

ORDER SHEET

WEST BENGAL HOUSING INDUSTRY REGULATORY AUTHORITY

Complaint No. COM-000086

Swarna Ganga Gold Traders Pvt. Ltd.....Complainant

AND

Shristi Infrastructure Development Corporation Ltd.....Respondent

Sl. Number and date of order	Order and signature of Officer	Note of action Taken on order
8 ----- 17-02-2020	<p>Parties are present filing hazira.</p> <p>This Authority heard this case on several dates given adequate opportunity to the parties to file their submissions and counter submissions. Parties filed their written responses and submissions and sought time for settlement of issues that was allowed. However, orders of the Authority allowing time to conclude delivery of possession in terms of agreement between parties did not yield any result.</p> <p>As per the complaint petition Complainant sought compensation for delay in possession at the rate of 18% p.a from 01/01/2014 to 31/03/2019 i.e, the period for default on the part of the Respondent from due date of possession as per the original agreement between the parties till final date of compensation.</p> <p>This Authority heard the Complainant on 07/08/2019 and recorded that the Complainant was required to submit written declaration on payment made to the Respondent showing the actual date of deposits in the form of chart and the Respondent was asked to give written response on the complaint petition. This Authority admitted the complaint petition as stated in the order dated 01/10/2019 based on submissions and evidence and directed Respondent to complete the delivery of possession as per sale agreement on complying the requirement of occupancy certificate and conditions for delivery of possession</p>	

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as per sale agreement. In this case the relief has been sought for possession due to delay in possession and it is appropriate that parties conclude the possession before any decision can be taken as regards amount of compensation and admissibility on the basis of facts of the case and provisions of the law.

Considering this position, Authority felt the necessity of conclusion of delivery of possession in terms of agreement as no orders for delay in possession can be considered without possession being concluded and rights of parties for compensation for delay as per covenants can be determined accordingly. At the time of hearing on 21/11/2019 it was submitted that the occupancy certificate of the building was obtained from Building Plan Sanction Authority on 08/11/2019 and accordingly notices to make delivery of possession was issued on 27/11/2019 as per submissions made by the Respondent.

Considering the submissions and the prayers made in the complaint petition, this Authority reiterated it's earlier decision that delivery of possession be completed without prejudice to the rights of the parties as regards compensation and cost if any in terms of provisions of the law.

Complainant instead of making specific submissions and counter submissions on the issues involved in the complaint petition on prayer for payment of admissible compensation for delay in possession, seeking orders for refund on cancellation of agreement, without any such prayers in the original petition.

The prayer filed by Respondent seeking adjournment is also not allowed.

At the same Complainant is also not allowed to make amendment to the original complaint petition as already stated in the Authority order dated 04/02/2020, in view of the fact that such prayers are altogether new relief and contrary to original prayers. At the time of hearing today the Complainant filed a copy of letter written to Respondent on 07/02/2020 which inter alia stated the decision of the Complainant not to proceed with taking possession of the flat and also stated certain litigations in Hon'ble High Court, Delhi passing the orders of status quo. These are the new discoveries in this complaint petition, which the parties concealed before this Authority though

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there has been several dates of hearing after the order of status quo as referred to.

Considering these facts the complaint petition in present form is liable to be disposed off with final order for the admitted fact that the Complainant refused to accept the possession in terms of the notice issued by Respondent and as per the orders of this Authority and thereby orders of prayers for compensation in delay can not be passed in the present complaint petition without fulfilling the covenant for taking over possession as ordered by the Authority. In the event of Respondent is unable to deliver possession, Complainant is at liberty to claim refund in terms of binding of the agreement. Accordingly, let parties conclude possession in 30 days from this final order failing which Complainant is at liberty to exercise right for cancellation of agreement.

Complainant is at liberty to approach appropriate forum or this Authority with a fresh petition seeking relief for refund on cancellation of allotment in view of discovery of new facts by the parties, which are not considered in the present form of the complaint petition.

Hence, it is

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the complaint petition is thus disposed off passing further orders without prejudice to rights of the parties to seek adjudication before appropriate Authority.



(ONKAR SINGH MEENA)
Designated Authority,
Housing Industry Regulatory Authority,
West Bengal.