

ORDER SHEET

**WEST BENGAL HOUSING INDUSTRY REGULATORY AUTHORITY**

Complaint No. COM-000035 of 2019

Ashley Brian Hyams.....Complainant

AND

Greentech IT City Pvt Ltd.. .....Respondent

Sl. Number and date of order	Order and signature of Officer	Note of action Taken on order
5 ----- 30-04-2019	<p>An online complaint was received as per Section 31 of the West Bengal Housing Industry Regulation Act,2017 vide complaint No. <b>COM-000035</b> dated <b>08/02/2019</b> to the WB Housing Industry Regulation Authority from Complainant <b>Ashley Brian Hyams of 16B, Dover Terrace Flat A-41, Dover Terrace Kolkata-700019</b> and the Respondent and the Complainant were called for hearing on 7/3/2019.</p> <p><b>On 7/3/2019</b>, both the parties appeared for hearing. The Complainant in his complaint has stated that an agreement dated 14/11/2014 was executed with Green Take IT City Private Ltd through India Bulls Real Estate for projects of Aqua Golf Villa, Phase-1 being GV-19 measuring 2500 square fit Golf Villa to be erected 3.5 cottahs of land as described in the schedule II of the said agreement for total consideration of Rs.1.5 crores and as per the said agreement the completion date was 24/11/2016. The Complainant also stated in his complaint that in March 2017, the Complainant visited the site and found that the construction of said unit has started and therefore, informed the Respondent to cancel the agreement and return all payments made by the Complainant with interest as the project will not get completed within two years as agreed by the parties. The Complainant also stated in his complaint, that the Complainant has already paid sum of Rs.78,89,680/- and has regularly asked for refund but the Respondent denied. However, after expiry more than four years, construction of the property has not been completed by the Developer.</p> <p>Complainant in his complaint has sought the following reliefs :-</p> <ol style="list-style-type: none"><li>1) Direction upon the Respondent to show the completion certificate and registration under HIRA Act.</li><li>2) Refund of the Complainant's money along with interest at the rate of 24%</li></ol>	

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per annum as per Article 4 of the agreement for sale.

3) To pay the Complainant's litigation cost.

The Respondent during the hearing stated that no complaint copy had been received by the Respondent with the notice for hearing. Hence, copy of the complaint was handed over to the Respondent with proper receipt during the hearing. The complainant during the hearing has been directed to send the entire documents related to the complaint to the Authority, copying the same to the Respondent. The next date of hearing was fixed on 19/03/2019.

On 19/3/2019, both the parties appeared for hearing. During the hearing the complainant filed a supplementary affidavit to this Authority and handed over a copy of the same to the respondent. The respondent during the hearing argued that the complainant has made India Bulls Real Estate a party to the complaint but India Bulls has not been served any notice regarding the complainant. Therefore, the respondent submitted that proper notice is required to be served to all the respondents for proper adjudication of the present complaint. It is found from the official record that India Bulls has not been served with any Notice regarding the complaint. Accordingly, the office was directed to serve a notice along with entire documents including the supplementary affidavit filed by the complainant to India Bulls Real Estate with a direction to the file reply in the next date of hearing.


The respondent during the hearing has also stated that since he has got a supplementary affidavit during this hearing, he requires further time to file a reply. Accordingly, the respondent is directed to file reply during the next date of hearing without any fail, otherwise order will be issued without taking reply into consideration.

A notice was sent to India Bulls, but it was returned to this office with the comment "Addressee moved".

On the next date of hearing on 9/4/2019, the Complainant appeared and the Respondent filed hazira but was found absent on call.

During the last date of hearing, on 19/03/2019, the Respondent stated that the Complainant has made India Bulls a party to the Complaint. Hence, a notice in favour of India Bulls is required to be served regarding the complaint. This office issued notice to India Bulls but the same was not served since the addressee has moved.

It was observed from the agreement dated 24/11/2014 that the same has been executed between Green Tech IT City Pvt. Ltd and the Complainant only and India Bulls has not been made party to the agreement. Hence, observation or reply from India Bulls is not required in the matter. Accordingly, the next date of hearing was fixed on 30.04.2019.

  
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On 30.04.2019, hearing was held. I have gone through the complaint, documents, submission by both the parties. It is fact that the complainant has paid Rs. 18,89,680/- to the respondent and the respondent has failed to provide possession of the villa within the stipulated agreed time between the parties. Therefore, the Respondent has contravened Section 17 of the West Bengal Housing Industry Regulation Act, 2017 by not providing possession of the villa within the stipulated time to the Complainant.

It is also a fact that as per Article 4 of the Agreement for Sale there is provision for payment of interest if any default is made on the part of complainant, however, there is no provision in the said Agreement if the default is made on the part of respondent. Hence, the Agreement for Sale is one sided and it would be justified to consider the said clause on default on the part of the Respondent.

Since the cease work of the Advocates are going on and the respondent is not present during the hearing, the next date of hearing will be fixed and informed to the parties in due course.



Designated Authority  
Housing Industry Regulatory Authority  
West Bengal



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