

BEFORE THE WEST BENGAL HOUSING INDUSTRY REGULATION
AUTHORITY, WEST BENGAL

COMPLAINT CASE

IN THE MATTER OF:

An application under Section 18 of the West Bengal Housing Industry Regulations Act 2017;

A N D

IN THE MATTER OF:

Sumit Bajaj

Son of Shri Rajendra Prasad Bajaj
Residing at 134, Block-A, Bangur Avenue,
3rd floor, Kolkata- 700055

. Complainant

Versus

Emami Realty Limited

(Formerly Emami Infrastructure Ltd.)
At- 1858/1, Acropolis, 13th floor, Rajdangra
Main Road, Kolkata- 700107
Represented by CEO, namely
Mr. Nitesh Kumar
& Director, namely
Mr. Girija Chaudhary.

. Respondent

The humble petition on behalf of the complainants above named;

Most Respectfully Sheweth:

1. The present dispute is in relation to several breach of terms and substantial delay in completion of the project and consequential **money recovery along with interest, compensation** for such substantial delay, Mental Harassment & Agony & other damages and other claims on purchase of a flat admeasuring 1760 sq. ft., being flat no. B4-704, 7th floor, Block- B4, Emami City, 2 Jessore Road, Kolkata- 700028 along with a basement car parking (hereafter referred to as the said Premises) and servant berth.
2. The Complainant has been the intending purchaser of a flat admeasuring 1760 sq. ft., being flat no. B4-704, 7th floor, Block-B4, Emami City, 2 Jessore Road, Kolkata -700028 along with basement car parking and servant berth.
3. The Complainant had applied for obtaining rights, title and interest in respect of the said premises upon completion of construction by the Respondent and handing over possession of the flat within the assured time however, the Respondent has failed to discharge their obligations. Therefore, the Respondent being the Developer of the

said Premises has failed and/or defaulted in providing basic level of service and wilfully causing mental harassment on small homebuyer like the complainant and misuse exercise of power of money being economically stronger party as compared to the homebuyer, hence the claim for damages and recovery of money from opposite party.

4. The opposite party has been a renowned promoter and developer and is the Developer of the said project, namely 'Emami City' at 2, Jessore road, Kolkata-700028.
5. That the Complainant was interested in purchasing a flat for residential use in Emami City. Pursuant to widespread advertisement and marketing by the Respondent regarding such proposed construction the Complainant had approached Emami Realty in May 2011 and on 29th May 2011, the complainant had booked via application letter a unit namely B4-704 in their proposed complex Emami City at 2, Jessore Road. The complainant was informed that the project would be delivered for possession within 3 years approx. and construction activity shall be started within 2-3 months. The complainant also said the respondent that the terms of application letter is not in the interest of homebuyer, but they assured that application letter is standard in nature and the final agreement and allotment letter would have all the terms and the same shall be shared and executed within next 3-4 months.
6. The flat area was proposed at 1598 sq ft at the time of booking. The complainant had placed huge regards & trusts on the **Emami group** given its reputation of its esteemed promoters Shri R S Goenka & Shri R S Agarwal who had been very respected promoters based out of Kolkata and who had been first generation promoters and commenced Emami in 1974 and subsequently brought Emami group to such great heights by 2011.
7. That accordingly, the Complainants applied for a flat in the said premises upon payment of requisite fees of Rs. 2,00,000/- (Rupees Two Lakh only) paid vide Cheque number 355712 drawn on Axis Bank dated 27th May 2011.
8. The complainant had small kids of 5 years and 1 year and in the interest of overall development of his family and kids and to provide its family a wholesome environment of a complex, he placed huge reliance on Emami Group and accordingly purchased the flat. It was understood that the flat would be handed over in 3 years and that would be the most appropriate time for the kids for their overall development, grooming, and academic and extra curricular and social purpose that the family would be able to shift in 2014 and hence get the appropriate benefits of living in the purported housing complex. Given the so much of faith and trust on Emami brand, the complainant purchased the housing unit from the developer and most importantly **complainant put into stake all his hard earned money in 2011 and also took up the liabilities for purchasing the Unit.**
9. That on 16th July 2011, the complainant was issued a final Allotment letter with respect to the Unit B4-704 and size of 1598 Sq. ft. and following Payment Schedule was mentioned in the Allotment letter **along with 20% of the flat value on allotment:**

