

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

Complaint No. WBRERA/COM(PHYSICAL)000156

M/s. Shree Balaji Complainant

Vs

Sibaji Sen..... 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. Respondent is absent, without any intimation, despite due service of hearing notice through email. Let the track record of due service of hearing notice to the Respondent be kept on record. 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. 3B, of phase -II, Block No. 14, without open car parking space (hereinafter referred to as 'said unit') situated with the said project was booked for total consideration i.e. Rs.15,15,000/-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 31.03.2021 (hereinafter referred to as Said Agreement) was executed between the parties for the total sale consideration of Rs.14,14,000/- inclusive of GST to be paid as per payment schedule.	

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 however subject to the allottee making all payments as mentioned in Schedule C-II and III.
6. That 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 failed to make timely payment despite of repeated reminders and as per terms and conditions, time is always an essence of the said Agreement. Therefore vide notice dated 14.05.2022, 01.08.2022, 10.09.2022 and 01.10.2022.
8. 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 20.03.2023 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.1,51,500/- only and Rs.11,36,250/- i.e (from foundation to Brickwork) falls due till 01.12.2022 on account of unit. Cost, the delayed payment interest of Rs.1,30,519/- is due therefore altogether total amount due and payable towards the said unit by the Respondent as on 20.03.2023 was Rs.12,66,769/- alongwith GST as per terms is due and payable by the Respondent towards the said unit.
10. 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.

11. That Respondent himself has requested for the cancellation due to financial problem therefore said unit of the Respondent is liable to set-aside.

12. 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 31.03.2021 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 clause 9.3(ii).

B. After declaring the Agreement to sale dated 31.03.2021 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 31.03.2021.

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.

After hearing the Complainant, the Authority is pleased to admit this matter for further hearing and order as per the provisions contained in Section 31 of the Real Estate (Regulation and Development) Act, 2016 read with Rule 36 of the West Bengal Real Estate (Regulation and Development) Rules, 2021 and give the following directions:-

The Complainant is directed to submit its total submission regarding their Complaint Petition on a Notarized Affidavit annexing therewith notary attested /self-attested supporting documents and a signed copy of the Complaint Petition and send the Affidavit (in original) to the Authority serving a copy of the same to the Respondent, both in hard and scan copies, within **15 (fifteen)** days from the date of receipt of this order of the Authority by email.

The Respondent is hereby directed to submit his Written Response on notarized affidavit regarding the Complaint Petition and Affidavit of the Complainant, annexing therewith notary attested/self-attested supporting documents, if any, and send the Affidavit (in original) to the Authority serving a copy of the same to the Complainant, both in hard and scan copies, within **15 (fifteen)** days from the date of receipt of the Affidavit of the Complainant either

by post or by email, whichever is earlier.

The Respondent is also directed to appear positively on the next date of hearing, failing which, this Authority shall have no other option but to proceed with ex-parte hearing and disposal of this matter on the next date of hearing, for the ends of speedy disposal of justice, as per the provision of section 29(4) of the Real Estate (Regulation and Development) Act, 2016.

Respondent is further directed to submit the Written Response on Notarized Affidavit within the stipulated timeline, as directed above, failing which, no more chance or time shall be given to the Respondent for submission of Written Response, for the ends of speedy disposal of justice as per section 29(4) of the RERA Act.

Fix **05.06.2025** for further physical hearing and order.


(BHOLANATH DAS)
Member

West Bengal Real Estate Regulatory Authority


(TAPAS MUKHOPADHYAY)
Member

West Bengal Real Estate Regulatory Authority