

**ORDER SHEET**


**WEST BENGAL HOUSING INDUSTRY REGULATORY AUTHORITY**

Complaint No. COM-000140 of 2019

Nepal Kashi Sharma.....Complainant

AND

Shubham Constructions.....Respondent

Sl. Number and date of order	Order and signature of Officer	Note of action Taken on order
3 ----- 07-01-2020  Dictated & corrected by me  	<p>Complainant is present filing hazira.</p> <p>Ld. Advocate Ms Ipshita Mukherjee appeared on behalf of the Respondent.</p> <p>In terms of Authority order dated 10/12/2019, the Complainant has conducted inspection of the flat, facilitated by respondent and according to written statement made by the Complainant at the time of hearing today after r inspection on 04/01/2020 the flat is not in inhabitable and usable condition. There are several unfinished works in the common passage area and therefore, he prays for refund of the amount already paid along with interest at the rate of 18% per annum as per sale agreement dated 14/07/2010. Complainant also raised the demand to deduct service taxes paid to respondent in the payments made so far claiming that service taxes are subsumed in GST. Though, sale agreement does not mention that agreed amount of consideration to payable by complainant is inclusive or exclusive of the service taxes/ applicable taxes.</p> <p>It is submitted on behalf of the Respondent that they have not received any written communication about the specific deficiencies as pointed out by the Complainant, which are required to be rectified and completed in order to the make flat fit in possession and assured that such defects, if informed in writing, shall be rectified before the possession of flat. However, the due</p>	

Dictated  
& corrected  
by me



amount of Rs.7,52,587/- is also required to be paid by the Complainant on completion of unfinished works but before handing over possession of the flat in terms of provisions of sale agreement. Respondent assured to finish the works as per obligations of the agreement on getting the communication from the complainant specifying the works to be undertaken.

Heard both parties in detail.

I have examined the sale agreement and other documents submitted by the parties and not inclined to pass orders for refund as prayed by mention by complainant today at the time of hearing as there has been no cancellation of allotment in terms of sale agreement and there are no such pleading in the compliant petition. Rather, the complaint petition prays for direction to promoter to make the flat habitable and usable as per the specifications and cause conveyance of the property in favour of the Complainant. As there are certain deficiencies has been pointed out at the time of inspection of the falt, though not specified in details, it is appropriate at this stage to pass following orders :

Ordered

that Respondent is directed to rectify the defects and complete the unfinished works as to be communicated by the Complainant to the Respondent within one week from date of receipt of this order. The flat has to be completed and made habitable and usable in terms of obligations and specifications recorded in the sale agreement within reasonable time, which the Respondent shall communicate to the Complainant in response to his communication as stated above, giving item wise completion timeline of each work.

This is needless to mention that the Complainant has to make payment of balance amount of Rs 7,52,587/- before delivery of possession and such payment has to be made as early as possible and immediately after the works to remove defects and make the flat habitable are completed and fit in possession is agreed upon between the parties.

Further, Respondent shall hand over possession and execute deed of conveyance within one month of making the final payment of dues by the Complainant.

This is clarified that the taxes like service tax and GST has to be realised as per admissible taxes on the date of transaction and any excess amount of GST due to service tax already paid has to be suitably disclosed to the complainant in the demand of balance payment to be raised by the Respondent with break-up of the taxes.

This is an ad interim order.

Let this matter be fixed for final orders for next date of hearing.

To 08/04/2020 for further hearing and final orders.

Dictated  
& corrected  
by me



07.01.2020

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