

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

Complaint No. COM000336 (erstwhile WBHIRA)

Sanjay Kumar Patodia Complainant

Vs.

Ideal Real Estate Pvt. Ltd..... Respondent

Sl. Number and date of order	Order and signature of Officer	Note of action taken on order
05 01.08.2023	<p>Complainant Sanjay Kumar Patodia alongwith Chartered Accountant Gopal Krishna Lodha are present in the online hearing filing hazira through email.</p> <p>Advocate Smt. Tapasika Bose is present in the online hearing on behalf of the Respondent.</p> <p>The Respondent has submitted a Written Objection on notarized affidavit dated 31.07.2023 and sent it by email dated 31.07.2023.</p> <p>Let the said Written Objection of the Respondent sent by email be taken on record.</p> <p>The Advocate of the Respondent Mr. Tirthankar Das prayed for a short adjournment by an adjournment petition dated 01.08.2023 but subsequently he filed a hazira for his participation in the hearing on 01.08.2023,all sent by email.</p> <p>Heard both the parties in detail.</p> <p>Complainant stated at the time of hearing that he has duly sent the scan copy of his affidavit alongwith annexure and orders of erstwhile WBHIRA Authority dated 28.08.2020, 15.12.2020 and 25.03.2021 to the email id of the advocate of the</p>	

Respondent Mr. Tirthankar Das, as per the last order of this Authority dated 12.07.2023.

Advocate Smt. Bose prayed for a short adjournment on the personal ground of advocate Tirthankar Das. She stated at the time of hearing that Advocate Das is engaged in this matter by the Respondent Company and as the matter was preponed to 01.08.2023 from 02.08.2023 by this Authority, advocate Das could not appear in today's hearing due to some prior personal engagement.

Considered and rejected the prayer of the advocate Ms. Tapasika Bose on the ground that ;-

- a. Already Written Objection on behalf of the Respondent has been filed and received by the Authority by email dated 31.07.2023 therefore the Authority already received the response and objection of the Respondent in this matter; also
- b. In the last order of the Authority it has been categorically stated that Respondent should remain present on the next date of hearing positively, failing which, the matter shall be heard and disposed of ex-parte by this Authority for ends of speedy disposal of justice as per sub-section (4) of section 29 of the Real Estate (Regulation and Development) Act, 2016.
- c. In the last order of this Authority dated 12.07.2023, one of the Directors of the Respondent Company was also directed to remain present positively in today's hearing for effective and speedy disposal of this matter, Respondent also neglected to comply this direction of this Authority. Although Mr. Das was not able to remain present today due to his prior personal engagement but he could very much arrange for online

appearance of any Director.

d. Advocate Das by an email dated 01.08.2023, prayed for an adjournment and again on the same day, he filed his hazira for his appearance in today's hearing. Therefore the Authority should act on the subsequent application of Advocate Das.

Therefore adjournment of this matter today is not acceptable to this Authority for the reasons stated above and does not contain much ground.

The Authority has no other option but to proceed with ex-parte hearing of this matter for speedy and effective disposal of justice.

The case of the Complainant is that he booked a flat the project "**Ideal Aquaview**" of the Respondent Company but he did not get the possession of the flat from the Respondent within the schedule time period agreed between the parties therefore, he prayed for refund of his money along with interest. He has paid total Rs.55,00,000/- (Rupees Fifty Five Lakhs only) to the Respondent in this regard.

In the Written Response dated 31.07.2023, the Respondent stated that there is an Arbitration Clause in clause 19 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 could not be curtailed or any way supersede 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.

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. The Respondent has till date refunded 11,00,000/- (Eleven Lakhs Only) to the Complainant and therefore he is liable to refund back the remaining amount of the principal amount paid by the Complainant along with interest on the total principal amount of Rs.55,00,000/- (Rupees Fifty Five Lakhs only) at the rate of SBI PLR +2% 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 remaining portion of the principal amounting to Rs.44,00,000/- (Rupees Forty Four Lakhs only) along with interest @SBI Prime Lending Rate + 2% per annum on the total principal amount of Rs.55,00,000/- (Rupees Fifty Five Lakhs Only) 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 Aquaview**', 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.

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

Sd/-

01.08, 2023

Special Law Officer
West Bengal Real Estate Regulatory Authority