

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

Complaint No. WBRERA/COM (PHYSICAL)000045

PS Vinayak Complex LLP..... Complainant

Vs

Arijeet Paul..... Respondent

Sl. Number and date of order	Order and signature of the Authority	Note of action taken on order
01 <u>24.06.2024</u>	<p>Chartered Accountant Mr. Amit Kumar Kedia is present in the online hearing on behalf of the Complainant filling hazira and authorization through email.</p> <p>Respondent-Allottee Mr. Arijeet Paul is present in the online hearing. He is directed to send his hazira immediately to the Authority through email after today's hearing.</p> <p>Heard both the parties in detail.</p> <p>The Complainant stated that the Respondent has not paid installment as demanded by the Complainant after payment of Rs.29,68,840/- to the Complainant-Promoter Company in respect of purchase of the Apartment No. B1 in the 10th floor at Tower No. 8, containing a carpet area of 550 Sq.ft., Type 2 BHK flat and total super built-up area being 906 sq.ft., alongwith right to park one car at the covered car parking space in Ground Level G-186 situated within the project named as 'The 102' of the Complainant Promoter-Company.</p> <p>The Respondent stated at the time of hearing that, he requires three (03) months time to pay the due amount to Complainant-Promoter Company.</p> <p>As per the Complaint Petition:-</p> <ol style="list-style-type: none">1. The Respondent has applied for allotment of an apartment in the said project under development and has been allotted Apartment No. B1, 10th Floor, Tower No.8, containing a carpet area of 550 Sq.ft., type 2 BHK and total super built-up area being 906 sq.ft. (hereinafter referred to as 'said unit') alongwith right to park one car at the covered parking space in Gr. Level G-186 situated with the said project was booked for total consideration of Rs.45,90,823/- exclusive GST.2. The Respondent has paid an amount of Rs.4,59,082/--including GST, as an advance amount for the said unit. Subsequent to the allotment, an Agreement for sale dated 13.07.2022 was executed between the	

parties for the total sale consideration of Rs.45,90,823/-exclusive of GST to be paid as per payment schedule.

3. That as per 1.2.3, of the said agreement the total extras charges and deposit in respect of apartment is Rs.2,64,000/-("Total extra and deposits").
4. That it was further stated that as per the said Agreement more specifically clause 7.1, the possession of the said unit was to be delivered on **30.07.2023** however clause 7.2 of the said agreement clearly states that the Promoter shall not be liable to deliver possession of the said unit to the Respondent/allottee until such time the allottee makes payment of total consideration of the said unit.
5. The Respondent opted for construction link payment plan for payment of the total consideration of the said unit as mentioned in the said agreement and as such Respondent was required to pay consideration as per payments schedule mentioned under **sixth schedule** of the said agreement and as such Respondent was required to pay consideration with progress of work. However, Respondent failed to make timely payment.
6. That the Respondent and his son approached to ICICI Bank Ltd., for a loan for purchasing the said unit and ICICI Bank Ltd has agreed to sanction/grant the loan to Respondent and the said unit was mortgaged in favour of ICICI Bank Ltd.
7. That it was further stated that as per the terms and conditions of the agreement to sale, demands for payments were raised as per the progress in the project. Complainant has issued various demand letters through which respondent were requested to make payment as per installments with delayed interest charges.
8. The respondent failed to make timely payment despite of repeated reminders and as per terms and conditions, time is always an essence of the said agreement, therefore, vide letter dated 21.09.2022 complainant issued cancellation reminder for the said unit thereby requesting to pay the due amount of Rs.29,15,103/-alongwith applicable interest of Rs.42,959/-within 5 working days from the date of said letter.
9. That despite of reminder cancellation notice, respondent failed to comply therefore complainant not left with any other option but to cancel the said unit of respondent booked in the said project and issued the final cancellation letter on 07.10.2022 and terminated the booking and further also informed that 10% of the total consideration amount will be forfeit plus applicable GST payable on such cancellation charges as per terms and conditions mentioned in clause 9.3(ii) of the said agreement and lastly requested the Respondent to kindly complete the formalities of cancellation. However Respondent till date didn't approached the complainant for the cancellation formalities.

