/2013. The respondent has failed to register the said site in favour of the complainant within the stipulated timeline. Therefore, the complainant in his email dated 4th January 2015 addressed to the respondent has requested to cancel the booking since it is taking too long time for registration. Despite multiple emails, visits follow-ups with the developer but still the developer is not refunding the amount. Having lost confidence with the respondent, the complainant has

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approached this forum for a direction to the respondent to refund the amount along with interest. Hence, this complaint.

4. After registration of the complaint, in pursuance of the notice, the respondent has been continuously remained absent during the hearings held on 29/7/2022, 19/8/2022, 30/8/2022, 13/9/2022, 30/9/2022, 28/10/2022, 21/11/2022, 12/12/2022, 17/01/2023, 30/1/2023, 10/3/2023, 17/4/2023, 26/5/2023 and on 12/6/2023 and hence he has been placed as an Ex-parte. Despite of providing sufficient opportunity, it is noticed that the respondent has not appeared before the Authority to put forth his defence and has not taken any interest to participate in the proceedings by filing statement of objections, producing documents if any on his behalf and remained absent on the aforesaid dates of hearings.

5. In support of his claim, the complainant has produced documents such copy of assignment agreement dated 6/7/2013, email communication with developer for cancellation of booking, email communication with developer for commitment given by developer for refund, payment receipts and memo of calculation, booking form dated 1/12/2012.

6. Heard the complainant.

7. On the above averments, the following points would arise for my consideration.

8. 1) Whether the complainant is entitled for the relief claimed?
2) What order?

9. **Findings to the above points is as under:**

1) In the Affirmative

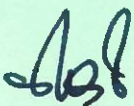
2) As per final order for the following:

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FINDINGS

10. **Findings on point no.1:** From the payment receipts furnished by the complainant, it is apparent that the complainant had booked a site bearing 282 in the project "MAX MARVEL PHASE III" of the respondent and has paid substantial sale consideration to the respondent. As per the Assignment Agreement entered into between the parties, the respondent was required to hand over the possession of the said site to the complainant by 6/1/2014. It is contended that the respondent has not completed the project within the stipulated timeline as agreed. Therefore, the complainant has approached this Authority for refund of amount along with interest.
11. At this juncture, our attention is drawn towards the decision of the judgement of the Hon'ble Supreme Court of India in CIVIL APPEAL NO(S). 3581-359 2022, Civil Appeal Diary No: 9796/2019 between M/s Imperia Structures Limited vs. Anil Patni & others, it is held as under:
12. "23. 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 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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13. Therefore, as per section 18(1) of the Act, the promoter is liable to return the amount received along with interest and compensation only if the promoter fails to complete or provide possession of an apartment /plot in accordance with sale agreement.
14. Further, in the decision of the Hon'ble Supreme Court of India in Civil Appellate Jurisdiction Civil Appeal No(s) 6745-6749 of 2021(arising out of SLP (Civil) No(s) 3711-3715 of 2021 between M/s Newtech Promoters and Developers Private Limited Versus State of UP & others, it is held as under:

"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 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 or the amount with interest at such rate as may be prescribed in this behalf"

15. From the averments made in the complaint and other documents, it is obvious that the complainant has paid an amount of Rs.2,01,600/- (Rs. Two lakhs one thousand six hundred only) to the respondent towards the purchase of site no: 282 which has been duly acknowledged by him. The complainant has furnished memo of calculation dated 20/01/2023. The Promoter-respondent has not submitted any memo of calculation in spite of several opportunities given to him.
16. Despite of several notices served upon the respondent, he did not appear before this Authority has been continuously remained absent on all the dates of hearings. Subsequently he has failed to file statement of objections and furnishing documents in support of his defence and hence not contested

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the matter. In the absence of any resistance by the respondent and considering the claim of the complainants which is corroborated with the documentary evidence, there is no option left to this Authority except to accept the claim of the complainant. Considering all these aspects, the point raised above is answered in the Affirmative.

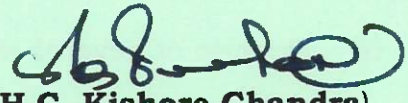
17. **Findings on point no.2:** In view of the above discussion, the complaint deserves to be allowed. Hence, I proceed to pass the following:

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/201029/0006978** is hereby allowed.

1. The respondent is hereby directed to refund an amount of Rs.2,01,600/- (Rs. Two lakhs one thousand six hundred only) along with interest to the complainant within 60 days from the date of this order calculated at the rate of 9% from 3/12/2012 to 30/4/2017. Further, at the rate of SBI MCLR +2% from 1/5/2017 till the date of entire realization.
2. The complainant is at liberty to enforce the said order in accordance with law if the respondent fails to comply with the above order.

No order as to costs.


(H.C. Kishore Chandra)
Chairman
K-RERA