

**ORDER SHEET**

**WEST BENGAL HOUSING INDUSTRY REGULATORY AUTHORITY**

**Complaint No. COM-000282**

**Pritha Roy Sarkar.....Complainant**

**AND**

**Siom Realy Private Limited**

**(formerly Mani Enclave Private Limited)**

**..... Respondent**

Sl. Number and date of order	Order and signature of Officer	Note of action taken on order
3 ----- 10.12.2020	<p>Complainant is present in the online hearing filing her hazira through email.</p> <p>Shri Samir Agarwal, Director, Shri Amit Kumar Kedia, Chartered Accountant and Smt. Purbasha Mukherjee Chakraborty, Senior Manager, Sales &amp; Marketing of the Respondent Company are present in the online hearing filing hazira through email.</p> <p>As per the last order of this Authority dated 15.09.2020 the Complainant has submitted a rejoinder which has been received by the Authority on 09.10.2020.</p> <p>Let the rejoinder submitted by the Complainant be taken on record.</p> <p>Heard both the parties at length.</p> <p>The agreement for sale was signed between the parties on 14<sup>th</sup> January 2017. There is no provision in the said agreement regarding cancellation or</p>	

withdrawal by the allottee.

The West Bengal Housing Industry Regulation Act, 2017 came into force on and from 01.06.2018. Therefore, the provisions contained in the WBHIRA Act, 2017 and the rules and regulations framed thereunder shall be applicable in case of cancellation by the allottee. Clause 7.5 of the Proforma Agreement for Sale as contained in the Annexure -A as per Rule 9 of the WBHIRA Rules, 2018 provides as follows :-

**“7.5. cancellation** by Allottee- The allottee shall have the right to cancel / withdraw his allotment in the project as provided in the Act.

Provided that where the allottee proposes to cancel / withdraw from the project without any fault of the promoter, the promoter herein is entitled to forfeit the booking amount paid for the allotment. The balance amount of money paid by the allottee shall be returned to the promoter within 45 days of such cancellation”.

As per this provision mentioned above the promoter in this matter shall be entitled to forfeit the booking amount paid for the allotment.

The Respondent in its Written Response on affidavit at page 5 at point no. 16(i) and (ii) submitted that the Complainant booked a flat bearing no.213E on 07/06/2017 and booking cheque was received and receipt was issued and the copy of the receipt dated 26/06/2017 is attached at Annexure-B of the Written Response. From the receipt dated 26/06/2017, it is evident that a sum of Rs.3,00,000/- only was received from the Complainant vide cheque No.046490 dated 07/06/2017, drawn on Axis Bank, Sreerampur Branch as booking amount against the flat. By a letter dated 01/08/2017, the Respondent informed the Complainant that ever since the booking of the flat from the month of June, 2017, the Respondent regularly invited the Complainant to sign the agreement for sale and pay the consideration due. In

this letter Referring to the Complainant's booking form and cheque dated 07/06/2017 the Respondent requested the Complainant to execute the agreement for sale within 07/08/2017 and also pay and discharge the amounts due in terms of the sale agreement.


From the Written Response of the Respondent along with supporting documents annexed therewith which shows the chain of events and proves beyond doubt it is evident that the booking money received from the Complainant in this matter is Rs.3,00,000/- and it was paid by a cheque dated 07/06/2017. Therefore, the Respondent shall be entitled to forfeit the amount of Rs.3,00,000/- only as the booking money if the flat and the balance amount of Rs.21,23,834/- - Rs.3,00,000/-) = Rs.18,23,834/- shall be refunded by the Respondent to the Complainant as per Clause 7.5 of the Proforma Agreement for sale as contained in Annexure-A of the WBHIRA Rules, 2018.

Therefore, after hearing both the parties, it is hereby

Ordered,

That the Respondent is entitled to forfeit the booking amount of Rs.3,00,000/- only and the balance amount of money paid by the Complainant which is Rs.18,23,834/- only shall be refunded by the Respondent to the Complainant within 45 days from the date of receipt of this order by email.

With the above directions the matter is thus disposed of.



(SANDIPAN MUKHERJEE)

Chairperson

West Bengal Housing Industry Regulatory Authority



(HAR GOVIND SINGH)

Member

West Bengal Housing Industry Regulatory Authority



(TAPAS MUKHOPADHYAY)

Member

West Bengal Housing Industry Regulatory Authority