

Facts of the case :

- a) By Allotment Letter dated 16.04.2014 the respondent allotted the Flat Ground B having super built up area of 1475 sq. ft. with private garden of 470 sq. ft. therewith in Barbet, Ideal Aquaview, Mahisbathan, P. S. Electronics Complex, Sector V, 24-Parganas North - 700 102 and one car parking space (hereinafter collectively referred to as the "said flat") in favour of the Applicants under Customer Code IAV-588 and agreed to sell and transfer the same in favour of the Applicants at the consideration of Rs. 87,90,526/-. A copy of the said allotment letter is annexed hereto and marked **Annexure "B"**.
- b) Though the letter of allotment stated that allotment of the said flat was subject to terms and conditions mentioned in the standard agreement for sale prepared by the respondent, but the copy thereof was not provided to the applicants at the time of issuance of the said allotment letter. The standard agreement dt 8th December 2014 was sent by the respondent to the applicant by email dated .27th February 2018. The applicant will crave leave to refer to the said standard agreement for sale, it required.
- c) Much later an agreement for sale was entered into by the respondent with the applicant for sale of the said flat which as appearing from the date put thereon by the respondent was dated 08.12.2014. The respondent did not provide a copy of the said agreement to the Mr at the time of execution thereof at the office of the respondent. A xerox copy of the said agreement was made over to the applicants only on 01.01.2020 when they visited the office of the respondent to collect a copy thereof upon coming to know of the said agreement by a letter dated 11.11.2019 of the respondent's Advocate annexed hereafter. A copy of the said agreement is annexed hereto and marked **Annexure "C"**.
- d) In terms of clause 2(i) of the Registration Certificate dt8-11-2018 the promoter/respondent was required to execute an agreement for sale with the applicant as provided in Annexure A. However in breach thereof the promoter did not enter into an agreement with the applicant as per the said Annexure A which is materilly different from the Agreement dt 8th December 2014 entered into by the Promoter with the applicamt

- e) In terms of the Clause 9.5 of the said Standard Agreement and also the said agreement for sale dated 08.12.2014 the respondent promised to complete the said flat within 31.12.2017.
- f) As per the demands made by the respondent the applicants have paid a total sum of Rs. 55,00,000/- to the respondent as per details below :

Payment details for Ideal Aqua View			
Receipt no	Date	Instrument date	Amount paid
2122	23-04-2014	23-04-2014	200000
2154	13-05-2014	13-05-2014	109270
2311	31-05-2014	29-05-2014	100000
2501	26-06-2014	26-06-2014	200000
2690	23-07-2014	23-07-2014	90000
2773	6/8/14	6/8/14	250000
2782	7/8/14	7/8/14	160000
3877	3/2/15	3/2/15	280000
4118	21-03-2015	21-03-2015	420000
4440	12/5/15	12/5/15	100000
4645	30-06-2015	30-06-2015	100000
4846	27-07-2015	27-07-2015	150000
5071	10/9/15	10/9/15	100000
5472	1/12/15	1/12/15	200000
5958	29-02-2016	29-02-2016	125000
6156	30-03-2016	30-03-2016	150000
6282	4/5/16	4/5/16	100000
6356	2/6/16	2/6/16	100000
6542	20-06-2016	30-06-2016	100000
6715	1/8/16	1/8/16	100000
6980	26-09-2016	26-09-2016	100000
7216	8/11/16	8/11/16	100000
7217	9/11/16	9/11/16	100000
7257	25-11-2016	25-11-2016	100000

7350	15-12-2016	15-12-2016	100000
7364	27-12-2016	17-12-2016	150000
7700	14-02-2017	14-02-2017	115730
8144	7/7/17	7/7/17	100000
8200	16-08-2017	16-08-2017	100000
8673	11/5/18	11/5/18	200000
8728	25-06-2018	25-06-2018	300000
8766	21-07-2018	21-07-2018	200000
127	28-01-2019	28-01-2019	100000
144	4/2/19	4/2/19	300000
152	19-02-2019	19-02-2019	300000
			5500000

