

**IN THE HON'BLE WEST BENGAL HOUSING INDUSTRY
REGULATORY AUTHORITY**

CALCUTTA GREENS COMMERCIAL COMPLEX, FIRST
FLOOR, 1050/2, SURVEY PARK, KOLKATA-700 075

COMPLAINT CASE NO.COM000497 OF 2020

In the matter of :

A complaint under Section 31
of the West Bengal Housing
Industry Regulatory Authority
Act, 2017

AND

In the matter of :

Non Refund of Booking amount
of Rs.4,00,000.00 and Service
Charge of Rs.1,00,000.00
against non handover/
possession of 690 Sq.Ft. Flat
with Car Parking Space at
"Klinton Towers".

AND

In the matter of :

Rule 36 of the West Bengal
Housing Industry Regulatory
Authority Rules, 2018

AND**In the matter of :**

MODASSIR JAWAID of
Greenfield City, Block No.24,
Flat No.9A, E3-398, Joth
Shibrampur Road, Post Office
& Police Station: Maheshtala,
Kolkata- 700 141, holding
PAN: AKEPJ7023N under the
Income Tax Act, 1961.

...COMPLAINANT/PETITIONER**Versus**

1. **CANCUN CONSTRUCTIONS**
a Partnership Firm having its
Office at Salua Roy Para, Post
Office: R. Gopalpur, Police
Station: Airport, Kolkata-700
136, District 24 Parganas

(North), West Bengal and
Correspondence Office at PS
IXL Building, Rajarhat, Chinar
Park, New Town Road, Unit
No.505, 5th Floor, Kolkata-
700136, West Bengal holding
PAN: AAIFC1661K under the
Income Tax Act, 1961
represented by its Partner –
Debasish Biswas.

2. **SRI.DEBASIS BISWAS**, son
of Sri.Sadhan Chandra Biswas
permanently residing at
Bajetaraf, Post Office:
Sikharpur, Police Station:
Rajarhat, District. 24 Parganas
(North), West Bengal and
presently residing at Salua Roy
Para, Post Office: R. Gopalpur,
Police Station: Airport, Kolkata
– 700 136 holding PAN:

AJHPB3184C under the
Income Tax Act, 1961.

3. BON MARQUE PVT. LTD.,
a Limited Company registered
under the Companies Act,
1956 having its *Corporate*
Office at 306, 3rd Floor, PS IXL,
Block-‘A’, Atghora, New Town,
Kolkata-700 136 and *Present*
Office at North Building, Astra
Tower, Room No.706, 7th Floor,
Action Area – IIC, Police
Station: Rajarhat, Major
Arterial Road (North Extension)
Kolkata-700 135.

... **RESPONDENTS**

To,

***The Hon’ble Chairman of the West Bengal Housing
Industry Regulatory Authority and His Companion
Members of the said Hon’ble Authority.***

The humble petition of the
above named *complainant/
petitioner* most respectfully

SHEWETH:

1. That, the *Petitioner/Complainant* **MODASSAIR JAWAID** (PAN: AKEPJ7023N) son of Late Jawaid Yusuf, by faith: Islam, by occupation: Service, by Nationality: Indian, residing at Greenfield City, Block No.24, Flat No.9A, E3-398, Joth Shibrampur Road, Post Office & Police Station: Maheshtala, Kolkata-700 141; is a **Purchaser** of a 690 Sq.Ft. (Super Built Area) Flat No.'B' consisting of *Two* Bed Rooms, *One* Drawing-cum-Dining, *One* Kitchen, *Two* Toilets along with *One* Covered Car Parking Space No.KP-6 on the First Floor of "Klinton Tower" as per the Agreement for Sale dated: 01.12.2018.
2. That, the *Respondent No.1* **CANCUN CONSTRUCTIONS** (PAN: AAIFC1661K) a Partnership Firm represented by its Partner Sri.Debasis Biswas (PAN: AJHPB3184C) (**although wrongly mentioned as Proprietorship Concern**); is a **Developer** of "Klinton Tower" as per the Agreement for Sale dated: 01.12.2018.

