

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

Complaint No. WBRERA/COM000928

S E Builders Realtors Limited Complainant

Vs

Monomita Ganguly & Abhijit Bhattacharya.....Respondents

Sl. Number and date of order	Order and signature of the Authority	Note of action taken on order
01 16.07.2024	<p>Ms. Moumita Kundu, Sr. Manager Legal (Mob. No. 9903844131 & email Id: moumita.kundu@ambujaneotia.com) is present in the physical hearing on behalf of the Complainants filing Authorization and signed the attendance sheet.</p> <p>Advocate Mr. Sukalpa Seal (Mob. No.9230569929 & email Id:sukalpaseal@gmail.com) is present in the physical hearing on behalf of the Respondents and signed the attendance sheet. He is directed to send his vakalatnama to the Authority immediately after today's hearing.</p> <p>Heard both the parties in detail.</p> <p>As per the Complaint Petition, the fact of the case is that:-</p> <ol style="list-style-type: none">1. The Respondent-Allottee applied for allotment of residential apartment, being Apartment No. UTL031605, having carpet area of 1741 sq.ft., alongwith an exclusive balcony area of 179 sq.ft. on the 16th floor, of tower no. D (Tritiya), Type E of the project name 'Utalika-Luxury Phase 4' of the Complainant Promoter Company alongwith two covered car parking.2. By virtue of an allotment letter dated 02.11.2019, the Respondent was allotted the Apartment.3. Pursuant to the allotment and upon receiving the Booking Amount of Rs.19,47,159/-, an Agreement for Sale dated 08.01.2021 was duly executed by the parties and registered.4. The Respondent failed and neglected to pay 11 (eleven) nos. of consecutive invoices/demands notices raised by the Complainant in terms of the payment plan of the Agreement for Sale amounting to a total of Rs.93,67,427/-. The Respondent also failed and neglected to pay an amount of Rs.14,604/- towards TDS against invoice no.8117511000. Hence, altogether a total amount of Rs.93,82,031/-	

(including GST) is due and payable by the Respondent to the Complainant.

5. The Respondent, therefore, was in clear default in terms of clause 9.3(ii) of the Agreement for Sale.
6. Ultimately, the Complainant issued a letter of termination of the Agreement for Sale to the Respondent with 30 days clear notice in terms of clause 9.3(ii) of the Agreement for Sale.
7. Since the Respondent neither replied to the letter nor paid the dues within the notice period, the Agreement for Sale stood terminated, and the allotment was cancelled.
8. Amount liable to be forfeited by the Complainant against cancellation due to default of the Respondent is Rs.37,81,507/- including interest and applicable statutory taxes in terms of the Agreement for Sale .

The Complainant prays before the Authority for the following relief(s):-

- i) To record the allotment of Unit No. UTL031605 as cancelled before the Authority;
- ii) To confirm forfeiture by the Complainant of an amount of Rs.37,81,507/-only.
- iii) To allow the Complainant sign, execute and register a unilateral Deed of Cancellation in respect of the registered AFS since it is a legal requirement that a registered agreement can be cancelled only by a registered deed of cancellation;
- iv) To direct the concerned Registrar to register unilaterally the Deed of Cancellation in respect of the Apartment;
- v) To permit the Complainant re-allot the Apartment to any prospective allottee;
- vi) To pass such other orders as the Authority may deem fit and proper in the interest of justice.

At the time of hearing the Advocate of the Respondent-Allottee informed the Authority that on the selfsame cause of action they have filed a Complaint Petition before this Authority bearing Complaint No. WBRERA/COM 000618 and he prayed before the Authority for urgent hearing of the same and he also stated that he does not have any objection if both the matters are heard simultaneously by the Authority.

The Authorized Representative of the Complainant Promoter Company stated that she has no objection if both the matters are heard simultaneously.

Considered and granted the prayer of the Respondent-Allottee.

Let both the matters that is WBRERA/COM 000928 and WBRERA/COM 000618 be heard simultaneously as the cause of action of both the matters are same and parties are also same.

After hearing both the parties, 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 copy of 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-Allottee** 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 copy of 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 Complainant is at liberty to file Reply/Rejoinder on a Notarized Affidavit, to the Written Response of the Respondent-Allottee, if any, and send the Affidavit (in original) to the Authority, serving a copy of the same to the Respondent-Allottee, within **07 (seven) days** from the date of receipt of the Affidavit of the Respondent-Allottee.

Inspite of the above directions, both the parties are directed to take initiative and try for an amicable settlement of the issues between them by mutual discussions and if they arrive at a mutual settlement, they shall submit a **Joint Notarized Affidavit**, signed by both, containing the terms and conditions of the mutual settlement, and send the Affidavit (in original) to the Authority before the next date of hearing and in that case there is no need of submitting separate Affidavit(s) by the Complainant and the Respondent, as per the directions given above.

Fix **14.11.2024** for further hearing and order.


(BHOLANATH DAS)
Member

West Bengal Real Estate Regulatory Authority


(TAPAS MUKHOPADHYAY)
Member

West Bengal Real Estate Regulatory Authority