

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

Complaint No. WBRERA/COM(PHYSICAL)000135

Belani NPR Projects LLP..... Complainant

Vs

Mr. Rajesh Dugar and Mr. Bal Chand Dugar..... Respondents

Sl. Number and date of order	Order and signature of the Authority	Note of action taken on order
01 27.08.2024	<p>Mrs. Anuva Sinha and Ms. Shalini Dubey are present on behalf of the Complainant Promoter Company, being its Authorized Representatives, filing hazira and authorization through email to the Authority.</p> <p>Advocate Abdul Masood (Mobile - 9831041010 & email Id: abdulmasood.advocate@gmail.com) is present in the online hearing on behalf of the Respondents filing hazira and Vakalatnama through email.</p> <p>Heard both the parties in detail.</p> <p>As per the Complaint Petition:-</p> <ol style="list-style-type: none">The Complainant is a Promoter/Developer within the meaning of the Real Estate (Regulation and Development) Act, 2016 (herein referred to as the 'said Act'). The Developer have undertaken a project commonly known as "SANCTUARY" for construction of building at the Premises No. 257/A Deshpran Sasmal Road, Kolkata - 700 033 (hereinafter referred to as the 'said Project').The said project was registered with the West Bengal Real Estate Regulatory Authority (WBRERA in short) under the provisions of the Real Estate (Regulation and Development) Act, 2016 and the Registration number was WBRERA/P/KOL/2023/000463 dated 23.08.2023, and the WBRERA Authority had issued the "Registration Certificate of Project" which was valid till 30.06.2027.The Respondents are the intending apartment purchasers in the said Project. Respondents agreed to purchase an Identified Apartment being No. 17K, on the 17th floor of Tower 4 together with three car parking space in the said project, lying and situated at 257/A Deshpran Sasmal Road, Kolkata - 700 033 (hereinafter referred to as the "Said Identified Apartment") and as morefully mentioned in the schedule of the Agreement for Sale, for price of	

Rs.5,07,46,932/-(Rs. five crore seven lakhs forty-six thousand nine hundred thirty two only).

- d. The Respondents had applied to the Complainant for allotment in the project vide application no. 106BOOKING0005421-22 dated 04.02.2022 ('**Application**') on the terms and conditions recorded therein. In pursuance thereof, by and under a provisional allotment letter bearing no. 106FAPP004321-22 dated 26.04.2022 ('**Allotment Letter**') the said identified apartment was allotted to the Respondents.
- e. After the initial part payment of the Booking amount the Respondents have failed to make timely payment of installments/invoices raised on them from time to time.
- f. That the Respondents entered into an Agreement for Sub-Lease with the Complainant on 06.07.2023. the said agreement for Sub-Lease was registered before the office of the Additional District Sub-Registrar Alipore, South 24-Pgs, since recorded in Book No. 1, Vol. no. 1605-2023, Pgs from 41971 to 42082, being No. 160501131 for the year 2023.
- g. The Complainant repeatedly sent reminder emails and tried to contact and apprise the Respondents of the dues over the telephone but they ignored and/or intentionally avoided all such reminders.
- h. The Respondents are in the habit of non-payment of dues timely and on the contrary tries to delay payment under one pretext or the other citing false and misleading statements to delay the payments intentionally.
- i. In such fashion, the Respondents have failed and intentionally neglected to pay the fifth installment and there is already a delay of 257 days and further they have not shown any intention to pay the same. Such delay has caused business loss to the Complainant leading to failure on the part of the Complainant to meet its obligations. Such non-payments of the Respondents of the fifth installment has forced the Complainant further not to issue the sixth invoice for 5th floor roof casting which has automatically become due on 20.05.2024. Such act of omission and commission on the part of the Respondents is prejudicial to the interest of the Complainant and in spite of repeated reminders and requests, the respondents have failed to adhere to the terms and conditions agreed.
- j. After issuing several reminder emails and making telephonic calls to the respondent requesting payment, on the failure of the respondents to pay heed to such requests, the Complainant was ultimately constrained to issue a letter on 23rd May, 2024 to the

Respondents through Speed Post as well as through emails for termination of the registered Agreement for sub-lease dated 06.07.2023 and requested them to come forward to execute a formal registered agreement recording termination/cancellation of Said Agreement for Sub-Lease with immediate effect. However, the Respondents did not pay any heed to the same and accordingly the Complainant was bonafied advised to file this complain against the respondent for redressal against all losses, deficiency caused by the respondent alleged mental agony.

- k. That the Complainant sent another letter on 04.06.2024 to the Respondents through speed post as well as through email requesting them to come forward to execute a formal registered agreement recording termination /cancellation of Said Agreement for Sub-Lease with immediate effect, but to no avail.
- l. That the letter dated 23.05.2024 via speed post which has since returned as "Unclaimed" on 29.05.2024. So it has been observed that the respondent is intentionally avoiding service.
- m. That the Respondent vide email dated 20.06.2024 informed the Complainant that due to some unforeseen circumstances there has been a delay in the payment due on invoice no. 106INV0005123-24 dated 03.10.2023 but no information or confirmation regarding the due payment of the interest payment was provided by the Respondent.
- n. That again vide email dated 26.06.2024 the Respondent requested for meeting and discussion and further stated for a revised payment schedule to address the delay payments and future payments, being fully aware that such payment schedule of a registered agreement cannot be modified and or altered. Showing clear intention of the Respondents that to delay the payment and the interest of the dues pending.
- o. The Respondents are in clear breach of the payment terms and being a habitual defaulter, the Complainant is well within its right to terminate the allotment / agreement.
- p. The instances of breach and or default and or delay in payment by the Respondent is set out as follows:-

Sl. No.	Date of Demand	Due dt of payment	Date of Payment	Days of delay
01	04..02.2022	04.02.2022	04.02.2022	-
02	26.04.2022	11.05.2022	22.09.2022	134
03	02.11.2022	17.11.2022	19.01.2023	63
04	07.12.2022	22.12.2022	19.01.2023	28
05	03.10.2023	18.10.2023	-	257

- q. Cause of Action for the instant complaint arose on various dates as

mentioned above wherein the Respondents committed breach and /or default of the agreed terms. The cause of action finally arose on 23.05.2024 when the Complainant was constraint to accept such default of the Respondent and was ultimately constraint to terminate the registered agreement.

r. That this instant Complaint is made bonafide and for ends of justice.

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

- (i) An order be passed recording termination of the Agreement for Sub-Lease dated 6th July, 2023 entered into by and between the Complainant and Respondents in respect of the said Identified Apartment.
- (ii) An order directing the Respondents to execute a formal registered deed of cancellation recording termination/cancellation of the Agreement for sub-Lease dated 6th July, 2023 and to collect the refund amount after Applicable deductions as stipulated in the said agreement for Sub-Lease dated 6th July'2023.
- (iii) On the Respondents failing to execute such registered deed of cancellation, this Authority may appoint a competent person on behalf of the Respondents to execute the same.
- (iv) To pass such other orders/orders as deem fit and proper.

The Respondent stated at the time of hearing that they will make payment of the due amount alongwith interest within 10 days from today.

Complainant stated that necessary permission be given so that they can raise demand immediately for the outstanding amount which they have not yet demanded.

After hearing the Complainant/ 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 shall raise demand for the outstanding amount immediately.

The Respondents shall make payment of all the demands raised by the Complainant **within 10 days from 28.08.2024.**

Fix **26.09.2024** for further hearing and order.



(TAPAS MUKHOPADHYAY)

Member

West Bengal Real Estate Regulatory Authority