

Filed by  
Advocate

**FORM - J**

[See rule 36(1)]

**APPLICATION TO THE WEST BENGAL HOUSING INDUSTRY  
REGULARITY AUTHORITY**

**Claim for compensation under Section 31 of Act**

For use of Authority(S) office:

Date of filing : \_\_\_\_\_

Date of receipt by post : \_\_\_\_\_

Application No. : \_\_\_\_\_

Signature : \_\_\_\_\_

Authorized Officer: \_\_\_\_\_

IN THE HOUSING INDUSTRY REGULARITY AUTHORITIES OFFICE  
KOLKATA

Compliant No..... of 2020

In the matter of:

An application under Section 31 of the West Bengal Housing Industry Regulation Act, 2017 ('Act') read with Section 18, 36 and 69 of the Act and Rule 37 of the West Bengal Housing Industry Regulation Rules, 2018 ('Rules');

And

In the matter of:

ADHRIT COMMERCIAL PVT. LTD.

*Visham Singh*

DIRECTOR / AUTHORISED SIGNATORY

Filed by  
Advocate

Filed by  
Advocate

Prayer for compensation for delay completion of the construction, inter alia, delay hand over of the possession of the flat.

And

In the matter of:

Adhrit Commercial Private Limited a company registered under the provisions of the Companies Act, 1956/2013 and having its registered office at 56, Metcalfe Street, 3<sup>rd</sup> Floor, Room No. 3H, Kolkata - 700013.

....Complainant

Vs.

In the matter of:

Emami Realty Limited, a company registered under the provisions of the Companies Act, 1956/2013 and having its registered office at Emami Tower, 687 Anandapur, E.M By Pass, Kolkata - 700107.

....Respondent

Filed by  
Advocate

ADHRIT COMMERCIAL PVT. LTD.

*Ujjwal K. Dasg*

DIRECTOR / AUTHORISED SIGNATORY

The humble petition on behalf of the  
Complainant above named, most  
respectfully-

**SHEW E TH**

**1. PARTICULARS OF THE COMPLAINT:**

- i. Name of the Complainant : Adhrit Commercial Private Limited., CIN No. – U52190WB2011PTC159295.
- ii. Address of the existing office : 56, Metcalfe Street, 3<sup>rd</sup> Floor, Room No. 3H, Kolkata – 700013.
- iii. Address for service all notices: 56, Metcalfe Street, 3<sup>rd</sup> Floor, Room No. 3H, Kolkata – 700013.
- iv. Details of allottees of apartment, plot or building The complainant herein is the allottee which has been allotted the apartment/unit No. 1203 on the 12 floor of the tower no. C-5 forming part of the residential segment in the housing complex known as Emami City containing by an area of 1920 sq. ft. (more or less) along with common utilities and amenities and facilities and proportionate land right located at 2, Jessore Road, P.S. – Dum Dum, Kolkata – 700028.

**2. PARTICULARS OF THE RESPONDENT:**

- i. Name of the Respondent: Emami Realty Limited.
- ii. Office address of the respondent : Emami Tower, 687 Anandapur, E.M By Pass, Kolkata – 700107.

- iii. Address for service all notices : To the best of knowledge of the complainant the address for service of all notices is Emami Tower, 687 Anandapur, E.M By Pass, Kolkata – 700107.
- iv. Registration No. & Address of Project :- The Respondent is the developer of the project and the said property/project is registered under Hira vide registration no. HIRA/P/NOR/2018/000122 and the said project is located at 2, Jessore Road, P.S. – DumDum, Kolkata – 700028.

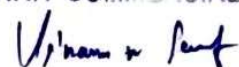
**3. JURISDICTION:**

The complainant herein declares that the subject matter of the claim falls within the jurisdiction of this Hon'ble Authority as the said project is located within the jurisdiction of this Tribunal.

