

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

Complaint No.WBRERA/COM000035

Kamlesh Gandhi.....Complainant
 Vs.
 Pratap Kumar Biswas..... Respondent

Sl. Number and date of order	Order and signature of Officer	Note of action taken on order
3 ----- 12.06.2023	<p>Ms. Taniya Saha and Ms. Moumita Kumar are present in the online hearing on behalf of the Complainant filing hazira and authorization through email.</p> <p>Advocate Tarun Basu is present on behalf of the Respondent filing hazira and vakalatnama through email.</p> <p>As per the last order of the Authority dated 20.04.2023, the Respondent-Allottee has submitted her Written Response on Notarized Affidavit dated 20.05.2023 by email.</p> <p>Let the said Written Response on Notarized Affidavit of the Respondent-Allottee received through email be taken on record.</p> <p>On perusal of the Written Response of the Respondent-Allottee, it appears that the Respondent had prayed for an opportunity for repaying the outstanding dues by way of easiest installments and he also prayed for rejection of the petition of the Complainant.</p> <p>The Respondent-Allottee has been provided three dates of</p>	

hearing to appear before this Authority and submit his submissions. This Complaint matter was heard on 14.03.2023, 20.04.2023 and also on today. The Respondent appeared on the second date of hearing that is on 20.04.2023 and submitted Written Response on affidavit on 20.05.2023. So reasonable opportunity of hearing has been provided to the Respondent-Allottee.

Heard both the parties in detail and also examined the affidavits and documents submitted by both the parties.

As per the Agreement for Sale executed on 24.07.2019 between the parties, it transpires that the Respondent-Allottee has paid a sum of Rs.12,15,000/- (Rupees twelve lakhs fifteen thousand only) as booking amount including GST being part payment towards the total price of the apartment.

The said Agreement for Sale is attached with the Affidavit of the Complainant dated 23.03.2023 as Annexure C and the Agreement is registered with ADSR, Rajarhat Newtown, North 24 Parganas.

Therefore on examination of the Affidavits of both the parties and after hearing the parties through online hearing, the Authority is of the considered view that the Respondent-Allottee has defaulted in his obligation in making payments for number of consecutive demands made by the Complainant as per the payment plan annexed with the Agreement for Sale at 4th schedule and the total consideration price of the said apartment is Rs. 1,05,78,804/-. Therefore as per the provisions of Clause 9 of the Proforma of the Agreement for Sale at Annexure-'A' of the West Bengal Real Estate (Regulation & Development) Rule,

2021 and clause 9.3(ii) of the Agreement For Sale executed between the parties, the Complainant is at liberty to cancel the Agreement for sale and terminate the allotment of the Respondent-Allottee. The Complainant may also apply for registration of the Deed of Cancellation of the Agreement For Sale unilaterally.

Hence, it is hereby,

ORDERED

that this Authority has no objection if the Agreement For Sale executed between the parties on 24.07.2019 is cancelled by the Complainant unilaterally. The Complainant may apply for registration of the Deed of Cancellation of the said Agreement For Sale and the ADSR, Rajarhat Newtown, North 24 Parganas is directed to take necessary steps for de-registration of the said Agreement For Sale by the Complainant unilaterally.

After cancellation of the Agreement, de-registration of the Agreement for Sale and termination of the Allotment of the Respondent-Allottee, the Complainant shall be at liberty to allot the same to any other Person.

GST amount of Rs. 1,57,120/- paid by the Complainant shall be deducted by the Complainant from the amount paid by the Respondent-Allottee and he shall hand over the receipt / certificate of such payment to the Respondent within 45 days from the receipt of this order through email.

The remaining amount of Rs. 10,57,880/- paid by the Respondent-Allottee shall be refunded by the Complainant, within 45 days from the date of receipt of this order through

email, after deduction of the Cancellation Charges and applicable GST payable on such cancellation charges, as per clause 9.3 (ii) of the Agreement For Sale executed between the parties on 24.07.2019.

Copy of this order be served to both the parties through speed post and also by email.

With the above directions the matter is hereby disposed of.

Sd/-

(SANDIPAN MUKHERJEE)

Chairperson

West Bengal Real Estate Regulatory Authority

Sd/-

(BHOLANATH DAS)

Member

West Bengal Real Estate Regulatory Authority

Sd/-

(TAPAS MUKHOPADHYAY)

Member

West Bengal Real Estate Regulatory Authority

Certified to be true copy.

Adh

12.06.2023

Special Law Officer

West Bengal Real Estate Regulatory Authority