

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

Complaint No. WBRERA/COM000679

Ambuja Neotia Teesta Development Pvt. Ltd.....Complainant

Vs

Bikash AgarwalRespondent

Sl. Number and date of order	Order and signature of Authority	Note of action taken on order
03 15.04.2024	<p>Mr. Piyush Singhania and Mrs. Moumita Kundu, being the Authorized Representatives of the Complainant Promoter Company are present in the online hearing filing hazira and Authorization through email.</p> <p>Mr. Bikash Agarwal, Respondent of the present Complaint Petition is present in the online hearing. He is directed to send his hazira on a plain paper to the Authority by email immediately after today's hearing.</p> <p>Complainant submitted a Notarized Affidavit dated 07.03.2024, as per the last order of the Authority dated 05.03.2024, stating details of the booking amount of the instant matter and annexing the supporting documents, which has been received by this Authority on 12.03.2024.</p> <p>Let the said Affidavit dated 12.03.2024 of the Complainant be taken on record.</p> <p>Heard both the parties in detail.</p> <p>After hearing both the parties and going through the Affidavits of the Complainant dated 05.02.2024 and 07.03.2024 placed on record, the Authority is of the considered opinion that in the present case, Rs.11,81,040/-(Rupees eleven lakhs eighty-one thousand forty only) was taken from the Respondent as booking amount and as per clauses 9.3(ii) of the registered Agreement for Sub-lease executed between the parties on 09.09.2022, the booking amount can be forfeited by the Complainant-Promoter in case of default of the Respondent-Allottee in payment of installments for a period beyond three consecutive months.</p> <p>The Respondent-Allottee has been provided three dates of hearing to appear before this Authority and submit his submissions. This Complaint matter has been heard on 16.01.2024, 05.03.2024 and today. The Respondent appeared in all the three dates but did not submit any affidavit. He submitted at the time of hearing that he will not be able to pay the due installments as he is going through financial constrains after the Covid Pandemic. So reasonable opportunity of hearing has been provided to him.</p>	

At Clause No. 1.11 of the Agreement for Sub-Lease executed on 09.09.2022 between the parties, it transpires that the Respondent-Allottee has paid a sum of Rs.11,81,040/- as booking amount being part payment towards the total price of the flat.

The said Agreement for Sub-Lease is attached with the first Affidavit of the Complainant dated 05.02.2024 as Annexure No. 3.

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".

Therefore on examination of the two Affidavits of the Complainant dated 05.02.2024 and 07.03.2024 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 Sub-Lease. 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 Sub-Lease and apply for registration of the Deed of Cancellation of the said Agreement for Sub-Lease. The Complainant shall refund the balance amount, if any, paid by the Respondent after deduction of the booking amount of Rs.11,81,040/-.

Hence, it is hereby,

ORDERED

that this Authority has no objection if the Agreement For Sub-Lease executed between the parties on 09.09.2022 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.11,81,040/- as per the Agreement for Sub-Lease 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 Sub-Lease. If required, the Deed of Cancellation of the said Agreement for Sub-Lease can be registered unilaterally by the Complainant. The ADSR, Bhaktinagar, Jalpaiguri, is directed to take necessary steps for de-registration of the said Agreement for Sub-Lease by the Complainant unilaterally.

After de-registration of the Agreement for Sub-Lease 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 the 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



(TAPAS MUKHOPADHYAY)

Member

West Bengal Real Estate Regulatory Authority