

COMPLAINT TO AUTHORITY
Complaint under section 31 of the Act

For use of Authority(s) office :

Date of filing : 4/3/2021

Date of receipt by post : _____

Complaint No. : COM000706

Signature : _____

Authorized Officer : _____

IN THE HOUSING INDUSTRY REGULATORY AUTHORITIES OFFICE

Calcutta Greens Commercial Complex (1st Floor), 1050/2, Survey Park, Kolkata-700075

Between

Mrs. Aparna Mishra Complainant(s)

And

Mr. Samaresh Das Respondent(s)

Details of claim :

1. Particulars of the complainant(s) :

(i) Name of the complainant : Mrs. Aparna Mishra

(ii) Address of the existing office / residence of the complainant :

(iii) Address of the service of all notice : C/701, Sorento Building, Shanti Park Complex, Garodia Nagar, GhatKopar (East), P.S. – Pant nagar, Mumbai – 400077.

2. Particulars of the respondents:

(i) Name(s) of the respondent : Mr. Samaresh Das

(ii) Office address of the respondent : 108, S. N. Roy Road, P.S. – New Alipore, Kolkata – 700038

(iii) Address for service of all notices : 108, S. N. Roy Road, P.S. – New Alipore, Kolkata – 700038.

3. Jurisdiction of the Authority : Complaint under Section 31 of the WBHIRA Act

4. The complainant declares that the subject matter of the claim falls within the jurisdiction of the Authority. Facts of the case:

That an Agreement(Verbal) was entered between Mrs. Aparna Mishra, (the Complainant herein), and M/s. Hindustan Corporation, a sole proprietorship firm, represented by its Proprietor Mr. Samaresh Das (Promoter), (Respondent herein), for purchase of 2 residential flats out of which one was on the Ground Floor and one on the Third Floor, together with 2 car parking space on the ground floor lying and situated at Premises No. 143, S. N. Roy Road, Kolkata – 700038.

The Rate of the Flats were fixed at @Rs.3,800/- per square feet.

The Rate of the Garages were fixed @Rs.2,50,000/- per Garage.

That payments were made by way of advance and/or earnest money by the Complainant in favour of the Respondent:

1. For the Ground Floor Flat and one Garage a sum of Rs.25,00,000/- was paid in 2016, and;

2. For the Third Floor flat and one Garage a sum of Rs.70,00,000/- was paid in 2016.

Inspite of innumerable requests personally and telephonically no Agreement was provided and Promoter also accepted a sum of more than 10% of the cost of the Flat as advance. Building was completed in 2018 but still neither possession nor Deed of Conveyance has been Registered nor B.C.C. or O.C., Approved Building Plans by KMC has been given inspite of infinite number of requests made to the Promoter telephonically and personally.

Thereafter the M/s. Hindustan Corporation on or about 11th February 2021 sent one Draft Deed of Conveyance in regard to the Ground Floor Flat and Third Floor Flat wherein the said Respondent deliberately did not mention any Car Garages in the Deed to dupe the complainant. Also instead of the Rate of @ Rs.3,800/- per sq. ft. as agreed at the time of booking he unilaterally quoted Rs.4,800/- per sq. ft. and instead of 757 sq.ft. SBU of ground floor, he is claiming money for 1273 sq.ft. SBU and for area of 1386 sq.ft. SBU for third floor he is claiming 2388 sq.ft. SBU. On all three counts mentioned above which shows it is a clear case of Cheating, Fraud and Forgery by the Promoter.

Aparna Mishra

COMPLAINT TO AUTHORITY
Complaint under section 31 of the Act

(give a concise statement of facts and grounds for complaint)

5. Relief(s)

In view of the facts mentioned in paragraph 4 above, the complainant prays for the following relief(s) :

A.To admit the complaint as per Section 18 of WBHIRA,2017.

