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Statement of Facts and Claims against SwanHousing & Infra Pvt. Ltd.,
Promoter of SwanGreen Residential Complex, Registration No. HIRA/P/SOU/2018/000290

Plaintiff/Complainant: Shri Partha Sarathi Dutta, S/O Late Shri Pabitra Kumar Dutta, at present residing at 56 Rastraguru Ave, Flat 5, 1st Floor, Narayani Apt, Nagerbazar, Kolkata 700028.

Defendant/Respondent: SwanHousing & Infra Pvt. Ltd., holding CIN: U70100WB2010PTC151403 and PAN No.AAECB1873F, having its registered office at 97A Southern Avenue, Kolkata 700029 (hereinafter referred to as “the Promoter”).

I hereby state the following facts pertaining to the Promoter’s deliberate breach of residential sale agreement, deliberate misrepresentation of property features and possession date(s), violations or intended violations of regulations or laws, unlawful attempt of collecting GST not owed, and intentional attempted abrogation or curtailment of my legal rights as the buyer and future owner.

1. The Promoter and I entered into a residential real estate sale/purchase agreement on 23/04/2018 (hereinafter referred to as “the Agreement”), where I was the buyer for a 2-BHK Flat numbered 6304 and a covered car parking space (later numbered as C-76) along with the proportionate indivisible land and the easement and use rights of all common facilities and amenities (hereinafter collectively referred to as “the Property”), in the Promoter’s residential development project named SwanGreen, situated at Raspunja, Bakrahat Road, South 24-Parganas, Kolkata 700104 (Exhibit-I). The project was registered with the WB-HIRA under the Registration No. HIRA/P/SOU/2018/000290.
2. It was stipulated by and between the parties in the Agreement that the Promoter would complete construction and handover possession of the Property to me by 30/11/2018, with a maximum allowable grace-period of 9-months thereafter ending on 31/08/2019.
3. It was further stipulated by and between the parties in the Agreement that the Promoter shall be liable to pay me a “delay penalty” computed at the SBI PLR on all funds I paid to the Promoter, if the Promoter failed to complete the handover of the Property following the expiry of the grace period on 31/08/2019.
4. At the time of execution of the Agreement, the Promoter’s employee(s) verbally assured me the Property would be completed and handed over to me by the deadline 30/11/2018 specified in the Agreement, or perhaps earlier. I informed the Promoter’s employees that I would have to make overseas travel for extended duration for business in January 2019.
5. Subsequently, during my visits to the site, it was evident that the construction work was proceeding at a much slower pace for various phases of the interior work of the said Flat, than what was verbally assured by the Promoter’s employee(s).
6. On 4/9/2018 the Majherhat Bridge collapsed cutting off one of the access routes to the area. I contacted the Promoter’s employee(s) for an update on the completion date and I was told that there would be a slight delay in the completion and handover date due to slower

transportation of construction supplies; however, much of the necessary materials were already sourced and stocked onsite, and the completion and handover would likely happen in January 2019.

7. I postponed my planned overseas business travel from January 2019 to April 2019, to be physically present for the registration paperwork and the Property handover. But, January 2019 passed without any notification from the Promoter.
8. On 12/2/2012 I contacted the Promoter by e-mail to ascertain the handover date for the Property. On 16/2/2019 the Promoter's Customer-Care employee called and informed me that they were waiting to receive the "CC" (Completion Certificate) soon, and would be able to handover the Property in March 2019 (audio recording of the call is available). This information was completely false, as proven later from the Promoter's subsequent communications and actions or lack thereof. During that call I again informed the Promoter's employee that I had overseas travel planned in April 2019 and would have to have the possession of the Property no later than the end of March 2019.
9. During my visits to the site between December 2018 to April 2019, I found no visible progress in the said Flat with regard to installation of plumbing, electrical wiring, interior wall finish, doors/windows etc.; furthermore, essential common facilities such as the lifts, water treatment plant, power transformer/substation, water tank and water supply lines were either incomplete or non-existent. Therefore, the Property and the entire complex was not ready for habitation and for application for the CC, let alone be granted one. During my April 2019 site visit, the Promoter's employee(s) assured me that the Property would be ready and handed over in June 2019.
10. As a result of this new delay, I had to reschedule my overseas business travel again to August 2019, to allow for adequate time following the handover of the Property to complete the interior work of the said Flat and move there with my belongings.
11. On 15/6/2019 I inquired again about handover of the Property, this time the Promoter's employee(s) informed me that the Property would be ready and handed over latest by 31/08/2019 as per the WB-HIRA registration commitment and not in June 2019. Therefore, I had to again reschedule my much needed overseas travel to December 2019.
12. On 17/7/2019 I visited the site and found the Property to be significantly incomplete in many respects including the internal wall finish and all of the internal fittings and fixtures; the building's lift and main water supply line were also either incomplete or uninstalled. The Promoter's employee(s) asked me to prepare a list of all the deficiencies and send to the Customer Care for remedy. I sent the deficiencies/defects list to the Promoter on 22/7/2019; however, the work was not completed until the 3rd week in September 2019, well past the 31/8/2019 deadline (including a generous 9-months long grace period) as per the Agreement and the HIRA registration, and that too after several follow-up communications from my end.
13. During my site visit on 2/9/2019 I was asked by the Promoter's employee(s) to specify in a written letter if I wanted the Property to be registered and handed over on an urgent basis! I wrote a letter on the spot explaining my overseas business travel plans and needing possession of the property on an urgent basis (Exhibit II). That letter was completely ignored by the Promoter.

