

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

Complaint No. WBRERA/COM000247

Digambar Nath Jha..... Complainant

Vs.

Bengal Shriram Hi-Tech City Private Limited..... Respondent

| Sl. Number and date of order | Order and signature of Authority | Note of action taken on order |
|------------------------------|--|-------------------------------|
| 01 28.02.2024 | <p>Complainant is present in the online hearing filing hazira through email.</p> <p>Advocate Mr. Aditya Kanodia, Advocate Ms. Madhurima Chakraborty and Ms. Arpita Sengupta, AGM Legal and Mr. Subhayan Sinha, Executive Legal of the Respondent Company are present in the online hearing on behalf of the Respondent filing hazira, Vakalatnama and Authorization, as the case may be, through email.</p> <p>Heard both the parties in detail.</p> <p>As per the Complainant, he has booked an apartment from Bengal Shriram Hi-Tech City Private Limited, (henceforth referred to as M/s. Shriram) in the project named as 'Grand One' on 12.06.2016. After that he was allotted an under-construction flat bearing Apartment No. A01-12-06, at Cluster A, Tower-1, 12th Floor, on 18.01.2017. The total cost of the flat with parking was Rs. 24,42,037/-. The Agreement for Sale was signed between the parties on 28.02.2018 and Sale Deed was registered on 24.06.2022. According to Schedule B of the Sale Deed, an amount of Rs.1,49,880/-was payable upon the issuance of the Possession Notice. The Complainant has made the payment in full. After that the Respondent Company i.e. M/s. Shriram has sent a letter on 12.09.2022 & forwarded two attachments:- a) Demanding a Tax Invoice number 3000026088 dated 10.09.2022 of Rs.1,49,880/-which he has duly paid (Rs. 97,505/-through his home loan account and Rs.52,375/-through NEFT transfer). B) A statement of interest charged on delayed payment of the apartment amounted to Rs.56,605/-including GST. The two demands of payment schedule of sale price for Rs.4,60,384/-and Rs.2,73,508/-, for which delayed payment interest has been charged at Rs.37,441/-without GST and Rs.5,290/-without GST respectively,</p> | |

were made before the agreement for sale was registered on 28.02.2018. He has also stated that Respondent M/s. Shriram has not only demanded more than 10% of the cost of the apartment before the agreement for sale was signed, but they have also charged interest on that amount for late payment, which is unfair, as per Section 13 of RERA Act, 2016. Vide mail dated 22.11.2022, M/s. Shriram threatened to impose holding charges since the deemed date of possession has already passed, which was on 15.11.2022.

In this Complaint Petition the Complainant prays before the Authority for the following relief(s):-

1. Respondent M/s Shriram sent a letter dated 12.09.2022 through which they forwarded a demand for delayed payment of interest amounting to Rs.56,605/- (including taxes). Out of this, two demands one for Rs.4,60,384/- and Rs.2,73,508/- for which interest has been charged for Rs.37,441/- without GST and Rs.5,290/- without GST respectively have been made before registration of Agreement of Sale i.e. before 28.02.2018. These demands are against provision of section 13 of RERA Act, 2016, which states that "No deposit or advance shall be taken by a promoter without first entering into an agreement for sale.". M/s Shriram have not only demanded more than 10% of the cost of the apartment before the agreement for sale was signed, but they have also charged interest on that amount for late payment. This is unfair.
2. As per the Supreme Court Judgement on 11.11.2021 in CIVIL APPEAL NO(S). 6745 6749 OF 2021 (Arising out of SLP(Civil) No(s). 37113715 OF 2021) RERA application is retroactive.
3. As per Section 89 of RERA Act, the Act has an overriding effect. The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.
4. Holding Charges are not applicable in this case. Clause 4.2 of agreement for sale states that if the purchaser fails to participate towards registration of the Sale Deed of the Unit and take the possession of the Unit from the Seller with the period stipulated in the Possession Notice, the purchaser shall be liable to pay to the seller holding charges. However, since the Sale Deed was duly registered on

24.06.2022 and all the payments as per Sale Deed has been made, holding charges should not be imposed. He has requested them several times to give him possession of his legally owned apartment, but the Respondent have failed to do so.

5. As per Clause 4.3 of Agreement for Sale and Section 18 of RERA, compensation may be given since 15.11.2022.
6. The Complainant requested for immediate handover of his legally owned property at the earliest. As per the agreement for sale and the relevant legal provisions, he has fulfilled all payment obligations and the Sale Deed has been duly registered on June 24, 2022. Therefore, he urge to facilitate the possession of the property without further delay.
7. Declaration of M/s. Shriram's demand of holding charges null and void as per clause 4.2 of the agreement for sale. Holding charges are only applicable if the purchaser fails to participate in the registration of the Sale Deed and take possession within the stipulated period mentioned in the Possession Notice. However, in this instance, all necessary procedures have been completed within the prescribed timelines.
8. As per clause 4.3 of Agreement for Sale and Section 18 of RERA Act, compensation may be given from November 15, 2022 (date of deemed as claimed by M/s. Shriram) until the date he take possession of his legally owned flat, at the rate mentioned in Clause 4.3 of Agreement for Sale (SBI's highest Marginal Cost of Lending Rate plus two percent).

After hearing both the parties, the Authority is pleased to admit this matter for further hearing and order as per the provisions contained in Section 31 of the Real Estate (Regulation and Development) Act, 2016 read with Rule 36 of the West Bengal Real Estate (Regulation and Development) Rules, 2021 and give the following directions:-

Both parties shall be at liberty to mutually settle the matter through amicable discussion between themselves within **15 (fifteen)** days from today. If they arrive at a mutual settlement, they shall submit a Joint Affidavit signed by both, containing the terms and conditions of the mutual settlement, and send it to the Authority (in original) before the next date of hearing.

If they fail to arrive at a mutual settlement, then they shall submit affidavit as directed below:-

The Complainant is directed to submit his total submission regarding their Complaint Petition on a Notarized Affidavit annexing therewith notary attested /self-attested supporting documents and a signed copy of the Complaint Petition and send the Affidavit (in original) to the Authority serving a copy of the same to the Respondent, both in hard and soft copies, within **10 (ten)** days from the date of expiry of **15 (fifteen)** days from today.

The Respondent is hereby directed to submit his Written Response on notarized affidavit regarding the Complaint Petition and Affidavit of the Complainant, annexing therewith notary attested/self-attested supporting documents, if any, and send the Affidavit (in original) to the Authority serving a copy of the same to the Complainant, both in hard and soft copies, within **10 (ten)** days from the date of receipt of the Affidavit of the Complainant either by post or by email whichever is earlier.

The Respondent is further directed to state in their Notarized Affidavit whether the project is registered with erstwhile WBHIRA or WBRERA and also state whether they have received the Completion Certificate (C.C). If yes, then the date of receipt of the C.C should be stated in their Notarized Affidavit and copy of the Completion Certificate shall be annexed with the Affidavit of the Respondent.

Fix **09.04.2024** for further hearing and order.



(SANDIPAN MUKHERJEE)
Chairperson
West Bengal Real Estate Regulatory Authority



(TAPAS MUKHOPADHYAY)
Member
West Bengal Real Estate Regulatory Authority