**4. FACTS OF THE CASE:**

- i. The complainant herein sometimes in the month of September 2011 came across the publicity of the said project "EMAMI CITY" at 2, Jessore Road, Kolkata – 700 028.
- ii. Having interest in the project and to book an unit along with a covered car parking space, the complainant sometime in September, 2011 approached the office of the respondent to enquire about the procedure. Upon such enquiry the complainant was informed that for unit of 1920 sq. ft. size along with covered car parking the total consideration shall be Rs. 88,76,800/- (Rupees Eighty eight lakh seventy six thousand eight hundred only). It was also informed by the respondent and/or its authorized representative that the project will be completed and the handover of the units/flats

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shall be made within five (5) years from now i.e. on or before 30<sup>th</sup> September, 2016. The respondent and/or its authorized representative further informed that the project is on a lease land and as such there can be sub lease of units/flats for 99 years and the consideration as stated herein before is the consideration for a sublease of the flat/unit.

- iii. Believing the same to be true, the complainant in the last week of September, 2011 submitted an application form along with a cheque for a sum of Rs. 2 Lakh towards the booking amount of the flat/unit being the unit in tower no. C-5, floor no. 12 and the type of apartment is 1203 admeasuring 1920 sq. ft. along with all rights attached to the said flat. The complainant submitted the application form in the format provided by the respondent at their office which contains certain guidelines for making the application. The said application form without providing all the particulars as per the format given by the respondent was duly handed over/submitted in the office of the respondent and which was duly accepted without raising any objection thereto. A copy of the said application is annexed hereto and marked as Annexure 'A'.
- iv. Against the application submitted by the complainant on or about 15<sup>th</sup> October, 2011 the respondent issued an allotment letter intimating that the complainant has been allotted a flat/unit no. C5-1203 and one covered car parking in the said project, EMAMI CITY at 2, Jessore Road, Kolkata - 700 028. Along with the said allotment letter the respondent also issued

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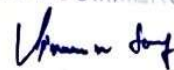
*V. Manoj Singh*

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a demand notice for an amount of Rs. 18,33,861/-. In the said allotment letter it is stated that the said allotment is governed by the "terms and condition of an agreement which will be executed and signed". A copy of the said allotment letter dated 15<sup>th</sup> October, 2011 and the demand notice are annexed hereto and collectively marked as Annexure 'B'.

- v. In terms of the allotment letter, the amount of Rs. 18,33,860/- which includes the amount of Rs. 2,00,000/- paid at the time of booking is the amount payable by the complainant on allotment. The complainant duly paid the amount without any delay believing whatever the complainant was informed and/or assured are true and the same will be achieved by the respondent.
- vi. The complainant herein states that along with the demand letter dated 15<sup>th</sup> October, 2011 the respondent issued and/or annexed schedule for payment of consideration and/or other charges for the said flat/unit. In terms of the said attachment the complainant is required to pay the total consideration in the manner as provided in the said annexure. A copy of the said attachment is annexed hereto and marked as Annexure - 'C'.
- vii. On or about 5<sup>th</sup> May, 2014 the respondent issued another demand letter demanding an amount of Rs. 9,15,109/- stating that 10% of the total consideration shall be paid on completion of foundation of the concerned block. The complainant herein believing the demand letter to be correct, on or about 19<sup>th</sup> August, 2014 paid the total demand amount

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of Rs. 9,15,109/-. A copy of the said demand letter dated 5<sup>th</sup> May, 2014 and the money receipt are annexed hereto and collectively marked as Annexure - 'D'.

- viii. In the same manner the respondent issued demand notices one after another between the years 2015 to 2016 for payment of the consideration as provided in the attachment to the first demand notice cum allotment advice. The complainant on receipt of the demand notice believing the statement of the respondent to be true and correct made the payments to the respondent. A copy of the statement showing the demand notice and the payment schedule is annexed hereto and marked as Annexure 'E'.
- ix. On or about 24<sup>th</sup> June, 2019 the complainant received a letter of intimation for possession with final invoice-cum-demand letter from the respondent. A copy of the said letter of intimation for possession and the final invoice-cum-demand letter are annexed hereto and collectively marked as Annexure - 'F'.
- x. In the said letter of intimation for possession dated 24<sup>th</sup> June, 2019 the respondent stated that there was some error in the ERP software of the respondent because of which some invoices might be showing erroneous amount.
- xi. In the month of June, 2019 upon receipt of the letter of intimation for possession from the respondent, the complainant went to the concerned flat for verification and inspection of the flat/unit. Upon such inspection of the

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flat/unit the complainant observed that there were various defects and constructions are still pending inside the flat/unit. The complainant realized that only to avoid the payment of interest and compensation the respondent managed to obtain the completion certificates and other permissions and approvals by doing the window dressing of the construction of the block/flat/unit. When the complainant raised the issue with regard to the pending construction and defects inside the flat/unit, the respondent agreed to complete the said construction and further agreed to waive the maintenance charges payable by the complainant. The respondent waived the CAM charges till June, 2020 i.e. till they complete the construction inside the flat/unit to the satisfaction of the complainant. Some of the copies of the mails waiving the CAM charges are annexed hereto and collectively marked as Annexure - 'G'.

