

**PROCEEDINGS OF THE AUTHORITY**

**PRESIDED BY HON'BLE MEMBER SHRI. G.R. REDDY**

**BEFORE BENCH 5**

**COMPLAINT NO: CMP/UR/200528/0005938**

**Dated 28<sup>TH</sup> APRIL 2023**

**COMPLAINANT...**

**Ms. Swathi  
Flat No. A 703, Sipani Bliss 2,  
Madivala Village, Marsur Post,  
Kasaba Hobli, Anekal-562106.  
DISTRICT: BANGALORE  
STATE: KARNATAKA**

**(In person)**

**VS**

**RESPONDENT.....**

**Dreamz Infra India Pvt Ltd.,  
NO. 577/B, 2<sup>nd</sup> Floor, Outer Ring Road,  
Teachers Colony, Koramangala,  
Near Silk Board, BANGALORE-560034.**

**(None Represented)**

**\* \* \* \* \***

1. This complaint is filed under section 18 of the RERA Act against the project "**Dreamz Shiloka-2**" developed by M/s Dreamz Infra India Pvt Ltd., for the relief of refund the amount with interest.

2. This project has not been registered with RERA.



**Brief facts of the complaint are as under:-**

3. As per the details furnished by the complainant in her complaint, the complainant has booked a Flat No. 407 on 16.08.2013 and paid an amount of Rs.16,70,000/- (Rupees Sixteen Lakhs Seventy Thousand only) as per launch offer to the Respondent out of the total cost of the Flat is Rs. 33,40,000/- (Rupees Thirty Three Lakhs Forty Thousand only) and entered into memorandum of understanding with the respondent. Since the Respondent has delayed the project, the complainant has cancelled the booking on 28.05.2016. The payment of booking amount and cancellation of the booking were done much before RERA came into force. The complainant has filed the above complaint before the RERA on 28.05.2020 along with Memo of Calculation for refund with interest.
4. Pursuant to the filing of the complaint, notices were issued on 05.06.2020 and 16.06.2020 to the Respondent to register the project under section 3 of the Act as an on-going project.
5. On pursuant of the submission it is noticed that as on the date of RERA coming into effect in 2017, the project is not completed and it is found to be an ongoing project as per RERA since occupancy certificate is not obtained.
6. Way back in June 2020 two notices were issued to the respondent to registered the project under section 3 of the Act as on ongoing project for which there was no response. One more notice calling for explanation for violation of section 3 on 5<sup>th</sup> April 2023 which was returned unserved with an endorsement 'Left



**the address'**. Since the notices were already issued from the Authority that it is an on ongoing project, the project is an ongoing project in the eyes of the law and those proceedings were separate and the present complaint needs to be addressed separately.

8. The complainant has booked flat on 16.08.2013 with flat No. 407 and paid an amount of Rs. 16,70,000/-. This booking was later cancelled on 28.05.2016 and the respondent did not honour this cancellation, since the amount has not been refunded even as on date.

9. Hence, the amount is to be returned and the second part of the transaction did not take place that is the compensation and interest there on. Under these circumstances the complainant is well within his right to claim refund with interest. Out of ongoing project under section 3 of the RERA act, in my considered view the date of cancellation which is prior to RERA has no bearing since the terms of contract were not honoured by the promoter and the second part of the contractor is not completed even as on date.

11. On plain reading of proviso to section 18(1) and also the proviso to section 71(1) of the Act, and the observations made in the case of *Neelkamal Realtors Suburban Private Limited and Another v Union of India and Others*, 2017 SCC Online Bom.9302, it can be said that the provisions of the Act, as far as they relate to delay in delivery of possession of apartment and determination of compensation or interest as the case may be, are applicable even to all the ongoing project. -K.Veerappa and Anoter v Real



*Estate Regulatory Authority, Bengaluru, Karnataka and Another,*  
**2019(3) Kar. L.J.121B (Tri.) (DB).**

12. For the reasons stated supra and in view of the provisions of the Act, the allottee is entitled for the refund with interest.

The complainant has filed memorandum of calculation as follows:

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	17-08-2023	16,70,000	1352	30-04-2017	5,56,727
2		16,70,000		TOTAL INTEREST (1)	5,56,727

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	MC LR INTEREST X%	INTEREST RATE X+2%	INTEREST @X+2%
1	01-05-2017	16,70,000	2131	2-03-2023	8.15	10.15 as on 01-05-2017	9,89,630
2	TOTAL AMOUNT	16,70,000				TOTAL INTEREST (2)	9,89,630

Memo Calculation			
PRINCIPLE AMOUNT ( A )	INTEREST ( B = I1 + I2 + I3 ) AS ON 02-03-2023	REFUND FROM PROMOTER ( C )	TOTAL BALANCE AMOUNT ( A + B - C )
16,70,000	15,46,357	0	32,16,357

I am of the opinion that this 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/200528/0005938** is hereby allowed. Respondent is directed to pay a sum of Rs. 32,16,357 towards refund with interest calculated at 9% from 17-08-2013 to 30-04-2017 and MCLR +2 % from 01-05-2017 to 02-03-2023 to the complainant within 60 days from the date of this order, with further interest till the date of last payment as per the Act.

No order as to costs.

  
(G R REDDY IRS)  
Member, K-RERA

NOT AN OFFICIAL COPY