Serial	Event	Amount to be paid
1	On Completion of Foundation	10% of flat value

2	On Completion of 2 nd Floor	10% of flat value
3.	On Completion of 5 th Floor	10% of flat value
4.	On Completion of 8 th Floor	10% of flat value
5.	On Completion of 11 th Floor	10% of flat value
6.	On Completion of Brickwork	10% of flat value
7.	On Completion of Plasterwork	10% of flat value
8.	On Intimation of Possession	10% of the flat value Plus extras

It is clear from the above schedule that **payment as per Serial 6 & 7 shall be triggered only after payment has been demanded after completion of 11th Floor.** The complainant had further enquired that the **copy of agreement** is not yet sent for execution, but the Respondent again assured that the same shall be sent soon to all the flat owners and then the same shall be executed soon. The complainant had **always believed on the assurances given by respondent.**

10. That immediately after 3-4 months of booking the flat, the complainant was issued a letter dated Nov 10th 2011, communicating, without placing any justified reason since there was no change in sanction plan, that the area of the flat has been **increased to 1760 Sq ft from 1598 Sq ft** and demanded an extra sum of money for the same.
11. That as per the declaration submitted by opposite party, uploaded in WBHIRA website, construction activities of the Emami City project commenced in **October 2011.**
12. That as per the Environmental Clearance approval provided to Emami City project dated March 13, 2019, it is evident that **construction activity was commenced even without getting the Environment clearance and the project was a violation case.** The State Level Environment Impact Assessment Authority (SEIAA), filed legal case against the Respondent for violation on at Barrackpore Court, North 24 Parganas (Case No: C-40/16). The case was disposed off by the Learned Additional Chief Judicial Magistrate, Barrackpore by order dated 9th March 2016. The Honourable court had imposed penalty and Respondent had to submit a remediation plan etc for a total amount of Rs. 13 crore which was later accepted by SEIAA etc. It clearly establishes the negligence, breach of duty of proper care and careless approach exhibited by the Respondent in dealing with important statutory approvals required for developing such a massive project with 1233 Units and on which more than 7000 people were dependent.
13. The complainant was utterly flabbergasted and shocked to see the gross default of the opposite party in availing proper statutory approvals and defaulting in basic process and not following the statutory compliances.
14. That after allotment of the flat in July 2011, Complainant had been meeting the respondent several times, and had been following them to share the **copy of agreement**, however Respondent kept avoiding and neglecting and kept delaying and said it would be shared soon. Even after a lot of follow up, they didn't share the copy of agreement with Complainant. Complainant had put entire trust on the respondent and still waited for them to share the agreement copy.

15. Therefore from their acts it appears that the Respondent were aware of the probable lapses in getting statutory approvals and willfully delayed in providing the Agreement to the homebuyer and hence the respondent are liable for willful misrepresentation and it is a case of defrauding a small homebuyer like the complainant who had put his entire savings of his life on stake and in return got the severe breach of trust.
16. That on 2nd June 2012, Respondent had allotted a Servant berth at Proposed Servant Dormitory for a sum of Rs. 1,26,000 plus taxes and demanded 20% of the amount on allotment which was paid as given in schedule of payment as above. The Servant berth allotment stated that the berth shall be used for sleeping and no other purpose. However, respondent didn't wilfully specify the exact location of the servant berth even though the Plan was sanctioned by South Dum Dum Municipality in April 2011.
17. That by letter dated 6th September 2012, Respondent communicated that they have awarded the construction contract to Larsen & Toubro and also claimed that construction will be done with the highest standard of safety and adherence to specifications that have been promised to Complainant. Further, it will endeavour timely delivery of the project.
18. That subsequently the opposite party raised the demands for amounts as per under:

