

COMPLAINT TO AUTHORITY
Complaint under section 31 of the Act

For use of Authority(s) office

Date of filing : 8/8/2020

Date of receipt by post : _____

Complaint No : COM000461

Signature _____

Authorized Officer : _____

IN THE HOUSING INDUSTRY REGULATORY AUTHORITIES OFFICE

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

Between

Smt. Tamali Mandal Complainant(s)

And

Shri Ajoy Nag and Shri Gautam Paul Respondent(s)

Details of claim :

1 Particulars of the complainant(s)

(i) Name of the complainant : Smt. Tamali Mandal

(ii) Address of the existing office / residence of the complainant : Flat No.401, Rainbow Apartment,

Nayabaaz Press Quarter Bazaar, Santragachi, Howrah, Domjur, Jagacha, 711112

(iii) Address of the service of all notice : Flat No. 401, Rainbow Apartment, Near Paltu Apartment, Nayabaaz, Press Quarter Bazaar, Santragachi, PS- Jagacha, Howrah-711112

2 Particulars of the respondents

(i) Name(s) of the respondent : Shri Ajoy Nag and Shri Gautam Paul

(ii) Office address of the respondent : Shri Ajoy Nag, M/s. Rainbow Constructions, Paltu Apartment,

Nayabaaz, Press Quarter Bazaar, Santragachi, PS- Jagacha, Howrah-711112

(iii) Address for service of all notices : Respondent No 1

Shri Ajoy Nag, S/o. Late Ajit Nag, Jagacha GIP Colony, P.S. - Jagacha, Dist- Howrah, Pin-711112

Respondent No.2

Shri Gautam Paul, S/o. Shri Sankar Paul, Behive Garden, P.S - Belgharia, Kolkata-700 056

3 Jurisdiction of the Authority : West Bengal

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

1. I do hereby solemnly declare that I am a flat owner of Rainbow Apartment (under M/s. Rainbow Constructions) by virtue of enjoying ownership.

2. That the construction of the said project for titled name Rainbow Apartment (under M/s. Rainbow Constructions) was commenced based on the Sanctioned Building Plan issued by Howrah Zilla Parishad, vide Memo No. 134/ EP dated 01.07.2011 to the Developers namely Shri Ajoy Nag Responded No.1 and Shri Gautam Paul Responded No.2 for construction of Rainbow Apartment on the plot bearing R.S.Dag No.700, L.R.Dag No.511 under R.S. Khatian No 194, L.R.Khatian No.3260 & 3522, J.L.No. 5 within Mouza-Dharsha, P.S. Jagacha, District-Howrah within the limit of Bankra 3 No. Gram Panchayat,

3. That the said sanctioned plan was valid upto 29.06.2016. Therefore, the construction and development of the aforesaid project were required to complete before 29.06.2016 i.e. within the validity period of the sanctioned plan;

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SQM from ground floor to 4th floor. Proposed total open area is 132.15 SQM.

- 5 That as per the sanctioned plan proposed length and width of the covered area are more or less 24 meters and 11 meters respectively. Whereas each floor area from 1st floor to 4th floor has been increased by more or less 100 SQM over and above the sanctioned floor area 264.32 SQM each due to extension of floor length by two meters towards east and north and towards south and west by one meter.
- 6 That as a result of this extension of the floor covered area, the floor has become more or less 364 SQM in area instead of 264 SQM that is in other way there is an increment of each floor covered area by 1076 square feet. Therefore, including 20% Super Build up total 5165 square feet area has been sold out and earned an extra amount of more or less Rs 1.25 Crore.
- 7 That as a result of this extension of covered floor area, floor load has been increased by about 38% over and above the sanctioned plan and the same has been developed on the same structural specification as mentioned in the sanctioned plan issued by Howrah Zilla Parishad, vide Memo No. 134/ EP dated 01.07.2011 which was valid upto 29.06.2016.
- 8 That the Staff Guard Room which was attached to Lift as per the sanctioned plan has also been sold out and earned more or less an amount of Rs. 6 lakhs extra. Extra toilet has been developed on the extended part in most of the apartments over and above the sanctioned plan and earned about Rs. 5 lakhs extra money by way of selling each toilet against Rs. 26 to 35 thousand.
- 9 That drainage system around the building has not been properly done. Common place in front of the entrance has been developed keeping two feet down from the entire ground level. As a result, water accumulated there after a heavy rainfall and it remains for long hours. It needs to be developed at the same level of the ground level.
- 10 That in the event of rectification of the ground level evenly, height of the only single entrance and exit gate would become almost at 4 feet and it could not be used for the purpose of entrance due to having very short height. Therefore, a new entrance should be made and the present entrance could be used as an emergency exit gate.
- 11 That the Agreement for Sale and Deed of Conveyance in respect of the owners of the said apartment was made individually as per the Sanctioned Building Plan issued by Howrah Zilla Parishad, vide Memo No. 134/ EP dated 01.07.2011 which was valid upto 29.06.2016.
- 12 That the Developers entered into an Agreement for Sale with every purchaser followed by Deed of Conveyance from time to time and sold flat before completion of the entire aforesaid project;
- 13 That the Deed of Conveyance made between the owners of the apartments and the developers and got registered time to time individually as applicable, in the office of the District Sub-Registrar of Howrah, District: Howrah, Government of West Bengal. As per the Third Schedule of the aforesaid Deed of Conveyance referred to Common parts and Common portions, (i) Water Pump Room, (ii) Transformer Room and (iii) Common Generator Room/Space are also essential Common parts and portions of said project along with other common parts and portions. However, the said common facilities as mentioned above have not been provided to the allottees till date as per the Deed of Conveyance in spite of spending time more or less 4 years from the date of expiry of the validity of the Sanctioned Building Plan. Therefore, both the Respondent No. 1 and Respondent No. 2 hereinafter referred to as Developers violated the rules and regulations mentioned in the sub-sections (1),(2) and (3) of the Section 14 under the West Bengal Housing Industry Regulation Act, 2017.
- 14 That there is no provision of emergency exit way in the building. Entire space of the Ground floor has been utilised for 4 apartments and for closed car parking. In the event of any incident caused due to setting fire or any other incident, allottees will not be able to come out without the entrance of the building. Further, work of top roof of the building has not yet been completed. Outlet drainage system has not been properly developed. Interior common road remains fully flooded with water after a heavy rainfall due to having no proper outlet drainage system. Even construction of the basement of the lift at the ground floor has been made with so poor materials, ground water accumulated to the basement area and the common lift becomes frequently on unoperational mode. Moreover, eastern and northern sides of the building from first floor has been extended more or less upto 8 feet towards east and north wherefrom structural construction has been done with heavy loads without giving any support of pillars from the land. As a result, the building has been tilted or inclined towards the land having structural defects. Building

