

**Facts of the case:**

- a. That the complainant had entered into an agreement dated 27<sup>th</sup> of March '2015 with the respondents for purchase of a residential flat no. 17-4/E, measuring about 1159 sqft on the 4<sup>th</sup> floor in block no. 17 in the proposed G+10 storied building of the project named 'The Pyramid' to be constructed on a divided and demarcated portion of land comprised in Mouza Gopalpur, J. L. No. 02, Holding No. RGM 5/03, BL-I, Narayanpur, under Ward No. 5 of Rajarhat- Gopalpur Municipality, Kolkata-700136.
- b. That the said agreement stipulates a clause regarding the completion date of the project in Para no. 9.5 on page no. 10, which states that "the construction, finishing and making of the said flat habitable shall be done by the Developer within 36 months from the date of commencement of construction i.e. from May '2015, provided however the completion date may be extended by a period of 1 year. Further, if the Developer fails to handover possession of the said flat before the expiry of the extended period then developer shall be liable to pay to the Buyer an interest @ 12% per annum on payments received, to be calculated from the date of expiry of the extended period till the date of possession notice.
- c. That in lieu of the aforesaid agreement and the verbal affirmation by the respondents that the per sqft rate quoted for the said flat shall be reduced by an amount of Rs. 1,000/- i.e. from Rs. 3,800/- per sqft to Rs. 2,800/- per sqft, an amount of Rs. 35,98,858/- was paid to the respondent no. 2 towards 90% value of consideration and applicable service tax vide five cheques dated 06.02.2015, 09.02.2015, 21.02.2015, 07.05.2015 and 07.05.2015 and accordingly money receipts acknowledging the said payment were issued only for the first three cheques.
- d. That the West Bengal Housing Industry Regulation Act, 2017(hereinafter referred to as the Act) got published in the Kolkata Gazette on 17.10.2017 and became effective from 01.06.2018, where in pursuance of the proviso to Section 3(1) of the said Act, every project that is ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, is required to get registered under the Act where the promoter has to make an application for registration of the project to the Authority within a period of three months from the date of commencement of this Act. However, it is noted that the respondents in the instant case has not complied with this requirement of law.
- e. That recently, when the proposed date of completion was about to end, we received a letter dated 28.05.2018, from the respondent no. 2, regarding extension of the completion period wherein it is stated that they are awaiting the sanction of the upper floors from the concerned Govt. authority (Bidhannagar Municipal Corporation) which is taking time and therefore the completion period shall be extended from around May '2019 to May '2020. In this regard, we would like to state that no documentary evidence whatsoever has been annexed to the said letter in this context except a general remark as made in the letter. Further, on visiting the site and enquiring regarding the same we have learnt that no steps whatsoever have been taken yet by the respondents to meet the obligations as envisaged in the agreement.
- f. That on receipt of the said letter dated 28.05.2018, we had written a letter dated 08.01.2019 addressed to the respondent no. 2 whereby we had requested for payment of interest @12% on the amount paid till date in pursuance of the clause of the agreement re completion date of the project which talks about payment of interest in case the developer fails to give possession of the said flat before the expiry of the extended period.

- g. That the said letter dated 08.01.2019 was returned to us due to change in address. However, it was again sent vide registered post to the address as obtained from the website of the Ministry of Corporate Affairs and to our surprise the said letter was once again returned with no reasons assigned for the said return. The said letter has once again been sent vide registered post on 18.03.2019.
- h. That the address of the respondents as mentioned in the Agreement is no more in existence and therefore the address as recorded on the website of the Ministry of Corporate Affairs has been used for the purposes of filing this complaint.

Grounds

- a. That the respondents failed to comply with the registration requirement as envisaged under proviso to Section 3(1) of the Act as it did not get itself registered with the Housing Industry Regulatory Authority established under sub-section (1) of Section 20 of the Act.
- b. That the respondents entered into the agreement for sale of flat without actually obtaining prior sanction from the concerned authorities even though clause 5.4 of the agreement records the fact that a building plan was sanctioned by the RGM (Rajarhat Gopalpur Municipality) for construction of the said complex.
- c. That the respondents demanded 90 percent value of the flat by misguiding the complainant regarding reduction in per sqft rates and the complainant in good belief paid the said amount of Rs. 35,98,858/- to the respondent no. 2 as against the payment terms as recorded in the agreement according to which payment is to be made on completion of certain events as stipulated therein.
- d. That the respondents failed to keep 70% of the said amount of Rs. 35,98,858/- in a separate account as required by Section 4(2)(1)(D) of the Act which states that seventy per cent of the amounts realised for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose.
- e. That the respondents failed to comply with the obligations as stipulated in the agreement.
- f. That the respondents is un-necessarily delaying the possession simply adhering to 'Force Majeure' clause of the Agreement