Serial	Event	Date of Demand Letter
1	On Completion of Foundation	24 th June 2013
2	On Completion of 2 nd Floor	14 th February 2014
3.	On Completion of 5 th Floor	23 rd April 2014
4.	On Completion of 8 th Floor	26 th July 2014
5.	On Completion of 11 th Floor	16 th October 2014
6.	On Completion of Brickwork	2nd July 2014
7.	On Completion of Plasterwork	2nd July 2014
8.	On Intimation of Possession	24 th June 2019 (received in end July 2019)

19. It may be noted that demand amount to be collected on completion of Brickwork and Plasterwork was demanded way before completion of 8th floor milestone mentioned in Serial 4. Opposite party had come at last moment in 2014 **with advance demand for 20% of total cost arising on brickwork and plasterwork on 2nd July 2014 even before the demands which were raised for completion of 8th and 11th floor milestone which was illegal and unethical in violation of the three payment terms.** The complainant felt fishy and again demanded an explanation for the same. However they didn't provide any valid reasons. Further, the complainant was utterly suspicious on reasons for delay from Respondent on providing the Agreement copy.
20. That complainant further went & met the respondent but their officials had no answer and said that due to change in the method of construction there is no work of brickwork & plasterwork being done separately since they were using Mivan technology.

The complainant was surprised as Sanction plan from the South Dum Dum Municipality was done vide sanction no. 792 dated 4th April 2011, Application for flat was made in May 2011, Allotment was made in July 2011, Construction activities were commenced in October 2011 and contract to L&T was provided in later part of year 2012 after more than 1.25 years of allotment. By that time the method of construction must have been finalised by Respondent which is the utmost requirement in a contract being provided to L&T etc. Hence, Complainant felt fishy and post that when they didn't provide valid or satisfactory responses to complainant, the complainant held on to their payments of the demands raised which were in violation of the schedule of payments provided on Allotment letter. Respondent were utterly unjustified and complainant was agonised because of such actions of the Respondent and particularly in not sharing the copy of agreement.

The small homebuyer like a complainant should not in any way get penalised. It seemed there was an ulterior motive of Respondent to get the demands advanced and in turn earn interest on additional advances received which amounts to an act of unfair trade practice.

21. That the technology used for construction and completion of the Apartment/Flat/Unit does not involve the process of brick work and plaster work. Hence, Complainant have no obligation to make such payment at an earlier date. **Such payments however had to be made at the time of handing over of the possession as the same would be due and payable only at that stage and at no period prior thereto.** The payment made by the complainant in respect thereof on this account should be treated as an advance on which interest becomes accrued to complainant by the opposite party.

The opposite party without any intimation nor any approval from Complainant modified by another plan sanction no. 180 dated 18th July, 2013.

Opposite party failed to provide valid clarifications for raising advance demands of Plasterworks and Brickworks and also failed in their obligations to share the copy of agreement for execution within reasonable period and further kept sending Complainant interest demands at the rate of 18% and various reminders for payments of interest and demand amounts raised in violation.

22. That the complainant submits Details of Payment made is as under:

Payment Schedule	Amount Rs	Remarks
27May 2011	200000	Application Amount (already mentioned earlier)
14 September 2011	630000	Amount payable on allotment. Due to delay in providing the copy of agreement, it was paid after 1 month, however when they assured that the agreement shall be shared

