

ಕರ್ನಾಟಕ ರಿಯಲ್‌ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,

Karnataka Real Estate Regulatory Authority,
1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound,
3rd Cross, Mission Road, Bengaluru

PROCEEDINGS OF THE AUTHORITY BEFORE BENCH-4

PRESIDED BY SHRI. H.C. KISHORE CHANDRA, CHAIRMAN

DATED 1st DAY OF AUGUST 2023

COMPLAINT No: CMP/ 201007/0006679

COMPLAINANT....

**GAGANDEEP BAKSHI
PRIME LEGEND, 708
BOTANICAL GARDEN ROAD
MASJID BANDA
KONDAPUR
HYDERABAD
TELENGANA-500084**

**(BY VERTICES PARTNERS
ADVOCATES)**

V/S

RESPONDENT.....

**M/s DAMDEN PROPERTIES
2 CROSS, TAVAREKERE
MAIN ROAD
BENGALURU URBAN-560029**

(BY SRI. N. KUMAR, ADVOCATE)

JUDGEMENT

1. This complaint is filed under section 31 of the RERA against, project “DAMDEN VIVO” developed by “M/s DAMDEN PROPERTIES” for the relief of refund of booking amount with interest.

Asst

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2. This project is not registered in RERA bearing registration no.PRM/KA/RERA/1251/308/PR/171201/001217.
3. The builder has developed this project situated at Sy.No: 270, Bidiruguppa Village, Attibele Hobli, Anekal Taluk, Bengaluru District.
4. The gist of the complaint is that the complainant has approached M/s Square Yards Consulting Private Limited, an real estate agent registered under RERA for the purpose of purchasing the apartment bearing no. 215 situated on the second floor in the project "**DAMDEN VIVO**" and thereafter entered into an agreement of sale and construction agreement both dated 28/2/2018 for a total sale consideration Rs.26,12,800/- (Rupees Twenty six lakhs twelve thousand eight hundred only) with the respondent-promoter M/s Damden Properties. The complainant has paid an amount of Rs.1,31,560/- (Rs.One lakh thirty one thousand five hundred sixty only) to respondent-promoter which has been duly acknowledged by him. The complainant has also entered into a tripartite agreement with the respondent-promoter and M/s Indiabulls Housing Finance Limited on 4/8/2018. The respondent was required to hand over the possession of the said apartment to the complainant within 24 months as per sale agreement dated 28/2/2018 i.e. by 28/2/2020. M/s Damden Vivo in collaboration with M/s Indiabulls Housing Finance came up with a loan programme where Indiabulls would fund 90% of the value and the balance 10% would have to be paid by the owner in 2 equal tranches i.e. 5% on booking and balance 5% on possession. As Indiabulls went into liquidity crisis in August 2018, they have decided not to disburse the loan. On coming to know about this, he cancelled the

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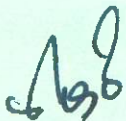
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booking in December 2018 and sought for refund for the 5% booking amount. Since then he is following up with the promoter, there has been no response to his multiple emails and calls. Hence, this complaint. The complainant has approached this Authority for the relief of refund of the booking amount with due interest.

5. After registration of the complaint, in pursuance of the notice, the respondent has appeared before this Authority through his counsel and filed statement of objections as under:
6. The respondent has denied all the allegations made against it by the complainant as false. It is contended that the complainant has paid an amount of Rs.1,31,560/- (Rs. One lakh thirty one thousand five hundred sixty only) to the ESCROW account of M/s Damden Properties held in YES Bank towards booking charges and not to the respondent as alleged. The said ESCROW account cannot be operated by the respondent as this has to be operated jointly by the respondent and the real estate agent of the complainant, i.e. M/s Square Yards Consulting Private Limited as per the agreement entered into between the parties on 28/11/2017. The respondent is only authorized to receive 78% of the amount received from the purchaser and the balance amount of 22% to be paid to M/s Square Yards Consulting Private Limited till the entire agreed amount with the agency is collected. As per the above, out of the total amount of Rs.1,31,560/- an amount of Rs.28,928/- was paid to M/s Square Yards Consulting Private Limited and additionally 18% GST of Rs.5,207/- is levied and the respondent has received only Rs.97,424/-.

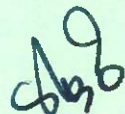


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7. Further, the respondent in accordance with law has paid 18% GST on the amount of Rs.97,424/- received by him and GST of Rs.17,536 was paid to the GST Department and thus the total amount remaining with the respondent is only Rs.79,888/-. Thus, any claim whatsoever can only be argued on Rs.79,888/- by the complainant. In view of the above, the refund of alleged amount is subject to Clause-5 of the agreement of sale and construction agreement and Clause 2 & 3 of the booking form. Hence the respondent is entitled to recover Rs.1,00,000/- in case of cancellation in addition to administrative charges etc. As per the booking form a sum of equivalent to 25% of the entire sale consideration is to be treated as forfeited. As agreed in the booking form, the complainant will be solely responsible for timely payment of the amount due irrespective of whether the payments are made from their own funds or through a bank. In view of the above, the respondent has issued a show cause notice to the complainant. As there was no response for about 12 months and later sent cancellation notices to his addresses at Hyderabad and Bombay. It is contended that the complainant averred in the complainant that due to the liquidation of the Indiabulls Bank, he was not able to pay the balance sale consideration. Due to non payment of the balance amount by the complainant, he has to suffer a huge loss and unable to meet the financial commitments. It is submitted that a cancellation policy reiterating the terms of booking is also sent to the agent of the complainant through email dated 18/5/2019. COVID 19 started at the end of 2019 and he has to stop the construction of the said project site due to non-availability of labour and materials. This Force-Majeure has created ripples in the industry and along with the non-payment of dues by the complainant. Further, since the complainant has not paid the



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agreed remaining sale consideration and hence the respondents are entitled to forfeit the booking amount as per Clause-5 of the agreement of sale and construction agreement and also Clause 2 & 3 of booking form/agreement. Hence, prayed to dismiss the complaint.

