

West Bengal Real Estate Regulatory Authority
Calcutta Greens Commercial Complex (1st Floor)
1050/2, Survey Park, Kolkata- 700 075.

Complaint No.WBRERA/COM-000125

Modassair Jawaid..... Complainant

Vs.

- 1) Cancun Constructions,
- 2) Sri. Debasis Biswas,
- 3) BON Marque Pvt. Ltd..... Respondents

Sl. Number and date of order	Order and signature of Officer	Note of action taken on order
03 01.08.2023	<p>Mr. Sourav Chandra, Authorized Representative of the Complainant is present in the online hearing. He is directed to send his hazira and authorization through email immediately after today's hearing.</p> <p>Respondent is absent in the online hearing despite due service of the hearing notice through speed post and also by email.</p> <p>Let the track record of the due service of the hearing notice to the Respondent be kept on record.</p> <p>The Respondent did not submit Written Response on affidavit in spite of time given by the Authority on the last date of hearing.</p> <p>The authority is of the considered opinion that already sufficient and reasonably time an opportunity has been given to the Respondent to file Written Response but he failed and/or neglected to take the opportunity. Therefore no more chance or time can be given to the Respondent to file the Written Response.</p> <p>Respondent is absent today but for the end of speedy disposal of justice as per section 29 (4) of the Real Estate (Regulation & Development) Act, 2016, the Authority has no</p>	

other option but to proceed with ex-party hearing and disposal of this matter.

Heard the Complainant in detail.

The case of the Complainant is that the Complainant had visited the flat booked by him on March, 2019 against which an Agreement for Sale was executed just three months prior to that and he found that someone residing in the same flat which is fully furnished with interior work. On cross checking by the Complainant the neighbours of the building i.e. '**Klinton Tower**' confirmed that the said flat has been occupied since last two months by those people and they are living with due permission of the Respondent No. 1 & 2. The Complainant immediately called the Respondent No. 1, 2 & 3 and confronted about the possibility of the some body's occupation in the same flat for which the Respondent No. 1 and 2 has signed an Agreement for Sale just three months back i.e. on 01.12.2018. The Respondent No. 3 has taken Service Charge just five months back i.e. on 13.10.2018. The Complainant being cheated by the Respondent No. 1, 2 & 3 asked them to return the Service Charge plus booking money of (Rs.1,00,000+4,00,000) = Rs. 5,00,000/- with immediate effect. In turn the Respondent No. 3 proposed via email dated 13.03.2019 to shift the booking of the Complainant in other project namely 'Orange Nest'. In reply, the Complainant via email dated 23.04.2019 clearly refused the shifting proposal and demanded refund of the entire Booking Money and Service Charges. That on 14.11.2019 and 18.01.2020, the Complainant received Return Memo Report of cheques with a remark "Insufficient Fund" and till date not received any amount from the Respondent.

After examination of the Notarized Affidavit of the Complainant and Notary Attested documents placed on record

Complainant and Notary Attested documents placed on record and after hearing the parties through online hearing, the Authority is of the considered view that the Respondent has failed miserably in his obligation and cheated the Complainant by taking booking money from him for a particular flat and providing the same flat to any third party without due process of law. Therefore, he is liable to refund the principal amount paid by the Complainant along with interest at the rate of **SBI PLR +2%** for the period starting from the date of respective dates of payments made by the Complainant till the date of realisation, as per the provisions contained in section 18 of the Real Estate (Regulation and Development) Act, 2016 read with rule 17 and 18 of the West Bengal Real Estate (Regulation and Development) Rules, 2021.

Hence it is hereby,

ORDERED

that the Respondent shall refund the Principle amount of Rs.5,00,000/- (Rupees five lakhs only) along with interest @ **SBI Prime Lending Rate + 2%**, for the period, starting from the respective dates of payments made by the Complainant till the date of realisation.

The refund shall be made by bank transfer to the bank account of the Complainant, within 45 days from the date of receipt of this order of the Authority by email.

The Complainant shall send his bank account details in which he wants to take the refund amount, to the Respondent by email within 3 days from the date of receipt of this order of the Authority by email.

Complainant is at liberty to file an Execution Application on

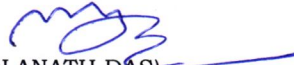
any plain paper annexing a copy of this Order, to this Authority, if the Respondent defaults to comply this order either in full or in part within the specified time period as mentioned in this order.

Let copy of this order be sent to both the parties through speed post and also by email immediately.

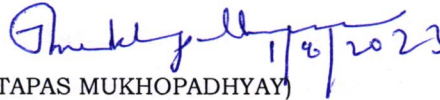
With the above directions the matter is hereby disposed of.



(SANDIPAN MUKHERJEE)
Chairperson
West Bengal Real Estate Regulatory Authority



(BHOLANATH DAS)
Member
West Bengal Real Estate Regulatory Authority



(TAPAS MUKHOPADHYAY)
Member
West Bengal Real Estate Regulatory Authority