

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

Complaint No.WBRERA/COM-000162

Subhashish Mukherjee.....Complainant

Vs.

Bengal Shelter Housing Development Ltd. Respondent

Sl. Number and date of order	Order and signature of Officer	Note of action taken on order
2 ----- 21.09.2023	<p>Complainant is present in the online hearing filing hazira through email.</p> <p>Advocate Subhro Kanti Roy Chowdhury (Mob. No. 9831581182) is present in the online hearing on behalf of the Respondent, filing hazira and Vakalatnama through email.</p> <p>Complainant submitted a Notarized Affidavit dated 05.09.2023, containing the total submission of the Complainant regarding this Complaint Petition, as per the last order of the Authority dated 20.07.2023, which has been received by this Authority on 11.09.2023.</p> <p>Let the said Affidavit of the Complainant be taken on record.</p> <p>Respondent submitted Written Response on Notarized Affidavit dated 14.09.2023 to the Complaint Petition and Affidavit of the Complainant, as per the last order of the Authority dated 20.07.2023, which has been received by this Authority on 15.09.2023.</p> <p>Let the said Written Response of the Respondent be taken on record.</p> <p>Heard both the parties in detail.</p> <p>The case of the Complainant is that he booked an apartment in the project named 'Neel Diganta' of the Respondent Company named as Bengal Shelter Housing Development Limited (BSHDL) in Bageshree (HIG) at Block 4 situated at Barasat, 24-Parganas (North) in the year 2013. The</p>	

cost of the apartment was Rs.33,29,700/-which includes apartment of 1196 sq.ft at 9th Floor along with one covered car parking space. The Complainant paid total Rs. 9,77,639/-in this regard. As per the Complainant the project started slowly and eventually it was stopped forever. Looking at the speed and huge lose of money in banking interest and it was pre-EMI payment, he decided to withdraw from the project on 19.08.2017. He received the Confirmation from the Respondent Company that they will return the money within next 12 months i.e. within 18.08.2018. But till 12.04.2023 he has received the refund of only Rs.3,70,000/-. The details of the refund made by the Respondent starting from till date is given below :-

Sl No.	Date of Refund	Amount
1.	01.02.2019	Rs.50,000/-
2.	07.03.2019	Rs.40,000/-
3.	02.12.2019	Rs.50,000/-
4.	29.01.2020	Rs.50,000/-
5.	29.09.2020	Rs.50,000/-
6.	29.03.2021	Rs.50,000/-
7.	01.09.2021	Rs.40,000/-
8.	10.06.2022	Rs.40,000/-
Total		Rs.3,70,000/-

The Complainant prays before the Authority for the relief of immediate return of the balance amount of the principal money paid by him i.e. Rs. (9,77,639/- - 3,70,000/-)= 6,07,639/- with interest as per RERA Act and Rules.

Today at the time of hearing the advocate of the Respondent prayed for a short time before the Authority to submit a supplementary Written Response on Affidavit on the ground that the Advocate of the Respondent intends to submit some points which has not been included in the Written Response as he was not engaged in the case from the beginning.

Considered and rejected the prayer of the Advocate of the Respondent on the ground that Authority is under the

obligation to make every endeavour for speedy disposal of matters before it within a period of 60 days as per the provision contained in section 29(4) of the Real Estate (Regulation and Development) Act, 2016. As per the Authority sufficient time and opportunity has been given to the Respondent and no more time can be given to the Respondent to submit supplementary Written Response.

Advocate of the Respondent also stated at the time of hearing that this project has commenced in the year 2010 and it has been abandoned / scrapped for some litigations in the year 2014 and refund has been made to the allottees as well as to the Complainant but the refund process has not been completed till date. Rs.3,70,000/- has been already refunded to the Complainant and an amount of Rs.6,07,639/- is yet to be refunded. He also stated that they will complete the refund of the Balance Amount alongwith interest at the rate of interest as contained in clause 16 of the General Terms and Conditions (GTC) of the Provisional Allotment Letter being no. NDB/107/1 dated 01.02.2013 signed between the Complainant and Respondent.

