

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

Complaint No. WBRERA/COM000563

Radheshyam Pancharia..... Complainant

Vs

Seema Pandey..... Respondent

Sl. Number and date of order	Order and Signature of the Authority	Note of action taken on order
04 29.04.2024	<p>Mrs. Moumita Kumar and Mrs. Taniya Saha are present in the online hearing on behalf of the Complainant filing hazira & authorization through email.</p> <p>Respondent is absent despite due service of hearing notice to the Respondent by speed post and also through email.</p> <p>Let the track record of due service of hearing notice to the Respondent be kept on record.</p> <p>Respondent submitted Written Response on Notarized Affidavit dated 19.03.2024, to the Complaint Petition and Affidavit of the Complainant, as per the order of this Authority dated 24.01.2024, which has been received by this Authority on 20.03.2024.</p> <p>Let the said Written Response of the Respondent on Notarized Affidavit be taken on record.</p> <p>Heard the Complainant in detail.</p> <p>Complainant stated at the time of hearing that they have tried for amicable settlement of the matter as per the last order of the Authority dated 27.03.2024 but no co-operation from the end of Respondent-Allottee or her advocate has been received. Therefore mutual settlement of this matter has not been materialized.</p> <p>After hearing the Complainant and going through the Affidavit of the Complainant dated 30.11.2023 and Affidavit of the Respondent dated 19.03.2024 placed on record before the Authority, the Authority is of the considered opinion that in the present case, Rs.8,44,605/- (Rupees eight lakh forty four thousand six hundred five only) was taken from the Respondent by the Complainant as booking amount and as per clauses 9.3(ii) of the registered Agreement for Sale executed between the parties on 07.07.2020, the booking amount can be forfeited by the</p>	

Complainant-Promoter in case of default of the Respondent-Allottee in payment of installments for a period beyond three consecutive months.

The Respondent-Allottee has been provided four dates of hearing to appear before this Authority and submit her submissions and representations. This Complaint matter has been heard on 23.11.2023, 24.01.2024, 27.03.2024 and today. The Respondent appeared 24.01.2024 and 27.03.2024 and he submitted Affidavit on 20.03.2024. At the time of hearing on the last date that is on 27.03.2024, the Advocate of the Respondent prayed for 9 months' time to pay the due amount to the Complainant but the Complainant did not consent to this proposal. In the last order, this Authority has given 30 days time to mutually settle the matter with the Complainant but the Respondent did not avail the opportunity to amicably settle the matter with mutual discussion. So, sufficient time and reasonable opportunity of hearing has been provided to the Respondent-Allottee.

At Clause No. 1.14 of the Agreement for Sale executed on 07.07.2020 between the parties, it transpires that the Respondent-Allottee has paid a sum of Rs.8,44,605/- as booking amount being part payment towards the total price of the flat.

The said Agreement for Sale is attached with the Affidavit of the Complainant dated 30.11.2023 as Annexure- B.

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 three 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 dated 30.11.2023 and Affidavit of the Respondent dated 19.03.2024 and the documents placed on record and after hearing the parties through online hearing, the Authority is of the considered view that the Respondent has defaulted in making payments for 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) Rule, 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 balance amount, if any, paid by the Respondent after deduction of the booking amount of Rs. 8,44,605/-.

Hence, it is hereby,

ORDERED,

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

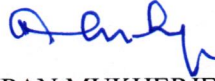
between the parties on 07.07.2020 is cancelled by the Complainant unilaterally and the Complainant shall refund the balance amount, if any, paid by the Respondent after deduction of the booking amount of Rs.8,44,605/- as per the Agreement for Sale executed between the parties on 09.09.2022 and the refund shall be made within 45 days from the date of receipt of this order through email.

The Respondent-Allottee is hereby directed to provide all necessary co-operation for de-registration of the Agreement for Sale. If required, the Deed of Cancellation of the said Agreement for Sale can be registered unilaterally by the Complainant. The ADSR, Rajarhat Newtown, North 24 Parganas, 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 said Agreement and termination of the Allotment of the Respondent Allottee, the Complainant shall be at liberty to allot the same to any other Person.

With the above directions this matter is hereby disposed of.

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



(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