

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-000548 (erstwhile WBHIRA)

Amalesh Kumar .....Complainant

Vs.

MKHS Housing LLP & Hemont Kumar Sikaria &  
Anurag Gupta & Astha Khetan & Kamal Chopra..... Respondents

Sl. Number and date of order	Order and signature of Officer	Note of action taken on order
8 ----- 15.09.2023	<p>Complainant is present in the online hearing filing hazira through email.</p> <p>Advocate Sourav Kumar Mukherjee is present in the online hearing on behalf of the Respondent filing hazira and vakalatnama through email.</p> <p>Heard both the parties in detail.</p> <p>The Respondent submitted an Application dated 12.09.2023 which has been received by the Authority on 13.09.2023 through email, praying for dismissal of the present Execution Application filed by the Complainant vide his letter dated 03.07.2023 and he also prayed for stay of all the proceedings of the instant Execution Application.</p> <p>Let the said Application, inter-alia, seeking dismissal of the Execution Application filed by the Respondent be taken on record.</p> <p>Respondent stated at the time of hearing and also in his Application, as mentioned above, that this Authority has no jurisdiction to entertain this Execution Application and as per Rule 26 of the West Bengal Real Estates (Regulation and</p>	

Development) Rules, 2021, this Execution Application should be filed by the Complainant before the Principal Civil Court of the District having jurisdiction to execute the same. As per the Respondent, this Authority has no jurisdiction to entertain Execution Application and it should be dismissed and all the proceedings of this execution matter should be stayed by this Authority and he prayed for the same at the time of hearing and also in his application dated 12.09.2023, as mentioned above.

Considered and Rejected the prayer of the Respondent, as mentioned above, because as per section 40 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the RERA Act), application for execution of any order passed by this Authority should be filed only before this Authority and this Authority shall take necessary steps as per the provisions of RERA Act and Rules made thereunder to execute the order to the satisfaction of the Authority. As per RERA Act, 2016, RERA Authority is the Executing Forum for all the orders passed by this Authority. The Authority may execute the order by itself by application of the provisions of the RERA Act and Rules made thereunder or it may send the order for execution to the District Magistrate having jurisdiction as per Rule 25 or to the Principal Civil Court having jurisdiction as per Rule 26 of the West Bengal Real Estates (Regulation and Development) Rules, 2021.

As the Respondent did not comply the order of the Authority dated 30.04.2021 for payment of Rs.**50,93,956/-** (Rupees fifty lakhs ninety three thousand nine hundred fifty six only) as this principal amount alongwith interest at **SBI Prime Lending Rate +2%** and also failed and neglected to comply the order in execution dated 22.08.2023, therefore, this Authority is hereby pleased to impose a penalty of Rs.10,00,000/-(Ten lakhs only) on the Respondent as per section 38 read with section 61 of the RERA Act for violating the orders of this Authority dated 30.04.2021 and 22.08.2023.

Therefore Respondent is hereby directed to make payment of the penalty amount of Rs.10,00,000/-to the Account of this Authority mentioned below within 15 days from today:-

Account Name: West Bengal Real Estate Regulatory Authority  
 Branch: Specialized Institutional Banking, Kolkata  
 Account No. 00000040777384369  
 IFS Code: SBIN0014524  
 MICR Code: 700002404

The Complainant at the time of hearing requested the Authority to send this matter for execution to the District Magistrate in whose jurisdiction the subject matter property is situated, as per the Section 40 read with Rule 25 of the West Bengal Real Estate (Regulation & Development) Rules, 2021.

As per the choice of the Complainant, this Authority is hereby pleased to send this matter for execution to the District Magistrate of North 24-Parganas to execute this order as per Section 40 of the Real Estate (Regulation & Development) Act, 2016 read with Rule 25 of the West Bengal Real Estate (Regulation & Development) Rules, 2021. As Rule 25 of the West Bengal Real Estate (Regulation & Development) Rules, 2021, the amounts due shall be recovered as arrear of land revenue and shall be recovered in the manner provided in the Bengal Public Demand Recovery Act, 1913 (Bengal Act 3 of 1913).

The Secretary, West Bengal Real Estate Regulatory Authority (WBREERA), is requested to send the final order of this Authority in this matter dated 30.04.2021 and also send this order of the Authority to the concerned District Magistrate, North 24-Parganas, along with copy of the Complaint Petition, within 10 days from today.

The District Magistrate North 24-Parganas, is requested to execute the order of the Authority dated 30.04.2021 for recovery of Rs.50,93,956/-and interest from the Respondent & payment to the Complainant and also payment of penalty amount of Rs.10,00,000/-to the Authority as mentioned above as per Rule 25 of the West Bengal Real Estate (Regulation and Development) Rules, 2021, **within 30 days** from the date of receiving of the certified copy of the order from the Secretary, WBREERA.

It should be mentioned here 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 & Collector North 24-Parganas & Ors., the Apex Court has been pleased to direct-

*"1. By the Judgment of this Court dated 4 May 2021 in Forum for Peoples Collective Efforts (FPCE) v State of West Bengal, The West Bengal Housing Industry Regulation Act, 2017 was held to be ultra vires in view of the provisions of the Central Act [Real Estate (Regulation and Development) Act, 2016 ].*

*"2. In the present case, an order was passed on 18 December 2019 in favour of the petitioner who is a home buyer under the WB-HIRA against the sixth respondent. The petitioner instituted an application for execution on 12 February 2020 in which a show cause notice was issued. An order dated 16 March 2021 was passed directing the refund due to be recovered as arrears of land revenue. The WB-HIRA Act was declared unconstitutional by this Court subsequently, on 4 May 2021, as noted above. 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.*

*3. 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.*

*4. The High Court, in the present case, dismissed the petition on the ground that it was only this Court under Article 142 of the Constitution which could issue an appropriate clarification.*

5. Since a clarification has been issued in the above terms by this Court, the order of the High Court shall stand subsumed by the directions issued above.

6. On the request of Mr J Sai Deepak, learned counsel for the petitioner, we direct the Authority shall proceed to execute the order which has been passed in favour of the petitioner 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, this Authority requests the concerned District Magistrate of North 24-Parganas to take necessary action for execution of this order **within 30 days** from the date of receipt of the certified copy of the final order dated 30.04.2021 from this Authority.

Complainant is at liberty to pursue with this matter in the office of the District Magistrate, North 24-Parganas to get refund of the amount as per the order of the Authority dated 30.04.2021.

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

Fix this Execution Case in the list of cases in the month of December 2023, for review of the execution matter.



(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