

ORDER SHEET


WEST BENGAL HOUSING INDUSTRY REGULATORY AUTHORITY

Complaint No. COM-000158

Vikash Kumar Bathwal.....Complainant

AND

Emami Realty Ltd.....Respondent

Sl. Number and date of order	Order and signature of Officer	Note of action Taken on order
<p style="text-align: center;">3</p> <p style="text-align: center;">-----</p> <p style="text-align: center;">25-02-2020</p> <p>Dictated & corrected by me</p> 	<p>Both the parties are present filing hazira.</p> <p>1. A fresh vakalatnama filed on behalf of the Respondent, authorizing Ms. Binota Roy, Ms. Vedika Sureka and Ms. Simran Sakunia is taken on record.</p> <p>2. A report filed by Respondent in compliance of this Authority order dated 19/12/2019, serving a copy to Complainant is allowed to be taken on record along with written rejoinder filed by Complainant originally address to Respondent party.</p> <p>3. This Authority considered written response on complaint petition filed on behalf of the Respondent on 19/12/2019 together with report on compliance filed now. Respondent pleaded challenging the maintainability of the complaint petition, inter alia, challenging the jurisdiction of this Authority, non joinder and or mis-joinder of parties and estoppels etc along with other pleadings as regards applicability of force majeure in this case. At the time of hearing today Ld. Advocates representing Respondents sought permission for amending the written response stating that some of the pleadings noted in the written response as regards maintainability are no more pleaded further and some of the pleadings will be modified.</p> <p>4. The oral prayer seeking amendment of the written response and</p>	

pleadings therein is allowed to be filed within two weeks from today serving a copy to Complainant.

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5. It appears from the report filed by the Respondent that delivery of physical possession of the flat could not be concluded though the parties proceeded with physical inspection that was conducted on 05/01/2020 and accordingly the notice of possession was also issued with the intention to complete delivery of physical possession of the flat. This is admitted by Respondent parties that the Complainant has fulfilled all the requirements to get physical possession and there are no payment dues and thereby the Complainant is entitled for physical possession in terms of agreement between the parties. Both the parties are in dis-agreement on the contents of possession memo, which is sent to the complainant for signature as a token to accept that full and peaceful possession of the flat has been completed. According to Complainant such form in annexure "A" of the notice mentioned certain terms and conditions at point "3" and point "4C" of such format which amounts to restriction and curtailment of rights of the Complainant contrary to the commitments in covenants. This is noticed that the format for physical possession as furnished by Respondent is one sided and does not seem to be in conformity to the covenants between the parties and hence not agreed upon by the Complainant.

6. Examined the points raised by Complainant and also considered the submissions on behalf of the Respondent. This Authority is of the considered view that imposition of additional terms and conditions restricting the rights of the parties, which are otherwise available in terms of the original agreement without any mutual consent or otherwise, is not permitted subject to any other conditions in the original agreement determining such rights.

7. Therefore, it is appropriate to reiterate that delivery of physical possession of the property is concluded without any further delay and strictly in terms of the conditions of original agreement.

Attempt of Respondent to get possession memo signed in the present format as offered to Complainant is thus not found in accordance with the agreement.

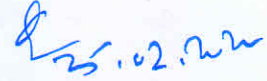
Let delivery of physical possession be concluded and written submissions

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with modification as allowed to the Respondent be submitted before next date of hearing. This is without prejudice to rights of the parties in this complaint petition.

Fix this matter for further hearing and orders on 23/03/2020.



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