B.To Direct the Respondent herein to execute the Deed of Conveyance forthwith in respect of both the Flats mentioned above and the Two garages and Register them in Favour of the Complainant as per their agreement and the Receipts of payments made to the Respondent herein at the rate per sq.ft. agreed upon by them and as the rates in that area and in the concerned Building have been around the same (Rs.3,600/- per sq.ft.)earlier and even in current date it is seen to be @ Rs.3,620/- per sq. ft. (SBU) and for the Total area of Ground Floor flat of 757 sq. ft. SBU and for the Third Floor an area of 1386 sq. ft. SBU which is as per the plan approved by KMC and the AutoCAD Drawing provided by the builder and also as per the Certificate given by an independent Registered Architect. He may be directed to provide the copy of sanctioned plans,layout plans approved by KMC, give us possession of the 3rd Floor Flat and the 2 Garages,copy of B.C.C. and the O.C. which promoter has not given till date in contravention of Section 12, 13(1) and (2), Section 17(1) and (2), and Section 19 of WBHIRA,2017.

C.Alternatively, the Deed of Conveyance may be directed to be registered by An Advocate Commissioner appointed by the WBHIRA.

D.To Direct the Promoter to pay forthwith interest at compound interest rate @18% per month to be paid by the promoter on the advances received from the Complainant since the date of money's paid to him in 2016, for contravention of section(s) 13(1) and (2) and 18(1) of WBHIRA,2017 and Under Section 18(1) of WBHIRA,2017 read with Rule 18 of WBHIRA Rules,2018.

E.Levy penalty upto 5% of the estimated cost of the project u/s 61 on the promoter for violation of section(s) 12, S-13,section 14,section 17,Section 18(1) and section 19, of WBHIRA2017.

F.Levy separate penalty on Promoter Mr Samaresh Das for violation of above sections and levy penalty on M/s Hindustan Corporation u/s 69(1) and (2) of WBHIRA,2017.

(Specify below the relief(s) claimed explaining the grounds of relief(s) and the legal provisions (if any) relied upon)

6. Interim order, if prayed for:

a.)To pass an order of interim injunction restraining the M/s. Hindustan Corporation and Promoter Mr. Samaresh Das, with the direction, not to sale, mortgage, assign, rent, lease or transfer in any way, the said 2 residential flats and the 2 car parking spaces in reference mentioned herein above, till final disposal of this complaint without giving any notice to the promoter u/s-36 of WBHIRA,2017 as the acts in contravention of this Act, has been committed and continues to be committed and to save the complainant from blatant cheating, Fraud and Forgery.

b.)To pass an order directing the promoter to provide the complainant and produce before the Authority copies of Approved Building Plan by KMC, copies of B.C.C.,O.C. and all other relevant Government Records pertaining to the said Premises and the Building as per provisions of WBHIRA,2017.

c.)To give any other Relief(s) as deemed fit.

Pending final decision on the complaint the complainant seeks issue of the following interim order:

a.)To pass an order of interim injunction restraining the M/s. Hindustan Corporation and Promoter Mr. Samaresh Das, with the direction, not to sale, mortgage, assign, rent, lease or transfer in any way, the said 2 residential flats and the 2 car parking spaces in reference mentioned herein above, till final disposal of this complaint without giving any notice to the promoter u/s-36 of WBHIRA,2017 as the acts in contravention of this Act, has been committed and continues to be committed and to save the complainant from blatant cheating, Fraud and Forgery.

(Give here the nature of the interim order prayed for with reasons)

7. Complainant not pending with any other court, etc:

The Complainant further declares that the matter regarding which this complaint has been made is not pending before any court of law or any other tribunal(s).

The complainant further declares that the matter regarding which this complaint has been made is not pending before any court of law or any other authority or any other tribunal(s).

8. Particulars of bank draft in respect of the fee in terms of sub-rule (1) of rule 36:

(i) Amount : 1000

(ii) Name of the bank on which drawn : BillDesk Online Payment

Aparna Mishra

FORM 'J'
See rule 36(1)

COMPLAINT TO AUTHORITY
Complaint under section 31 of the Act

9. List of enclosures :
(Specify the details of enclosures with the complaint)

Aparna Mishra - Reply

Letter by Complainants Advocate

Letter by Complainants Advocate

Money Receipts

Reply to Respondents Advocate

Verification

I **Mrs. Aparna Mishra** son / daughter of **Late Shri M.M. Thakur** the applicant do hereby verify that the contents of paragraphs (1 to 7) are true to my personal knowledge and belief and that I have not suppressed any material fact(s).

Place : MUMBAI

Date :

Aparna Mishra

Signature of the applicant(s)