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15. That all the matters were brought to the notice of the developers time to time. However, no further action has been taken from their side and always remained indifferent to this matter whenever they were requested to carry out the work for rectification on several occasions.

16. That all the insurances notified by the State Government relating to this project must have been obtained by the Developers / Promoters as per the applicable rules and regulations but the said insurances have not yet been handed over or transferred to the association of the allottees. Further, no documents relating to insurances have also been handed over to the association of allottees. Therefore, the Respondents are absolutely responsible for violation of the rules and regulations mentioned in the sub-sections (1), (3) and (4) of the Section 16 under the West Bengal Housing Industry Regulation Act, 2017.

17. That the Developers have not provided or handed over the completion certificate, sanctioned plan including all documents pertaining to the building and also, the physical possession of the common areas to the association of allottees till date. Therefore, the Respondents are absolutely responsible for violation of the rules and regulations mentioned in the sub-sections (1) and (2) of the Section 17 under the West Bengal Housing Industry Regulation Act, 2017.

(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)
Relief sought for -

1. The entire building has been damaged due to structural defects in the construction. It cannot be rectified fully without reconstruction. However, since the matter is very sensitive and a cause of high life risk, it invites for the expertised advice of the appropriate authority designated for this job. Therefore, on the advice of the appropriate authority decision may be taken in a rightful way.

2. Respondents may be directed to refund the Extra amount of Rs. 1.36 Crore earned by them on account of selling additional 5165 square feet area over and above the sanctioned area as compensation proportionately amongst all the 24 owners on the basis of the proportionate share since all owners have incurred a gross loss due to entirely damage the building which cannot be rectified fully and also made a great loss of proposed common area for which they paid amount.

3. Since the developers have already sold out 5165 square feet more than their proposed covered area as mentioned in the sanctioned plan, they have no selling right on the remaining portion which has not been sold out till date. All the Flat owners are presently suffering and are also to be suffered for a long period keeping themselves in mental agony and entering themselves into a life risk. Further, the building is tilted to the eastern side towards the earth due to uneven distribution of total load and floor level has become lower at eastern side by more than one foot from the opposite side. As a result, water after the use of toilet and bathroom does not come out through the pipe. Therefore, developers may be directed not to sell the remaining part whatever it may be in the form of room or parking space. Direction may also be given to the developers to make arrangement for an alternative entrance through the garrage/parking space which remained vacant or unsold.

4. Two flats at the ground floor as mentioned above are available. Out of which one is having about 200 square feet and other is about 500 square feet. Developers may be directed to hand over the same to the Association for the purpose of Guard Room, Common Generator, Pump Room and Common utility.

5. Terrace/Top roof of the building is uneven and it is not properly finished. Respondents may be directed for its rectification properly.

6. Owners of the flats are not able to make mutation in absence of the Completion certificate and other necessary documents. Respondents may be directed to hand over Completion certificate along with all other documents pertaining to the Rainbow Apartment.

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

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Prayed for interim Order:-

1. Prayed for Order to Respondents for not withdrawal of money from their Bank Account till the final outcome of the case;
2. Prayed for Order to the Respondents for not selling remaining parking space and two flats at the ground floor till the final outcome of the case.

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

As per the Act as decided by the Hon'ble Authority. Reasons have been mentioned at column 4 above in the facts of the complaint.

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

7. Complainant not pending with any other court, etc:
I do hereby declare 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.

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:
(Specify the details of enclosures with the complaint)

Copy of sanctioned plan

Photos of different positions of the building

Verification

I **Smt. Tamali Mandal** son / daughter of **W/o. Shri Subrata Mandal** 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 : *Santragachi*

Date : *8/8/2020*

Tamali Mandal.
Signature of the applicant(s)