

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

Complaint No.WBRERA/COM000158

RadheshyamPancharia..... Complainant

Vs

Amit Kumar Agarwal&ArpitaAgarwal..... Respondents

Sl. Number and date of order	Order and signature of Authority	Note of action taken on order
05 20.12.2023	<p>Mrs.Moumita Kumar,Mrs.TaniyaSaha and Mr.AnirbanGhoshare present on behalf of the Complainant, being its Authorized Representatives, and signed the Attendance Sheet.</p> <p>Respondents arepresent in the physical hearing today and signed the Attendance Sheet.</p> <p>As per the last order of the Authority dated 16.10.2023, the Complainant has submitted a Rejoinder / Reply on Notarized Affidavit dated 30.11.2023, against the Affidavit of the Respondent dated 04.10.2023, which has been received by this Authority on 30.11.2023.</p> <p>Let the said Rejoinder / Reply of the Complainant be taken on record.</p> <p>On perusal of the Rejoinder of the Complainant-Promoter, it appears that no mutual settlement has taken place between the parties as per the last order of the Authority dated 16.10.2023 and the amounts which are due from the Respondent at present are as follows :-</p> <p>Due consideration amount – Rs.11,35,070/-</p>	

Due Extras and Deposits – Rs.6,41,996/-

Interest as on date – Rs.43,551.97/-

The Respondent stated at the time of hearing that he has paid Rs.1,51,79,052/- till date Rs.1,35,76,439/- which is the total cost of the flat booked by him and thus Rs.16,02,613/- has been paid by him over and above the total cost with tax and extras. They prayed for adjustment of a sum of Rs.16,02,613/- paid by them over and above the total cost alongwith tax and extras. The extra amount is paid by him due to the penalty imposed on him for late payment as per the Agreement for Sale executed between the parties on 18.07.2019.

The Respondent-Allottee has been provided four dates of hearing to appear before this Authority and submit his submissions. This Complaint matter was heard on 13.06.2023, 03.08.2023, 12.09.2023, 16.10.2023 and also on today. The Respondent appeared on the first and second dates of hearing and remain absent on third and fourth dates of hearing and submitted Written Response on affidavit on 04.10.2023. So reasonable opportunity of hearing has been provided to the Respondent-Allottee.

On examination of the Affidavits of both the parties and after hearing the parties, the Authority is of the considered view that the Respondents have defaulted in their obligations in making payment of installments in due time to the Complainant and therefore penalty was imposed on them as per the terms of the Agreement for Sale. There is no violation of any of the terms of the agreement by the Complainant. Therefore the Respondents are under the obligation to make payment of the balance amount to the Complainant to get the possession of the flat from the Complainant. If they fail to make payment of the balance amount,

then 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) Rule, 2021 and clause 9.3(ii) of the Agreement For Sale executed between the parties, the Complainant is at liberty to cancel the Agreement for sale and terminate the allotment of the Respondents. The Complainant may also apply for registration of the Deed of Cancellation of the Agreement For Sale unilaterally.

Hence, it is hereby,

ORDERED

The Respondent shall make payment of the due amount as mentioned above within 45 days from the date receipt of this order through email and the Complainant shall deliver possession of the flat to the Respondents immediately after the payment.

If the Respondent fail to make the payment as directed above then in that case, this Authority has no objection if the Agreement For Sale executed between the parties on 18.07.2019 is cancelled by the Complainant unilaterally. The Complainant may apply for registration of the Deed of Cancellation of the said Agreement For Sale and Concerned Registering Authority is directed to take necessary steps for de-registration of the said Agreement For Sale by the Complainant unilaterally.

After cancellation of the Agreement, de-registration of the Agreement for Sale 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 shall be deducted by the Complainant from the amount paid by the

Respondents and he shall hand over the receipt / certificate of such payment to the Respondent within 45 days from the date of de-registration of the Agreement for Sale.

The remaining amount paid by the Respondents shall be refunded by the Complainant, on the date of cancellation of the Agreement for Sale, after deduction of the Cancellation Charges and applicable GST payable on such cancellation charges, as per the relevant provision of the Agreement For Sale executed between the parties on 18.07.2019.

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

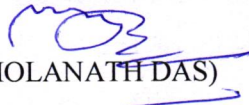
With the above directions the matter is hereby disposed of.



(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