As per the Respondent the GTC was signed between the parties on 01.02.2013 prior to the enforcement of the Real Estate (Regulation and Development) Act,2016 and there is no retrospective effect of the said Act.

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 timeline. The subject matter project named **Neel Diganta** has been abandoned/scrapped due to occurrence of some litigation. Therefore he is liable to refund back the principal amount paid by the Complainant along with interest 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.

The Authority hereby rejects the plea of the Respondent that the interest rate as provided in the WBRERA Rules shall not be applicable in the present matter on the grounds mentioned below:-

a) The Respondent could not present any proof that they have duly notified that the project is abandoned/scrapped in the year 2014. The Respondent is claiming that the project has been scrapped in the year 2014 but they have failed to duly notify it in the public. They have also not duly notified it to the Complainant; and

b) If for argument sake it is considered that the project has been abandoned in the year 2014 then also the provisions of RERA Act is applicable in this matter as the cause of action although arose in the year 2014 but the said cause of action still persists and therefore it is a continuing cause of action. The provision contained in section 31 of the RERA Act provides that,- “ Any aggrieved person may file a complaint with the Authority or the Adjudicating Officer, as the case may be for any violation or contravention of the provisions of this Act or the Rules and Regulations made thereunder against any promoter, allottee or real estate agent, as the case may be.”. Therefore, nowhere in the said provision there is any restriction that only the cause of action which arose after the enforcement of the said Act will come under the purview of the said Act and it is not the intention of the legislature; and

c) The refund process has been started in the present matter on 01.02.2019 that is after the commencement of RERA Act and Rs.3,70,000/- has been already refunded to the Complainant therefore the cause of action still persists and it is continuing and therefore it will come under the purview of the provisions of the RERA Act and Rules made thereunder. If the refund process has been started and completed before the enforcement of the RERA Act then this matter surely shall not come within the purview of the RERA Act.

As per the considered view of the Authority this matter

surely comes under the purview of the RERA Act and Rules made thereunder and therefore interest rate of SBI PLR plus 2% per annum is applicable in the present matter as per Rule 17 of the WBRERA Rules, 2021 as the cause of action still persists, the Complainant has paid an amount of Rs.9,77,639/- to the Respondent but till date neither he has received the possession of the completed flat also he has not received the Principal Amount alongwith interest as per the GTC signed between the parties in the year 2013. Therefore the cause of action for which the Complainant is aggrieved and he filed the present Complaint Petition still persists and continuing and he has not received the relief till date. Therefore he is entitled to get refund of Principal Amount alongwith interest at the rate of SBI PLR plus 2% per annum as provided in Rule 17 of the West Bengal Real Estate (Regulation and Development) Rules, 2021.

Hence it is hereby,

Ordered,

That the Respondent shall refund balance of the Principal Amount of Rs. 6,07,639/- (Rupees Six lakhs Seven Thousand Six Hundred Thirty Nine Only) along with interest calculated on the total Principal Amount of Rs.9,77,639/- paid by the Complainant at the rate of SBI Prime Lending Rate + 2% per annum starting from the respective dates of payments made by the Complainant till the date of realisation. The details of the payments made by the Complainant is given below :-

Sl No.	Date of payment	Amount
1.	01.02.2013	Rs.75,000/-
2.	19.03.2013	Rs.1,07,380/-
3.	09.04.2013	Rs.5,85,860/-
4.	10.06.2013	Rs.2,09,399/-
Total		Rs.9,77,639/-

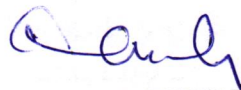
The refund shall be made by bank transfer to the bank account of the Complainant, within 45 days from the date of receipt of this order of the Authority by email.

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.

Complaint is at liberty to file an Execution Application on any A4 size 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 might 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 '**Neel Digana**', as determined by this Authority, as per the provision contained in section 63 of the Real Estate (Regulation and Development) Act, 2016.

With the above directions the matter is hereby disposed of.

Let copy of this order be sent to both the parties through 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