

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

Complaint No. WBRERA/COM000618

Monomita Ganguly & Abhijit Bhattacharya.....Complainants

Vs

S E Builders Realtors Limited Respondent

Sl. Number and date of order	Order and signature of the Authority	Note of action taken on order
01 16.07.2024	<p>Advocate Mr. Sukalpa Seal (Mob. No.9230569929 & email Id:sukalpaseal@gmail.com) is present in the physical hearing on behalf of the Complainants and signed the Attendance Sheet. He is directed to send his vakalatnama to the Authority through email immediately after today's hearing.</p> <p>Ms. Moumita Kundu, Sr. Manager Legal of the Respondent (Mob. No. 9903844131 & email Id: moumita.kundu@ambujaneotia.com) is present in the physical hearing on behalf of the Respondent Promoter Company filing Authorization and signed the Attendance Sheet.</p> <p>Heard both the parties in detail.</p> <p>As per the Complainant the fact of the case is that:-</p> <ol style="list-style-type: none">1. Upon application of the complainants an apartment was allotted vide allotment letter dated 02.11.2019 issued by the Respondent. The complainants started making payment and paid a total sum of Rs.40,74,430/-till 09.09.2020 even before execution of any Agreement for Sale.2. Thereafter, an Agreement for Sale was duly executed on 08.01.2021 which was registered and duly recorded in Book No. 1, Volume No. 1606-2021, Pages from 9371 to 9432, being No. 160600158 for the year 2021.3. After execution of the said Agreement, the Complainants did not receive any communication from the Respondent either as regards to the progress of the said project or as regards to any amount due/payable. According to Term No. 1.2 Explanation (iii) of the said Agreement, the promoter shall periodically intimate to the allottee, the amount payable and the allottee shall make payment.4. The Complainants received a Notice dated 20.08.2022 through speed post from the respondent wherein the following allegations were raised	

that – (i) the Complainants have not made payment of Rs.93,82,031/- which was due in terms of the 2 consecutive demand notices, (ii) even after a lapse of more than 2 months from the notice several reminder mails were sent, (iii) the complainants are still to make payment of the defaulted amount of Rs.1,02,09,312/-(including Interest as on 18.08.2022), (iv) the complainants are no longer ready and willing to abide by the terms and conditions of the said Agreement, (v) the Complainants have clearly defaulted in the Complainant's payment obligations, (vi) the complainants are also in breach of their statutory obligations enshrined under section 19(6) of the RERA Act, 2016.

5. The Respondent further threatened the complainants that the respondent has no other option but to cancel the allotment and the agreement.
6. The Respondent further claimed that the Respondent is entitled to deduct the cancellation charges to the tune of Rs.33,33,660/-.
7. The Complainants came to learn that the Respondent is trying to cancel the said Agreement to fetch a higher price from other purchasers.
8. Challenging the said notice dated 20.08.2022 the complainants filed a Title Suit before the learned 3rd Additional Civil Judge (Jr. Div.) at Alipore being Title Suit No. 1430 of 2022 and also for a permanent injunction.
9. By an order dated 15.09.2022, the Learned Trial Court passed an Ad interim order of injunction by directing the parties to maintain status quo and further restrained the respondent from giving effect to the Notice dated 20.08.2022. The said interim Order has been extended from time to time and is still subsisting and the next date has been fixed on 17.11.2023.

The Complainants pray before the Authority Relief(s) for the following Grounds:-

1. According to clause No. 29 of the said Agreement for Sale, all the notices are mandatorily required to be served by "Registered Post" at the respective addresses of the parties to the said Agreement for Sale which is more specifically written in the said clause No. 29 and only in that case it shall be deemed to have been duly served.
2. For that prior to the aforesaid purported notice dated 20.08.2022, the complainants had not received any notice from the Respondent through registered post.
3. For that the complainants are supposed to and are always ready and willing to pay their dues/installments as and when legitimate demands will be raised by the Respondent but in the instant case no demands were raised by the Respondent before issuing the said notice.
4. For that the respondent is acting in ultra violation of the terms of the aforesaid Agreement for Sale and in complete disregard to the provisions of the RERA Act, 2016 and is trying to purportedly cancel

the allotment of the complainants in violation of Section 11(5) of the RERA Act, 2016.

Complainants pray before the Authority for the following relief(s):-

- (i) A Declaration that the Agreement for Sale dated 08.01.2021 is still in force, existing and is binding on the parties herein; and
- (ii) A Declaration that the impugned notice dated 20.08.2022 is illegal, arbitrary and contrary to the terms of the Agreement for Sale dated 08.01.2021; and
- (iii) Permanent injunction restraining the Respondent from giving effect to the said impugned notice dated 20.08.2022; and
- (iv) A permanent injunction restraining the Respondent from illegally and arbitrarily terminating the allotment of the said property to the Complainants and/or to cancel the said Agreement for Sale; and
- (v) Permanent injunction restraining the Respondent from entering into any new Agreement for Sale with any third party and/or to create any third party interest over the said property.

After hearing both the parties, 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:-

The **Complainants** are directed to submit their total submission regarding their 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 scan copies, within **21 (twenty-one)** days from the date of receipt of this order of the Authority by email.

The **Complainants** are directed to send a scan copy of their Affidavit also to the email id of the Authorized Representative of the Respondent Promoter Company in her email id, as mentioned above.

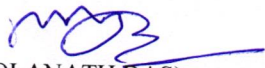
The **Complainants** are further directed to provide in a **Tabular Form** chronologically all the payments made by them specifying date, amount, money receipt number, if any, and the total amount in the said table in their Affidavit.

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 Complainants, either by post or by email, whichever is earlier.

Inspite of the above directions, both the parties are directed to take initiative and try for an amicable settlement of the issues between them by

mutual discussions and if they arrive at a mutual settlement, they shall submit a **Joint Notarized Affidavit**, signed by both, containing the terms and conditions of the mutual settlement, and send the Affidavit (in original) to the Authority before the next date of hearing and in that case there is no need of submitting separate Affidavit(s) by the Complainant and the Respondent, as per the directions given above.

Fix **14.11.2024** for further hearing and order.



(BHOLANATH DAS)

Member

West Bengal Real Estate Regulatory Authority



(TAPAS MUKHOPADHYAY)

Member

West Bengal Real Estate Regulatory Authority