- g) Out of the said amount of Rs. 55,00,000/- paid by the applicants the respondent has appropriated sum of Rs. 52,92,785/- towards the agreed sale consideration and the balance amount of Rs. 2,07,215/- has been appropriated by the respondent towards taxes. This position will be evident from the ledger account of the applicants for the period from 01.04.2014 to 19.02.2020 maintained by the respondent a copy whereof made over to the applicants is annexed hereto and marked **Annexure "D"**.
- h) By emails dated 09.12.2017 and 16.02.2018 the respondent informed the applicants that possession of the said flat would be given to the applicants in **September 2018**. However in response to the applicants email dated 20.03.2018, the respondent vide mail dated 21.03.2018 informed the applicants that possession of the flat would be given to the applicants only for the purpose of doing the work of fit out in **December 2018** without mentioning the date for handing over legal possession of the flat and execution of the deed of conveyance.
- i) By mail dt 30th August the respondents postponed the delivery date to March 2019. On enquiry it was clarified by mail dt 4th Sept 2018 that **March 2019** is the date for fit out only and final possession would be given 3 months later

j) The respondent further postponed the date of possession by emails dated 12.02.2019 and 04.06.2019 respectively whereby the respondent first assured to give possession of the flat in **June 2019** and later on extended the same till **March 2010**.

k) The mail dt 4th June 2019 of **Mr Anuj Tulsyan Director of respondents** and the person with whom we dealt with reads as under

Quote

Dear Ms. Patodia

Please accept our apologies for the **delay in giving possession of your flat** in our project ideal Aquaview.

Under the present status we will be able to give possession of your flat **by March 2020**.

We sincerely regret for the inconvenience caused to you **due to this delay**.

Assuring you of our best services at all times

Regards

Anuj Tulsyan

Unquote

There is clear admission of the delay in this delay.

l) The respondents by mail dated 30th December 2019 informed further that in **June 2020** they would handover the apartment for fit out only without specifying any date for possession of the apartment. Pl refer **Annexure E-7**

Copies of the said emails dated 09.12.2017, 16.02.2018, 20.03.2018, 21-03-2018, 30-08-2018, 04-09-2018, 12-02-2019, 04-06-2019 & 30-12-2019 are annexed hereto and collectively marked **Annexure "E 1 -E7"**. Relevant portions have been highlighted for easier access

m) The respondent has unduly delayed handing over possession of the said flat to the applicants in habitable condition though the applicants had all along been ready

and willing to pay the entire amount of agreed sale consideration of Rs. 87,90,526/-

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- n) In the circumstances the applicants by the Advocate's notice dated 27.09.2019 demanded refund of the said sum of Rs. 55,00,000/- with interest and compensation in terms of the Section 18 of the West Bengal Housing Industries Regulation Act 2017 (HIRA 2017). A copy of the said letter is annexed hereto and marked **Annexure "F"**.
- o) The said letter dated 27.09.2019 was replied by the respondent vide its Advocate's letter dated 11.11.2019 making false and frivolous allegations therein. By the said letter the delay in completion of the flat was sought to be justified by alleging as follows :
- a. "Delay, if any, is due to several circumstances of Force Majeure mentioned in Clause 16 of the said agreement"
- p) By the said letter of its Advocate, the respondent also purported to make false and fictitious demand for Rs. 7,57,260/- on account of interest, though the respondent itself caused delay. A copy of the said letter is annexed hereto and marked **Annexure "G"**.
- q) No circumstances of alleged Force Majeure justifying delaying completion of the said flat were mentioned in the said letter dated 11.11.2019 to support such allegation. The circumstances of Force Majeure in clause 16 of the said agreement are as under :
- i. acts of God (2) acts of nature (3) acts of war (4) fire (5) insurrection (6) terrorist action (7) civil unrest (8) civil wars (9) lock outs (10) general strikes (11) riots (12) non availability or reduced availability of building materials (13) strike by material suppliers, transporters, contractors, workers and employees (14) delay on account of receiving statutory permissions (15) delay in the grant of electricity, water, sewerage and drainage connection or any other permission or sanction by the Government or any statutory authority (16) any notice, order of

injunction, litigation, attachments, etc. and (17) any rule or notification of the Government or any other public authority or any act of Government such as change in legislation or enactment of new law, restrictive Governmental laws or regulations (18) acquisitions and/or requisitions (19) any reasons/circumstances beyond the control of Ideal.

- r) The said agreement between the applicants and the respondent stands modified to the extent of statutory form of agreement for sale being Annexure "A" to the West Bengal Housing Industry Regulations Rule 2018 by reason of Rule 9(2) of the said Rules. Statutory form of agreement for sale provides in clause 7.1 provides for circumstances of Force Majeure to be war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature. No circumstances of Force Majeure existed either in terms of the said Agreement between the parties or in terms of statutory form of agreement.
- s) The allegations made in the said letter dated 11.11.2019 on behalf of the respondent were dealt with in the letter dated 17.01.2020 written on behalf of the applicants the contents whereof are true and correct. Copies of the said letter dated 11. 17.01.2020 is annexed hereto and collectively marked **Annexure "H**