

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/COM000222

Merlin Projects Limited .....Complainant

Vs

Apu Chakraborty, Tapan Chakraborty and Mithu Chakraborty.....Respondents

Sl. Number and date of order	Order and signature of Authority	Note of action taken on order
02 ----- 19.03.2024	<p>Smt. Deepa Das, D.G.M Audit &amp; Risk (mobile No. 9836301188 &amp; email Id:- deepa.das@merlinprojects.com), Smt. Anusua Ghosh, Legal Officer and Shri. Gautam Ray, Manager Law of the Complainant-Promoter Company are present in the online hearing on behalf of the Complainant filing hazira and Authorization through email.</p> <p>Respondent Apu Chakraborty is present in the online hearing filing hazira through email.</p> <p>The Complainant submitted a notarized affidavit dated 27.02.2024, containing their full submission regarding this Complaint Petition, as per the last order of this Authority dated 12.02.2024, which has been received by this Authority on 04.03.2024.</p> <p>Let the said affidavit of the Complainant be taken on record.</p> <p>The Respondent did not submit any Written Response till date in non-compliance with the last order of this Authority dated 12.02.2024.</p> <p>Heard both the parties in detail.</p>	

The Respondent Mr. Apu Chakraborty is present in the online hearing and prayed for 15 days time to make payment of the due amount to the Complainant. He stated that a House Building Loan will be sanctioned shortly and after that he will make payment of all the due amount to the Complainant.

Considered and granted the prayer of the Respondent and a time of **45 days** is hereby given to the Respondent to make the payment of all the due amount to the Complainant.

As per the Agreement for Sale executed on 19.08.2022 between the Complainant and the Respondent, it transpires that the Respondent - Allottee has paid a sum of **Rs.3,74,756/-** as the total amount paid by him till date. This amount includes **booking amount of Rs.1,89,252/-** and some part payment towards total price of the apartment at the time of application.

The said Agreement for Sale is attached with the Affidavit of the Complainant dated 27.02.2024 as Annexure -**'A'**.

Clause 9 of the Proforma of the Agreement for Sale at Annexure -**'A'** of the West Bengal Real Estate (Regulation and Development) Rules, 2021 provides that, -

"In case of default by the Allottee under the condition listed above continues for a period beyond 3 (three) consecutive month after notice from the Promoter in this regard, the Promoter shall cancel the allotment of the apartment/plot/flat in favour of the Allottee and refund the amount of money of paid to him by the Allottee by deducting the booking amount and the interest liabilities and this Agreement for Sale shall thereupon stand terminated".

On examination of the Affidavit of the Complainant and after hearing both the parties through online hearing, the Authority is of the considered view that the Respondent-Allottees have defaulted in making payment in more than three (03) consecutive demands made by the Complainant as per the Payment Plan annexed with the Agreement for Sale at schedule -**'C'**.

Therefore, as per the provision of Clause -9 of the Proforma of the Agreement for Sale at Annexure-**'A'** of the West Bengal Real Estate

(Regulation and Development) Rules, 2021, the Authority is of the considered view that if Respondents failed to make the payment of the due amount within 45 days then the Complainant is at liberty to cancel the Agreement for Sale executed with the Respondents and apply for registration of the deed of cancellation of the said Agreement for Sale and the Complainant shall refund the principal amount paid by the Respondent after deduction of the booking amount and the interest liabilities, if any, as per the Agreement for Sale executed between the parties on 19.08.2022.

Hence, it is hereby ORDERED that –

- a) Respondents shall pay all the dues within 45 (forty-five) days from the date of receipt of this order through email; and
- b) If Respondents fail to make the payment within stipulated time-period, as directed above, then in that case this Authority has no objection, if the Agreement for Sale executed between the parties on 19.08.2022 is cancelled by the Complainant by registration of the deed of cancellation of the said Agreement for Sale and Respondents shall give all the cooperation to the Complainant in this regard and the Complainant shall refund the Principal Amount of Rs.3,74,756/- paid by the Respondents after deduction of the booking amount of Rs.1,89,252/- and interest liabilities, if any, as per the Agreement for Sale executed between the parties on 19.08.2022, within 45 days from the date of de-registration of the said Agreement for Sale; and
- c) The registration of the deed of cancellation of the said Agreement for Sale shall be done unilaterally by the Complainant, if the Respondents do not cooperate; and
- d) The concerned Registrar is directed to take necessary steps for de-registration of the said Agreement for Sale by the Complainant unilaterally, if required; and

- e) After de-registration of the Agreement for Sale and termination of the allotment of the Respondent-Allottees, the Complainant shall be at liberty to allot the same to any third party; and
- f) GST amount, if any, paid by the Complainant on the Principal Amount paid by the Complainant, shall also be deducted by the Complainant and he shall handover the relevant receipt and / or certificate to the Respondent, within 45 days from the receipt of this order through email; and
- g) The remaining amount, if any, paid by the Respondent / Allottees shall be refunded by the Complainant, within 45 days from the de-registration of the Agreement for Sale.


With the above directions the matter is hereby disposed of.

Let the 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



(BHOLANATH DAS)

Member

West Bengal Real Estate Regulatory Authority



(TAPAS MUKHOPADHYAY)

Member

West Bengal Real Estate Regulatory Authority