14. I visited the Property again on 24/9/2019 and made final payments for the Property and the Extra Development Charges (costs for generator backup and proportionate share of the common facilities); but the Promoter failed to provide the keys and possession of the Property.
15. Thereafter the Promoter continued the delay in providing possession on account of not having had received the Completion Certificate. The Promoter received the Completion Certificate on or about 16/10/2019, but continued to deliberately dawdle thereafter in handover of the property and registration without any justifiable cause.
16. I requested the Promoter on 11/10/2019 to provide me all the requisite documents I was entitled to receive for review and approval, including a draft copy of the conveyance deed. The Promoter promised to send them, but never did.
17. I had had asked the Promoter in writing on 23/10/2019 and on 11/11/2019 (Exhibits III and IV respectively) to urgently handover and register the Property in my name, and also to compensate me with the “delay penalty” as per the Agreement.
18. After initially ignoring my letters, the Promoter finally responded on 20/11/2019 in a letter (Exhibit V) with specious excuses for the delay, and rejecting my demand for the compensatory “delay penalty” payment, and not agreeing to my requested handover and registration deadline of 30/11/2019 or for that matter any other deadline.
19. The Promoter finally sent me some documents on 16/11/2019 all of which were either incomplete and/or defective, and had to be rejected with request for the correct and complete documents. Notably, the conveyance deed completely omitted part of the Property (namely the covered parking space) and had numerous legal and language or construction errors. I sent a marked up corrected copy of the said conveyance deed on 21/11/2019 back to the Promoter.
20. I reasserted my claims to the Promoter again in a letter dated 22/11/2019 (Exhibit VI) and an addenda thereto dated 25/11/2019 (Exhibit VII). In response the Promoter sent me a stamp duty and fees payment notice on 28/11/2019, and two e-mails on 30/11/2019, one stating that the Property was possession ready, and the second with a draft copy of the Conveyance Deed which was found to be defective again.
21. I notified the Promoter on 30/11/2019 by e-mail (Exhibit VIII) about some of the defects I found in the conveyance deed; and asked them to refund my entire payments along with the stipulated interest thereon computed at the SBI PLR no later than 3/12/2019. The Promoter has neither responded nor taken any apparent action to pay me thus far.
22. After having had waited for over 20 months and suffering both tangible and intangible financial losses due to the unjustifiable delay in handover of the Property, resulting solely from the Promoter’s failures and deliberate dawdling, it is no longer viable for me to accept the Property.
23. Further, at the time of initial purchase application and deposit payment, I was assured by the Promoter’s employee(s) that I was buying a 2-BHK flat with 2 bathrooms. I was further reassured of the same, at the time of execution of the Agreement and thereafter in a meeting

with the Promoter's engineering and sales employees on or about May 2018 that both the bathrooms would have water heater/geyser connections for hot water supply to the showers and the basins, and that the Property would be wired for 3-phase electrical supply connection to accommodate the load and balanced power usage for 3 air-conditioner units and other high-power home-appliances. On or about the 3rd week of July 2019, I learned that the Promoter installed shower and water-heater/geyser facility only in one bathroom and declined to do the same for the 2nd bathroom. During the Property inspection on 29/11/2019, I found that the Promoter provided only a single-phase master switch at the electrical meter installation location and that the meter installation box/panel provided by the Promoter was too small to accommodate a 3-phase electricity supply meter.

24. The Promoter also attempted to unlawfully demand 18% GST payment on the maintenance fees for the Property, despite clear guidance to the contrary issued in a circular from the Indian Government's Ministry of Finance.

Therefore, I contend that,

- i) The Promoter defaulted on the sale/purchase Agreement, both in its letter and spirit, by the Promoter's willful negligence and deliberate blatant disregard for the terms of the Agreement, and inter alia failed to provide possession after expiry of the completion and handover date of 30/11/2018 and thereafter on 31/8/2019 following a 9-month long grace-period stipulated in the Agreement;
- ii) The Promoter's employees on numerous occasions knowingly misrepresented the features, desirability and prospective availability of the Property;
- iii) The Promoter and/or its agent(s) knowingly prepared defective conveyance deeds, twice, violating various legal norms, including the WB-HIRA ACT of 2017 section 14(3), as well as my legal rights as the buyer and future owner, and thus intentionally hindered registration and handover of the Property;
- iv) The Promoter violated the West Bengal Apartment Ownership Act of 1972, as amended in 1998, by failing to provide me the keys to the Property even after receiving full payment for the Property;
- v) The Promoter's conduct of providing fictitious Property handover dates, constantly changing in 2-month increments, had had incontrovertibly caused loss of my business revenue and possibly clients, by restricting my overseas travel.
- vi) The Promoter unlawfully attempted to collect taxes on the maintenance fees in violation of directive issued by the Ministry of Finance of the Government of India;
- vii) The Promoter failed to respond and failed to take action to reimburse me for my entire payment plus the applicable interest thereon, despite my clear demand therefor on 11/11/2019 and 30/11/2019.

I pray for a judgment in my favour, directing the Promoter to posthaste

- A) refund my entire payment of Rs. 24,88,332 (Rupees Twenty-Four Lakh Eight-Eight Thousand Three Hundred Thirty-Two) PLUS the interest thereon computed at the rate of SBI PLR plus 2% (two percent) for the entire duration for which the Promoter has had retained the funds, until repaid in full; and
- B) reimburse me all legal costs I might have incurred or may incur in adjudication of this matter, including but not limited to attorney's fees, filing costs, copying costs, transportation costs etc.; and
- C) issuance of an injunction upon the Promoter to not market/sale/re-sale to any other party the Property I paid for until the Promoter's payment to me is complete.