

ORDER SHEET

WEST BENGAL HOUSING INDUSTRY REGULATORY AUTHORITY

Complaint No. COM-000011

Moniruddin Mondal.....Complainant

AND

Shri . Tapas Kumar Bhagat....Respondent

Sl. Number and date of order	Order and signature of Officer	Note of action Taken on order
7 ----- 29-05-2019	<p>An online complaint was received as per Section 31 of the West Bengal Housing Industry Regulation Act, 2017 vide complaint No. COM-000011 dated 21/09/2018 at the W B Housing Industry Regulatory Authority from Complainant Mr. Moniruddin Mandal of Chakalamath, College Para, Rampurhat, Birbhum-731224 against Mr. Tapash Kumar Bhagat, 119/2B, Harish Mukherjee Road, Post-Kalighat, Kolkata-700 026 and as per Rule 36 of the West Bengal Housing Industry Regulation Rules, 2018, NOTICE was issued for the alleged contravention and the Respondent as well as the Complainant were directed appear for hearing at the Office of the W.B Housing Industry Regulatory Authority, Calcutta Greens Commercial Complex (1st Floor), 1050/2, Survey Park, Kolkata-700 075 along with relevant documents on 15/11/2018 at 1.30 p.m.</p> <p>During the hearing on 15/11/2018, Mr. Moniruddin Mandal, the Complainant appeared for hearing but the Respondent Mr. Tapash Kumar Bhagat did not appear as the notice through speed post was not delivered to him. During the hearing the Complainant stated that he had booked a flat (Super Blt up-757 sq. ft.) in the residential project addressed at 116, North Station Road, Agarpara and executed the sale agreement on 17th February, 2013 and with the last payment made in August, 2017, he had paid total amount of INR 17,43,300/- so far, which includes cost of the flat (INR 14,38,300) as per the sale agreement rate, INR 40,000/- towards some extra grill & electric meter as demanded by the promoter and INR 2,65,000/- towards registry & other expenses. The Complainant further stated that after a long undue delay, the promoter agreed to do registration in August,</p>	

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2017 and so all payment were done but after that the Respondent did not executed the Sale Deed inspite of several round of discussions between them.

The Complainant further stated that it was also found by the Complainant during December, 2017 that the Respondent has allowed some family to stay in that flat without any consent from of the Complainant and till date that family is staying there.

Since the earlier notice was not served properly to the Respondent another notice has been issued for hearing on 11/12/2018 at 12.00 noon.

During the second hearing on 11/12/2018, both the Complainant the Respondent appeared for hearing and the Respondent appealed for some more time to file his reply. Accordingly, the matter was fixed for hearing on 18/12/2018 at 2.00 p.m.

On 18/12/2018, both the parties appeared and the Respondent submitted reply. The matter was fixed for hearing on 04/02/2019 at 11.00 a.m.

On 04/02/2019, the Complainant appeared but the Respondent did not appear in spite of proper service of the notice. It is fact that the Respondent has been provided with ample scope to represent himself during the previous hearing.

During the hearing, the Complainant has submitted that he is ready to pay the amount for the extra area of the flat but as per the rate of the agreement not as per the present market price. Further, the Complainant also submitted during the hearing that for the delay in possession of the flat, the Complainant wants compensation by way of interest at the rate of 18% per annum of the amount paid as per clause 25 of the agreement.

The Respondent in his reply has submitted that the complain is not maintainable as the building has been completed very much before the date of enactment of West Bengal Housing Regulation Act, 2017, i.e., on 01.06.2018 but the Respondent in his reply itself also submitted that Completion Certificate has not been issued in respect of the said building.

Therefore, it is observed by this Authority that the instant complain is very much maintainable under proviso to sub section 1 of Section 3 of the West Bengal Housing Regulation Act, 2017 since the Completion Certificate


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has not been issued in respect of the said building.

