

ORDER SHEET

WEST BENGAL HOUSING INDUSTRY REGULATORY AUTHORITY

Complaint No. COM-000048 of 2019

NAVIN PATODIA.....Complainant

AND


1. LGW LIMITED, 2. MKHS REALTY LLPRespondent

Sl. Number and date of order	Order and signature of Officer	Note of action Taken on order
4 ----- 29-05-2019	<p>An online complaint was received as per Section 31 of the West Bengal Housing Industry Regulation Act, 2017 vide complaint No. COM-000048 dated 25/03/2019 at the WB Housing Industry Regulatory Authority from Complainant Navin Patodia of 4, Fairlie Place, 4th Floor, Room No-407 Kolkata-700001 and as per Rule 36 of the West Bengal Housing Industry Regulation Rules, 2018, NOTICE was issued for the alleged contravention and the Respondent as well as the Complainant were directed appear for hearing at the Office of the WB Housing Industry Regulatory Authority on 16/4/19.</p> <p style="text-align: center;">On 16/4/19, both the parties appeared during the hearing.</p> <p>The Complainant in his complaint has submitted the following :</p> <p>a) That the Complainant had entered into an agreement dated 27th of March 2015 with the Respondents for purchase of a residential flat 'no. 17-4/E, measuring about 1159 sq.ft. on the 4th 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 – 700 136.</p> <p>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</p>	

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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 sq.ft rate quoted for the said flat shall be reduced by an amount of Rs. 1,000/- i.e. from Rs. 3,800/- per sq.ft. to Rs. 2,800/- per sq.ft. 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, the Complainant 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, the Complainant had written a letter dated 08.01.2019 addressed to the Respondent no. 2 whereby the Complainant had requested for payment of interest @12% on the amount paid till date in pursuance of the clause of the agreement regarding 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.


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- g) That the said letter dated 08.01.2019 was returned to the Complainant 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.

During the hearing the Respondent No. 1 submitted that he is the land owner of the said project which is to be developed by the Respondent no. 2. The Complainant during the hearing submitted that 90% of the total consideration of the Flat has already been paid to the Respondent no. 2 and also stated that the project is not registered under the West Bengal Housing Industry Regulation Act-2017. During the hearing the Respondents submitted an application seeking time to file their reply. Accordingly, the next date of hearing was fixed on 30.04.2019.

On 30/4/19, the Complainant appeared and Respondent no. 1 appeared. However Respondent no. 2 did not appear in spite of proper notice. During the hearing Respondent no. 1 sought time to file reply as the reply to be submitted before the Authority is not duly signed by the Respondent. Accordingly, last opportunity was provided to both the Respondents to file their respective reply and the next date of hearing was fixed on 16/05/19.

On 16/05/19, the Complainant appeared along with both the Respondents of the matter.

Both the Respondents filed their reply against the complaint and handed over a copy of the same to the Complainant. Accordingly, the next hearing was scheduled on 29/5/19.

On 29/05/19, the Complainant along with both the Respondents appeared.

During the hearing the Respondent submitted a declaration stating that the Ld. Civil Judge(Sr. Division) at Barasat Court has passed an order for stay on the premises of the said project named "The Pyramid".

I have gone through the complaint, the documents submitted by the parties and the submissions made by all the parties during the hearing.

It is fact that the Respondent No. 1 is the land owner and Respondent No.2 is the developer of the said project and the Complainant has paid an amount of Rs. 35,98,858/- to the Respondent no. 2 for the residential Flat in the aforesaid project. It is also a fact that the date of possession of the said Flat as per the agreement dated 27.03.2015 is 36 months from the date of commencement of the construction



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but the Respondent has failed to provide possession of the said Flat as per the aforesaid agreement; thereby the Respondent no. 2 has violated section 17 of the West Bengal Housing Industry Regulation Act, 2017.

It is hereby ordered that the Respondent no. 2 shall refund the entire amount paid by the Complainant along with an interest @ 12% per annum as per the agreement between the parties from the date of payment made by the Complainant till 01.06.2018, i.e., the date of commencement of West Bengal Housing Industry Regulation Act, 2017, and after 01.06.2018 till the date of payment made the Respondent no. 2 shall pay an interest @ State Bank of India Prime Lending Rate plus 2% as per rule 18 of the West Bengal Housing Industry Regulation Rules, 2018.

The Respondent no. 2 shall refund the aforesaid amount along with interest to the Complainant within a period of 45 days from the date of communication of this order.

The matter is hereby disposed of.

Let the copy of the order be communicated both the parties.



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Designated Authority,
Housing Industry Regulatory Authority