

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 30TH JANUARY 2023

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/210313/0007785

COMPLAINANT...

**MR. SWARN KANT &
MRS. AKANKSHA GAUR
H.NO.109, HARI BHAI UPADHYAY NAGAR
(MAIN), BEHIND CINE WORLD
PUSHKAR ROAD
AJMER-305001
STATE: RAJASTHAN
DISTRICT: AJMER**

(IN PERSON THROUGH SKYPE)

V/S

RESPONDENT.....

**SKYLINE CONSTRUCTIONS &
HOUSING PRIVATE LIMITED
11, HAYES ROAD
BANGALORE-560025.**

**(BY MRS.H.H. SUJATHA
ADVOCATE)**

*** * * * ***

1. This complaint is filed under section 31 of the RERA Act against the project "SKYLINE RETREAT" developed by M/s Skyline Constructions & Housing Private Limited for the relief of refund with interest and compensation for mental harassment.

Brief facts of the complaint are as under:-

2. The complainants have booked a flat in the project of the respondent in July 2012 and entered into an agreement of sale cum construction agreement on 16/08/2012. The complainants have paid an amount of Rs.34,71,060/- (Rupees Thirty Four Lakh Seventy One Thousand and



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Sixty only) towards the flat on various dates to the respondent. The complainants have paid 90% of the total sale consideration as per demand note raised by the respondent. The respondent had committed to handover the apartment to the complainants within 24 months from the date of receipt of the commencement certificate with a grace period of six months. The construction work is stopped since 2014. Despite which the respondent collected Rs.30,000/- from the complainants promising that work will begin. The complainants submit that no construction work is started and the site looks like a haunted place with basement full of water. The complainants are paying EMIs and rent for several years and still have no hope of getting the flat of their own. Despite entire amount has been paid to the respondent, the respondent has failed to handover the possession of the apartment even after ten years and thus failed to abide by the terms and conditions of the agreement dated 16/8/2012. Due to this enormous delay, the complainants have been put to financial burden and mental harassment. Thus the complainants have approached this Authority for refund of entire amount paid to the respondent with interest, compensation for mental agony and strict action against the developer. Hence, this complaint.

3. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its counsel. But it has not contested the matter either by filing statement of objections or producing documents on its behalf.
4. In support of their claim, the complainants have produced documents such as copies of Agreement of Sale cum Construction, Allotment letter, Payment receipts and memo of calculation as on 13/10/2022.

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5. Heard arguments of both sides.

6. On the above averments, the following points would arise for my consideration:-

1. Whether the complainants are 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

REASONS

8. **My answer to Point No.1:-** From the materials placed on record, it is apparent that inspite of entering into an agreement of sale cum construction agreement on 16/8/2012 to handover the possession of the apartment to the complainants within 24 months with grace period of six months from the date of receipt of the commencement certificate, the builder has not completed the project as per agreement and has delayed the project, and thus failed to handover the unit in favour of the complainants till date. The enormous delay in completing and handing over the flat has caused mental harassment and more financial burden on the complainants. Hence, the builder has failed to abide by the terms of the agreement for sale cum construction agreement dated 16/8/2012. 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

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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 agreement between the parties, it is obvious that the complainants have already paid entire sale consideration amount. Having accepted the said amount and failure to keep up promise to handover possession of the apartment as agreed, certainly entitles the complainants herein for refund with interest. Though the respondent informed the Authority that they are in the process of settlement with all allottees of this project and that Transfer of Right is happening for which they will approach RERA in one of the hearing, neither the respondent nor its counsel turned up for the hearing held on 17/1/2023.
12. The complainants have filed their memo of calculation as on 13/10/2022 claiming an amount of Rs.66,00,910/- as refund with interest. Despite opportunities were given, the respondent have not filed their memo of calculation. A thorough verification of the documentary evidence submitted by the complainants reveals that their claim is genuine. Having regard to all these aspects, this Authority concludes that the complainants are entitled for refund with interest as submitted vide their memo of calculation as on 13/10/2022 in view of the non-cooperation of the respondent.



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13. Further the complainants have sought relief of compensation for mental harassment, which does not come under the jurisdiction of the Authority and hence, the same cannot be considered.

14. 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	24-08-2012	1,00,000	1710	30-04-2017	42,164
2	09-11-2012	2,82,340	1633	30-04-2017	1,13,686
3	07-01-2013	3,82,340	1399	30-04-2017	1,31,891
4	03-03-2013	3,82,340	1492	30-04-2017	1,40,659
5	10-05-2013	9,55,850	1451	30-04-2017	3,41,984
6	05-07-2013	1,91,170	1395	30-04-2017	65,757
7	02-08-2013	3,82,340	1367	30-04-2017	1,28,874
8	11-09-2013	1,91,170	1327	30-04-2017	62,551
9	09-10-2013	1,91,170	1299	30-04-2017	61,232
10	30-12-2013	3,82,340	1217	30-04-2017	1,14,733
11	27-08-2015	30,000	612	30-04-2017	4,527
12				TOTAL INTEREST (I1)	12,08,058

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	34,71,060	1991	13-10-2022	8.15	10.15 as on 01-05-2017	19,21,792
2	TOTAL AMOUNT	34,71,060				TOTAL INTEREST(I2)	19,21,792

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Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 13-10-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
34,71,060	31,29,850	0	66,00,910

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

16. **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/210313/0007785** is hereby allowed. Respondent is directed to pay a sum of **Rs.66,00,910/- (Rupees Sixty Six Lakh Nine Hundred and Ten only)** towards refund with interest to the complainants within 60 days from the date of this order, calculated at 9% from 24/08/2012 to 30/4/2017 and at MCLR + 2% from 01/05/2017 till 13/10/2022. The interest due from 14/10/2022 up to the date of final payment will be calculated likewise and paid to the complainants. The complainants are 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, K-RERA