

**BY REGISTERED POST WITH A/D**

Dated 25<sup>th</sup> October, 2019

To  
Mr. Aishwarya Kumar Awasthi  
Advocate  
10, Old Post Office Street  
Ground Floor, Room No.06  
Kolkata-700 001

**Sub: 42, Nalini Ranjan Avenue (Said Premises)**

Dear Sir

We write to you with reference to your letter dated 11<sup>th</sup> October, 2019 sent on behalf of your client Ms. Poulomi Bose.

At the very outset we deny and dispute the contents thereof as also each of the statements and/or allegations made therein.

We totally negate and deny the allegations made by you in your letter under reference that as per clause No. 2 of the Memorandum of Understanding dated 20<sup>th</sup> December, 2016 (MOU) read with development agreement dated 20<sup>th</sup> December, 2016 it was our obligation to obtain a sanctioned building plan for construction of the new building at the premises within 12 months from the date of execution of the MOU and that we are in default of this obligation and have failed to obtain a sanctioned building plan despite more than two years having passed from the date of execution of the MOU or anything at all.

We further totally negate and deny the allegations made by you in your letter under reference that (1) clause No. 5 of the MOU obligates us to handover to your client possession of the completed flat and storeroom within 27 months from the date of sanction of building plan or that from a combined reading of clauses 2 and 5 of the MOU it becomes abundantly clear that we are under an obligation to obtain sanction of the building plan within 12 months from the execution of MOU dated 20<sup>th</sup> December, 2016 and to handover possession of the completed flat and storeroom to your client within 27 months thereafter and that we are under an obligation to handover possession of the constructed flat and the storeroom to your client no later than 2020 or at all and (2) we have already acted in breach and default of our obligation to obtain sanction of the building plan despite two years having elapsed from the date of execution of the MOU and that there is no attempt on our part to even now expeditiously proceed with obtaining of sanction of the building plan and commence construction of the new building and that we are neither ready nor willing or is otherwise unable to fulfill our obligation to handover possession of the completed flat and storeroom to your client or anything at all.

Neither the terms of the Development Agreement nor the terms of the MOU advocate or substantiate or prove tenable any of the allegations made by you in your letter under reference which please note.

Firstly, clause No. 8(c) of the Development Agreement states that **“the Developer shall apply to the KMC for obtaining the sanction of the Building Plan within 1(one) month after the completion of the amalgamation process as stated in clause 7(e) and obtaining the requisite permissions/NOCs/consents as stated in Clause 7(g)”** which clearly brings the understanding to the light that Developer’s obligation to apply for sanction triggers only after completion of amalgamation process and obtainment of requisite NOCs and not prior thereto.

Secondly, clause 8(g) of the Development Agreement clearly stipulates that **“Subject to Force Majeure Events the Developer shall construct, erect and complete the New Building and make it habitable and fit for occupation in all respects with the Completion Certificate from the sanctioning authority and drainage and water connection thereafter issue a notice to offer the Co-owner’s Allocation to the respective Co-owners within a maximum period of 24(twenty four) months from the date of commencement of construction with a grace period of 3(three) months;”**

A conjunctive reading of the clauses 8(c) and 8(g) leaves no doubt and clearly leads us to conclude that the obligations of the Developer under the Development Agreement to obtain sanction of building plan and complete construction of the building within the timelines given therein have always been and are always subject to **inter alia obtainment of Amalgamation and Force Majeure Events**. It’s also pertinent to mention herein that the timeline for completing the building is 27 Months from the date of commencement of construction and not from the date of sanction of building plan which please note. We reiterate that we cannot and should not be held responsible for the delays caused by circumstances beyond our control that Force Majeure Events. We repeat and reiterate that we, in fact, have done, executed and performed several acts, deeds and things etc. to our best effort all only with the sole aim of developing the project on the Said Premises and your client has due notice and knowledge of each of our such actions etc.