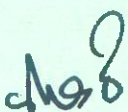
8. The respondent has filed written statement/objection 15/5/2023 which is nothing but replica of the statement of objections filed by the respondent on 9/12/2022.

9. The complainant has also filed rejoinder to the statement of objections filed by the respondent on 20/1/2023 as under:

It is contended that during February 2018, he has done the booking. Booking form shows that the said booking was done under the scheme as represented against the said apartment booked which is 5%: 90%. 5% scheme and all EMIs to the extent of 90%, post the booking 5% amount has to be paid through home loan/builder subvention facility through a bank identified by the respondent for the purpose of implementation of the Scheme. The respondent failed to identify and/or enter into necessary arrangement with any such bank until the period from October-December 2018. The complainant terminated the agreement and cancelled the booking in 24th December 2018.

10. In support of his claim, the complainant has produced documents such as (1) copy of agreement of sale and construction agreement both dated 28/2/2018 (2) copy of tripartite agreement (3) copy of lease deed (4) copy of the several emails to respondent (5) copy of several emails to the real estate agent.(3) Memo of calculation.

11. In support of his defence, the respondent has produced documents such as (1) postal receipts (2) copy of agreement between M/s Damden Properties and M/s Square Yards Consulting Private Limited (3) copy of



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agreement of sale and construction agreement both dated 28/2/2018(4)
cancellation of flat no. 215 at Damden Vivo (5) copy of email dated
18/5/2019 cancellation policy of booking.

12. Heard arguments of the both the parties

13. 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?

14. **Findings on the above points are as under:-**

1. Partly Affirmative.
2. As per final order for the following:

FINDINGS

15. Findings on point No.1:- The grievance of the complainant is that the project was advertised with (a) below 30 lakhs – 5% booking amount – 5:90:5 (b) above 30 lakhs – 10% booking amount – 10:80:10 (c) EMI holiday till possession (d) assured rental for 18 months post possession(Rs.324 per SFT) (e) dual rental benefit. The project was financed in collaboration with M/s Indiabulls Housing Finance. M/s Indiabulls would fund 90% of the value and the balance 10% would have to be paid by the owner in 2 equal tranches – 5% on booking and balance 5% on possession. He had booked an apartment bearing no. 215 situated on the second floor in the project “**DAMDEN VIVO**” and thereafter entered into an agreement of sale and construction agreement both dated 28/2/2018 for a total sale consideration Rs.26,12,800/- (Rupees Twenty six lakhs twelve thousand eight hundred only) with the respondent-promoter. The respondent was required to hand over the possession of the said apartment to the complainant within 24 months as per sale agreement

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dated 28/2/2018 i.e. by 28/2/2020. He has terminated the agreement and cancelled the booking in December 2018.

16. The same is resisted by the respondent on the ground that the complainant had communicated the request for cancellation of the allotment through email dated 24/12/2018. As per Clause 5(b) of the construction agreement, 25% of the entire cost of construction has to be paid by the complainant to the respondent. He has continuously sent reminders to the complainant for the payment of balance amount on 17/10/2019, the complaint did not respond and hence he has cancelled the booking due to non-payment.

17. From the payment receipt furnished by the complainant, it is apparent that the complainant had booked a flat in the project **"DAMDEN VIVO"** by paying booking amount of Rs.50,000/- dated on 5/2/2018 and Rs.81,560/- on 6/2/2018 altogether Rs.1,31,560/-. Herein this case, the complainant has entered into agreement of sale and construction both dated 28/2/2018. The complainant vide email dated 24/12/2018 addressed to the respondent stated that *"as the transaction has not proceeded until now, he would like to cancel his apartment and the booking amount be refunded at the earliest"*

18. On perusal of the entire documents and materials placed on record, it is apparent that the complainant has paid an amount of Rs.1,31,560/- to the ESCROW account held by M/s Damden Properties in YES Bank. The amount is paid to the ESCROW account created jointly by the respondent and the real estate agent of the complainant i.e. M/s Square Yards Consulting Private Limited. The said Escrow account cannot be operated by the respondent and this has to be operated jointly. The respondent has received Rs.1,02,616/- (22% of Rs.1,31,560). Out of this, GST of 18% is levied on the payment made by the complainant by Government of India and hence further amount of Rs.23,680/- is paid as GST and thus total amount received by the respondent is only Rs.78,936/-. It is apparent from that records that the complainant has not paid balance sale consideration as agreed by him. As



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agreed in the booking form, the complainant will be solely responsible for timely payment. Now, he has approached this Authority seeking for refund of said booking amount along with interest on the grounds that due to some reasons he had cancelled the booking and requested for refund of booking amount along with interest. However, this issue is not related to delay but due to the complainant voluntarily seeking withdrawal of amount. Hence, he can claim that much of the advance amount paid after permissible deductions whereas he is not entitled for any interest. Accordingly, the point raised above is answered as partly Affirmative.

19. Findings to point no.2. In view of the above discussion, I conclude that, this complaint deserves to be allowed partly. Accordingly, I proceed to pass the following order:

ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No: CMP/201007/0006679 is hereby allowed partly as under:

1. The respondents M/s Damden Properties and M/s Square Consulting Private Limited are hereby directed to pay booking amount of Rs.1,31,560/- to the complainant with permissible deductions within 60 days from the date of this order.
2. The complainant is at liberty to enforce the said order in accordance with law if the respondent fails to comply with the order.

No order as to costs.


(H.C. Kishore Chandra)

Chairman
K-RERA