3. That, the *Respondent No.2* **SRI.DEBASIS BISWAS** (PAN: AJHPB3184C) son of Sri. Sadhan Chandra Biswas *permanently* residing at Bajetaraf, Post Office: Sikharpur, Police Station: Rajarhat, District. 24 Parganas (North), West Bengal and *presently* residing at Salua Roy Para, Post Office: R. Gopalpur, Police Station: Airport, Kolkata – 700 136; is a **Constituted Attorney of Land Owner/Vendor** Smt.Suparna Mondal (PAN: AMDPM2365F) wife of Sri.Subrata Mondal, by faith Hindu, by occupation: Housewife, by Nationality: Indian, residing at Jatragachi, Post Office: Ghuni, Police Station: New Town, District: 24 Parganas (North), West Bengal as per the Agreement for Sale dated: 01.12.2018.
4. That, the *Respondent No.3* **BON MARQUE PVT. LTD.**, a Limited Company registered under the Companies Act, 1956 having its *Corporate Office* at 306, 3rd Floor, PS IXL, Block-‘A’, Atghora, New Town, Kolkata-700 136 and *Present Office* at North Building, Astra Tower, Room No.706, 7th Floor, Action Area – IIC, Police Station: Rajarhat, Major Arterial Road (North Extension) Kolkata-700 135; is a **Real Estate Marketing Agent** of the *Respondent No.1* for selling the newly constructed flats in “Klinton Tower”.

5. That, an **Agreement for Sale** has been executed on **01.12.2018** by and between the *Petitioner/Complainant* and *Respondent No.1* and *2* in respect of the said **2BHK Flat No.'B'** and **Covered Car Parking Space No.KP-6** at **"Klinton Tower"**.
6. That, in the year 2018, the *Petitioner/Complainant* was looking for an immediate moving ready residential property at New Town and suddenly connected through a telephone call with the *Respondent No.3* of the said property, the telephone number of which was received by the *Petitioner/Complainant* vide a marketing/sales promotional SMS. After initial telephonic discussions by and between the *Petitioner/Complainant* and *Respondent No.3*, the *Petitioner/Complainant* went to the office of the *Respondent No.3* for seeing various property options including the captioned property.
7. That, after being convinced and satisfied with the immediate handover of a vacate peaceful possession in habitable condition within seven months from the date of execution of Agreement for Sale, the *Petitioner/Complainant* shortlisted and selected a 2BHK Flat No.'B' in "Klinton Tower" at the First Floor with a Cover Car

Parking Space No.KP-6 and accordingly booked by filling the Application Form on 13.10.2018 with immediate NEFT of Service Charge amounting to Rs.1,00,000.00 in favour of the *Respondent No.3* on 13.10.2018 vide Cheque No.955489, drawn on State Bank of India, "Samriddhi Bhawan" Kolkata High Court SPB Branch, 1, Strand Road, Kolkata-700 001. The Respondent No.3 also issued a Money Receipt No.048, dated: 13.10.2018 for the same. *(Copy of such Booking Application Form, Cheque, NEFT Application Form and Money Receipt is annexed hereto and collectively marked as **Annexure-'A'** and **'B'** respectively).*

8. That, it is pertinent to mentioned that at the time of booking the *Petitioner/Complainant* were told, the property is owned by the *Respondent No.1* and the *Respondent No.3* being an authorised Real Estate Marketing Agent is fully authorised to accept the Service Charges against the property offered and/or sold by *Respondent No.1* who actually have a sharing Agreement with Land Owner/Vendor and the said flat is its ownership.

