

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,

Karnataka Real Estate Regulatory Authority,

1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound,
3rd Cross, Mission Road, Bengaluru-560027

PROCEEDINGS OF THE AUTHORITY BEFORE BENCH-4

PRESIDED BY MR. H.C. KISHORE CHANDRA, HON'BLE CHAIRMAN

DATED 17TH DAY OF JANUARY 2024

COMPLAINT NO. CMP/200503/0005862

COMPLAINANT:

RANJEEVA RANJAN
KASHI, SMRITI SADAN
GOKUL PATH
PATEL NAGAR, PHULWARI
PATNA
BIHAR-800023

(REP BY PRIYANKA S
ADVOCATE)

v/s

RESPONDENT...

1.M/s DAMDEN PROPERTIES
2ND CROSS, TAVAREKERE
MAIN ROAD
BEGALURU URBAN-560 029

(REP BY N. KUMAR
ADVOCATE)

2. M/s SQUARE YARDS
CONSULTING PRIVATE
LIMITED
PRESTIGE ZEENATH
RAJA RAM MOHAN ROY ROAD
SAMPANGI RAMA NAGAR
BENGALURU-560 001.

PROJECT NAME &

DAMDEN VIVO

REGISTRATION NO.

**PRM/KA/RERA/1251/308
PR/171201/001217**



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JUDGEMENT

1. This complaint has been filed under section 31 of the RERA Act against the project "**DAMDEN VIVO**" developed by "**M/s DAMDEN PROPERTIES**" for the relief of refund of booking amount paid along with interest.

2. The promoter has developed this project situated at 270, Bidreguppa, Sarjapura-Attibele Road, Bengaluru.

3. Brief facts of the complaint are as under: The complainant herein has booked a flat bearing no.112 in the project "**DAMDEN VIVO**" through real estate agent Square Yards Consulting Private Limited, for a total sale consideration of Rs.19,65,120/- (Rs. Nineteen lakhs sixty five thousand one hundred twenty only) of the respondent/promoter. The complainant has paid an amount of Rs.98,256/- (Rs. Ninety eight thousand two hundred fifty six only) on 3/12/2018 which has been duly acknowledged by him. It is contended that housing loan formalities was being undertaken by the agent who promised that the booking amount of Rs.98,256/- shall be refunded in case of rejection of housing loan application. At the time of booking, the agent Square Yards confirmed him verbally that the payment of the flat would be made only after sanction of the loan. Further, in the event of non-sanctioning of loan due to any reason, the entire booking amount would be reversed to his bank account. The complainant had made the booking in the month of December 2018. In the month of January, 2019, he was confirmed that there is some problem in the loan sanction process and hence there was uncertainty over the same. Therefore, he cancelled the booking and sought for refund to which they responded that they were contacting the developer for the same. Thereafter, he had series of emails, visits and meetings with the agent and developer. The developer is neither responding to his communication and nor any communication from him. Therefore, the complainant has approached



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this forum for the relief of direction to the respondent to refund their booking amount along with interest. Hence, this complaint.

4. After registration of the complaint, in pursuance of the notice, the respondent-1 did appear before this Authority through its counsel and filed statement of objections as under:

5. The respondent no.1 has denied all the allegations made by the complainant against him as false. It is contended that the complainant has approached M/s Square Yards Consulting Private Limited, an real estate agent registered under RERA, for the purchase of apartment bearing No: 112, situated on the 1st floor in the project "Damden Vivo" for a total sale consideration of Rs.19,65,120/- (Rs. Nineteen lakhs sixty five thousand one hundred twenty only). An agreement was entered into between the respondent and M/s Square Yards Consulting Private Limited dated 28th November 2017. As per Clause 7 of the said agreement, the customers amount is to be debited to an "ESCROW ACCOUNT" wherein the respondent and M/s Square yards Consulting Private Limited are parties and collected amount will be disbursed as 22:78 ratio favouring agent 22% and respondent 78%. The respondent had to pay Rs.2,75,480/- to the agent at Rs.388/- Sq.ft as per agreement.

6. Further, the complainant has paid an amount of Rs.98,256/- to the "ESCROW ACCOUNT" of Damden Properties towards booking charges and not to the respondent as alleged. The said ESCROW ACCOUNT cannot be operated by the respondent and this has to be operated jointly. The respondent has received Rs.76,639/- (22% of Rs.98256) and out of this a GST 18% is levied on the payment by the customer by the Government of India hence further amount of Rs.17,687/- is paid as GST and thus total amount received by the respondent is only Rs.58,952/- and further assured that he will pay the remaining balance sale consideration within 10 days. The respondent is only authorized to receive 78% of the amount received from the



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customer 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. The complainant is a defaulter in paying the balance sale consideration as agreed by him. As per Clause 2 & 3 of the booking form, 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. It is further submitted that COVID PANDEMIC effected at the end of 2019, spread across the nation and world and the respondent had to stop the construction of the said project due to non-availability of labour and materials. Hence, prayed to dismiss the complaint.