Further, in para 8 of the reply, the Respondent has submitted that the Respondent is ready to register the flat but only after measurement by the civil engineer and if it is found there in extra more than the agreement then that has to be paid as per the present market price before registration.

However, as per Clause 12 of the Agreement dated 17/02/2013 executed by and between the parties to this Complaint it is found that after completion of the said flat if the area of the flat is more than what has been stated under the agreement the Complainant shall make the payment as per the rate mentioned in the said agreement.

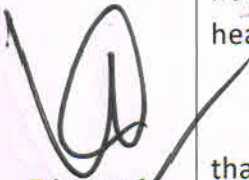
During the hearing on **04/02/2019**, it was directed to constitute a team with the Law Officer of the West Bengal Housing Industry Regulatory Authority and the Official Engineer of Panihati Municipality under section 35 of West Bengal Housing Regulation Act, 2017 to make a physical inquiry of the project. The physical inquiry shall be conducted within 7 days and a report of such enquiry shall be placed before this Authority within 7 days thereafter. The cost of such enquiry shall be borne by the Respondent.

The Chairman, Panihati Municipality was directed to extend all sort of support in this regard and depute its Official Engineer to constitute the aforesaid team for conduct of the said physical inquiry.

As per the aforesaid order of the West Bengal Housing Industry Authority, the Law Officer, WBHIRA along with an Assistant Engineer, Panihati Municipality, Sri Pinaki Mazumder conducted an enquiry at plot no "kha", Mouza – Tarapukuria, JL no 12, Touzi no 178, Dag No 567 , Khatian No 223, Holding No 16, North Station Road, Panihati Municipality and duly submitted its report. The next date of hearing was fixed on 20/05/2019.

On **20/05/2019**, the Complainant appeared but the Respondent did not appear and since the Respondent has failed to appear the next date of hearing was fixed on 29/05/2019.

On **29/05/2019**, both the parties appeared. The Complainant stated that he wants immediate possession and registration of the flat and for the delay in possession of the flat he wants compensation by way of interest at the rate of 18% per annum of the amount paid as per clause 25 of the agreement. The Respondent also stated that he would execute the registration and give possession of the flat.


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I have gone through the complaint, documents, report submitted by the aforesaid committee and the submissions made by the both the parties.

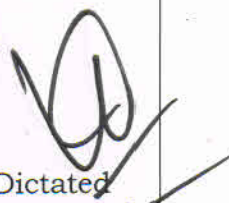
It is fact that as per the report there are 26 no. Of flats in the project, the total cover area of the flat of the complaint is 664.86 sq. ft. And there is a family residing in the said flat of the Complainant.

It is fact that the Complainant has made the full payment in respect of the said flat including the registration charges.

It is also a fact that as per clause 25 of the agreement for sale dtd. 17/02/2013, the Respondent shall hand over the said flat to the Complainant within 24 months from the date of execution of the said agreement for sale, failing which the Complainant can claim compensation from the Respondent. The Respondent has fail to provide possession of the said flat within the stipulated time as per the agreement for sale and as such violated Section 17 of the West Bengal Housing Regulation Act, 2017.

Therefore, it is hereby ordered that the Respondent shall provide immediate possession of the flat to the Complainant as per the measurement submitted by the aforesaid enquiry committee, i.e., 664.86 sq. ft. (covered area) and register the said flat within 30 days from the date of communication of the order. The Respondent shall also pay an interest @ 18% per annum of the amount paid by the Complainant from 17.02.2015, i.e., due date of possession of flat to 30.06.2018 before the date of commencement of West Bengal Housing Industry Regulation Act, 2017 and from 01/06/2018 the interest rate for delay in providing possession shall be as per State Bank of India Prime Lending rate plus 2% of the amount paid by the Complainant till actual possession of the flat as per Rule 18 of West Bengal Housing Industry Regulation Act, 2018 within 45 days from the date of communication of the order.

Let a copy of this order be communicated to both the parties.


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Designated Authority,
Housing Industry Regulatory Authority