

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

Complaint No. WBRERA/COM000336

Bengal Ambuja Housing Development Limited Complainant

Vs

Konebou Fashions Pvt. Ltd..... Respondent

Sl. Number and date of order	Order and signature of Authority	Note of action taken on order
02 19.12.2023	<p>Mr. Rakesh Ranjan and Miss Moumita Kundu, being the Authorized Representatives of the Complainant Promoter Company is present in the online hearing on behalf of the Complainant filing hazira and authorization through email.</p> <p>Respondent Allottee is absent despite due service of hearing notice through speed post and also by email.</p> <p>Let track record of due service of hearing notice to the Respondent be kept on record.</p> <p>As per, the last order of the Authority dated 06.11.2023, the Complainant has submitted a Notarized Affidavit dated 16.11.2023, containing their total submission regarding this Complaint Petition, which has been received by the Authority on 21.11.2023.</p> <p>Let the said Affidavit of the Complainant be taken on record.</p> <p>The Respondent-Allottee has been provided 2 (two) dates of hearing to appear before this Authority and submit its response. This Complaint matter was heard on 06.11.2023 and also on today. The Respondent did not appear on any of the dates and he also did not submit any affidavit and no communication has been made from its end. So reasonable opportunity of hearing has been provided to it.</p> <p>Therefore, today this Authority has no other option but to proceed for ex-parte hearing and disposal of this matter, as this Authority is under the obligation to dispose of the matters as expeditiously as possible as per section 29(4) of the Real Estate (Regulation and Development) Act, 2016.</p>	

Heard the Complainant in detail and also examined the Affidavit and documents submitted by the Complainant.

The total cost of the flat / apartment booked by the Respondent is Rs.41,39,970/- as per clause No. 1.2 of the Agreement for Sale executed on 28.09.2022 between the parties. It transpires that the Respondent-Allottee has paid a sum of Rs.3,76,253/- (Rupees Three Lakhs Seventy Six Thousand Two Hundred Fifty Three only) as booking amount being part payment towards the total price of the apartment at the time of application, as per clause 1.12 of the said Agreement For Sale.

The said Agreement for Sale is attached with the Affidavit of the Complainant dated 16.11.2023 as Annexure-“A-3”.

Clause 9 of the Proforma of the Agreement for Sale at Annexure-‘A’ of the West Bengal Real Estate (Regulation & Development) Rule, 2021 provides that, -

“In case of default by Allottee under the condition listed above continues for a period beyond consecutive months after notice from the Promoter in this regard, the Promoter shall cancel the allotment of the [Apartment/Plot] in favour of the Allottee and refund the amount money paid to him by the Allottee by deducting the booking amount and the interest liabilities and this Agreement shall thereupon stand terminated”.

Therefore on examination of the Affidavit of the Complainant and after hearing them through online hearing, the Authority is of the considered view that the Respondent has defaulted in making payments for 5 (five) number of consecutive demands made by the Complainant as per the payment plan annexed with the Agreement for Sale. Therefore as per the provisions of Clause 9 of the Proforma of the Agreement for Sale at Annexure-‘A’ of the West Bengal Real Estate (Regulation & Development) Rules, 2021 the Complainant is at liberty to cancel the Agreement for sale and apply for registration of the Deed of Cancellation of the said Agreement For Sale. The Complainant shall refund the principal amount paid by the Respondent after deduction of the cancellation charges, if any, as per the Agreement for Sale executed between the parties on 28.09.2022.

Hence, it is hereby,

ORDERED

that this Authority has no objection if the Agreement For Sale executed

between the parties on 28.09.2022 is cancelled by the Complainant unilaterally and the Complainant shall refund the principal amount paid by the Respondent after deduction of the cancellation charges, if any, as per the Agreement for Sale executed between the parties on 28.09.2022. The Deed of Cancellation of the said Agreement For Sale may be registered unilaterally by the Complainant. The Additional Registrar of Assurances- IV, Kolkata, is directed to take necessary steps for de-registration of the said Agreement For Sale by the Complainant unilaterally.

After de-registration of the Agreement for Sale and cancellation of the Agreement and termination of the Allotment of the Respondent Allottee, the Complainant shall be at liberty to allot the same to any other Person.

GST amount, if any, paid by the Complainant on the amount of the booking money, shall be deducted by the Complainant and he shall handover the receipt/certificate of such payment to the Respondent within 45 days from the receipt of this order through email.

The remaining amount, if any, paid by the Respondent Allottee shall be refunded by the Complainant within 45 days from the date of receipt of this order through email.

Copy of this order be served to both the parties through speed post and also by email.

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