

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

Complaint No. WBRERA/COM000659

Kalyan Kumar Chattopadhyay. Complainant

Vs

M/s. A.S.Enterprises & Others..... Respondents

Sl. Number and date of order	Order and signature of the Authority	Note of action taken on order
01 25.04.2024	<p>Advocate Sri. Subhro Kanti Roy Chowdhury (Mob. No. 9831581182 & email Id: 2018skandassociates@gmail.com) is present in the online hearing on behalf of the Complainant, filing hazira and Vakalatnama through email.</p> <p>Respondent is absent in the online hearing despite due service of hearing notice to the Respondent through speed post and also by email.</p> <p>Let the track record of due service of hearing notice to the Respondent be kept on record.</p> <p>Heard the Complainant in detail.</p> <p>As per the Complainant he had booked a flat on 9th May, 2007 measuring about 850sq.ft. more or less super built up area in the backside of the 3rd floor on the South-West side of the building constructed at 11/1A, Raja Dinendra Street, Kolkata - 700 009, by paying a booking amount of Rs.10,000/-out of the total consideration of Rs.13,60,000/-.</p> <p>He made further payment of Rs.5,00,000/- to the Respondent Company from 4.06.2008 to 01.08.2008 on a condition that the Agreement for Sale shall be executed immediately after obtaining sanctioned building plan from the concerned municipality.</p> <p>The building plan was sanctioned on 15.01.2010 and the building permit was valid till 02.06.2015.</p> <p>The Respondent Company executed and registered the Agreement for Sale in respect of the said flat on 15.03.2013 that is after a period of 5 years approximately from the date of payment of booking amount and 3 years approx from the date of sanction of the building plan and it was mentioned in the said Agreement that delivery will be given by August'2013.</p> <p>After visiting the construction site, the Complainant observed that the site is half</p>	

done and is in non-habitable condition.

Ever after sending many letters to the Respondent Company, the Respondent has failed to handover the said flat and execute and register the said flat in the name of the Complainant till date.

Moreover, the Respondent Company started making unauthorized construction beyond the scope of the sanctioned plan and trying to transfer the same to the third party and if such unauthorized constructions are not stopped then the Complainants shall suffer irreparable loss and injury.

There are discrepancies in the area of said flat that is by physical measurement the area of the flat is 654.86 sq.ft. super built up area and as per the said Agreement, the area of the said flat is 850 sq.ft. super built up area and the same has been informed to Respondent by letter but the Respondent failed to give any response.

Now, the Complainant asked for a compensation of Rs.20,00,000/-for the physical and mental harassment they had to bear for non-registration of the Deed of Conveyance and non-delivery of the said flat for the span of 10 years of time in spite of paying total amount of Rs.12,60,000/-out of Rs.13,60,000/-and also execution and registration of the said flat in immediate basis.

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

- a) An order directing and commanding the Respondent to execute the Deed of Conveyance and to make delivery of the flat in question as mentioned in the schedule of the Agreement and to complete the construction of the flat in a complete habitable condition as per the Agreement and also handover the possession of the flat; and
- b) An order commanding the Respondent to execute the Deed of Conveyance without any delay in any manner; and
- c) An order restraining the Respondent from constructing any structure beyond the sanctioned plan and for creating any third party interest on the unauthorized construction, if any; and
- d) An order directing the Respondent to deliver the Possession Certificate, Completion Certificate and other relevant documents – Sewerage Certificate and also the Clearance Certificate and also other documents and the Respondent may be directed to pay the interest @18% p.a. over the total deposited amount of Rs.12,60,000/-to the Complainant on and from August'2013 onwards as per Clause No.5(a), page no. 9 of the agreement dated 15.03.2013; and
- e) An order restraining the Respondent to desist from any illegal construction not shown in the original building plan and further restraining the Respondent from making any illegal construction which will be a serious problem to the safety, security and privacy as well; and
- f) An order directing the Respondent not to create any third party interest on the

Schedule of the property; and

- g) An order directing the Respondent to pay compensation of Rs.20,00,000/- only for causing physical and mental harassment of the Complainant;
- h) Costs of Rs.50,000/-.

After hearing the 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:-

The Complainant is directed to submit his total submission regarding their Complaint Petition on a Notarized Affidavit annexing therewith notary attested /self-attested 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 receipt of this order of the Authority by email.

The Complainant is also directed to mention in his affidavit, if there is any other case pending in any other forum regarding this matter. If yes, he shall mention the details of the case alongwith present status and shall annex with his Affidavit a copy of the last order(s) of such case(s).

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 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 soft 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 **26.06.2024** for further hearing and order.


(BHOLANATH DAS)

Member

West Bengal Real Estate Regulatory Authority


(TAPAS MUKHOPADHYAY)

Member

West Bengal Real Estate Regulatory Authority