

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

Complaint No. WBRERA/COM000959

Dhruba Jyoti Sen & Ratna Sen. .... Complainants

Vs

Ganguly Home Search Pvt. Ltd. ....Respondent

Sl. Number and date of order	Order and signature of the Authority	Note of action taken on order
01 22.07.2024	<p>Complainant (Mob. No. 9830067572 &amp; email Id: dhrub.j.sen@gmail.com) is present in the physical hearing filling hazira through email.</p> <p>Advocate Kaustav Sen (Mob. No. 7980105590 &amp; email Id: support@gangulygroup.in, sen_kaustav@yahoo.com), is present in the physical hearing on behalf of the Respondent filing authorization and signed the Attendance Sheet.</p> <p>Heard both the parties in detail.</p> <p>1. As per the Complainants they have booked a Flat bearing No. 1617, Block -V ("flat") at '<b>4 sight Grand Castle Phase-II</b>' [HIRA/P/SOU/2018/000291] from the Respondent Promoter Company named as <b>Ganguly Home Search Pvt. Ltd.</b> at 50, Barhans, Garia, Kolkata - 700 084, and the Respondent promised to deliver the possession of the flat by December, 2022.</p> <p>2. Sale Agreement dated 08.08.2021 was registered, wherein date of delivery of possession is 30.06.2023 (due date).</p> <p>3. Complainant timely paid 85% (Rs.62.00 lakhs) of total price of Rs.73.00 lakhs, plus GST Rs.3.10 lakhs, as per milestones in Agreement.</p> <p>4. On 18.02.2023, Respondent unreasonably demanded Rs.7,30,425/- plus taxes for fitting doors and windows without completing the work. Upon inspection, Complainants found that work did not even start.</p> <p>5. Complainant emailed to Respondent on 01.08.2023 that the Agreement provides an option to make payment on or before completion of milestone and Complainants preferred payment on completion of milestone. Schedule C of Agreement states that payment can be made (7<sup>th</sup> installment) "on or before completion of doors and windows fittings castings".</p>	

6. Complainants repeatedly followed up on delivery of possession since delay was inflicting severe financial burden of monthly rent and bank EMI's. But Complainant's harassment was met with apathy by Respondent and no clarity was given on possession. Complainants were further tormented by false promises vide email dated 11.01.2024 committing possession by March, 2024.
7. Complainants became apprehensive due to delay in project delivery timeline and highlighted the delay of the project in email dated 12.01.2024.
8. Clause 9.2 (i) of Agreement states that on Respondent's default Complainant may stop making further payments and Respondent "shall correct the situation by completing the construction milestones and only thereafter the Purchasers be required to make payment without any interest".
9. Clause 7.6 (Compensation) and 9.2 (Events of Defaults and Consequences), state that in the event of delay in giving possession, Complainants are entitled to:
  - a) Stop making further payments till rectification of situation by Respondent;
  - b) Option of terminating Agreement with refund of entire amount paid with interest;
  - c) If Complainant does not intend to terminate the Agreement, Respondent shall pay interest for monthly delay till handing over possession within 45 days.
10. In an event of default by Respondent, Complainants have sole discretion to opt for termination of Agreement Or take flat with delay interest.
11. Complainants repeatedly communicated their intention to take possession of the flat and withstood tremendous financial stress and mental agony after making 85% payment.
12. Complainants emailed Respondent on 10.04.2024 seeking firm date of possession and compensation.
13. Post delay of 10 months from due date and facing immense financial strain, complainants emailed on 01.05.2024 seeking compensation as per Agreement and West Bengal Real Estate (Regulation and Development) Act and Rules.
14. Respondent replied on 02.05.2024 that issue will be addressed during possession hand over and conclusion of complainant's account.
15. Based on Respondent's email dated 11.05.2024, Complainant went to Respondent's office on 25.05.2024. But, Respondent failed to give any date of possession and denied delay compensation.
16. Complainants emailed Respondent on 27.05.2024 in hope that

Respondent may revert with suggestive resolution to amicably settle the issue.

17. Respondent by letter dated 11.06.2024 to Complainants, attempted to unlawfully and unilaterally terminate registered Agreement citing false and misleading statements with an ulterior motive to deprive complainants of their rights over subject flat and avoid taking responsibility. Letter also revealed encumbrance of pending litigations of which complainants were not informed.

18. Complainants sent a reply dated 19.06.2024 to Respondent to withdraw illegal letter dated 11.06.2024 as Complainants made all payments as per demand except the last illegitimate demand because milestone was not achieved and there being an inordinate delay in completion of milestones as well as delivering of possession. Agreement itself provides Complainants option of withholding payment till Respondent rectifies delay. Further, Complainants were never informed of milestone completion of doors and windows.

19. Complainants were further willing to make payment after inspection of Flat on 22.06.2024 as doors and windows were installed. Immediately thereafter, on 24.06.2024, Complainants requested that bank to disburse payment for completion of milestone. On further enquiry, HDFC Bank informed Complainants on 29.06.2024 that disbursement could not be processed due to a letter from Respondent claiming illegal termination of Agreement.

20. On 29.06.2024, Respondents further attempted terminating the registered Agreement.

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

1. To declare the Termination issued by the Respondent dated 11.06.2024 as void;
2. To direct the Respondent to deliver the possession of the Apartment as agreed in the Agreement dated 08.08.2024;
3. To direct the Respondent to register the Sale Deed in the name of Complainants and convey the absolute ownership of the flat;
4. To direct the Respondent to make payment of delay compensation, in terms of the Agreement, until the handover of possession; and / or
5. Any other relief the Authority may deem fit and proper.

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:-

Let **Mrs. Ratna Sen** w/o Mr. Dhruba Jyoti Sen be included as **Joint Complainant** as she is the joint allottee alongwith Mr. Dhruba Jyoti Sen and therefore a necessary party for adjudication of the present Complaint

Petition.

The **Complainants** are directed to submit their 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 Complainants are further directed to submit in a tabular form chronologically the payments made by them specifying the date, amount, money receipt no., if any, and total amount in their Affidavit.


Complainants are also directed to send a scan copy of their Affidavit to the email id of the Advocate of the Respondent, as mentioned above.

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 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.

In spite of the above directions, both the parties are directed to 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 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 Complainant and Respondent, as per the directions given above.

The **Respondent** is further directed not to make any type of alienation or transfer of the right, title, interest in regard to the flat booked by the Complainant till the disposal of this matter or until further order, whichever is earlier.

Fix **12.09.2024** for further hearing and order.

  
(BHOLANATH DAS)  
Member

West Bengal Real Estate Regulatory Authority

  
(TAPAS MUKHOPADHYAY)  
Member

West Bengal Real Estate Regulatory Authority