

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

Complaint No. WBRERA/COM000175

Sushma Yadav Complainant

Vs.

Ideal Real Estates Pvt. Ltd..... Respondent

Sl. Number and date of order	Order and signature of Officer	Note of action taken on order
02 21.09.2023	<p>Complainant Sushma Yadav alongwith her advocate Priyanko Banerjee are present in the online hearing filing hazira through email.</p> <p>Advocate Shounak Mukhopadhyay and Advocate Tirthankar Das are present in the online hearing on behalf of the Respondent filing hazira and vakalatnama through email.</p> <p>Complainant submitted a Notarized Affidavit dated 25.08.2023, containing her total submission regarding the Complaint Petition, as per the last order of the Authority dated 17.08.2023, which has been received by this Authority on 28.08.2023</p> <p>Let the said Affidavit of the Complainant be taken on record.</p> <p>Respondent has submitted Written Response on Notarized Affidavit dated 18.09.2023, as per the last order of the Authority dated 17.08.2023, which has been received by this Authority on 18.09.2023 through email.</p>	

Let the said Written Response of the Respondent be taken on record.

Respondent is hereby directed to send the hard copy of the Written Response to the Authority and also to the Complainant immediately after this hearing.

Heard both the parties in detail.

The case of the Complainant is that she has booked a flat bearing no. 22B in Block-Albatross in the project named as '**Ideal Aquaview**', situated at Mahisbathan of the Respondent Company in the year 2022. The Agreement for Sale was executed between the parties on 03.02.2022. As per Part III of Schedule-A of the Agreement for Sale, the delivery of possession of the flat was scheduled to be held by 30th June, 2022. Till date she has paid Rs.76,00,002/- (Rs. Seventy-six lakhs two only) to the Respondent Company for purchase of the said flat. Total cost of the flat is Rs.96,35,598/-. The Respondent Company failed to deliver possession of the flat within the time-line as agreed between the parties. As per letter dated 16.02.2022, the Respondent agreed to pay interest for delay period, if the possession is not given by 30th September 2022. As per the project details submitted by the Promoter at the time of registration of the said project with the erstwhile WBHIRA Authority, the Completion date of the said project is 30.06.2022, after getting the extension of 9 months due to Covid 19 pandemic granted by the erstwhile WBHIRA Authority.

The Complainant prayed before the Authority for refund of the principal amount of Rs.76,00,002/- along with interest as per the Real Estate (Regulation and Development) Act, 2016 (hereinafter

refer to as 'the RERA Act, 2016') and Rules made thereunder.

In the Written Response dated 18.09.2023 at the point 2(b), the Respondent stated, inter alia, that,- "the said purported agreement is an insufficiently stamped and unregistered document, and as such, the said document is not a valid contract between the parties. The said Agreement is void and non est in law, and as on date there is no agreed time stipulated for handing over any property by the opposite party to the Complainant. In any event, the said agreement cannot be received, looked at or considered by any Authority or Court. In such circumstances, no question of any of the terms of the agreement being valid or binding on the parties can or could arise; consequently, no question of any breach of the said agreement can or could arise."

In support of his plea / argument, the Respondent has referred and placed a judgement of Hon'ble Supreme Court dated 25th April 2023 of the Hon'ble Supreme Court in Civil Appeal NO(S). 3802-3803 of 2020 in the matter of M/S. N.N. Global Mercantile Private Limited ... APPELLANT(S) Versus M/S. Indo Unique Flame Ltd. & Ors. ... Respondent(S).

Let the said Judgement of the Hon'ble Supreme Court be taken on record.

This Authority duly considered and rejected the above stated plea / argument of the Respondent on the following grounds :-

- a) Section 13(1) of the Real Estate (Regulation and Development) Act, 2016 provides that,- "A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building, as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force."

In the instant case the Respondent Promoter has failed and / or neglected his duty/ obligation to register the Agreement For Sale as per section 13(1) of the RERA Act, 2016. From the language of section 13, it is crystal clear that it is the obligation on the Promoter to accept a sum more than 10 percent of the cost of the flat only after entering into an Agreement For Sale with the allottee and register the said Agreement For Sale. Here, in this case the Respondent failed in his obligation as per section 13(1) of the RERA Act, 2016 and **therefore he is liable to pay penalty for the violation of this provision as per section 61 of the RERA Act, 2016.**

