

ORDER SHEET


WEST BENGAL HOUSING INDUSTRY REGULATORY AUTHORITY

Complaint No. COM-000031 of 2019

Dipanwita Paul Das.....Complainant

AND

Pukhraj Baid & oths.Respondent

Sl. Number and date of order	Order and signature of Officer	Note of action Taken on order
5 ----- 08-04-2019  Dictated & corrected by me	<p style="text-align: center;">An online complaint was received as per section 31 of west Bengal Housing Industry Regulation Act-2017 vide complaint no. COM-00031, dated 06.01.2019 at the West Bengal Housing Industry Regulatory Authority from a complainant Dipannita Paul Das. Accordingly, a notice was issued for the alleged contravention and the respondent was directed to appear for hearing on 22.01.2019 at 1.15 pm.</p> <p style="text-align: center;">Accordingly, on 22.01.2019 both the parties appeared and filed their hazira.</p> <p style="text-align: center;">The complainant stated in his complaint that :</p> <ol style="list-style-type: none">1) That "KADAMBARI" project has received the completion certificate on 23.07.2018 and the project is not registered under WBHIRA Act. Hence, the Complainant has requested for registration of the project under WBHIRA Act immediately.2) That in the tripartite agreement between respondent, the complainant and State Bank of India executed on 02.12.2015 it was covenanted that the project will be completed latest by 30th June,2017 but the respondent insisted the complainant to take possession without Completion Certificate and sent the complainant the demand letter to pay the balance payment otherwise 18% penalty was fixed for delay payment and the respondent had handed over the flat on 31.01.2018. Thus in terms on the agreement the respondent is liable to pay a penalty of 18% per annum on the amount paid by Complainant for the delay from the part of the respondent. Since the project is already delayed by 7 months complainant has become entitled for interest and penalty of a sum of Rs. 5,50,633/- being 18% of the principal amount already paid by her.3) That through Demand letter dated 22.01.018 the respondent has claimed balance 5% payment Rs. 2,62,207/- with GST @18% for Rs. 31,465/-.The complainant has paid 95% payment with service tax in the month of	

February, 2017 and waited almost one year for handover of booked flat from respondent. As per tripartite agreement the respondent has confirmed that they have to hand over flat within month of June 2017 but due to slow construction of work this was delayed almost 8 months. GST was implicated in the month of July, 2017. If the respondent timely would have completed the work, the complainant may make the balance payment @5% payment with service tax before GST implications.

- 4) That as per sales agreement the respondent have to provide "Water Treatment Plant" instead of existing "Iron Removal Plant". The Complainant is receiving poor quality water supply every day, it is chocking the water purifier, water heater, etc. frequently. The complainant has stated that the water is no longer considered as a safe drinking water as well as bathing purpose & mouth wash and diseases like diarrhea, dysentery and cholera may break out at any time. The complainant also stated that the water supplied to the residents has been tested by the independent agency and the report confirmed that the water is not safe for drinking. The respondent has committed to operate the water treatment plant for safe water. Complainant also stated that the "Water Treatment Plant" is non-operational or non-standard and the Complainant demands supply of good quality drinking water as per agreement.
- 5) That it was committed in brochure of site plans during purchasing of flats that a Diagnostic Centre would be constructed in front of the main gate but it has not started till date.
- 6) That it was committed in brochure of site plans by respondent during purchasing of flats that a POND and playground would be constructed inside of the complex area but still it has not started/included in project common area till date.
- 7) That the complainant has also stated that the common area and facilities has been earmarked for car parking and the way it has been done that in case of fire there will not be easy access for fire vehicle (Fire Tender). Further respondent has marked the cover parking area for allotment of garage one behind other without keeping space to place the car behind the first one. The complainant submits that the common area should be maintained as per HIRA Act for hassle-free movement of occupation/children/car.
- 8) That the West side gate (beside Children Park) must be opened immediately.

Accordingly, the respondent was directed to file reply within seven days along with sanctioned plan, number of flat and land area of the project and sent a copy of the same to the complainant. The complainant was also directed to file the rejoinder within seven days after receiving reply and the next date of hearing was fixed on 14.02.2019 at 12.00 noon.

