

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

Complaint No. WBRERA/COM(PHYSICAL)000157

M/s. Shree Balaji Complainant

Vs

Satyajit Saha..... Respondent

Sl. Number and date of order	Order and signature of the Authority	Note of action taken on order
01 07.08.2024	Mr. Nisheet Agarwal is present in the physical hearing on behalf of the Complainant-Promoter Company being its Authorized Representative. The Respondent-Alottee Mr. Satyajit Saha is present in the physical hearing today. Heard both the parties in detail. As per the Complaint petition the fact of the case is that:- 1. That M/s. Shree Balaji (herein referred to as Complainant) is a Sole Proprietorship firm. The Complainant has been into business of Real Estate, started developing and promoting a real estate project, namely, "Panthaniwas Dooars Phase-II" (herein "said Project") situated at Batabari, Dakshin Dhupjhora, P.S. Matiali, District - Jalpaiguri - 735206 (herein after "said Land") which is registered under Real Estate Project registered with West Bengal Housing Industry Regulatory Authority at Kolkata, bearing Registration No. HIRA/P/JAL/2019/000591. 2. The brief facts of the case are that the respondent has applied for allotment of an apartment vide application dated 12.11.2020 in the said project under development and has been allotted Apartment No. 4C, of phase -II, Block No. 13, without open car parking space (hereinafter referred to as 'said unit') situated with the said project was booked for total consideration including taxes and other charges i.e. Rs.13,13,000/-excluding GST. 3. The respondent/allottee has paid an amount of Rs.50,500/-including GST, as an advance amount for the said unit. Subsequent to the allotment, an registered agreement for sale (without possession) dated 15.09.2021 (hereinafter referred to as Said Agreement) was executed between the parties for the total sale consideration of Rs.13,13,000/-	

excluding other charges to be paid as per payment schedule prescribed therein.

4. That thereafter as per clause 1.4 of the said agreement, the Respondent/allottee agrees to pay the remaining price of the said unit as prescribed in the Payment Plan (Schedule "C II and III).
5. That it was further stated that as per the said Agreement more specifically clause 7.1, the possession of the said unit was to be delivered on 31.03.2023 unless there is any delay or failure due to force Majeure and in that condition the allottee agrees that the promoter shall be entitled to the extension of time for delivery of possession of the Apartment.
6. That, subsequent to the execution of the agreement for sale, Respondent was required to pay consideration with progress of work however Respondent failed to make timely payment therefore complainant has issued various Demand letters as and when payment become due however Respondent neither paid any amount nor responded to the Demand Letter.
7. That, Respondent has violated the agreement terms and committed default in payment therefore, complainant has sent various reminders and final reminders before cancellation vide notice dated 14.05.2022, 29.09.2022, 28.10.2022 and 18.11.2022.
8. That it is further stated and submitted that, despite of reminder cancellation notice, Respondent failed to comply therefore Complainant not left with any other option but to cancel the said unit of Respondent booked in the said project and issued the final cancellation letter on 06.03.2023 and terminated the booking as per terms and conditions mentioned in the said agreement and lastly requested the Respondent to kindly complete the formalities of cancellation however Respondent till date did not approached the complainant for the cancellation formalities.
9. It vide final cancellation notice dated 06.03.2023, the Respondent was informed about the due amount as on date which is, amount made by the Respondent is Rs.1,31,300/- only on account of unit cost the delayed payment charges falls due of Rs.1,13,115/-therefore altogether total amount payable towards unit by Respondent as on 06.03.2023 was Rs.10,97,865/-alongwith GST as per terms is due and payable by the Respondent towards the said unit.
10. That, it is further pertinent to mention herein that the project of the Complainant is completed and vide 10.10.2023 the completion certificate was obtained from the "Pradhan, Matiali Batabari No. II Gram Panchayat.

11. **That M/s. L & T Construction Equipment Limited Vs. The Real Estate Regulatory Authority, in Appeal (K-REAT) No. 351/2020** it was held in para no. 17, as per the terms contained in clause 9.3(iii) which is extracted above, in any of the contingencies arising as above, the promoter may cancel the allotment of the apartment made in favour of the allottee and upon handing over the original of this agreement duly cancelled and executing and registering the cancellation deed with the jurisdictional Sub-Registrar, refund the money paid to him by the allottee by deducting the booking amount, brokerage and the interest liabilities and this agreement shall thereupon stand terminated.
12. That Respondent himself has requested for the cancellation due to financial problem therefore said unit of the Respondent is liable to set-aside.
13. That Complainant has suffered huge loss in terms of money due to the failure on the part of the Respondent for not making any payments since the date of booking moreover Complainant is not able to resale the said unit to third party as the Respondent has kept the unit on hold.

The Complainant prays before the Authority for the following reliefs:-

- A. By appropriate order or direction, the agreement to sale dated 15.09.2021 executed between Complainant and Respondent may be declared as cancelled and accordingly the said unit booked by the Respondent be termed as cancelled and direct the Respondent to complete the cancellation formalities as per terms of the agreement.
- B. After declaring the Agreement to sale dated 15.09.2021 as cancelled kindly direct the concerned Additional registrar to note such cancellation in its record and delete the encumbrance as recorded on the basis of agreement to sale dated 15.09.2021.
- C. Further direct the Respondent to pay a sum of Rs.25,000/-on account of litigation cost of this complaint and further proceedings thereof.
- D. Pass such other and further orders as this Hon'ble Authority may deem fit and proper in the circumstances of the case.

The Respondent Allottee stated at the time of hearing that he is not willing to take flat in this project and requested for transfer of the booking to any other project of the Complainant-Promoter.

The Complainant stated that no transfer of the Allotment is possible at present to any other project of the Complainant.

After hearing both the parties, the Authority is of the considered opinion that the Respondent is not willing to proceed with the booking and purchase of the flat and as there is no fault on the part of the Promoter therefore the Promoter is entitled to cancel the booking and forfeit the booking amount as the Respondent has defaulted in payment of number of installments.

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".

As per clause 9 of the Proforma Agreement for Sale at Annexure - 'A' of the West Bengal Real Estate (Regulation and Development) Rules, 2021, the present Allottee may considered as an Defaulter for non-payment of number of installments and as per the last para of the said clause 9, the Promoter is entitled to cancel the booking / allotment and forfeit the booking amount of Rs.50,500/- (including GST) and de-register the Agreement for Sale dated 15.09.2021 and allot the same to any third party. The Complainant shall refund the principal amount paid by the Respondent after deduction of the booking amount, as per the Agreement for Sale executed between the parties on 15.09.2021.

Hence, it is hereby,

ORDERED

that this Authority has no objection if the Agreement For Sale executed between the parties on 15.09.2021 in regard to **Apartment no.4C, Phase - II, Block No.13, 3rd Floor**, in the project **Panthaniwas Doors Phase - II**, is cancelled by the Complainant unilaterally and the Complainant shall refund the principal amount paid by the Respondent after deduction and forfeiture of the booking amount of Rs.50,500/- (including GST), as per the Agreement for Sale executed between the parties on 15.09.2021, within 45 days from the date of receipt of this order of the Authority through email.

The Deed of Cancellation of the said Agreement For Sale may be

registered unilaterally by the Complainant.

The **concerned Registrar** 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.

Copy of this order be served to both the parties immediately.

With the above directions the matter is hereby disposed of.


(BHOLANATH DAS)

Member
West Bengal Real Estate Regulatory Authority


(TAPAS MUKHOPADHYAY)

Member
West Bengal Real Estate Regulatory Authority