- b) Furthermore the Respondent is trying to take benefit of his own fault which is not at all permissible in law. Here, in this case the Respondent failed/neglected to register the Agreement for Sale executed between the parties on 03.02.2022. No evidence has been submitted by the Respondent that he has taken necessary steps for registration of the said agreement and it is due to the fault of the Complainant, the Agreement could not be registered. The Respondent accepted a sum amounting to Rs.76,00,002/- which is around 79% of the total cost of the flat booked by the Complainant, without registering the Agreement For Sale, which is a serious fault on his part and now he is trying to take benefit of his own fault by taking the plea that this agreement is void and no nest in law as it is not registered. **The Respondent should not be allowed to take benefit of his own fault.**
- c) Chapter III of the RERA Act, 2016 contains the heading,- **Functions and duties of promoter.** Section 11 to section 18 is under Chapter III of the RERA Act, 2016. Therefore, it is also crystal clear and evident that intention of legislature, who have drafted the RERA Act, 2016, was that section 13 should be the obligation of the promoter and that's why they have placed it under chapter III containing the heading '**Functions and duties of promoter**'.
- d) After careful perusal of the said Judgement of the Hon'ble Supreme Court dated 25th April 2023 of the Hon'ble Supreme Court in Civil Appeal NO(S). 3802-3803 of 2020 in the matter of M/S. N.N. Global Mercantile Private Limited ... APPELLANT(S) Versus M/S. Indo Unique Flame Ltd. & Ors. ...

Respondent(S), this Authority is of the considered view that this Judgement is applicable only to Arbitration Agreements and this Judgement is not applicable in the present matter which is dealing with Agreement For Sale under RERA Act, 2016. Therefore the Principle of this Judgement is not applicable in the present case.

- e) Even if, for arguments sake, if the Authority considers that the Agreement For Sale executed between the parties on 03.02.2022 is void and non est in law then also there is a letter from the Respondent to the Complainant dated 16.02.2022 which is annexed at page 66 of the Affidavit of the Complainant dated 25.08.2023. In this letter the Respondent specifically stated and promised that he will hand over the flat to the Complainant by 30th September 2022 and if he failed to deliver the flat within 30th September 2022, he will give interest to the Complainant. He also accepted in the said letter that Complainant has made payment of Rs.69,40,540/- up to 16.02.2022.
- f) Even if, again for arguments sake, if the Authority considers that the said Agreement dated 03.02.2022 is void and non est in law then also it is an admitted fact that the Complainant has paid Rs.76,00,002/- to the Respondent and the Respondent has received the amount which is evident from the Money Receipts submitted by the Complainant. The Respondent did not object in this regard in his Written Response and also did not make any objection in this regard at the time of online hearing. Therefore the Respondent is liable to make the refund of the Principal Amount alongwith interest to the Complainant as per section 18 of the RERA Act, 2016 read with rule 17 of The West Bengal Real Estate (Regulation and Development) Rules, 2021. The Completion date of the said project named Ideal Aquaview was 30.06.2022 as per the information available in the WBRERA website therefore the Respondent failed to deliver the flat within the completion date as per the submissions given by them on Affidavit at the time of registration of the said project with the erstwhile WBHIRA Authority. Therefore the Respondent is liable to refund the Principal Amount to the Complainant alongwith interest as per section 18(1) RERA Act, 2016.

After examination of the Notarized Affidavits of both the parties 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 handover possession of the flat to the Complainant within the scheduled time line that is within 30.06.2022 as per Part III of Schedule-A of the Agreement For Sale executed between the parties on 03.02.2022. Therefore, he is liable to refund the Principal Amount paid by the Complainant amounting to Rs.76,00,002/- (Seventy Six lakhs two only) alongwith interest on the total Principal Amount at the rate of SBI PLR +2% per annum 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 Principal Amount of Rs.76,00,002/- (Rupees Seventy Six lakhs two only) alongwith interest @SBI Prime Lending Rate + 2% per annum on the total Principal Amount for the period starting from the respective dates of payments made by the Complainant till the date of realisation. The details of the payments made by the Complainant is provided below :-

Sl No.	Amount Paid	Date of Payment
1.	Rs.1,00,000/-	02.02.2022
2.	Rs.8,40,500/-	07.02.2022
3.	Rs.60,00,040/-	09.02.2022
4.	Rs.61,969/- (TDS)	21.05.2022
5.	Rs.5,97,493/-	12.07.2022
	Rs.76,00,002/-	Total Amount Paid

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 her bank account details, in which she 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.

The Respondent shall make payment of a penalty of Rs.10,00,000/-(Rupees Ten lakhs only) to the Authority as because he has violated the provisions of sub-section (1) of section 13 of the Real Estate (Regulation and Development) Act, 2016, by accepting a sum from the Complainant which is more than 10 percent of the total cost of the flat booked by the Complainant, without registering the Agreement For Sale. The Penalty amount shall be paid to the WBRERA Authority within 45 days from the date of the receipt of this order of the Authority. The Bank Account details of WBRERA Authority is given below :-

Account Name: West Bengal Real Estate Regulatory Authority

Branch: Specialized Institutional Banking, Kolkata

Account No. 00000040777384369

IFS Code: SBIN0014524

MICR Code: 700002404

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 might 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 '**Ideal Aquaview**', 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