It’s quite pertinent to mention herein that the terms and conditions of the Development Agreement only obliges the Developer to facilitate and extend co-operation in the process of amalgamation on the clear understanding that costs for processing the amalgamation will be borne by the Developer. Execution and registration of a Deed of Amalgamation as required by the Kolkata Municipal Corporation is essentially a document that changes the ownership composition of the property by making each and every assessee owner of each and every portion of the property which in no manner supplements to the right of the developer under the development agreement and hence should be borne by the owners only and not by the Developer. Kindly further note that we continuously interacted with the registration authority to our best endeavour to bring down the quantum of stamp duty and registration fees despite the fact that such registration will neither fetch any benefit or gain to the developer nor is the developer obliged to pay stamp duty and registration fees on a document which changes the ownership composition of a property. Despite our relentless effort the registration authority did not bring down the quantum of stamp duty.

Clause 2 of the MOU stipulates that **“the Developer has represented to the Buyers that in pursuance of the terms of the Development Agreement the Developer shall cause the preparation of a building plan and obtain sanction of such building plan for the construction of the new building having ground and four upper floors at the Said Premises within a period of 12 months from the date of execution of this MOU”** which unequivocally brings the understanding to the fore that timeline on completing the building mentioned herein will and shall always be subject to and dependent upon the terms and conditions agreed upon in the Development Agreement and not otherwise. Similarly, Clause No. 5 of the MOU which stipulates that **“unless prevented by unavoidable delays beyond the control of the Seller and subject to the observance and performance of the terms and conditions to be recorded in the Agreement for Sale by the Buyer the Seller shall complete the said flat within 27 months from the date of sanction of the building plan”** has also followed the suit by upholding and retaining the fundamental understanding of the Development Agreement.

We totally deny refute and negate that your client is at all entitled to put an end to the contract and demand a refund as stated by you in your letter under reference or at all. Clause No. 30 of the MOU stipulates that **“except for the occurrence of a Force Majeure Event, if the Seller fails to complete or is unable to give possession of the Said Flat in accordance with the”**

**terms of this agreement duly completed within the stipulated timeframe mentioned in Clause 5 the Seller shall be liable, on demand of the Buyers to pay interest @15% p.a. for every month of delay, till the handing over of the possession of the said flat**” which means that despite the absence of any Force Majeure Events if the seller fails to meet the timelines the seller will be at fault and in such an event the only remedy available to the Buyer is to get interest on the payment made @15% p.a. for every month of delay, till the handing over of the possession of the said flat. It will not be out of place to mention and underscore the fact that despite our best efforts constraints and obstacles pertaining to title and landowners came in the way which materially thwarted and affected our progress. The first hurdle we faced and which subsists till date is the Assessee Amalgamation. After constant follow up and intense discourse with the KMC officials we were advised during June, 2018 to submit a Deed of Amalgamation duly executed and registered by all the Assesseees for processing the procedure of amalgamation and the same was immediately communicated to the landowners. Again, the accomplishment of the execution and registration of the Deed of Amalgamation by all the Assesseees appeared to be a tall order as one of the co-owners Mr. Ronodeep Bose was not in a position to do the execution and registration. Consequently, it was decided to get the execution and registration of the Deed of Amalgamation done by a Power of Attorney holder of Mr. Ronodeep Bose. Since July, 2018 we constantly followed up for the registered Power of Attorney granted by Ronodeep Bose, the verbal confirmation whereof we finally received in December 2018 i.e. after 6 months. Thus, there is no room to disagree or deny the fact that we had to wait for such a long time for a document which will mobilize the process of execution and registration of the Deed of Amalgamation without any fault or lackadaisiness of ours. The trail of incidents unequivocally leads any prudent person to draw only one conclusion that the delays caused were beyond our control i.e. Force Majeure event and thus we are not at fault at all.

We reiterate that we were, are and will always ready and willing to live up to our commitments and hence handing cancellation of MOU and refund of money as cannot and does not arise at all.

Thanking You

Yours Faithfully

For Indus Builders



(Sourav Dasgupta)  
(Authorized Signatory)

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