On 14.02.2019, the complainant appeared but the respondent failed to appear in spite of proper service of notice. Since the respondent did not appear and also failed to file their reply, last opportunity was given to the respondent to appear and file their reply. Accordingly, the next date of hearing was fixed on 18.03.2019 at 11.00 am.

On 18.03.2019 both the parties appeared. During the hearing the respondent submitted that no documents or enclosures have been received by the respondent for which reply has not been filed by the respondent


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though he had not informed the matter on previous hearing on 22.01.2019. Accordingly, the entire documents as Annexed with the complaint of the respondent sent to the Respondent which was received on 27.03.2019 by the Respondent. Accordingly, the next date of hearing was fixed on 08.04.2019 at 11.00 am.

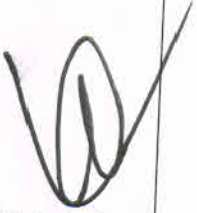
On 08.04.2019 both the parties appeared. During the hearing the respondent failed to submit their reply and submitted a letter dated 08.04.2019 wherein it is stated that Writ Petition being WP No. 5092(W) of 2019 has been filed by the respondent challenging the constitutional validity of the West Bengal Housing Industry Regulation Act-2017 and the matter is pending before the Hon'ble High Court at Kolkata prayed for keeping in abeyance hearing till disposal of the writ petition. It is a fact that an order dated 07.03.2019 has been passed by the Hon'ble High Court at Kolkata in the aforesaid WP No. 5092(W) of 2019 wherein the petitioner has been granted liberty to obtain registration under the West Bengal Housing Industry Regulation Act-2017 without prejudice its right and contention in the Writ Petition. The prayer of the Responded was considered and rejected as no order of stay in respect of Writ Petition No. 5092(W) of 2019 had been passed by the Hon'ble High Court at Calcutta.

It is also a fact that no order to stay or quash the West Bengal Housing Industry Regulation Act-2017 has been issued by the Hon'ble High Court at Kolkata in the aforesaid Writ Petition.

Since no reply has been filed by the respondent in the present complaint, the Authority is of the opinion to take decision as per the documents and submissions made by the complainant in her complaint.

After going through the complaint, the documents and submission made by the Complainant and the Respondent and the submission made during the hearing, the Authority is of the opinion that in terms of the agreement dated 02.12.2015 executed between the parties the project is required to be completed latest by 30th June, 2017. However, as per the submission made by the respondent in the Writ Petition being WP No. 5092 (W) of 2019 the project was completed on 23/07/2018. It is also observed from the Demand Letter, dated 22nd January, 2018 that the respondent has sought 18% interest on the amount due from the complainant. But, there was no clause in the agreement for payment of interest for any default by the Respondent. It is a fact that the respondent had handed over the Flat on 31.01.2018 but due date was June, 2017. Hence, it is hereby ordered that the respondent shall pay an interest at the rate of State Bank of India Prime Lending Rate plus two percent per annum on the amount paid by the Complainant to Respondent for the delay on handing over the possession from 01.07.2017 to 31.01.2018 under rule 18 of West Bengal Housing Industry Regulation Rules, 2018, to the complainant within a period of thirty days from the date of order received by the Respondent.

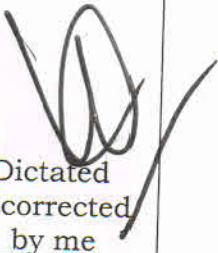
The Authority further observed that it is a fact that if the project was completed within scheduled agreed date on 30th June, 2017, the complainant will not require to pay the GST amount of Rs. 31,465/- only service tax at the prevalent rate to be paid. Therefore, the respondent is directed to Pay the excess amount paid by the Complainant for GST in lieu of service tax to the complainant within a period of Thirty days from the


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date of communication of this order.

The respondent is also directed to provide all the amenities and facilities as per the brochure shown to the complainant and the agreement for sale executed between the complainant and the respondent. The respondent is directed to provide the said amenities and facilities within a period of one month from the date of this order and submit a compliance report to this Authority within next 15 days.

However, both parties shall abide by the final judgment of the Hon'ble High Court, Calcutta, in respect of the Writ Petition being no. WP No 5092(W) of 2019.



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Designated Authority
Housing Industry Regulatory Authority
&
Secretary, Housing Department.