

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

Complaint No. WBRERA/COM000818

Murtuza Dawood Merhaba and Anr. Complainants

Vs

Shiv Mahima Developers Private Limited..... Respondent

Sl. Number and date of order	Order and signature of the Authority	Note of action taken on order
01 14.05.2024	<p>Advocate Subhro Kanti Roy Chowdhury is present on behalf of the Complainant filing hazira and vakalatnama through email.</p> <p>Chartered Accountant Gopal Krishna Lodha is present on behalf of the Respondent Company, being its Authorized Representative, filing hazira and authorization through email.</p> <p>Heard both the parties in detail.</p> <p>The facts of case is that –</p> <ol style="list-style-type: none">1. By virtue of an Indenture the Complainants purchased the residential flat being No. 7B on the 7th floor alongwith one servant quarter on the 7th floor, measuring an area of land 2022 sq.ft. more or less super built up area together with one extended terrace attached with the said residential flat measuring about 90 sq.ft. built up area and 1 medium size motor car parking space on the Ground Floor at the project “ELYSIUM” located at Municipal premises No.25, Dr. Ambedkar Sarani, P.S.-Topsia, Ward No. 59, Kolkata Municipal Corporation from the Respondents herein and paid an amount of Rs.1,17,89,356/-out of the total consideration amount of Rs.1,33,37,500/-.2. As per the terms of the Agreement, the project was to be completed within March, 2018 with a clause to extend the time for another period of 6 months subject to Force Majure and other terms and conditions contained therein.3. But the Respondent failed to complete the project within the stipulated time period.4. The Respondent took project loan from LIC Housing Finance by	

mortgaging the said property vide a sanction letter dated 01.11.2016 and have defaulted the same. But the Respondent managed to arrange an investor to invest in the project and clear the dues of LIC Housing Finance.

5. Thereafter, the Complainant entered into a Supplementary Agreement dated 29.03.2022 with the Respondents and the Respondent stated that they shall complete the project and handover the said flat to the Complainants by 31.03.2023 and
6. Till date the Respondent have neither delivered us the said flat nor executed the deed of conveyance. Moreover, the Respondent is constructing extra floor and hence, the common area included on the super built up area decreases proportionately since the saleable area increased.

The Complainant prays before the Authority for the following relief(s):-

1. Peaceful and vacant possession of the said flat alongwith CC of the project and execution of deed of conveyance in favour of the Complainant.
2. Demand an interest on delayed possession of the said flat as per section 18 of the RERA Act and Rule 17 of the WB RERA Rules.
3. Re-calculate the super built up area of the said flat and
4. To restrain the Respondent from transferring and/or alienating and/or encumbering the said flat.

After hearing the Complainant, 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:-

The Complainant is directed to submit her 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 **15 (fifteen)** days from the date of receipt of this order of the Authority by email.

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 **15 (fifteen)** days from the date of receipt of the Affidavit of the Complainant either by post or by email whichever is earlier.

Respondent is further directed to state in his Affidavit the contact details of the Directors/Partners of the Respondent Company and also state the present status of the construction of the project on his Affidavit annexing therewith a Report of the concerned Engineer/Architect in this regard. He also shall state the estimated date of delivery of possession of the flat to the Complainant in his Affidavit.

Fix **23.07.2024** for further hearing and order.



(SANDIPAN MUKHERJEE)
Chairperson

West Bengal Real Estate Regulatory Authority



(TAPAS MUKHOPADHYAY)
Member

West Bengal Real Estate Regulatory Authority