

**ORDER SHEET**


**WEST BENGAL HOUSING INDUSTRY REGULATORY AUTHORITY**

**Complaint No. COM-000189 of 2019**

**Pradip Kumar Agarwal.....Complainant**

**AND**

**Emami Realty Limited.....Respondent**

Sl. Number and date of order	Order and signature of Officer	Note of action Taken on order
1 ----- 16-01-2020  Dictated & corrected by me 	<p>Complainant is present filing hazira.</p> <p>Ld. Advocate Ms. Gargi Manna is also appearing of the Complainant.</p> <p>Ld. Advocate Ms. Simran Sakunia is representing Respondent filing vakalatnama.</p> <p>Respondent filed written response, a copy of which has been delivered to the Complainant at the time of hearing.</p> <p>Heard the parties.</p> <p>Respondent in his written response stated that the instant complaint is not maintainable on the ground that the Complainant can not be categorized as consumers as defined in section 2(1)(D) of the Act on the basis of sub lease agreement and this complaint petition does not come under the purview of WBHIRA Authority as sub lease agreement was made between the parties prior to enactment of the Act (WBHIRA Act, 2017). Respondent also pleaded that the complaint petition suffers from non-joinder or mis -joinder of parties as L&amp;T who is entrusted as contractor for construction for the project should also be added as party in this complaint petition.</p> <p>Respondent however, admitted the fact that flat measuring area of 1150 sq ft super built area at the project "Emami City" was agreed to be delivered possession on payment of consideration amount of Rs.57,15,000/- for the flat along with car parking space as detailed in clause 4.1 of the agreement</p>	

Dictated  
& corrected  
by me



between parties on 29/06/2015.

Ld. Advocate the Complainant pointed out that L & T is merely a contractor as clearly stated in the agreement to sub lease signed between Complainant and Respondent Company and land owner. Hence, Construction Agency L & T is not signatory to such agreement. Later Ld. Advocate of the Respondent informed that section 2(1)(D) of the Act has been mentioned by mistake and pleadings on maintainability on those grounds is not pursued.

Considered submissions of parties and examined the complaint petition along with agreement for sub lease between the parties. I do not find any merit in the pleading that the complaint petition is not maintainable and also do not agree to the prayer for nonjoinder or misjoinder of the parties at this stage for the reason that Respondent promoter signed agreement with complainant along with land owner as a party. There are no other parties to this agreement. The Respondent has not prayed for adding the land owner and therefore, the question of nonjoinder and misjoinder does not arise. In written response, I do not find any grounds to satisfy that WBHIRA Act is not applicable as the agreement between parties is still subsisting and delivery of possession of the property as per agreement between the parties is not yet concluded. Therefore, complaint petition is maintainable u/s 17 and section 18 of WBHIRA Act, 2017.

Prayer for non-maintainability of complaint petition is thus disallowed.

The Complainant is at liberty to respond on the written response of the Respondent.

As the parties did not dispute the fact of payment of Rs.61,50,153/- paid by the Complainant to the Respondent Company as stated in the complaint petition and also admitted the position that delivery of possession has not yet been concluded, this is appropriate to issue the following interim orders :

Ordered,

that Respondent shall conclude the delivery of possession within two weeks of receipt of this order on fulfilment of conditions of agreement for sub-lease between the parties by the Complainant, without prejudice to rights of the parties as regards any compensation for delay in possession or conditions of any due payments prior to execution of conveyance of the deed which will be



decided after hearing the parties on next date of hearing.

Both the parties shall abide by the conditions of the agreement for the purpose of concluding delivery of possession as per this interim order.

Be it noted, Authority will proceed with further hearing on merits on next date and accordingly allowed parties to file their written agreements.

To 24/02/2020 for further hearing and orders.

Dictated  
& corrected  
by me



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