

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

Complaint No. WBRERA/COM-000101 & COM-000382 (erstwhile WBHIRA)

Bapi Das..... Complainant

Vs.

Abhishek Tewari and Sujit Chakraborty..... Respondent

Sl. Number and date of order	Order and signature of Officer	Note of action taken on order
02 10.07.2023	<p>Complainant is present in the online hearing filing hazira through email.</p> <p>Respondent is absent in the online hearing despite due service of the Hearing Notice of the Respondent through speed post and also by email.</p> <p>Let the track record of due service of Hearing Notice to the Respondent be kept on record.</p> <p>Respondent failed to submit Written Response on Notarized Affidavit as per the last order of the Authority dated 16.05.2023.</p> <p>Respondent was absent on the last date of hearing that is on 16.05.2023 and he is also absent today without any prior notice or intimation.</p> <p>Therefore, the Authority is of the considered opinion that sufficient time and reasonable opportunity has been given to the Respondent to defend this matter and present his case before the Authority but he failed and/or neglected to take the opportunity. No more chance/time can be given to the Respondent to submit the Written Response and this Authority has no other option but to proceed with ex-parte hearing and disposal of this matter for the ends of speedy disposal of justice as per section 29(4) of the Real Estate (Regulation and Development) Act, 2016.</p>	

Heard the Complainant in detail.

At the time of hearing, it came to the notice of the Authority that on the selfsame matter, the Complainant had filed a Complaint case bearing number COM000382 before the erstwhile WBHIRA Authority. The said matter was admitted for hearing by the erstwhile WBHIRA Authority. Later on WBHIRA Authority was struck down by the Hon'ble Supreme Court of India vide order dated 04.05.2021.

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 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 Complaint no. COM-000382 stand transferred to this Authority. As the said matter was not disposed of by the erstwhile WBHIRA Authority, this Authority is of the considered opinion to dismissed and close the proceeding regarding the mater relating to COM 000382.

On the selfsame matter the present Complaint bearing no.

WBRERA/COM000101 has been filed by the Complainant therefore the Authority is hereby please to close and dismiss the Complaint no. COM-000382 and this Authority shall now proceed with hearing of this present Complaint Petition bearing no. WBRERA/COM 000101.

The case of the Complainant is that he has booked a low budget apartment of Rs.6,00,000/- (370 sq.ft approx.) in '**IRA Paradise Apartment**' project situated at Sarmastapur under Poleghat Gram Panchayat, P.S. – Sonarpur, District – South 24 Parganas (W.B) of the developer firm named as '**M/s Kolkata Home Search**'. The partners of the firm are Mr. Abhishek Tewari along with his wife Mrs. Ruchi Tewari. Another partner was Mr. Pratyush Mukherjee who has resigned. Mr. Sujit Chakraborty is a staff of the firm and he always communicated with the Complainant on behalf of the firm. The Complainant paid total Rs. 2,20,000/- to the Respondent for purchase of the said apartment as mentioned earlier. The date of handing over of the flat was March 2020. As the construction of the project was stopped since long time the Complainant submitted cancellation letter to the Respondent and the Respondent Mr. Tewari refunded Rs. 35,000/- till date to the Complainant. A cheque of Rs.2,30,000/- was given by the Respondent to the Complainant but the cheque was bounced due to signature mismatch.

In this Complaint Petition, the Complainant prays for the relief of the refund of the Principal amount of Rs.1,85,000/- alongwith interest from the Respondent along with Compensation at the earliest as per RERA Act and Rules made thereunder.

Complainant submitted Notarized Affidavit dated 24.05.2023 containing his total submission regarding this Complaint Petition, as per the last order of the Authority dated 16.05.2023, which has been received by this Authority on 29.05.2023.

Let the said Affidavit of the Complainant be taken on record.

Heard the Complainant in detail.

Today at the time of hearing the Complainant stated that at

present Principal amount of Rs.1,85,000/-is required to be refunded by the Respondent alongwith interest as per law.

After examination of the Notarized Affidavit of the Complainant and Notary Attested documents placed on record and after hearing the Complainant through 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 time line and therefore, he is liable to refund the principle amount paid by the Complainant along with interest at the rate of **SBI PLR +2%** per annum 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.

Hence it is hereby,

ORDERED

that the Respondent shall refund the Principle amount of Rs.1,85,000/- (Rupees one lakh eighty five thousand only) alongwith interest @ **SBI Prime Lending Rate + 2%** per annum for the period starting from the respective dates of payments made by the Complainant till the date of realisation.

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.

Complainant is at liberty to file an Execution Application on any 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.

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

With the above directions the matter is hereby disposed of.



(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