		to all the homebuyers soon, complainant released the majority of payment on Allotment.
19 October 2011	100000	Amount payable on allotment. Respondent was unable to provide the copy of agreement, still in good faith payments were all released in phases.
07 December 2011	70000	
10 December 2011	48002	
15 December 2011	299474	
03 August 2012	25979	Extra amount for Servant berth demanded on June 2 nd 2012.
24 January 2014	686208	Demand against Foundation as per Serial 1 of the payment schedule. FIR to Shakespeare Sarani Police Station was filed on August 6th, 2013 and also notified to Respondent for issuance of the Duplicate money receipts, Allotment letter and other documents, however, Respondent had issued the Duplicate documents after substantial delay of more than 1 year, which acted as further hindrance for complainant to raise funds from the banks to allow disbursement in addition to hindrance caused due to non-execution of the agreement.
03 March 2014	686207	Amount Paid on 2 nd floor completion as per Serial 2 of the payment schedule.
14 May 2014	686208	Amount Paid on 5 th floor completion as per Serial 3 of the Payment schedule.
27 April 2016	686208	Amount paid as per Serial 6 of the Payment schedule on compulsion. Even after substantial follow up of more than 2.5-3 years, Respondent failed to provide the copy of agreement. When they had provided the copy of agreement, it was completely one-sided with various unfair and unreasonable clauses and further they didn't agree to make the changes in the clauses. Complainant had no option but to keep paying the demanded amounts.
16 June 2016	686208	Amount paid on 11 th floor completion as per Serial 7 of the Payment schedule.
02 June 2017	1372416	Balance 20% of the amount as per Serial 4 & 5 of the Payment schedule. Although 20% of the Total

		Consideration against Brickwork and Plasterwork should have been paid on possession only, however even though Respondent kept failing on their assurances and kept pressurising & threatening the Complainant to pay the amounts else they will cancel the Unit and hence, complainant had no option but to pay the amounts and take up additional liabilities.
4 th December 2019	5,40,001	Payments made under protest under threatening received from developer that they would cancel the flat in 7 days. INR 781006 (including TDS of Rs. 61116) was paid for undue interest levied on complainant.
7 th December 2019	5,01,111	
9 th December 2019	7,81,006	
Total	79,99,022	

23. That the complainant submits that he had been running from pillars to post and requesting for agreement copy however, the Respondent had wilfully being delaying and waiting for raising the 90% of the total amount and unfairly so because they were aware of the lapses in taking Environmental clearances and violated the statutory requirements and this act along with violating the Payment schedule constitutes mala fine intention and act of wilful intention to cause harm to small homebuyer **like the complainant which have hardly any economic or financial power or negotiation power in comparison to the large real estate player like the Respondent.**
24. The opposite party/respondent was aware of the delay in project due to filing of legal case by the SEIAA the final outcome of the case which came in 2016 and hence Respondent were wilfully demanding the amounts and also threatening to cancel the unit in case if Complainant delayed the payment and further also wilfully delayed in execution of the agreement and sharing the same to complainant. **The copy of agreement sent has stamp paper dated 20th November 2014 with their lawyer's name which is in itself sufficient proof that they had malafide intention to delay the execution of agreement.**
25. That on 23rd March 2015, Opposite party/Respondent sent a communication that they are constrained to terminate the Allotment letter and asked the respondent to collect the amount after deducting 5% of the total consideration. This was a threat to the aggrieved home buyer where the Respondent had first failed in their duty to discharge their obligations, were negligent in complying with the Statutory regulations like Environmental clearances, violated the schedule of Payments as per the Allotment Letter and kept avoiding the Complainant to provide valid response and then finally Respondent threatened the Complainant to cancel the Unit. However, their subsequent action of not cancelling the same proves that

Respondent were aware of their lapses and failure of obligations and hence only tried to apply pressure tactics on the Complainant.

