

ORDER SHEET

WEST BENGAL HOUSING INDUSTRY REGULATORY AUTHORITY

Complaint No.COM-000226

Arundhati Das.....Complainant

AND

Simoco Systems & Infrastructure Solutions Ltd.....Respondent

Sl. Number and date of order	Order and signature of Officer	Note of action Taken on order
1 ----- 06-02-2020	<p>Complainant is present filing hazira.</p> <p>Respondent is represented by Ms. Sanjana Jaiswal duly authorised by Respondent.</p> <p>Heard the parties.</p> <p>This is the case of the Complainant that one 2 BHK flat measuring 734 sq ft super built up area was agreed to be delivered within 36 months from the date of sale agreement between parties signed on 21/06/2016, on payment of consideration amount of Rs.14,14,890/- as per payment schedule noted therein for purchase of flat no.5B on 5th floor, block-2B-6 in the project "Sanhita" being developed by Respondent Company. It is alleged by the Complainant that despite making payment of Rs.14,54,796/- no possession of the flat has been delivered by the Respondent, though due date of possession with extended grace period already over on 21/12/2019.</p> <p>This is submitted on behalf of the Respondent that Rs.14,94,311/- was received from the Complainant. It is further submitted that the Company has offered settlement with the Complainant by refunding Rs.13,10,607/- without GST and claimed that Complainant has accepted the offer of settlement.</p>	

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The Complainant filed the payment receipts according to which total sum of Rs.14,54,796/- as value of flat + a sum of Rs.56,702/- as service tax was paid to the Respondent Company between 01/04/2014 to 10/02/2017.

Examined documents and payment receipts and also gone through details of the payment made to the Respondent Company and noticed that the contentions of the Respondent company about GST are not true to the extent that this is not the GST which was applicable at the time of transactions but service tax as GST came into effect from 01/07/2017. Further this is admitted position that the Respondent Company could not deliver the possession of the flat as agreed within due date of possession and therefore, the Complainant is entitled for full refund without any deductions except the statutory service tax which is Rs.56,702/- as per the documentary evidence filed by the Complainant.

Complainant refuses to have accepted settlement proposal for refund of Rs.13,10,607/- as claimed by the Respondent in the written submission. Rather, the Complainant pleaded to refund the entire deposits after deducting the service tax only.

Attention has been drawn to clauses in sale agreement applicable in this case where 30 % of amount received as application money is liable to be deducted in the event of buyer cancelling the allotment at any stage. Complainant while agreeing to the fact that cancellation of allotment has been sought by her by filing formal request to respondent within due date of possession, pleaded that amount proposed in settlement calculated deductions beyond 30 % of application money. A sum of Rs 2 lakhs was deposited as application money, so applicable deductions on cancellation can't exceed Rs 60000/-. Admittedly, complainant is entitled for refund of deposits after adjusting sales tax which is not refundable and Rs 60000/- in lieu of cancellation charges as per sale agreement. The offer of settlement is therefore not agreed by complainant. Complainant agreed to receive the amount offered without prejudice to her rights to claim entitled amount as admissible as per law.

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After hearing the parties and considering facts of the case and submission this is

Ordered.

That Respondent shall refund Rs.13,94,796/- within 45 days of the receipt of this order. Further in view of offer of the Respondent to deliver six numbers of cheques amounting to Rs.13,10,607/- duly received by the Complainant at the time of hearing today without prejudice to rights of the party, let balance amount to be paid as per this order.

In the event of Respondent desires to file written objection on the facts filed by the Complainant and the amount claimed to be refunded Respondent is allowed to do so within one week from receipt of this order serving a copy to the Complainant.

This Authority will consider such objections if any, filed by the Respondent before passing final orders on next date of hearing.

Fix 05/03/2020 for final hearing and orders.



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