

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 OCTOBER 2022

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/210914/0008331

COMPLAINANT.....

**KHAIRUNNISA ALI REHMAN
EDEN ROSE 3C, FLAT 503
NEAR PVR CINEMA
MIRA ROAD EAST-401107
DISTRICT: THANE
STATE: MAHARASHTRA**

(Mr.S.K. Prabhakara Shetty, Advocate)

V/S

RESPONDENT.....

**Sanchaya Land and Estate Pvt Ltd
482, 2nd Floor, 80 Feet Road,
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 complainants had booked an apartment in the project of respondent by entering into Agreement of Sale and Construction Agreement on 3/12/2014 and paid an amount of Rs.11,02,822/- (Rupees Eleven Lakh Two Thousand Eight Hundred and Twenty Two only) being sale consideration amount to the respondent on various dates. The respondent had assured the

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complainants that the flat will be handed over by the end of March 2016. Even after a delay of more than 5 years, the respondent has not handed over the possession of the said Unit and only the structure is completed. The respondent is giving false promises about completion date year after year. For the above reason, the complainant decided to cancel her booking and get back the money from the respondent. But the respondent is saying that he will deduct 30% of the amount as penalty from the principal amount. 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 appeared before the Authority couple of times through its representative. But the respondent has not contested the matter by filing statement of objections nor producing documents on its behalf.
4. In support of her claim, the complainant has produced in all 3 documents such as copies of Agreement of Sale, Payment receipts, and memo of calculation for refund with interest as on 15/10/2022.
5. Heard arguments of both sides.
6. On the above averments, the following points would arise for my consideration:-

- a. Whether the complainant is entitled for the relief claimed?
- b. What order?

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

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

Handwritten signature

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REASONS

8. **My answer to point No.1:-** From the materials placed on record, it is apparent that inspite of entering into an agreement for sale to handover the possession of the apartment to the complainant, the builder has not handed over the possession of the flat even after a delay of more than 5 years. The respondent has also not applied for extension of RERA registration of the project. Hence, the builder has failed to abide by the terms of the agreement for sale and construction agreement dated 3/12/2014. 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 the complainant has paid sale consideration amount to the respondent. Having accepted the said amount and failing to keep up promise to handover possession of the apartment, certainly entitles the complainant herein for refund with interest. The complainant vide her memo of calculation as on 15/10/2022 has claimed that the respondent has to refund with interest an amount of

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Rs.18,48,085/-. During the process of the hearing on 27/9/2022, the complainant requested for assistance to file memo of calculation. The Authority directed the office to help work it out as the complainant is unable to do it. As such, the memo of calculation from the complainant was received on 15/10/2022. 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	02-12-2014	4,51,410	880	30-04-2017	97,949
2	14-07-2015	1,12,853	656	30-04-2017	18,254
3	20-02-2016	2,25,706	435	30-04-2017	24,209
4	05-04-2016	1,12,853	390	30-04-2017	10,852
5				TOTAL INTEREST (11)	1,51,264

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	9,02,822	1993	15-10-2022	8.15	10.15 as on 01-05-2017	5,00,360
2	27-02-2018	2,00,000	1692	15-10-2022	8.1	10.1 as on 01-02-2018	93,639
3	TOTAL AMOUNT	11,02,822				TOTAL INTEREST (12)	5,93,999

M. S. S.

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Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 15-10-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
11,02,822	7,45,263	0	18,48,085

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/210914/0008331** is hereby allowed. Respondent is directed to pay a sum of **Rs.18,48,085/- (Rupees Eighteen Lakh Forty Eight Thousand and Eighty Five only)** calculated at 9% from 02/12/2014 to 30/4/2017 and at MCLR + 2% from 01/05/2017 till 15/10/2022 towards refund with interest to the complainant, within 60 days from the date of this order. The interest due from 16/10/2022 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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