26. Vide letter dated 25th March 2016 Respondent sent a letter to complainant requesting to contact Mr. Sunny Nayak or Mr. Rajarshi Roy for execution of the agreement. Complainant kept meeting the Respondent for highlighting that the agreement has been built up completely one-sided with malafide intent and further most of the clauses in the agreement are completely one sided constituting restrictive & unfair trade practices and detrimental to the interest of the small home buyer however, their team were still adamant and didn't agree to the changes of the clauses in the agreement. Consequentially, the complainant had no option but complainant didn't agree to execute the unfair agreement with such unfair clauses. **Key terms such as possession date** etc were changed against the promises made at the time of Application. Possession was promised after 3 years from date of allotment however, Respondent with mala fide intent and due to the fact that there were issues on environment regulations, they took liberty first to delay the agreement signing and then forcing the small homebuyer to executed agreement with Possession date as December 2017 including the grace period. The complainant also sent a written letter after receiving the final demand Letter to Respondent detailing all the terms and again requesting the Respondent to change the agreement and execute the same, however the same was ignored completely by Respondent and they instead of resolving the issues and executing the agreement, they kept pressurizing the small homebuyer like the complainant to pay all sums of money including the illegal interest demands raised by them and no promise to pay the compensation for more than 5 years delay in giving the possession.
27. That the opposite party/respondent sent a communication dated 29th May 2017 that they had commenced the work of construction and necessary permissions and approvals have been obtained, but they require further clearances and approvals. However, as explained earlier, due to negligence of the Respondent by commencing the Construction activity in Oct 2011 without taking Environmental clearance, they had severely failed in their obligations and had to face legal case from SEIAA due to which substantial delay had happened. Further, they remained silent on communication of such negligence to the complainant instead kept sending irrelevant updates on approvals being obtained.
28. That subsequently the opposite party/respondent further made a communication dated Sept 16th 2017, that the Unit is complete and main gate, access roads and other infrastructure facilities at the project site are also progressing well and invited the Complainant to visit the Unit and make a tour of the Complex. However when Complainant had visited the site, Respondent clearly said that final possession is not being provided currently. The sanction plan was again changed in 2018 without any intimation nor any approval of the complainant, copy of which has been asked by Complainant but they are unable to share the same.

29. That after raising 90% of the demands in October 2014, the Respondent raised final 10% demand after almost 5 years of raising 90% demand. The final demand raised on complainant in **July 2019 of INR 10,41,110 plus interest of INR 7,81,206 purported to be for delayed payments although unjustified**. The demand letter was followed up by the complainant and then only the same was received in end of July 2019. It is pertinent to mention herein that despite there being delay, the respondent did not utter a single whisper regarding the compensation as legitimately due to the Complainant for such extreme & substantial delay.
30. That an Undue Interest (of approx. INR 7.81 lakh) charged by them because of illegal demand raised- Complainant had multiple times clarified to them that he is not liable to pay any interest amount given there is violation of Payment schedule and demands were raised in arbitrary manner for which proper justification were also not provided and further due to willful delay in sending the copy of agreement. The demands relating to Brickwork and Plasterwork are not applicable at all as explained earlier. Payments demanded in respect of completion of brick work and in respect of completion of Plaster work as mentioned in the Allotment letter dated July 16th 2011, was inapplicable and the same should be payable at the time of possession. The payment made by complainant should be treated as an advance on which interest at the rate of 18% should be payable to complainant by the Respondent. However, the Respondent has been neglecting the same and instead levied interest at rate of 18% on the demands amounting to INR 7.81 lakhs approx.
31. That on 27th July 2019, Respondent sent a mail to Complainant asking to check and verify the amount payables. In the mail they also requested to apply for waiver of interest and then pay the balance amount for taking up possession. Complainant was surprised as they themselves have come forward and asking the complainant to request for waiver. Complainant had also requested them to waive the interest charged unlawfully, but the Opposite party/Respondent didn't respond.
32. That after demanding 90% of the amount in 2014, and then issuing a final possession notice after July 2019 after a span of 5 years, reflects the substantial delay caused by them in handing over the possession to complainant. However, Emami City has come back with the final 10% demand after more than 8 years which is a substantial extreme delay and further they are also depriving the rights of home buyers to claim compensation by forcing complainant to take possession without paying the compensation amount for the delay of more than 5 years and also further they were avoiding to execute the agreement as well. It is to be mentioned that when there is/was no specific date mentioned for delivery of possession it should be within 3 years from the date of allotment.
33. That the complainant vide various letters dated November 13th 2019, November 24th 2019, November 26th 2019, and various multiples reminders written and verbal and through email requested for

clarifications and confirmations in this regard but Respondent again have been unable to provide any clarifications and had no answer to the queries raised. Important points of contention are given below:

- a) **Legality of Servant berths** being residential occupation in Basement pursuant to National Building code and Kolkata Municipal Corporation Building Rules.
- b) **Verification of Area being charged as super built etc.**
- c) **Drinking Water issue-** No Municipal corporation water is made available till date. Tubewell water is not good habitant water and Respondent must ensure to get the municipal water availability. Complainant has been seeking clarification on when habitant water is not available then why the Respondent is providing the possession, however there is no answer.
- d) **Maintenance/FMC Charges:** Respondent has been pushing the complainant to provide the FMC charges since the date of the final demand letter. However, it is completely uncalled for and Complainant should be made to pay the FMC charges only after unconditional possession of the Flat.
- e) Further, the Complainant had noticed that the Respondent has altered the original plan comprising of common areas with additional mechanical car parking area in the driveway to the said Project which is a risk to the evacuation in case of an emergency detrimental to the interest of the entire Project however, the Respondent didn't answer.
- f) **Club Membership Fees:** As per the details shared with complainant, Club membership is chargeable at rate per square feet instead of a lump sum amount. It is quite unreasonable and its an act of discrimination between the residents residing. Any resident having a 2BHK flat say of 1000 sq ft pays almost half the membership fees in comparison to another resident having a flat of 2000 sq ft.

Complainant had been seeking urgent clarifications from them, but still they remained silent on it till date for unknown reasons.

34. That even after 8 years from the date of allotment, Emami had been unable to get the approvals particularly Fire NOC, and other approvals. It is gross negligence on part of developer to start and accept booking from home buyers and award contract to L&T for construction without any approvals and with a view reasons best known to them they kept changing the Sanction plans without approval from the Home buyer.
35. That the Complainant states that since the Respondent had expressed his unwillingness to pay compensation for the substantial delay caused and other damages, the Complainant continued to pursue for the same by visiting their office and agreed to pay the remaining sum after confirmation of the compensation receivable from the Respondent herein& also removal of the interest charged to Complainant. The complainants continued to pursue regarding the said compensation due to them but finally received a mail dated 3rd December 2019 containing false information that agreement has

been executed on 29th January 2018 and threatening to cancel the unit if all amounts including interest is not paid within 7 days. The email contained false content that the agreement had been signed. Sending a communication with false information of agreement having executed, it seems to be malafide intent of Respondent to focus only on getting the amounts from the homebuyer. It caused severe mental harassment, oppression, mental agony to complainant and consequential anxiety to complainant`s family as well.

36. That it is to be noted that after being threatened of cancellation of booking, complainant had no choice but to pay the amounts under severe protest within 7 days including interest amount of INR 7.81 lakhs approx. The complainant was under severe stress and mental trauma & great fear, and also requested Respondent to provide 15-20 days for arranging funds and making the payment, however Respondent didn't agree to the same. **Complainant paid an amount of INR 18,22,318 in December 2019 under protest to them.** Total aggregate amount paid to them since last 8-9 years were **Rs. 79,99,022.** Since last 8-9 years complainant had to bear the interest on loans availed from banks and friends and where the flat was to be handed over in 2014, the complainant had put his entire life`s savings in this property for his family and in return got nothing from the developer. Complainant had been paying amounts since 8-9 years, paying interest to banks and others, paid illegal interest to respondent, didn't get flat nor any compensation in return. Complainant feel that he has been defrauded for an amount of INR 80 lakhs because of his purchase of flat in Emami City and placing so much of reliance and trust on the Emami Group. Entire his trust has been broken and in wake of a fair natural justice from the laws of the State, the complainant has approached the WBHIRA.
37. That the complainant had after 3rd. December 2019 mail kept asking multiple times by flagging it as urgent to the Respondent that under what right they have intimated to cancel the Unit however, still they remained silent. The complainant had no option but to avail loans of INR 13,50,000 from friends/others at exorbitantly high rate of interest and paid the entire amounts as said in para 36 including interest under protest. Accordingly the Complainant had made all the payment including interest amount claimed by Respondent under protest in respect of the said unit within the stipulated time of 7 days given as per Email dated 3rd December 2019. In Complainant`s letter dated December 11, 2019, wherein it is written to Respondent "*I was utterly flabbergasted, felt threatened, felt intimidated, it increased severe fear in me, and increased undue mental anxiety to receive such communication at such juncture, & giving such short notice of 7 days for cancellation of my flat, which is basically a threat to aggrieved home buyer like me. Such a threatening communication is an intentional act of putting me in fear of an injury to me. By attempting to send such a communication and looking to dispose-off the property without resolving my queries/clarifications and remaining silent on my letters & emails selectively & to the important matters is a serious breach of trust, which is clear from the observations pointed out by me. Further, in the email you had falsely*