9. That, apart from the payment as mentioned in Paragraph No.7, the *Petitioner/Complainant* has directly paid Rs.4,00,000.00 in favour of *Respondent No.1* vide Account Payee Cheque No.955488, dated: 27.10.2018, drawn on State Bank of India, "Samriddhi Bhawan" Kolkata High Court SPB Branch, 1,Strand Road, Kolkata-700 001 as per the demand for executing Agreement of Sale. *(Copy of such Cheque is annexed hereto and marked as **Annexure-‘C’**).*
10. That, thereafter, the **Agreement for Sale** was executed on **01.12.2018** by and between the *Petitioner/Complainant* and *Respondent No.1* and 2 with a consideration of Rs. 4,00,000.00 out of the total consideration of Rs.25,00,000.00. *(Copy of such Agreement for Sale is annexed hereto and marked as **Annexure-‘D’**).*
11. That, in the first week of March 2019, upon curiosity the *Petitioner/Complainant* has suddenly decided to drop in the said property while passing through the spot to see the progress of the work as promised by the *Respondent No.1* and 3. Accordingly the *Petitioner/Complainant* visited the property against which an Agreement for Sale

was executed just before three months. Soon after visit, the *Petitioner/Complainant* was very astonished with mental shock to see that someone is residing in the same flat which is fully furnished with interior work. On cross checking by the *Petitioner/Complainant*, the neighbours of the building i.e. "Klinton Tower" confirmed, the said flat has been occupied since last two months by those people and they living with due permission of the *Respondent No.1*.

12. That, being spellbound and flabbergasted the *Petitioner/Complainant* immediately called the *Respondent No.1, 2* and 3 from the site and confronted about the possibility of somebody's occupation in the same flat for which the *Respondent No.1* and 2 has already signed an Agreement for Sale just three months back i.e. on 01.12.2018 and *Respondent No.3* taken Service Charge just five months back i.e. on 13.10.2018.

13. That, the *Respondent No.1, 2* and 3 pretended to be unknown about this which was totally fabricated because it was not possible for anybody to occupy the flat, take possession, completed the interior work and living there for last two months without their knowledge.

The *Petitioner/ Complainant* then immediately called for a meeting with the *Respondent No.1 and 2* who has signed the agreement in the capacity of a Developer cum Constituent Attorney of Landowner/Vendor and also with *Respondent No.3* who has taken the Service Charge as a Real Estate Marketing Agent.

14. That, after few days during meeting the *Respondent No.1, 2 and 3* told the *Petitioner/Complainant*, there is a legal tussle going on due to some payment related issues which will be resolved but may take some time.

15. That, the *Petitioner/Complainant* being cheated by the *Respondent No.1, 2 and 3*, asked them to return the money of Rs.(1,00,000.00+4,00,000.00)=Rs.5,00,000.00 with immediate effect. In turn the *Respondent No.3* proposed via email dated: 13.03.2019 to shift the booking in their other project namely "Orange Nest". In reply, the *Petitioner/Complainant* via email dated: 23.04.2019 clearly refused the shifting proposal and demanded the entire Booking Money and Service Charges back. (Copy of such Emails are annexed hereto and collectively marked as **Annexure-'E'**).

16. That, since then, the *Petitioner/Complainant* have followed up the *Respondent No.1, 2 and 3* for the money back with countless number of times over telephone calls, sms, emails and by physically visiting their office in New town which is almost 25 Kilometres from the place of the *Petitioner/Complainant*. In each and every occasion the *Petitioner/Complainant* was assured by the *Respondent No.1, 2 and 3* about the money return within a short span after overcoming the ongoing financial crunches. *(Copy of such Emails are annexed hereto and collectively marked as Annexure-‘F’)*

17. That, after following up for almost six months, the *Respondent No.2* finally given two cheques @Rs.2,00,000.00 each bearing no(s).460393 and 460394, dated: 10.11.2019 and 30.12.2019 respectively. For the balance amount of Rs.1,00,000.00, the *Petitioner /Complainant* was directed to follow up with the *Respondent No.3*. Accordingly, the *Petitioner /Complainant* followed up with countless number of times over telephone calls, sms, emails and by physically visiting their office in New town which is almost 25 Kilometres from the place of the *Petitioner/Complainant*. But, neither get any response against such

emails and nor any positive reply till date. (*Copy of such Cheques and Emails are annexed hereto and collectively marked as **Annexure-‘G’** and **‘H’***).

