

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

Complaint No. COM 000192

Partha Sarathi Dutta ..... Complainant

Vs.

Swanhousing & Infra Private Limited..... Respondent

Sl. Number and date of order	Order and signature of Officer	Note of action taken on order
(02) Execution <u>26.07.2023</u>	<p>Today is the second day of Execution Hearing of this matter.</p> <p>Advocate Devajyoti Barman is present on behalf of the Complainant filing hazira and Vakalatnama through email.</p> <p>Advocate Ajay Gaggar and Advocate Vedika Sureka are present on behalf of the Respondent Company filing hazira and Vakalatnama through email.</p> <p>The Respondent submitted a recalling application on 19.07.2023 which has been received by this Authority on 19.07.2023.</p> <p>Let the said recalling application be taken on record.</p> <p>The Respondent submitted a petition for stay of the execution proceeding, dated 19.07.2023.</p> <p>Let the said stay application of the Respondent be taken on record.</p> <p>Heard both the parties in detail.</p> <p>Complainant stated that the Respondent did not comply the final order dated 24.02.2021 of the erstwhile WBHIRA and also the order of this Authority in execution dated 30.05.2023 directing the Respondent to complete the registration of the Deed of Conveyance of the flat of the</p>	

Complainant as per direction given in point number (A) to (J) of the order portion of the final order dated 24.02.2021 of the erstwhile WBHIRA Authority within 30 days.

He prayed for necessary direction / order from this Authority for execution of the final order dated 24.02.2021 in this matter.

The Respondent stated at the time of hearing that the Hon'ble High Court at Calcutta in its order dated 9<sup>th</sup> August 2021, in WPA 11802 of 2021, in the matter of Partha Sarathi Dutta Vs State of West Bengal &Ors., directed the following,-

“The orders obtained by the petitioner against the private Respondent passed by the erstwhile HIRA would essentially have to be tested before the new Tribunal and / or under the Rules framed by the State of West Bengal under the RERA 2016.

In that view of the matter, the state is directed to set up the infrastructure expeditiously under the newly adopted West Bengal RERA. The petitioner would have to move the appropriate Authority under the New Act and thereafter seek remedies in accordance with law.

With the aforesaid directions the Writ Petition is disposed of.”.

The Respondent submitted at the time of hearing that as per the direction of the Hon'ble High Court as mentioned above, the order dated 24.02.2021 passed by the erstwhile WBHIRA has to be reconsidered and tested before the new Tribunal formed under the RERA Act in consonance with the provisions of the rules as framed in accordance to the RERA Act 2016. Therefore he prayed before this Authority for stay of this execution case filed by the Complainant till the time the order dated 09.08.2021 passed by the Hon'ble High Court is complied with and the entire matter is heard afresh.

This Authority heard the contentions of the Respondent, considered and rejected on the following grounds;-

a. That by the Order of the Hon'ble Supreme Court

dated 12.05.2023 in the Case No. Special Leave to Appeal (C) No(s). 16908/2022 in the matter of Saptaparna Ray Vs. District Magistrate North 24 Parganas & Ors., the Apex Court has been pleased to direct-

*“This Court observed that the “striking down of WB-HIRA will not affect the registrations, sanctions and permissions previously granted under the legislation prior to the date of this judgment”. This principle shall also apply to orders which were passed whether in original or in the course of execution prior to the date of the judgment. All such orders shall be executed in accordance with law, as if they were issued under the RERA.*

*Moreover, we clarify that all complaints which were filed before the erstwhile authority constituted under WB-HIRA shall stand transferred to and be disposed of in accordance with law by the authority which is constituted under the Central Act. Any person aggrieved by an order passed under WB-HIRA will be at liberty to pursue the corresponding remedy which is available under the RERA.”*

Therefore, as per the above direction of the Hon’ble Supreme Court, the Complainant is required to apply for execution before the WBRERA Authority as the order passed by erstwhile WBHIRA dated 24.02.2021 shall be deemed to have been passed by the WBRERA Authority and shall stand transferred before the WBRERA Authority. Therefore, the Complaint bearing number WBRERA/COM 000115 has been treated as execution application by this Authority and execution proceeding has been started on 30.05.2023 for execution of the order dated 24.02.2021 of the erstwhile WBHIRA in COM-000192.

