

FORM 'J'  
See rule 36(1)

COMPLAINT TO AUTHORITY  
Complaint under section 31 of the Act

For use of Authority(s) office :

Date of filing : 7/19/2019

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

Complaint No. : COM000100

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

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

IN THE HOUSING INDUSTRY REGULATORY AUTHORITIES OFFICE

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

Between

Arun Kumar Dokania Complainant(s)

And

Bengal Unitech Universal Infrastructure Pvt Ltd Respondent(s)

Details of claim :

1. Particulars of the complainant(s) :

(i) Name of the complainant : Arun Kumar Dokania

(ii) Address of the existing office / residence of the complainant : IB-27, Salt lake City Sector-3, North 24-Parganas, Bidhannagar Municipal Corporation, Bidhannagar (South), 700106

(iii) Address of the service of all notice : Arun Kumar Dokania  
IB-27, Salt lake City, Sector-III, Kolkata-700106

2. Particulars of the respondents:

(i) Name(s) of the respondent : Bengal Unitech Universal Infrastructure Pvt Ltd

(ii) Office address of the respondent : Uniworld City, Horizons, Tower-7, Unit No.001& 002, Action Area-III, Main Arterial Road, New Town, Kolkata-700 156

(iii) Address for service of all notices : Bengal Unitech Universal Infrastructure Pvt Ltd, Uniworld City, Horizons, Tower-7, Unit No.001& 002, Action Area-III, Main Arterial Road, New Town, Kolkata-700 156

3. Jurisdiction of the Authority : Kolkata, WB

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

(A) Booked a Flat in Project namely Uniworld City – Harmony Kolkata , promoted by Respondent, measuring 1574 sq. ft. super area being Apartment No. 1001 on the 10th Floor, Tower 7 at Uniworld City – Harmony Kolkata with one covered car parking space at Action Area III, New Town, Kolkata to be built and constructed at or upon Phase – VI of about 100 acres of land allotted by WBHIDCO, for a total consideration of Rs. 75,99,029/- plus applicable taxes, payable in Instalments vide Agreement dated 12/11/2012 with agreement for possession on 31/03/2016 but no possession given till date. (B) As per demand from time to time by respondent, the Complainant paid Rs Rs.49,24,902/ -(last Demand made on 10/12/2015) till date. (C) The Respondent vide Assignment Agreement & Declaration & Undertaking both dated 5th May, 2017 assigned/mortgaged the Project land to one JM Financial Assets Reconstruction Company Limited to secure the finance taken by a third party i.e. Unitech Ltd in violation Article-5 of said Agreement; Companies Act; Section 15 of HIRA Act, IPC & CPC (D) That in the meantime the Hon'ble Supreme Court vide its order dated 23/10/ 2017 in SLP (CRL.) Nos.5978-5979/2017 instructed Mr. Pawan Shree Agarwal, Amicus Curiae, to enable Unitech buyers (including the respondent) to exercise their option of refund or possession on the portal created for the purpose. In response thereof the Complainants recorded it options claiming refund of the part payment made along with interest at the rate of 18% per annum compounded quarterly and compensation of Rs. 5/- per square per month of delay vide affidavit dated 18/07/2018 (E) That the Respondent in gross violation of section 3 (1) of the HIRA Act did not get themselves registered their ongoing project within three months from the date of commencement of the Hira Act and thereafter, inviting penalty under section 59 of the said Act.

FORM 'J'  
See rule 36(1)

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 give possession of the flat booked by the Complainant otherwise to give possession of similar flat acceptable to Complainant immediately;

b.In case the respondent is not able comply with the relief in (a), the Complainant wish to withdraw from the project and seek refund/return the amounts Rs.49,24,902/- received by the respondent in instalments along with Interest @18% per annum from the date of payments made from time to time till the date of return/refund of the amount and along with compensation as provided under Clause 5(c)(ii) of the Agreement for Sale dated 22/11/2012 and as required U/S 18(1) of the Act because the respondent:

(i)Failed to complete and give possession of the flat within 31/03/2016 in terms of Article 5, Clause 5(a)(i) of the Agreement for Sale dated 22/11/2012;

(ii)The Respondent have indulged themselves in breach of Agreement of sale by assignment of the whole of land appurtenant to the project by mortgaging the same in respect of finance taken by a third party in breach of Article -7 of the Agreement for Sale dated 22/11/2012 and section 15 of the Act;

c.Compensation for to the tune of Rs. 10,00,000/- for harassment and mental agony and for financial loss incurred;

d.To pass appropriate order declaring that the Assignment Agreement dated 5th May, 2017 for assignment of Project land by way of mortgage by respondent in favour of JM Financial Assets Reconstruction Company Limited, as illegal and void because (i) Such mortgage of project land is in violation of Article -7 of the Agreement for Sale dated 22/11/2012 and section 15 of the Act ;

e.To take appropriate action(s) against the respondent, its Directors and officers under (i) section 59 for violation of section 3 of the Act, (ii) section 61 for assignment for violation of section 15 of the Act by assigning the project land by way of mortgage to secure finance taken by third party.

f.And to pass further order or orders as the authority may deem fit and proper

(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 restrain respondent and JM Financial Assets Reconstruction Company Limited from invoking the provisions of Assignment Agreement dated 5th May, 2017 till the disposal of this complaint because it is apprehended that JM Financial Assets Reconstruction Company Limited may invoke realization of finance taken by third party and also because such mortgage of project land is in violation of Article -7 of the Agreement for Sale dated 22/11/2012 and section 15 of the Act ;

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

a.To restrain respondent and JM Financial Assets Reconstruction Company Limited from invoking the provisions of Assignment Agreement dated 5th May, 2017 till the disposal of this complaint because it is apprehended that JM Financial Assets Reconstruction Company Limited may invoke realization of finance taken by third party and also because such mortgage of project land is in violation of Article -7 of the Agreement for Sale dated 22/11/2012 and section 15 of the Act ;

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

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

It is to declare that there is no pending Complaint

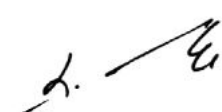
The complainant further declares that the matter regarding which this complaint has been made is not pending before any court of law or any other authority or any other tribunal(s).

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

9. List of enclosures :



**FORM 'J'**  
See rule 36(1)

**COMPLAINT TO AUTHORITY**  
Complaint under section 31 of the Act

(Specify the details of enclosures with the complaint)

- a. Allotment Letter dated 12/11/2012 of the flat; receipt of the booking amount vide Receipt No 003948 dated 12/11/2012 and Agreement To Sell dated 22/11/2012 vide ANNEXURE 'A'
- b. Statement of Account confirming the payment of said sum of Rs 49,24,902/- by the complainants to the respondent is annexed hereto and marked as ANNEXURE 'B'
- c. Letters dated 23rd February and 20th March, 2017 and email dated 23rd February, 2017 are annexed and collectively marked ANNEXURE 'C'
- d. Letters dated 21/08/2017 and 12/01/2018 and emails dated 02/09/2017 and 04/09/2017 are annexed herein and collectively marked ANNEXURE 'D'
- e. The photocopies of the said letters dated 16/04/2018, 02/05/2018 and 08/05/2018 along with Copies of Assignment Agreement dated 05/05/2017 executed between the OP Developer and one JM Financial Ass

**Verification**

I **Arun Kumar Dokania** son / daughter of **Late Satyanarayan Dokania** 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 : *Kolkata*

Date : *19/07/2019*

  
Signature of the applicant(s)