

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/201016/0006871

COMPLAINANT.....

MR. SUUNIL DATWANI
202, Sangam Building
15th Floor, Khar West
Mumbai – 400049.
District: Mubai Suburban
State: Maharashtra

(By Mr. Raj Kumar, Advocate)

V/S

RESPONDENT.....

Sanchaya Land and Estate Pvt Ltd
482, 2nd Floor, 80 Feet Road,
HMT Layout, near RT Nagar,
Bengaluru-560032.

(By Mr. Ashwin, Advocate)

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 two flats in the project of respondent and in 2016 by paying an amount of Rs.14,45,866/- (Rupees Fourteen Lakh Forty Five Thousand Eight Hundred and Sixty Six only) being 20% cost of the two flats to the respondent. Despite several requests by the complainant to the respondent for an Agreement of Sale, the respondent has not given Sale

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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 flats will be handed over by the end of December 2018. Even after a delay of more than 3 years, the respondent has not handed over the possession of the said Units. Thus the complainant is left with no option, but to exit from the Project and approach the Authority for refund of the 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 counsel/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 Booking Forms, Payment receipts, Statement of Account and memo of calculation for refund with interest as on 09/07/2022.
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?

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

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

M. S.

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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 flats 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 units in favour of complainant till date. The respondent has also not applied for extension of RERA registration of the project. There seems to be no possibility of completing the project or handing over the possession in near future.
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 and failing to keep up promise to handover possession of the apartments, certainly entitles the complainant herein for refund with interest. The complainant vide his memo of calculation as on 09/07/2022 has claimed that the respondent has to refund with interest an



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amount of Rs.23,56,707/-. During the process of the hearing on 10/8/2022, the representative of the respondent offered to pay back the money to the complainant. The complainant's counsel requested for some time. There was no offer forthcoming from the respondent for settlement. There is no cooperation or response from the respondent. 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	03-02-2016	5,22,933	452	30-04-2017	58,281
2	06-02-2016	5,22,933	449	30-04-2017	57,895
3	02-06-2016	2,00,000	332	30-04-2017	16,372
4	02-06-2016	2,00,000	332	30-04-2017	16,372
5				TOTAL INTEREST (I1)	1,48,920

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	14,45,866	1895	09-07-2022	8.15	10.15 as on 01-05-2017	7,61,921
2	TOTAL AMOUNT	14,45,866				TOTAL INTEREST (I2)	7,61,921

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Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 09-07-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
14,45,866	9,10,841	0	23,56,707

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/201016/0006871** is hereby allowed. Respondent is directed to pay a sum of **Rs.23,56,707/- (Rupees Twenty Three Lakh Fifty Six Seven Hundred and Seven only)** calculated at 9% from 03/02/2016 to 30/4/2017 and at MCLR + 2% from 01/05/2017 till 09/07/2022 towards refund with interest to the complainant, within 60 days from the date of this order. The interest due from 10/07/2022 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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