7. In support of their claim, the complainant has produced documents such as copy of application form dated 3/12/2018, copy of cheque dated 3/12/2018, copy of bank statement, copy of emails dated 22/1/2019 and 24/1/2019, copy of the emails to agent and respondent, copy of letter dated 25/6/2019.

8. On the other hand, in support of defence, the respondent has furnished documents such as postal receipts, copy of agreement between M/s Square Yards Consulting Private Limited & respondent, copy of booking agreement, copy of show cause for cancellation and cancellation letter to the complainant on 28/8/2020, email dated 18/5/2019.

9. On the above averments, the following points would arise for my consideration.

10. 1) Whether the complainant is entitled for the relief claimed?
2) What order?

11. **Answer to the above points is as under:**

- 1) In the Affirmative
2) As per final order for the following:



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FINDINGS

12. Findings on point no.1: From the payment receipt furnished by the complainants, it is apparent that the complainants has booked a flat no.112 in the project "**DAMDEN VIDO**" by paying booking amount of Rs.98,256/- (Rs.Ninety eight thousand two hundred fifty six only) dated 3/12/2018. Now, he has approached this Authority seeking for refund of said booking amount on the grounds that he had cancelled the booking before any paper work as the loan was not sanctioned. As promised by the agent, the booking amount was agreed to be refunded in case the loan was not sanctioned. The cancellation request neither accepted nor acknowledged till date by the respondent. As there was no developments after filing of application even after several letters and mails, the complainant was left with no other option but to cancel the booking and claim the refund. Neither the agent acted upon the application nor did the respondent.

13. The same is resisted by the respondent that the complainant has paid an amount of Rs.98,256/- to the "ESCROW ACCOUNT" of DAMDEN PROPERTIES ESCROW ACCOUNT and not to the respondent. The said ESCROW ACCOUNT cannot be operated by the respondent and this has to be operated jointly. The respondent is authorized to received 78% of the amount received from the customer 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. The complainant has not paid the balance sale consideration as agreed by him under the booking agreement and kept on dragging the payments by giving one or the other evasive reasons. As per clause 2 & 3 of the booking form, 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.



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14. It is apparent from the payment receipt that the complainant has paid an amount of Rs.98,256/- (Rs. Ninety eight thousand two hundred fifty six only) on 3/12/2018 to the ESCROW ACCOUNT of Damden Properties Escrow Account held in YES Bank. However, this issue is not related to delay but the complainant seeking withdrawal of the amount before any paper work formalities as the loan was not sanctioned. Further, as promised by the agent, the booking amount was agreed to be refunded in case the loan was not sanctioned. It is to be noted here that there was no developments after filing of application besides neither the agent acted upon the application nor did the respondent. The respondent has retained the booking amount of Rs.98,256/- even after the cancellation/withdrawal of the booking was communicated to the respondent by the complainant.

15. In the statement of objections, the respondent has sought to explain the delay by referring to several issues such as the respondent has to stop the construction at the said project due to non-availability of labour and materials. In addition to which the respondent pleaded that COVID 19 Pandemic and lockdown have contributed significantly to the obstacles faced by the respondent. These issues are nothing but routine requirements of compliances and construction related issues which are required to be handled by the promoter of any project who has undertaken to develop the real estate project. None of the reasons submitted by the respondent has any force and legal validity to justify the delay in completion of the project and provide any exception under the Act.

16. From the materials placed on record, it is apparent that the said ESCROW Account has been created jointly between the respondent and M/s Square Yards Private Limited. As per the agreement entered into between respondent no.1 and 2, the respondent-1 is only authorized to receive 78% of the amount received from the customer, and balance amount of 22% to be paid to M/s Square Yards Consulting Limited till the entire agreed amount with the



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agency is collected. The complainant has paid the booking amount of Rs.98,256/ to the ESCROW ACCOUNT of DAMDEN PROPERTIES LIMITED created jointly by both the respondents and hence both are liable to refund the booking amount to the complainant. Therefore, it is just and necessary to direct the respondent no.1 and respondent no.2 to refund the booking amount to the complainant.

17. Having regards to all these aspects, the complainant is entitled for refund of booking amount. Accordingly, the point raised above is answered in the Affirmative.

18. Findings on point no.2: In view of the above discussion, the complaint deserves to be allowed. Hence, I proceed to pass the following:

ORDER

In exercise of the powers conferred under section 31 of the Real Estate Regulation and Development) Act, 2016, the complaint bearing No.**CMP/220503/0005862** is hereby allowed.

1. The respondent no. 1 and 2 are hereby directed to refund the booking amount of Rs.98,256/- (Rs. Ninety eight thousand two hundred fifty six only) towards booking amount to the complainant **within 60 days** from the date of this order.
2. The complainant is at liberty to enforce this order in accordance with law if the respondent fails to comply with the same.

No order as to costs.


(H.C. Kishore Chandra)

Chairman
K-RERA

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