

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

Complaint No.WBRERA/COM-000053

1.Avijit Kumar Majumder, and 2) Soma Majumder.....Complainants
Vs,
M/s. Cancun Construction Respondent

| Sl. Number and date of order | Order and signature of Officer | Note of action taken on order |
|---------------------------------------|---|-------------------------------------|
| 3 ----- 20.07.2023 | <p>Advocate Proteek Debnath is present on behalf of the Complainants filing hazira and Vakalatnama through email.</p> <p>Advocate Manoj Chakraborty is present in the online hearing on behalf of the Respondent filing hazira and Vakalatnama through email.</p> <p>The Complainant has submitted a Notarized Affidavit-of- Service dated 19.07.2023, stating the details of service of Affidavit of the Complainant to the Respondent, as per the last order of the Authority dated 21.06.2023, which has been received by the Authority on 19.07.2023.</p> <p>Let the said Notarized Affidavit-of-Service of the Complainant be taken on record.</p> <p>In the said Affidavit the Complainant stated that he has sent his Affidavit alongwith annexure to the Respondent by email and also by speed post. The email was duly sent to the email id's dbiswas333@gmail.com and theiurisprofessionals@gmail.com but the speed post was not delivered and returned to the Complainant with the comment,- "Item Returned, No such person in the address".</p> <p>Respondent did not submit Written Response on Notarized Affidavit till today.</p> | |

Respondent submitted a Petition before the Authority today.

Let the said Petition of the Respondent be taken record.

In the said Petition the Respondent stated that the Agreement between the Complainant and the Respondent has been terminated and part of refund has already been made. Due to absence of the Accountant of the Respondent Company, the details of the said refunded amount could not be shown today and the Respondent prayed for some time to file Written Response in this matter.

Considered and rejected the prayer of the Respondent.

Respondent was directed to submit Written Response on Notarized Affidavit in the 1st order of the Authority dated 20.04.2023 and 2nd order of the Authority dated 21.06.2023 but he failed and / or neglected to submit the Written Response.

Therefore, the Authority is of the considered opinion that sufficient time and reasonable opportunity has been given to the Respondent to defend this matter and present his case before the Authority but he failed and / or neglected to take the opportunity. No more chance / time can be given to the Respondent to submit the Written Response and this Authority has no other option but to proceed with hearing and disposal of this matter today for the ends of speedy disposal of justice as per section 29(4) of the Real Estate (Regulation and Development) Act, 2016.

Heard both the parties in detail.

The case of the Complainants is that they had booked a flat bearing No. B5/005 facing South-East on the 2nd Floor (the said floor number was subsequently changed to 5th floor in accordance with sanctioned floor plan), measuring 1100 Sq.ft. of super built-up area approximately in Block-B in the Housing Project namely '**Cancun Skylark**' of the Respondent Company together with one covered garage measuring about 120 Sq.ft. and he has paid total amount of Rs.33,02,370/-(Rupees thirty-three lakhs two thousand three hundred

seventy only) in three instalments by way of cheques and cash between the period from 09.06.2015 to 26.06.2015. Agreement for Sale was executed between the parties on 29.06.2015. The sanctioned building plan having memo no. 4057(3)/NKDA/BPS-04(13)2014 dated 18.07.2016 for the proposed G+VII storied Residential Building was issued by New Town Kolkata Development Authority. In terms of the Agreement for Sale, the Respondent was liable to complete the construction of the project and hand over possession of the said residential flat within the period of 36 (thirty-six) months from the date of sanction of the building plan from the concerned Authority i.e., within 17.07.2016 and with a further extension of 6(six) months, it ought to have been completed within 17.01.2020.

The Respondent had failed to deliver the said residential flat within the stipulated time period and thus he has breached the terms of the said Agreement for Sale. So the Complainant requested the Respondent for withdrawal from the project and after repeated requests, the Respondent accepted their request and refunded Rs. 2,00,000/- to the Complainant.

The Complainant prayed before the Authority for relief of refund of the balance amount of the Principal amount paid by him of Rs.31,02,370/- (Rupees Thirty One lakhs Two thousand Three hundred Seventy Only) from the Respondent along with interest as per RERA Act and Rules.

After examination of the Notarized Affidavit of the Complainant and Notary Attested documents placed on record and after hearing both the parties in the online hearing, the Authority is of the considered view that the Respondent has failed miserably in his obligation to hand over possession of the Apartment to the Complainant within the scheduled time line. The Respondent already refunded Rs.2,00,000/- (Rupees Two Lakhs Only) and therefore he is liable to refund the balance of the Principal Amount paid by the Complainant amounting to

Rs.31,02,370/-(Rupees Thirty One lakhs Two thousand Three hundred Seventy Only) along with interest calculated on the total Principal Amount of Rs.33,02,370/-(Rupees thirty-three lakhs two thousand three hundred seventy only) at the rate of SBI PLR +2% per annum for the period starting from the date of respective 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 balance of the Principal Amount paid by the Complainant amounting to Rs.31,02,370/-(Rupees Thirty One lakhs Two thousand Three hundred Seventy Only) along with interest @ SBI Prime Lending Rate + 2% per annum calculated on the total Principal Amount paid by the Complainant amounting to Rs.33,02,370/-(Rupees thirty-three lakhs two thousand three hundred seventy only) 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. In that case Respondent may be liable to a penalty for every day during which such default continues,

which may cumulatively extend up to five percent, of the estimated cost of the real estate project named '**Cancun Skylark**', as determined by this Authority, as per the provision contained in section 63 of the Real Estate (Regulation and Development) Act, 2016.

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