

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

Complaint No. WBRERA/COM001271

Arun SharmaComplainant.

Vs

Ankur Nirman Private LimitedRespondent.

Sl. Number and date of order	Order and signature of Authority	Note of action taken on order
05 15.01.2026	<p>The Complainant, Arun Sharma, represented by the Learned Advocates, Pratip Mukherjee, is present online mode and the Learned Advocate, Chaitali Mukhopadhyay is present physically present in the hearing today by filing hazira</p> <p>The Respondent, Ankur Nirman Private Limited, represented by the Learned Advocates, Suranjana Chatterjee and Soham Sen appeared physically in the hearing today by filing haizra.</p> <p>Heard the Complaint in details.</p> <p>The Learned Advocate for the Complainant stated that the Order of Extension of this project has been challenged before the Hon'ble High Court at Calcutta and the same is still pending.</p> <p>The Learned Advocate for the Respondent stated that the Complainant is not maintainable and the Provision of Section 18 of the Real Estate (Regulation and Development) Act, 2016 is not applicable in this Complaint. He mentioned the letter dated 12/09/2024, the Legal Notice for Repudiation of the Development Agreement and POA u/s 39 of the Indian Contract Act, 1872 and seeking compensation for the same under Section 74 of the Indian Contract Act, 1872. Wherein it was mentioned " As according to the concerned agreement you were supposed to complete and hand over to my client the entire construction of the proposed twelve storied multistoried building on 18th April, 2021 as per agreement. Till date you have not done so even though my client is willing to give you a grace period of fifteen days you should have performed your obligation by May, 03rd. 2021. Therefore, due to your specific non-performance and violation of the terms of the said agreement my client has decided to terminate the POA & Registered Developer Agreement made with you."</p> <p>The Learned Advocate for the Respondent also cited a report of the Supreme Court Cases (1989) 1 SCC wherein Sections 38 and 73 of the Contract Act, 1872 - Anticipatory breach of Contract by a party to the Contract - Claims open to the other party - Specific performance of the contract can inter alia be claimed only</p>	

by showing his willingness to perform the contract . In page 83 it has been observed "..... *In our view, this argument cannot be accepted. It is settled in law that where a party to a contract commits an anticipatory breach of the contract, the other party to the contract may treat the breach as putting an end to the contract and sue for damages, but in that event he can not ask for specific performance. The other option open to the other party, namely the aggrieved party, is that he may choose to keep the contract alive till the time for performance and claim specific performance but, in that event, he can not claim specific performance of the contract unless he shows his readiness and willingness to perform the contract has been challenged.*"

The Learned Advocate for the Respondent stated that the Respondent has filed a Title Suit being Title Suit No. 1282 of 2024 before the Learned Civil Judge (Senior Division), 2nd Court at Alipore against the Complainant and Goutam Construction for Declaration and Permanent Injunction praying inter alia for the following reliefs :-

- A) A Decree for declaration that the Development Agreement dated 11.03.2016 and 24.7.2020, Power of Attorney dated 17/03/2016 and 24.7.2020 and the Supplementary Development Agreement dated 09/12/2020 are valid and subsisting and the same having been acted upon by the Respondent and Goutam Construction Company Pvt. Ltd and is binding on the Goutam Construction Company being the Defendant No. 1 in the said Title Suit;
- B) A Decree for declaration that the Notice dated 12/09/2024 is invalid, bad in law, not binding on the Respondent (Plaintiff No. 1 of the Title Suit No. 1282 of 2024) and is liable to be delivered up and cancelled;
- C) A Decree for Permanent Injunction restraining the Complainant from giving effect to the purported notice of termination dated 12/09/2024 or to act upon the same in any manner;
- D) A Decree for Permanent Injunction restraining the Complainant from transferring, alienating, encumbering, dealing with and/or disposing or from creating any third party right or interest in respect of the Developer's allocation in the newly constructed building in question;
- E) And for other reliefs;

In that Title Suit the Respondent has also filed an Application for Injunction under Order 39 Rule 1 and 2 of the Code of Civil Procedure.

The Learned Advocate for the Respondent could not produce any Certified Copy of Order passed in that Suit as mentioned above regarding the fate of that Title Suit. From page 312 of the Affidavit filed by the Respondent the ORDERED portion it appears that "*the defendants are hereby resgtrained from giving effect to the purported notice of termination dated 12.09.2024 or to act upon the same in any manner and/or from transferring, alienating, encumbering, dealing with and/or disposing or from creating any third party right or interest in respect of the Developers' Allocation in the newly constructed building at Premises No. 24, Deodar Street, Kolkata 700 019 in an y manner whatsoever till 20.11.2024.*"

The Title Suit as mentioned above is still now pending before the Learned Civil Court as mentioned by the Learned Advocate for the Respondent

but the actual status of the said Suit has not been mentioned by either of the parties in today's hearing.

Today the matter is partly heard due to time constraints.

Fix after **4 (four) weeks** for further hearing and Order.



(JAYANTA KR. BASU)
Chairperson

West Bengal Real Estate Regulatory Authority



(TAPAS MUKHOPADHYAY)

Member

West Bengal Real Estate Regulatory Authority