claimed that the agreement to sub-lease has been signed on 29th January 2018, however the fact is that Emami Realty has been avoiding to sign the agreement and only focusing to get the amounts paid etc along with interest. I wonder wherefrom you are deriving the right to cancel my unit after falsifying the events. I have written repeated mails during the 7 day time provided to me, however, you purposely remained silent on the same without explaining me the reason why you falsely wrote that agreement has been signed and from where you derived the right to cancel my flat". There was no response to the same as well.

38. That while the complainant had been raising concerns on legality of providing servant berth in the basement, Respondent failed to provide any kind of clarification and justification and instead unilaterally cancelled the servant berth allotment and sent a letter dated **16th December 2019** along with **a cheque of Rs.1,26,108/-** ignoring the time value of money and damages for deficient services. Complainant responded to the Respondent on this action of the Respondent and returned the cheque vide letter dated 23.12.2019. Later again on January 23rd 2020, Developer sent another cheque of **INR 80,752 purporting to be interest amount on the cost of servant quarter at rate of interest of SBI PLR +2%**. However, I requested them to solve all the matters including their failure to providing me possession and given the matter was sub-judice I was unable to take any action and returned the cheque again.
39. That the complainant has been following up with opposite party/Respondent to provide the possession since long and visited the Respondent several times but the Respondent failed to provide the possession to Complainant. The Respondent further sent the complainant the draft documents to be executed on possession which specifically amongst others usurps the rights of complainant to claim any kind of financial compensation or any damages. Also the possession document states that the Complainant has executed the Agreement which in fact has never been done and Respondent has been neglecting either to execute the same. Complainant had requested the opposite party/Respondent to change the possession document however the Respondent responded after getting the entire amounts as paid above and said that it is standard in nature and cannot be changed. Even after sending legal notice to Respondent they haven't agreed and now threatening again to cancel the unit unless the Complainant executed these format and takes the possession by usurping the right of the willful claims.
40. That it is pertinent to be mentioned that the Complainant being so aggrieved had resorted to social media as already intimated to the opposite party/Respondent and posted the facts of the 3rd December 2019 email sent to the complainant threatening to cancel the Unit and demanding all sums of money including interest and Respondent being negligent in providing the compensation for the delay in possession of the unit. Complainant had provided its just opinion and comment as an aggrieved consumer, however, still the Respondent sent a threatening letter that unless the complainant removes the

same from social media they will be forced to take criminal action against the complainant for defamation and also threatened to take up the matter with employer of Complainant where the complainant is working. It was entirely frivolous on part of Respondent to threaten in such manner as the flat had been purchased in personal capacity and involving the employer was again an act of threatening. Although complainant haven't done any kind of defamation but presented the facts only, the complainant in good faith removed the same immediately within few hours of posting. Even after such removal, the Respondent sent a legal notice through its lawyers and demanding a frivolous sum of Rs. 25 cr and unconditional apology. It is completely pressuring complainant and putting pressure on complainant to take the possession by signing the unconstitutional possession documents.

