

**ORDER SHEET**


**WEST BENGAL HOUSING INDUSTRY REGULATORY AUTHORITY**

**Complaint No. COM-000035 of 2019**

**Ashley Brian Hyams .....Complainant**

**AND**

**Greentech IT City Pvt. Ltd.....Respondent**

Sl. Number and date of order	Order and signature of Officer	Note of action Taken on order
8 ----- 20-12-2019  Dictated & corrected by me 	<p>A complaint was received online u/s 31 of WBHIRA Act, 2017 vide complaint no.Com-000035 dated 08/02/2019 from Ashley Brian Hyams of 16B, Dover Terrace Flat, , A-41, Kolkata-700 091. Both Complainant and Respondent were called for hearing on 07/03/2019 and subsequently the matter was heard on 19/03/2019, 09/04/2019, 30/04/2019, 25/11/2019 and finally on 20/12/2019.</p> <p>On 07/03/2019 both the parties appeared. Complainant in his complaint stated that an agreement dated 14/11/2014 was executed with Green Tech IT City Pvt Ltd through India Bulls Real Estate for projects for Acqua Golf Villa, Phase-1 being GV-19 measuring 2500 sq ft. Golf Villa to be erected on 3.5 katha land as described in the schedule of the sale agreement on payment of Rs.1.5 crores consideration amount. As per sale agreement the completion date was 24/11/2016.</p> <p>In March, 2017 the Complainant visited the site and found that construction of the said unit has started but not ready for possession and therefore, informed the Respondent to cancel the agreement and return all payments made by the Complainant with interest as the project not completed within two years as agreed by the parties. The Complainant also stated that he</p>	

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had already paid a sum of Rs.7889680/- and has regularly asked for refund, but the Respondent did not refund the amount. However, even after four years the construction of the property has not been completed by the Developer.

Complainant in his complaint has sought for following reliefs :

- 1) Direction upon the Respondent to show the completion certificate and registration under WBHIRA Act.
- 2) Refund of the Complainant's money along with interest at the rate of 24% per annum as per Article 4 of the agreement for sale.
- 3) To pay the Complainant's litigation cost.

The Respondent during the hearing stated that no copy of complaint had been received by him with the notice for hearing. Hence, the copy of complaint was handed over to the Respondent under proper receipt. The Complainant was directed to send the entire documents related to the complaint to the Authority with copy to the Respondent.

On the next date of hearing i.e, 19/03/2019 both parties were present. The Complainant during the hearing filed supplementary affidavit to the Authority with a copy of the same served to the Respondent.

The Respondent during the hearing has also argued that India Bulls Real Estate was made a party but has not been served any notice regarding the complaint. It was also found in the official record that notice was not served to India Bulls regarding the complaint. Accordingly, the office was directed to serve a notice along with entire documents including supplementary affidavit filed by the Complainant to India Bull Real Estate with a direction to file reply on the next date of hearing. Respondent sought further time to file reply for to supplementary affidavit. Accordingly, Respondent was directed to file the reply on the next date of hearing.

A notice was sent to India Bulls but it was returned to this office with the comment "Addressee moved".

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On the next date of hearing on 09/04/2019, the Complainant appeared but the Respondent was found absent on call though filing hazira.

It was observed from the agreement dated 24/11/2014 that the same has been executed between Green Tech It City Pvt. Ltd and the Complainant only and India Bulls has not been made party to the agreement. Hence, replies of India Bulls was dispensed with as not the party in this case.

Accordingly next date of hearing was fixed on 30/04/2019.

On 30/04/2019 hearing was held and heard both the parties. It is noted that Complainant had paid Rs.7889680/- to the Respondent but the Respondent has failed to provide possession of the villa within the stipulated agreed time between the parties.

However, it is also observed that as per Article 4 of the said agreement for sale there is provision for payment of interest if any default is made on the part of the Complainant. But there is no provision in the said agreement if the default is made on the part of the Respondent.\

On the next date of hearing 25/11/2019 both the Complainant and authorised representative of the Respondent were present. Complainant prayed for filing of amendment of the complaint petition seeking specifically refund of money from Respondent which was allowed.

Complainant was directed to file the amendment of the complaint petition within two weeks from the date of this order serving copy to the Respondent. Respondent Company was directed to submit written response on affidavit inter alia covering the timeline of refund of payment to the Complainant along with admissible interest within two weeks from the date of receipt of the amendment petition serving copy to the Complainant. Copy of order was served to both the parties.

Today on 20/12/2019 the parties were heard in details.

After examining submissions and the counter submission from both the parties and facts of the case this is reasonably beyond doubt that Respondent

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failed to deliver the possession of the property within the extended period of completion of the project and deemed date of possession and therefore, the Complainant is entitled for refund of entire deposit of Rs.7889680/- along with interest as admissible.

Respondent filed a prayer with schedule of payment for refund of consolidated amount of Rs.80 lakhs as full or final settlement in ten equal monthly instalment commencing from January, 2020 and ending in October, 2020. A copy of prayer is served to the Complainant.

It is not clear from this written submission on prayer as to how much principal amount and interest are included in the consolidated amount offered for refund from January, 2020 to October, 2020.

This Authority after hearing the parties and considering the written submissions hereby issue following ad interim order :

Ordered

that the Respondent shall refund the entire deposits of Rs.78,89,680/- principal amount as already stated in detail about receipt details of the amount deposited to the Respondent Company by the Complainant till date within October, 2020, the first instalment being paid in January, 2020. All the payments to the Complainant shall be made by bank transfer in the bank account of Complainant.

In addition the Respondent is required to provide a calculation sheet of interest amount being offered on the principal amount and communicate the same to the Complaint within two weeks of receipt of the ad interim order. Such calculation and schedule of payment of interest and principal amount shown therein must be on affidavit.

Be it noted that interest on deposits shall be payable to the Complainant as per prevailing simple rate of interest during the entire period of retention of money by the Respondent Company till its final refund. The Complainant is at liberty to accept the offer with such modifications as he may like to settle

with the Respondent Company.

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This Authority will decide regarding interest compensation or any other costs, as may be admissible in this case after examining further submissions of the parties on next date of hearing for final orders.

To 20/02/2020 for hearing and final orders.



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