

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

Complaint No.WBRERA/COM000153

Kamlesh Gandhi.....Complainant

Vs

Rajesh Jalan..... Respondent No.1

ICICI Bank Ltd Respondent No. 2

| Sl. Number and date of order | Order and signature of Authority | Note of action taken on order |
|------------------------------------|--|--|
| 05 ----- 28.02.2024 | <p>Ms. Moumita Kumar and Ms. Taniya Saha are present in the physical hearing on behalf of the Complainant, being its Authorized Representatives, filing hazira and authorization and signed the attendance sheet.</p> <p>Advocate Somnath Chattopadhyay (Mobile – 8584873398, email –som07dc@gmail.com) is present on behalf of the Respondent no. 1 (Mr. Rajesh Jalan) is present in the physical hearing filing vakalatnama and signed the Attendance Sheet.</p> <p>Mr. Sandip Barma (Mobile – 9123067836, email – sandip.barma@icicibank.com), Branch Sales Manager, ICICI Bank Ltd., 45, Bhupen Bose Avenue, Shyambazar, Kolkata – 700004, is present in the physical hearing on behalf of Respondent no.2 and signed the Attendance Sheet.</p> <p>The Respondent has submitted a Petition dated 28.02.2024 stating that an Appeal is being filed before the Ld. West Bengal Real Estate Appellate Tribunal (WBREAT) on 28.02.2024 challenging the order dated 07.12.2023 passed by this Authority and requested the Authority that the hearing of this matter may kindly be adjourned till the disposal of the said Appeal.</p> | |

Let the said Petition of the Respondent no.1 be taken on record.

Considered and rejected the prayer of the Respondent no.1 as the said Appeal has not yet been admitted by the Hon'ble WBREAT and no stay order has been passed by the said Tribunal regarding this matter. Therefore for the ends of speedy disposal of justice which is one of the main objective of the Real Estate (Regulation and Development) Act, 2016, as enshrined in section 29(4) of the said Act, and today is the 5th day of hearing of this matter, therefore, no more adjournment can be given in this matter.

Complainant has submitted a Reply on Notarized Affidavit dated 27.12.2023, to the Application of the Respondent no.1 dated 07.12.2023, giving para-wise reply to the said Application, which has been received by this Authority on 29.12.2023.

Let the said Reply on Notarized Affidavit of the Complainant be taken on record.

Heard all the parties in detail.

The Respondent no.1-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, 28.08.2023, 07.12.2023 and also on today. The Respondent no.1 appeared on all the dates of hearing and submitted an Application on 07.12.2023 stating his points of contentions. So reasonable opportunity of hearing has been provided to the Respondent-Allottee and he has submitted his Response in this regard.

Heard all the parties in detail and also examined the affidavits and documents submitted by all the parties.

An Agreement for Sale executed between the parties on 27.08.2021. The Respondent-Allottee has paid a sum of Rs.18,57,093/-(Rupees Eighteen Lakhs Fifty Seven Thousand Ninety Three only) to the Complainant-Promoter till date. Respondent no.2 ICICI Bank Ltd. has paid Rs.50,00,000/- to the Complainant-Promoter. Respondent no.1 failed to pay number of consecutive demands of the Complainant as per the payment schedule.

On examination of the Affidavits of both the parties and after hearing the parties through online and physical hearings, the Authority is of the considered view that the Respondent-Allottee has defaulted in his obligation in making payments for number of consecutive demands made by the Complainant as per the Payment Plan annexed with the Agreement for Sale at 5th schedule. The total consideration price of the said apartment is Rs. 1,84,86,602/-. 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 Respondent-Allottee. The Complainant may also allot the said flat to any third party after termination of the allotment with the Respondent no.1 and by refund of the payments to the Respondent no.1 and 2 and taking NOC from the Respondent no.2. Only the booking amount and the GST applicable on the same shall be deducted from the Principal Amount paid by the Respondent no.1.

Hence, it is hereby,

ORDERED

a) that this Authority has no objection if the Agreement For Sale executed between the parties on 27.08.2021 is cancelled by the Complainant unilaterally.

b) GST amount, if any, paid by the Complainant shall be

deducted by the Complainant from the amount paid by the Respondent no.1-Allottee and he shall hand over the receipt / certificate of such payment to the Respondent no.1 within 45 days from the date of receipt of this order through email.

c) The balance amount of the total Principal Amount paid by the Respondent no.1 shall be refunded by the Complainant, within 45 days from the date of receipt of this order through email, after deduction of only the booking amount and applicable GST payable on such booking amount, as per clause 9.3 (ii) of the Agreement For Sale executed between the parties on 27.08.2021.

d) The amount disbursed by the Respondent no.2 shall be refunded by the Complainant within 45 days from the date of receipt of this order of the Authority through email and the Respondent no.2 is hereby directed to issue NOC and release the unit / flat immediately after the refund made by the Complainant.

e) After cancellation of the said Agreement for Sale and termination of the Allotment of the Respondent No.1, the Complainant shall be at liberty to allot the same to any other Person.

With the above directions the matter is hereby disposed of.

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



(SANDIPAN MUKHERJEE)

Chairperson

West Bengal Real Estate Regulatory Authority



(TAPAS MUKHOPADHYAY)

Member

West Bengal Real Estate Regulatory Authority