41. The complainant had along with spouse Mrs. Vandana Bajaj on December 21, 2019 visited the Emami City office and met Mr. Ankit Sharma at their site and requested for peaceful possession again. The complainant had requested for providing peaceful possession but Respondent denied and said that their legal head would send further conditions required for taking up the possession. Further, the respondent/opposite party had said that signing of the possession document is mandatory and then post signing the complainant wouldn't be able to claim any kind of compensation. When complainant had asked as to why they are looking to act in such unfair manner usurping the right of the small homebuyers, to this the Respondent had said that their legal department has directed to act in such manner. Subsequently, Respondent had emailed to Complainant that for taking up the possession, **Complainant has to not only sign their unfair possession documents but also tender an apology.** Even after several follow ups, the respondent failed to provide possession even after more than 8 years of buying the flat.
42. That even after paying 100% of the total amount and also paying the interest amount under protest, Respondent have again threatened the complainant's lawyer asking to sign the possession document and take the possession else they will cancel the flat.
43. The Respondent has been practicing this habit of threatening the small homebuyer and not giving fair play. The complainant has been making double losses by not only paying rent at current home but also paying interest to banks and financiers.
44. In the aforesaid facts and circumstance, the Respondent failed to provide and/or has been deficient in the services agreed to be provided to the Complainant, and the same has been subjected the Complainant to grave agony and injury.
45. That the acts and conducts of the opposite party/respondent reflect gross deficiency and default in service, in breach of its obligations as per the said agreement. The delay and default perpetrated by the

opposite party/Respondent was required to be adequately compensated and penal charges levied for the inordinate delay which amounts to deficient services provided by the Respondent, is unbecoming of its reputation.

46. That the opposite party/Respondent has defaulted in providing services as represented to the Complainant and such disregard reflects the deliberate breach and violation tantamounting to act of fraud.
47. The actions of the Respondent reflect careless and lackadaisical approach in providing service to the Complainant. Such actions reflect absolute disregard to the Complainant.
48. That in light of the aforesaid deficiency in service and breach due to failure to perform its obligations the Respondent is liable for having acted extremely negligently in attending to the complainants and is **therefore liable to refund the entire moneys received by them and refund along with interest of 18% and compensate the complainants for the loss and injury caused to him and extreme delay caused to the complainant.**
49. That the cause of action of this complaint arose on 16.07.2011 being the date of allotment of the flat and thereafter it is continuing till date as the opposite party/respondent failed to deliver possession, execute agreement.
50. That for the purpose of filing this complaint the complainant has paid the necessary fees online.

In view of the facts and circumstances mentioned herein above, it is most humbly prayed before this Hon'ble Commission maybe pleased to:

- i. Direction on the Respondent to refund INR 79,99,022 all sum of amounts paid (including interest of INR 7.81 lakhs) to them **along with compounded interest @ 18% p.a.** from the date of money paid to them till the money is actually refunded to complainant.
- ii. Order on the Respondent to pay Rs. 25,00,000/-(rupees twenty five Lakhs Only) for compensation as damages, harassment and agony & for extreme delay of 10 years from the date of allotment as reasonably assessed;
- iii. Order on the Costs incurred as legal expenses being reasonably assessed at Rs.

2,50,000/- (Rupees Two Lakhs fifty thousand only);

- iv. Such further Order and/or orders, direction and/or directions as this Hon'ble Court may deem fit and proper in the interests of justice;

And for this your petitioners as in duty bound shall ever pray

Schedule refers to above:

All that piece and parcel of on self contained flat measuring about 1760 sq. ft., being flat no. B4-704, 7th floor, Block- B4, Emami City, 2 Jessore Road, Kolkata- 700028 along with a basement car parking (hereafter referred to as the said Premises) and servant berth within the limits of Kolkata Municipal Corporation together with undivided proportionate share and interest of the building and the rights of the user of the common areas and facilities in common with co-owners of the said building and with all common facilities and other civic amenities.