- xii. Ultimately on or about 28<sup>th</sup> June, 2020 the complainant received another letter of intimation for handover of the flat/unit. As such for all practical purposes the construction could be completed only in the month of June, 2020 and the possession of the flat was given during the same time after delay of more than 3 years.
- xiii. Despite repeated approach of the complainant the respondent fraudulently managed to drag the issue of entering into any agreement to sublease with the complainant.
- xiv. Finally, however, on or about 16<sup>th</sup> July, 2016 an agreement of sublease was executed between the complainant and the

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*Upmanu K. Singh*

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respondent and one Oriental Sales Agencies (India) Private Limited, a company having its registered office at Emami Tower, 687 Anandapur, EM By Pass, Kolkata – 700107 as the Lessor. In the said agreement to the sublease the respondent herein is defined as the developer and the said Oriental Sales Agencies (India) Private Limited is defined as the Lessor.

- xv. In the said agreement to sublease dated 16<sup>th</sup> July, 2016 all the terms and condition are set out with regard to the sublease and the consideration payable and other obligations of the parties. A copy of the said agreement to sublease dated 16<sup>th</sup> July, 2016 is annexed hereto and marked as Annexure – 'H'.
- xvi. In terms of the Article VI of the said agreement to sublease dated 16<sup>th</sup> July, 2016 the tower/block in which the flat/unit which is booked by the complainant herein shall be constructed and completed on or before March, 2017 with a grace period of 9 months ("completion date"). It is also provided in the said article that the said tower in which the flat/unit is situated shall be deemed to have been completed if provided with electricity, water, lift and other utilities and being certified so by the architect irrespective of whether the other towers have been completed.
- xvii. Under the same Article VI it is provided that the time for completion of the flat/unit is based on the contract entered into by the respondent with one Larsen & Tourbo Limited and in the event of delay in completion of the flat/unit within the completion date, the respondent shall be entitled to a grace period of 6 months and during the said grace period the

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allottee shall be entitled to interest on the amount paid by the allottee at the rate of then prevailing SBI-PLR and the developer is liable for such payment of interest.

- xviii. Further, under the said Article VI it is also provided that if the respondent fails to complete the flat/unit within the grace period of 6 months the respondent shall be entitled to a further grace period of another 6 months, however, the sub lessee/allottee is entitled to interest on the amount paid at the rate then prevailing SBI-PLR + 2%.
- xix. However, the respondent failed to complete the construction of the flat/unit, inter alia, failed to deliver the flat/unit to the complainant. The delay in completion of the construction and/or delivery of the possession of the flat/unit is for more than 3 years as the complainant ultimately received a letter of intimation for possession with final invoice-cum-demand letter only in the month of June, 2020. Whereas in terms of the agreement to sublease dated 16<sup>th</sup> July, 2016 the construction supposed to be completed on or before March, 2017. A copy of the letter of intimation for possession along with a copy of the letter for handing over peaceful and vacant possession are annexed hereto and marked as Annexure - 'I'.
- xx. In terms of the agreement to sublease dated 16<sup>th</sup> July, 2016 the respondent is liable to pay interest for the delay completion of the construction.
- xxi. In addition to the payment of interest as provided in the agreement dated 16<sup>th</sup> July, 2016 the respondent is also liable

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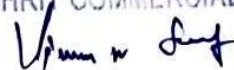


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to pay compensation to the complainant for such delay. The respondent compelled the complainant to sign a purported waiver letter waiving all its claim of interest and compensation for the delay caused by the respondent in completion of the construction and also in handing over of the possession.