18. That, on 14.11.2019 and 18.01.2020 the *Petitioner/Complainant* received Return Memo Report of Cheques with a remark **Insufficient Fund** from the State Bank of India, High Court Specialized Personal Banking Branch where the account of the *Petitioner/Complainant* is situated which were issued by the *Respondent No.1* after so many requests and persuasions. (*Copy of such Return Memo Reports annexed hereto and collectively marked as **Annexure-‘I’***).

G R O U N D S

- I. FOR THAT, the instant case is a clear evident of cheating the *Petitioner/Complainant* with an ulterior motive to misappropriate for which *Petitioner/Complainant* is under tremendous stress and mental agony. Practically the *Petitioner/Complainant* is under trauma and spending sleepless nights by thinking about the money refund. The *Petitioner/Complainant* belongs to a simple middle class family for which the amount of Rs.5,00,000.00 is huge and for which the *Petitioner/Complainant* taken personal loan from his Employer's Co-Operative Bank by payment of EMI and by utilized all his savings. Therefore, the *Petitioner/Complainant* have requested all the *Respondents* with folded hands and even cried but, they are simply and shamelessly trying to digest the hardworking money of the *Petitioner/Complainant*. Moreover, the *Petitioner/Complainant* is bearing huge opportunity cost because of this for not been able to book another property due to non refund of Rs.5,00,000.00.
- II. FOR THAT, this is also a clear evident of fraud by the *Respondent No.1, 2 and 3* as they dealing with the

property which was never under their possession and control at any point of time but, set the *Petitioner/Complainant* up with immaculate planning and made believe that the said property belonged to the *Respondents*. This kind of pre-planned activities and expertise indicates that they are a big gang and have done this fraud several times by cheating number of clients.

III. FOR THAT, it is pertinent to mention, the *Respondent No.1* has again got the Registration Certificate from the West Bengal Housing Industry Authority for it's another new project *Cancun Promise* at Vill: Mahamadpur, New Town, District: 24 Parganas (North), West Bengal – 700 157 vide Registration No.HIRA/P/NOR/2019/000417, dated: 10.05.2019. (*Copy of such Registration Certificate is annexed hereto and marked as **Annexure-‘J’***).

IV. FOR THAT, unless the Hon'ble West Bengal Housing Industry Regularity Authority is pleased to interfere with the fraudulent activities of the *Respondent No.1, 2 and 3*, the *Petitioner/Complainant* being a middle class individual shall suffer prejudice, irreparable loss and injury.

V. FOR THAT, your *Petitioner/Complainant* states that your petitioner has not moved any application either before the Hon'ble West Bengal Housing Industry Regularity Authority or any other Court on the self-same fact and/or cause of action which is the subject-matter of the present complaint.

VI. FOR THAT, your petitioner states that there is no other adequate and/or efficacious alternative remedy and the remedies sought for in this *Petition/Complaint* will be full, adequate and proper.

VII. FOR THAT, for the purpose of jurisdiction and filing fees, the records are lying and the *Respondents* are working for gain in West Bengal within the Jurisdiction of this Hon'ble Authority and as such this Hon'ble Authority has jurisdiction to entertain. The Filing Fees of Rs.1,000.00 has also paid online on 15.09.2020.

VIII. FOR THAT, the cause of action for this suit arose on and from 01.12.2018, when the parties executed the Agreement for Sale within the jurisdiction of this Learned Authority. Therefore, the *Petition/Complaint* has been filed in time.