- b. In the order of the Hon’ble High Court in WPA 11802 of 2021, the court directed the petitioner Partha Sarathi Dutta to move to the appropriate Authority under the new Act and thereafter seek remedies in accordance with law.

Therefore as per this order also the Complainant has to move the appropriate Authority and in the present

case, it is the WBRERA Authority and the remedy required to be sought by him is the prayer for execution of the order dated 24.02.2021 of the erstwhile WBHIRA in accordance with law.

c. Therefore there is no contradiction between the order of the Hon'ble High Court dated 09.08.2021 and order of the Hon'ble Supreme Court dated 12.05.2023. As per the orders of both the Courts, the petitioner is required to pray for execution before the appropriate forum that is before WBRERA Authority for execution of the order dated 24.02.2021 of the erstwhile WBHIRA.

d. Even if for argument sake if we consider that the Hon'ble High Court intended that the petitioner Mr. Dutta is required to file a fresh Complaint Petition before the WBRERA Authority then also the order of Hon'ble Supreme Court shall prevail and supersede the Hon'ble High Court's order **and order of the Supreme Court is very much clear and according to that order the petitioner can very much file execution application before the WBRERA Authority as the Supreme Court stated that, "This principle shall also apply to orders which were passed whether in original or in the course of execution prior to the date of the judgment. All such orders shall be executed in accordance with law, as if they were issued under the RERA."**

As the Respondent did not comply the order within the period of 30 days as directed in the last order of the Authority dated 30.05.2023 in execution therefore, this Authority has no other option but to send this matter for execution as per Rule 26 of the West Bengal Real Estate (Regulation & Development) Rules, 2021 and this Authority is hereby pleased to send this matter for execution to the Principal Civil Court of South 24 Parganas to execute it as a decree of the Civil Court in a suit before it and the provisions of Order XXI of the First Schedule to the court of civil procedure, 1908 shall as per as may be, applicable, as per the provisions of section 40 of the Real Estate (Regulation &

Development) Act, 2016 read with rule 26 of the West Bengal Real Estate (Regulation & Development) Rules, 2021.

Rule 26 of the West Bengal Real Estate (Regulation & Development) Rules, 2021 provides that,-

“26(1). Every order made by the Authority, Adjudicating Officer or Appellate Tribunal shall be enforced by it in the same manner as if it were a decree of a civil court in a suit before it and the provisions of Order XXI of the First Schedule to the Court of Civil Procedure, 1908 shall, as per as may be, applicable.

(2). Any such order shall be executed by the Principal Civil Court of the District having Jurisdiction to execute the same”.

The Secretary, West Bengal Real Estate Regulatory Authority (WBREERA), is hereby directed to send certified copies of this order of this Authority and final order dated 24.02.2021 of the erstwhile WBHIRA Authority, alongwith copy of the Complaint Petition no. COM 000192, to the Registrar of the District Court of South 24 Parganas at Alipore with the request to place the matter before the District Judge of South 24-Parganas so that the order dated 24.02.2021 in COM 000192 passed by erstwhile WBHIRA can be executed as per the provisions contained in rule 26 of the West Bengal Real Estate (Regulation & Development) Rules, 2021 and he is also requested to send the compliance report to this Authority as expeditiously as possible.

It should be mentioned here that in a similar case, the Hon’ble Supreme Court of India, in petition for Special Leave to Appeal (C) No.16908/22, has been pleased to order as follows;-

“We direct, that the authority shall proceed to execute the order which has been passed in favour of petition expeditiously, within a month from the date of receipt of a certified copy of this order by the executing forum”.

As the present matter is similar to that of the matter heard by the Supreme court of India as mentioned above,

therefore, necessary steps should be taken to execute this order within a month from the date of receipt of certified copies of the orders along with other papers and documents from this Authority.

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



(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