

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

Complaint No.WBRERA/COM 000111

Sailendra Nath Mazumder & Rekha Mazumder Complainants

Vs.

Ideal Real Estates Private Limited..... Respondent

Sl. Number and date of order	Order and signature of Officer	Note of action taken on order
03 27.07.2023	<p>Advocate Sarbajit Mukherjee is present on behalf of the Complainant filing hazira and Valakatnama through email.</p> <p>Advocate Tirthankar Das is present on behalf of the Respondent in the online hearing filing hazira and vakalatnama through email.</p> <p>Respondent submitted Written Response on Notarized Affidavit dated 11.07.2023, as per the last order of the Authority dated 04.07.2023, which has been received by this Authority on 13.07.2023.</p> <p>Respondent submitted a petition challenging the maintainability of the Complaint Petition which was received by this Authority on 26.07.2023 by email.</p> <p>Let the said maintainability petition be taken on record.</p> <p>Heard both the parties in detail.</p> <p>In the maintainability petition of the Respondent dated 26.07.2023, the Respondent stated that there is an Arbitration Clause in clause 19 of the Agreement for sale.</p> <p>The Respondent at the time of hearing also stated that the present Complaint Petition is not maintainable before this Authority as there is a clause of 'Alternative Dispute Resolution'</p>	

at clause 19 of the Agreement For Sale, signed between the parties on 31.08.2018.

Considered and rejected the point of maintainability raised by the Respondent on the ground that provision of any Act cannot be curtailed, restricted or superseded by any clause of an Agreement For Sale. Where specific provision of Section 31 is given in the Real Estate (Regulation and Development) Act, 2016, and whereby right is given to the allottee to file Complaint Petition when the Respondent fails to Comply his obligation as per the provisions of the Act, that right cannot be taken away by any clause of the Agreement For Sale.

The Authority is of the view that when an Act contains a provision and gives a right to the Complainant to file complaint, that right cannot be curtailed or any way superseded by an 'Arbitration Clause' in the Agreement for sale. The provision of Act shall always prevail over the provision/clause of any contract/Agreement, which is the settled principle of Law.

Therefore this Complaint Petition is very much maintainable before this Authority.

The case of the Complainant is that he booked a flat bearing no. 10D in the 10th floor measuring about built up area for 1570 sq.ft. approximately in block – G at 'Gardenia' together with one covered car parking space in the project of the Respondent Company named as **"Ideal Greens"** situated at premises no. 591A, Motilal Gupta Road, Kolkata – 700008, on 27.08.2018 and Agreement For Sale was executed on 31.08.2018. In terms of the said Agreement, the said flat was scheduled to be handed over, completed in all respect, within September 2019 and with an extension period of 12 months, within September 2020. The Complainant paid Total amount of Rs.44,50,998/- (Rupees Forty Four Lakhs Fifty Thousand Nine Hundred Ninety Eight Only) against proper receipts. The Complainant did not get the possession of the flat from the Respondent within the schedule time period agreed between the parties and therefore, he prayed for refund of his money along with interest

After examination of the Notarized Affidavits of both the parties and Notary Attested documents placed on record and after hearing both the parties in the online hearing, the Authority is of the considered view that the Respondent has failed miserably in his obligation to hand over possession of the flat to the Complainant within the scheduled time line. Therefore the Respondent is liable to refund the Principal Amount paid by the Complainant along with interest on the said principal amount of Rs.44,50,998/ (Rupees Forty Four Lakhs Fifty Thousand Nine Hundred Ninety Eight Only) at the rate of SBI PLR +2% per annum, for the period starting from the date of respective payments made by the Complainant till the date of realisation, as per the provisions contained in section 18 of the Real Estate (Regulation and Development) Act, 2016 read with rule 17 and 18 of the West Bengal Real Estate (Regulation and Development) Rules, 2021.

Hence it is hereby,

Ordered,

that the Respondent shall refund the Principal Amount paid by the Complainant amounting to Rs.44,50,998/ (Rupees Forty Four Lakhs Fifty Thousand Nine Hundred Ninety Eight Only) along with interest @SBI Prime Lending Rate + 2% per annum for the period starting from the respective dates of payments made by the Complainant till the date of realisation.

The refund shall be made by bank transfer to the bank account of the Complainant, within 45 days from the date of receipt of this order of the Authority by email.

The Complainant shall send his bank account details in which he wants to take the refund amount, to the Respondent by email within, 3 days from the date of receipt of this order of the Authority by email.

Complainant is at liberty to file an Execution Application on any plain paper annexing a copy of this Order, to this Authority, if the Respondent defaults to comply this order either in full or in part within the specified time period as mentioned in this order. In that case Respondent shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to five percent, of the estimated cost of the real estate project named '**Ideal Greens**', as determined by this Authority, as per the provision contained in section 63 of the Real Estate (Regulation and Development) Act, 2016.

Let copy of this order be sent to both the parties through speed post and also by email immediately.

With the above directions the matter is hereby disposed of.

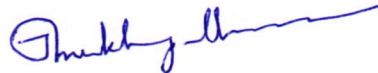


(SANDIPAN MUKHERJEE)
Chairperson
West Bengal Real Estate Regulatory Authority



(BHOLANATH DAS)
Member

West Bengal Real Estate Regulatory Authority



(TAPAS MUKHOPADHYAY)
Member

West Bengal Real Estate Regulatory Authority