10. Thereafter, It is further stated that an total amount of **Rs.24,86,804/-** was received through Respondent's Bank i.e. ICICI Bank Ltd towards the said unit.

11. That it is submitted that, till date an amount of **Rs.29,68,840/-** has been received towards the said unit therefore as on date total due and payable amount by the Respondent as on date towards the said unit is **Rs.21,56,120/- inclusive of GST**.

12. That thereafter on 16.11.2022, email was received from Respondent who have also booked the another unit i.e. No. A1 (3BHK), thereby stated that due to their financial problem respondent will not be able to continue with the said unit and as per terms and conditions requested for cancellations of the said unit.

13. That M/s. L & T Construction Equipment Limited. Vs. The Real Estate Regulatory Authority, in Appeal (K-REAT) No. 351/2020 it was held in Para No.17, as per the terms contained in clause 9.3(iii) which is extracted above, in any of the contingencies arising as above, the promoter may cancel the allotment of the apartment made in favour of the allottee and upon handing over the original of this agreement duly cancelled and executing and registering the cancellation deed with the jurisdictional Sub-registrar, refund the money paid to him by the allottee by deducting the booking amount, brokerage and the interest liabilities and this agreement shall thereupon stated terminated.

14. That Respondent himself has requested for the cancellation due to financial problem therefore said unit of the Respondent is liable to set-aside.

15. That complainant has suffered huge loss in terms of money due to the failure on the part of the respondent for not making any payments since the date of booking. Moreover Complainant is not able to resale the said unit to third party as the Respondent has kept the unit on hold.

The Complainant prays before the Authority for the following relief(s):-

1. By appropriate order or direction, the agreement to sale dated 13.07.2022 executed between Complainant and Respondent may be declared as cancelled and accordingly the said unit booked by the Respondent be termed as cancelled and direct the Respondent to complete the cancellation formalities.
2. After declaring the Agreement to Sale dated 13.07.2022 as cancelled kindly direct the concerned Sub-Registrar to note such cancellation in its record and delete the encumbrances as recorded on the basis of agreement to sale dated 13.07.2022.
3. Further direct the Respondent to pay a sum of Rs.25,000/- on account of litigation cost of this complaint and further proceedings

thereof.

4. Pass such other and further orders as this Hon'ble Authority may deem fit and proper in the circumstances of the case.

After hearing both the parties/Complainant, the Authority is pleased to admit this matter for further hearing and order as per the provisions contained in Section 31 of the Real Estate (Regulation and Development) Act, 2016 read with Rule 36 of the West Bengal Real Estate (Regulation and Development) Rules, 2021 and give the following directions:-

At first both the parties shall take initiative to amicably settle the matter by mutual discussion and if they arrive at a mutual settlement, they shall submit a **Joint Notarized Affidavit**, signed by both the parties, containing the terms and conditions of the mutual settlement and send the Affidavit (in original) to the Authority, both in hard and scan copies, **within 15 days** from the date of receipt of this order of the Authority through email.

If they fail to arrive at a mutual settlement, they shall submit Affidavits as per the following directions of the Authority:-

The Complainant is directed to submit his total submission regarding his Complaint Petition on a Notarized Affidavit annexing therewith notary attested/self-attested copy of supporting documents and a signed copy of the Complaint Petition and send the Affidavit (in original) to the Authority, serving a copy of the same to the Respondent, both in hard and soft copies, **within 15 (fifteen)** days from the date of expiry of 15 days from the date of receipt of this order of the Authority through email.

The Respondent is hereby directed to submit his Written Response on notarized affidavit regarding the Complaint Petition and Affidavit of the Complainant, annexing therewith notary attested/self attested copy of supporting documents, if any, and send the Affidavit (in original) to the Authority serving a copy of the same to the Complainant, both in hard and scan copies, **within 15 (fifteen)** days from the date of receipt of the Affidavit of the Complainant either by post or by email, whichever is earlier.

Fix **26.09.2024** for further hearing and order.


(BHOLANATH DAS)

Member

West Bengal Real Estate Regulatory Authority


(TAPAS MUKHOPADHYAY)

Member

West Bengal Real Estate Regulatory Authority