

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 3rd OCTOBER 2022

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/201013/0006832

COMPLAINANT.....

**MR. BIPLAB BAKSI &
MRS. SANJIB DAS BAKSI**
Vivant-A-803, Lodha Splendora
Bhayenderpada
Ghodbunder Road
Thane (West) – 400615
District: Thane
State: Maharashtra

(By Mr. Raj Kumar, Advocate)

V/S

RESPONDENT.....

**SANCHAYA LAND & ESTATE PVT LTD
(INDYA ESTATES)**
479, HMT Layout,
near RT Nagar,
Bengaluru-560032.

J U D G E M E N T

1. This complaint is filed under section 31 of the RERA Act against the project "Sky View" for the relief of refund with interest.

Brief facts of the complaint are as under:-

2. The complainant had booked an apartment in the project of respondent in 2018 by paying an amount of Rs.7,01,254/- (Rupees Seven Lakh One Thousand Two Hundred and Fifty Four only) being 20% cost of the two flats to the respondent. Despite several requests by the complainant to the respondent for an

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Agreement of Sale, the respondent has not given Sale Agreement till date. The project is registered under RERA and was valid till 31/12/2018. Thus the respondent has violated the provisions of Section 13 of the Real Estate (Regulation and Development) Act, 2016 by collecting more than 10% booking amount without entering into sale of agreement. The respondent had assured the complainant that the flat will be handed over by the end of December 2018. When the complainant enquired about the progress of the project and registration of the flat, the complainant came to know that their booking has been cancelled by the respondent citing non-payment of dues towards the flat. The respondent sent an email to this effect on 19/9/2020. The respondent through another email dated 11/11/2020 informed that the refund will be processed in March 2021. But so far, the respondent has not refunded the amount. Thus the complainant is left with no option has approached the Authority for refund of the full amount with interest till date. Hence, this complaint.

3. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its representative, despite which the respondent has not contested the matter by filing statement of objections nor producing documents on its behalf.

4. In support of his claim, the complainant has produced in all 4 documents such as copies of email correspondence from the respondent, Payment receipts and memo of calculation for refund with interest as on 29/06/2022.

5. Heard arguments of both sides.

6. 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?



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

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

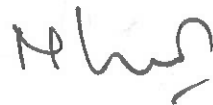
REASONS

8. My answer to point No.1:- From the materials placed on record, it is apparent that inspite of accepting 20% as booking amount for the flat and not entering into an agreement of sale is a clear violation of Section 13 of the Real Estate (Regulation and Development) Act, 2016. The builder has not completed the project within the validity period of the RERA registration i.e. 31/12/2018 and has failed to handover the unit in favour of complainant till date. The respondent has also not applied for extension of RERA registration of the project. The respondent without any prior intimation to the complainant has cancelled the booking of the flat and had assured that the refund will be processed in March 2021.

9. As per section 18(1) of RERA Act, 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, plot, 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.

10. 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 etc., in accordance with sale agreement.

11. From the averments of the complaint and the copies of documents produced by the complainant, it is obvious that complainant has paid 20% of the booking amount out of the sale consideration amount. Having accepted the said amount



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and failing to keep up promise to handover possession of the apartment and cancelling the booking without any intimation and not refunding the amount paid by the complainant as committed, certainly entitles the complainant herein for refund with interest. The complainant vide his memo of calculation as on 29/06/2022 has claimed that the respondent has to refund with interest an amount of Rs.9,75,513/-. During the process of the hearing there was no commitment from the representative of the respondent. The respondent/his representative also repeatedly failed to attend the hearings. Having regard to all these aspects, this Authority concludes that the complainant is entitled for refund with interest.

12. 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	30-04-2017	0	0	30-04-2017	0
2				TOTAL INTEREST (I1)	0

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	0	1885	29-06-2022	8.15	10.15 as on 01-05-2017	0
2	06-10-2018	2,00,000	1362	29-06-2022	8.7	10.7 as on 01-10-2018	79,854
3	14-11-2018	5,01,254	1323	29-06-2022	8.7	10.7 as on 01-11-2018	1,94,405
4	TOTAL AMOUNT	7,01,254				TOTAL INTEREST (I2)	2,74,259

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Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 29-06-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
7,01,254	2,74,259	0	9,75,513

13. Accordingly the point raised above is answered in the Affirmative.

14. **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/201013/0006832** is hereby allowed. Respondent is directed to pay a sum of **Rs.9,75,513/- (Rupees Nine Lakh Seventy Five Thousand Five Hundred and Thirteen only)** calculated at MCLR + 2% from 06/10/2018 till 29/06/2022 towards refund with interest to the complainant, within 60 days from the date of this order. The interest due from 30/06/2022 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.


(Neelmani N Raju)
Member-2, K-RERA

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