- xxii. It is under this compelling circumstances, the complainant had to accept the terms dictated by the respondent and/or its representative and had to sign a waiver letter in order to come out of that evil clutches of the respondent and/or its people.
- xxiii. However, the complainant immediately after such handover of the possession and immediately upon signing of the purported waiver letter filed a complaint before the police authorities to register a complaint of the forcefully, corrosive, manipulative and fraudulent action of the respondent and/or its men. A copy of the said complaint which is duly acknowledged by the police authorities and the possession letter dated 28/06/2020 along with Annexure A thereto are annexed hereto and collectively marked as Annexure - 'J'.
- xxiv. Despite such complaint to the police authorities on 28/06/2020 no action has been taken till now.
- xxv. The complainant has received no relief whatsoever and the respondent is not inclined to accede to the request and requirement of the complainant.
- xxvi. In between, upon receipt of the letter for physical possession of the flat/unit and when the respondent refused to pay the interest and compensation to the complainant and instead

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forced the complainant to succumb under the dictat of the respondent, the complainant finding no other option filed a police complaint on dated 21<sup>st</sup> November, 2019 registering the complaint of about the manipulative and oppressive action of the respondent. A copy of the said police complaint dated 21<sup>st</sup> November, 2019 is annexed hereto and marked as Annexure – 'K'.

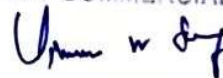
- xxvii. There is grave urgency in the matter as the respondent may wind up its business and run away.
- xxviii. Balance of convenience and inconvenience is entirely in favour of the complainant.
- xxix. Unless orders as prayed for herein are passed your complainant will suffer irreparable loss of injury.
- xxx. The complaint is bona fide and in the interest of justice.

**5. RELIEFS:**

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

- (a) The instant complaint be admitted;
- (b) The respondent be directed to pay interest and compensation for the delay in completion of the construction and handing over of the possession of the

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flat/unit for the reason stated herein before;

- (c) The respondent be directed to refund the interest of Rs. 2,90,485/- to the complainant which the respondent illegally charged along with interest on the same;
- (d) Direction be given to the respondent and/or its man not to disturb the peaceful possession of the flat/unit by the complainant;
- (e) Direction be given to the respondent not to charge the complainant for any amount for the common maintenance charges till the disposal of the complaint;
- (f) Direction be given restraining the respondent and its directors and promoters from further carrying any business of construction of buildings and to deal therein;

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*Vijay v. H*

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- (g) Direction be given to black list the respondent and its directors and promoters so that they cannot be provided any permission, approval, license or registration for development, construction, sale and/or to deal with any property at any places in India;
- (h) Ad interim order in terms of prayers above;
- (i) Costs of and/or incidental to this application be paid to the complainant and/or complainant by the no complainant;
- (j) Such further order or orders be passed and/or direction or directions be made as to your Honour may deem fit and proper.

**Grounds**

The grounds for the above reliefs are morefully described and submitted in the paragraph 4 above.

**Provisions**

The complainant refers to the provisions of the Section 18 of the West Bengal Housing Industry Regulation Act, 2017 for the  
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compensation and Article VI of the agreement to sublease dated 16<sup>th</sup> July, 2016 for the interest on the delay completion of the project.

**6. INTERIM ORDER, IF PRAYED FOR:**

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

- (a) Since the respondent appears to run away direction be given to deposit an equal amount of interest and compensation payable to the complainant with the registry of this Ld. Tribunal for the delay completion of the construction as per Article VI agreement to the sublease dated 16<sup>th</sup> July, 2016 and compensation under Section 18 of the West Bengal Housing Industry Regulation Act, 2017;
- (b) Direction also be given upon the respondent to deposit the interest amount of Rs. 2,90,485/- illegally collected from the complainant as there was delay payment against some of the demand notices issued by the respondent;
- (c) Direction be given to the respondent not to charge and collect the common maintenance charges for maintenances of the common area from the complainant till the disposal of the instant complaint;
- (d) Such further order or orders be passed and/or direction or directions be made as to your Honour may deem fit and proper.

**7. COMPLAINANT NOT PENDING WITH ANY OTHER COURT, ETC.**

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*Uman Singh*

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The complainant herein declares that the matter regarding which this application/appeal is being filed is not pending before any court of law or any other authority or any other tribunal.

