

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

Complaint No.WBRERA/COM-000052

1. Ranadeep Sarkar &
 2. Koyel Chakraborty Alias Koyel SarkarComplainants
 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 04.07.2023, 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</p>	

with the comment,- "Item Returned, No such person in the address".

Respondent did not submit Written Response on Notarized Affidavit till today.

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 24.04.2023 and 2nd order of the Authority dated 04.07.2023 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 Complainant is that the Complainants have booked a 2BHK flat bearing No. B6/007 of approximately 900 Sq.ft. on the 11th Floor of the project named '**Cancun Skylark**' of the Respondent Company on 14.07.2015. He has paid total amount of Rs.24,68,575/- (Rupees Twenty Four Lakhs Sixty Eight Thousand

Five Hundred Seventy Five Only). Agreement for Sale was executed between the parties and in terms of the said Agreement for Sale, the Respondent was liable to complete the construction of the flat and handover the possession of the said residential flat within a period of 36 (thirty-six) months from the date of sanction of the building plan from the Concerned Authority with a further extension of 6 (six) months. 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. The period expired on 17.01.2020 and the Respondent had failed to deliver the said flat within the stipulated time of 17.01.2020. So the Complainant requested to the Respondent for withdrawal from the project and after repeated requests, the Respondent accepted their request and refunded Rs. 6,99,994/- to the Complainant in 4 installments between the period of 12.08.2020 to 06.10.2020.

The Complainant prayed before the Authority for relief of refund of the balance amount of the Principal amount paid by him of Rs.17,68,581/- (Rupees seventeen lakhs sixty eight thousand five hundred eighty-one only) from the Respondent along with interest @18% per annum to be calculated from the date of every actual payment till the date of realization.

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.6,99,994/- (Rupees Six Lakhs Ninety Nine Thousand Nine Hundred Ninety Four Only) and therefore he is liable to refund the balance of the Principal Amount paid by the Complainant amounting to Rs.17,68,581/- (Rupees Seventeen Lakhs Sixty Eight Thousand Five Hundred Eighty One Only) along with interest 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.17,68,581/- (Rupees Seventeen Lakhs Sixty Eight Thousand Five Hundred Eighty One Only) along with interest @SBI Prime Lending Rate + 2% per annum calculated on the total Principal Amount paid by the Complainant amounting to Rs.24,68,575/- (Rupees Twenty Four Lakhs Sixty Eight Thousand Five Hundred Seventy Five 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.

Complaint 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 shall 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