

# West Bengal Real Estate Regulatory Authority

Calcutta Greens Commercial Complex (1<sup>st</sup> Floor)

1050/2, Survey Park, Kolkata – 700 075.

Complaint No.WBRERA/COM-000132

Ashutosh Mazumdar & Smt. Chandana Mazumdar ..... Complainants

Vs.

Riverbank Developers Private Limited..... Respondent

Sl. Number and date of order	Order and signature of Authority	Note of action taken on order
<p>3 ----- 07.09.2023</p>	<p>Complainant is present alongwith his wife and joint allottee Smt. Chandana Mazumdar and Son Shri Abhisek Mazumdar in the online hearing filing hazira through email.</p> <p>Advocate Anirban Chatterjee is present in the online hearing on behalf of the Respondent filing hazira and Vakalatnama through email.</p> <p>Respondent submitted hard copy of the Written Response on Notarized Affidavit dated 18.07.2023, as per the last order of the Authority dated 18.07.2023, which has been received by this Authority on 02.08.2023.</p> <p>Let the said Written Response be taken on record.</p> <p>Heard both the parties in detail.</p> <p>The case of the Complainant is that he along with his wife Mrs. Chandana Mazumdar are the joint Alottees of a unit / flat in '<b>Highland Greens Phase-II</b>' project of the Respondent. They have paid total amount of Rs.22,63,766/- (Rupees twenty-two lakhs sixty-three thousand seven hundred sixty-six only) for purchasing the said flat in the project mentioned above. The Complainant was allotted unit 4A1 at the 4<sup>th</sup> Floor at Tower 10 of the said project vide an allotment letter dated 09.07.2014. The handover of the said flat, complete in all respect, was scheduled to be held within 42 months from the date of allotment</p>	

i.e. by the beginning of 2018 and all the payments were made in due timeline by the Complainant. The Respondent failed to comply his timeline and could not deliver the possession of the flat till today.

In the above circumstances, the Complainant prayed for refund of the full amount paid by him amounting to Rs. Rs.22,63,766/- (Rupees twenty-two lakhs sixty-three thousand seven hundred sixty-six only) alongwith interest as per the provisions of Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the RERA Act, 2016), read with Rule 17 and 18 of the West Bengal Real Estate (Regulation and Development) Rules, 2021 (hereinafter referred to as the WBRERA Rules, 2021), and as directed by the WBRERA Authority.

On the last date of hearing on 18.07.2023, the Respondent stated that the said flat was first allotted in the year 2014 to the Complainant, after that on 20.09.2016 they have cancelled the allotment. Subsequently, on the request of the Complainant the flat was re-allotted to the Complainant on 03.11.2016. As the same flat i.e. flat no. 4A1 in tower 10 was available as on 03.11.2016, the same was re-allotted to the Complainant on 03.11.2016. Therefore, Respondent claimed that the interest should be calculated on and from 03.11.2016 and not from 09.07.2014, as the flat was re-allotted to the Complainant on 03.11.2016.

Complainant strongly denied the fact of re-allotment of the flat to him at the time of hearing and he stated that as the same flat was given to him therefore it is not a case of **cancellation and re-allotment**. Although the Complainant requested for cancellation but at that time he was informed by the Respondent that Rs.4,00,000/- will be deducted from the Principal Amount paid by the Complainant, if they cancel the flat, so they did not ultimately give consent for cancellation of the allotment of the flat. He also stated that no fresh GTC / Agreement For Sale was signed between the parties in the year 2016 so there is no case of cancellation and re-allotment of the said flat.

It is the considered view of the Authority that there is no case of cancellation and re-allotment of the subject matter flat bearing no. 4A-1 in the 4<sup>th</sup> Floor of Tower 10 of the instant project booked by the Complainant on the following grounds :-

- a) No fresh GTC / Agreement For Sale was executed between the parties in the year 2016 at the time of re-allotment of the flat, as claimed by the Respondent; and

b) The Principal Amount of Rs.22,63,766/- (Rupees twenty-two lakhs sixty-three thousand seven hundred sixty-six only) was not refunded by the Respondent at the time of cancellation of the flat, as claimed by the Respondent; and

c) No fresh payment has been made by the Complainant on 03.11.2016 which proves that there was no re-allotment on that date.

Therefore the Authority is of the opinion that the flat was allotted on 09.07.2014 and after that there was no cancellation and re-allotment of the flat. Only a process of cancellation was started but it has not been completed or finalized. Complainant requested for the cancellation but when he was informed that Rs.4,00,000/- will be deducted from the Principal Amount paid by him, he did not proceed with the cancellation and duly requested the same to the Respondent. Therefore, the date of allotment in the case of the Complainants shall be taken as 09.07.2014 and interest shall be calculated accordingly as per section 18 of the RERA Act, 2016 read with Rule 17 and 18 of the WBRERA Rules, 2021, which is required to be paid by the Respondent.

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 Apartment to the Complainant within the scheduled timeline and therefore he is liable to refund back the principal 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 principal amount of Rs.22,63,766/- (Rupees twenty-two lakhs sixty-three thousand seven hundred sixty-six only) along with interest 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 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 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 '**Hiland Greens Phase-2**', as determined by this Authority, as per the provision contained in section 63 of the Real Estate (Regulation and Development) Act, 2016.

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