**8. PARTICULARS OF THE BANK DRAFT IN RESPECT OF THE FEE IN TERMS OF THE SUB RULE (1) OF RULE 37:**

- i. Amount :- 1000/-
- ii. Name of the bank on which drawn :-
- iii. Demand draft No. :-
- iv. Dated :- .....

**9. LIST OF ENCLOSURES:**

- i. Annexure-A- Application form
- ii. Annexure-B – Allotment letter and demand notice
- iii. Annexure- C – Attachment to the demand notice
- iv. Annexure- D – Copy of the demand notice dtd 05.05.2014 and the money receipt
- v. Annexure- E – Copy of the statement showing the demand notice and the payment schedule
- vi. Annexure- F – Letter of intimation dtd 24.06.2019 and the final invoice cum demand notice
- vii. Annexure- G – Mails as received for waiver of CMA charges
- viii. Annexure- - H – Agreement to Sub-lease dtd 16/07/2016
- ix. Annexure- I – Letter of intimation of June 2020 along with the copy of the letter for handing over the possession
- x. Annexure- J – Copy of the Police Complaint dtd 28/06/2020
- xi. Annexure- K - Copy of the Police Complaint dtd 21/11/2019.

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*Uman - fuf*

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Verification

I, Vikram Kumar Saraf son of Sri Dinesh Kumar Saraf, aged about 42 years, by faith Hindu, by occupation - Business, working for gain at 56 Metcalfe Street, 3<sup>rd</sup> Floor, Room No. 3H, Kolkata - 700 013 being the duly authorized director of Adhrit Commercial Private Limited, the complainant herein do hereby verify that the contents of paragraph No. 1 to 7 and the respective sub-paragraphs are true to my personal knowledge and belief and that I have not suppressed any material fact.

Place :- *Kolkata*

*Vikram K Saraf*

Signature of the Complainant

Date: *05/11/2020*

*Identified by me*  
*[Signature]*

**ADHRIT COMMERCIAL PRIVATE LIMITED**

**CERTIFIED TRUE COPY OF THE RESOLUTION PASSED AT THE MEETING OF THE BOARD OF DIRECTORS OF ADHRIT COMMERCIAL PRIVATE LIMITED HELD AT THE REGISTERED OFFICE OF THE COMPANY 56, METCALFE STREET, 3<sup>RD</sup> FLOOR, ROOM NO. 3H, KOLKATA - 700 013 ON MONDAY, 2<sup>ND</sup> NOVEMBER, 2020 AT 11:00 A.M.**

**“RESOLVED THAT** for the purpose of realisation of interest on delayed completion of construction and delay in handover of the possession of the flat/unit by EMAMI Realty Ltd for the flat/unit booked in the project EMAMI CITY at 2, Jessore Road, Kolkata - 700 028 the consent of the Board of Directors of the Company be and hereby accorded to file complaint and initiate proceedings against EMAMI Realty Ltd under West Bengal Housing Industry Regulation Act, 2017 and Mr. Vikram Kumar Saraf, Director of the Company hereby authorized to take all necessary action under the provisions of West Bengal Housing Industry Regulation Act, 2017 read with the Rules thereto including to institute proceedings by filing of application/petition/complaint, appeal and to submit, execute, sign and verify any application/petition/complaint, reply, re-joinder, affidavit-in-opposition, affidavit before the Authorities, competent court of law and/or any forum to appoint Solicitor, Advocate, pleader, authorised representative and to sign and execute power of attorney, resolution, vakalatnama, authorisation in this regard.

**RESOLVED FURTHER THAT** Mr. Vikram Kumar Saraf, Director be and is hereby further authorized to discharge the receipt of the payment, enter into any terms of settlement, out of court settlement, acknowledge the payment received, enter into any Memorandum of Understanding, engage any representative, professional, advocate, counsel, pleader and attorney in the above matter and to enter appearance and make submissions before any authority, Tribunal or any court, if necessary and depose and to do all such other things as may be necessary and expedient in the matter stated here-in-before.”

ADHRIT COMMERCIAL PVT. LTD.