IX. FOR THAT, this application has been made *bona fide* and in the interest of justice.

In the circumstances aforesaid, the applicant most humbly prays before ***Your Honour*** for:

a) An order for immediate Refund of the Booking amount for Rs.4,00,000.00 plus Interest;

b) An order for immediate Refund of Service Charge amount of Rs.1,00,000.00 plus Interest;

c) An order for Compensation of Rs. 5,00,000.00;

d) An order for exemplary Punishment;

e) An order directing the *Respondents* to certify and forthwith transmit all the relevant records to the Hon'ble Authority;

f) An order awarding cost of and/or incidental to this Petition/Complaint against the *Respondents*;

g) Such other order or orders as the Hon'ble Authority may deem fit and proper.

And for this act of kindness the applicant shall as in duty bound forever pray.

By the pen of

Moderin Jawaid

(Full Signature of the *Petitioner/Complainant*)

**IN THE HON'BLE WEST
BENGAL HOUSING
INDUSTRY REGULATORY
AUTHORITY, COMPLAINT
CASE NO. COM000497.**

In the matter of :

A complaint u/s 31 of the West Bengal Housing Industry Regulatory Authority Act, 2017; read with Rule 36 of the West Bengal Housing Industry Regulatory Authority Rules, 2018.

AND

In the matter of :

MODASSIR JAWAID

...COMPLAINANT

Versus

**CANCUN CONSTRUCTIONS &
2 OTHERS.**

....RESPONDENTS

COMPLAINT PETITION

CHANDRA LEGAL & TAX
CONSULTANTS of "Archana
Bhawan" 8/B, Ramanath
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IN THE HON'BLE WEST BENGAL HOUSING INDUSTRY
REGULATORY AUTHORITY

CALCUTTA GREENS COMMERCIAL COMPLEX, FIRST
FLOOR, 1050/2, SURVEY PARK, KOLKATA-700 075

COMPLAINT CASE NO.COM000497 OF 2020

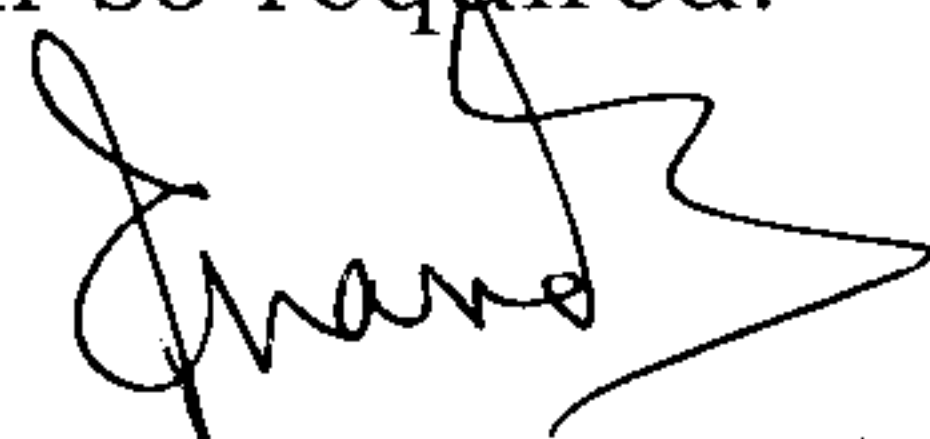
MODASSIR JAWAID

– Vs. –

CANCUN CONSTRUCTIONS & 2 OTHERS.

I Modassir Jawaid (*Complainant*), son of Late Jawaid Yusuf of Greenfield City, Block No.24, Flat No.9A, E3-398, J.S Road, P.O & P.S: Maheshtala, Kolkata-700 141, do hereby authorize SRI.SAURAV CHANDRA on my behalf to attend and represent me before this Hon'ble Authority in the above mentioned complaint case and as may be necessary or expedient to give statement or any submissions on my behalf in relation to my personal capacity.

SRI.SAURAV CHANDRA is also authorized to represent the undersigned in any of the legal matters if so required.



Signature of Sri.Saurav Chandra

Modassir Jawaid

(Modassir Jawaid)

Attested

Modassir Jawaid
15.09.2020

(Modassir Jawaid)