*Asha Saraf*

DIRECTOR / AUTHORISED SIGNATORY

**CIN : U52190WB2011PTC159295**  
**E-MAIL : adhritcommercial@gmail.com**  
**CONTACT : 9830822136 / (033) 40603215**  
**PAN : AAJCA2592D**

**REGISTERED ADDRESS**  
**56, METCALFE STREET**  
**3D FLOOR, ROOM NO - 3H**  
**KOLKATA - 700013**

The West Bengal Housing Industry  
Regularity Authority

**VAKALATNAMA**

ADHRI COMMERCIAL PVT. LTD.  
Vishu n Roy  
DIRECTOR / AUTHORISED SIGNATORY

Complaint Case No. 000542 of 2020

ADHRI COMMERCIAL PVT. LTD.

Plaintiff  
Applicant  
Petitioner

**-Versus-**

EMAMI REALTY LTD

Defendant  
Respondent  
Opp. party

Vakalatnama on behalf of COMPLAINANT

Know all men by these presents that the Vakalatnama I/We appoint the Advocates noted below or any one of them as my/our lawful advocate or Advocates for filing the memorandum of appeal or petition in the above matter for appearing in, conducting and arguing the same for depositing or withdrawing any money in connection therewith for moving the court in any matter connected therewith, for preparing the paper-book in the case and for putting in papers, petitions, etc. on my/our behalf for filing taking back any documents for withdrawing suits or appeals or petitions with permission to institute fresh suits, etc. for signing and filing petitions of compromise in connection with the same matter and for taking copies of paper from the record and I/We further say that any act done by my/our said Advocate or Advocates or by any one of them after accepting this Vakalatnama, shall be considered as my/our own true and lawful act.

And I/We further hereby agree and undertake to pay the said Advocates his or their fees as settled and all others sums that may be necessary to carry out the requisitions of the Court and otherwise to enable the said Advocates to conduct the case properly. Failing which the said Advocates after notice to me/us will be at liberty to withdraw from the further conduct of the case.

IN WITNESS WHEREOF I/We sign and execute this vakalatnama, on this the 5<sup>th</sup> day of Nov. 2020

**Name of Advocates**

**JITENDRA PATNAIK**

1B, Old Post Office Street,

1<sup>st</sup> floor, Room No. 8,

Kolkata - 700 001

Mobile No. 9831079953

Email Id :- jpatnaikassociates@gmail.com

**ADHRIT COMMERCIAL PRIVATE LIMITED**

**CERTIFIED TRUE COPY OF THE RESOLUTION PASSED AT THE MEETING OF THE BOARD OF DIRECTORS OF ADHRIT COMMERCIAL PRIVATE LIMITED HELD AT THE REGISTERED OFFICE OF THE COMPANY 56, METCALFE STREET, 3<sup>RD</sup> FLOOR, ROOM NO. 3H, KOLKATA - 700 013 ON MONDAY, 2<sup>ND</sup> NOVEMBER, 2020 AT 11:00 A.M.**

**“RESOLVED THAT** for the purpose of realisation of interest on delayed completion of construction and compensation for delay in handover of the possession of the flat/unit by EMAMI Realty Ltd for the flat/unit booked in the project EMAMI CITY at 2, Jessore Road, Kolkata - 700 028, Mr. Jitendra Patnaik, Advocate, having his office at Room No.8, 1st Floor, 1B, Old Post Office Street, Kolkata-700 001 be and is hereby authorised to enter appearance before Authorities under West Bengal Housing Industry Regulation Act, 2017, court of law or forum in the matter for and on behalf of the Company, and to do and/or to take all such necessary steps in signing, verifying and filing of application, petition, affidavits and execute any other necessary papers or documents before the aforesaid Authority or Tribunal in connection with proposed proceedings and to do all such acts, deeds, matters and things as may be necessary and expedient in the matter stated here-in-before.”

ADHRIT COMMERCIAL PVT. LTD.

  
DIRECTOR / AUTHORISED SIGNATORY

*Accepted*  
  
*Advocate*

**CIN : U52190WB2011PTC159295**  
**E - MAIL : adhritcommercial@gmail.com**  
**CONTACT : 9830822136 / (033) 40603215**  
**PAN : AAJCA2592D**

**REGISTERED ADDRESS**  
**56, METCALFE STREET**  
**3D FLOOR, ROOM NO - 3H**  
**KOLKATA - 700013**