

**ORDER SHEET**


**WEST BENGAL HOUSING INDUSTRY REGULATORY AUTHORITY**

**Complaint No. COM-000021 of 2019**

**Mr. Vijay Kumar Mohta.....Complainant**

**AND**

**Bengal Unitech Infrastructure Pvt Ltd.....Respondent**

Sl. Number and date of order	Order and signature of Officer	Note of action Taken on order
5 ----- 18-11-2019  Dictated & corrected by me 	<p>The Complainant is represented by his father Sri Govinda Dass Mohta by filing hazira.</p> <p>Respondent is also present and filed hazira.</p> <p>On early occasions Respondent appeared on 03/01/2019, 17/01/2019 and 12/03/2019 whereas the Complainant could not attend the hearing on these days.</p> <p>Similarly the Complainant appeared before the Authority for hearing on 22/05/2019 but Respondent was on absent.</p> <p>Heard both the parties.</p> <p>It is noticed from the record of the case that the Complainant filed online complaint petition on 06/12/2018 against the Respondent Company Bengal Unitech Universal Infrastructure Pvt. Ltd.</p> <p>The case of the Complainant is that the flat with super built up area measuring 1226 sq ft in Uniworld City-Vistas, New Town, Kolkata Project of the Respondent Company was booked by the Complainant and agreement for sale was signed between both the parties on 12/05/2011 promising allotment</p>	

of the apartment bearing no.806 on 8<sup>th</sup> Floor, Block- 7 of the project as stated in Clause 1.a under the heading 'apartment' against consideration amount of Rs.48,83,439/- inclusive of basic price and car parking space charges. As per clause 5.a of the agreement the possession of the apartment was agreed to be delivered within 36 months from the date of execution of agreement.

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The Complainant filed the payment receipt of Rs.4,37,928/- paid on 27/04/2011 by cheque vide receipt no.005208 at the time of booking. The Complainant paid further instalments as per agreed payment schedule vide receipt No.006034 dated 21/07/2011 for payment of Rs.2,35,895/-, receipt no.006817 dated 22/09/2011 of Rs.4,49,216/-, receipt no.006857 dated 24/09/2011 amounting to Rs.4,49,216/-, receipt no.009164 dated 03/04/2012 of Rs.5638/-, Receipt no.007708 dated 13/12/2011 amounting to Rs.2,18,969/-, receipt no.007732 dated 14/12/2011 amounting to Rs.11,34,349/-, receipt no.008594 dated 16/02/2012 amounting to Rs.2,24,607/-, receipt no.009314 dated 13/04/2012 amounting to Rs.2,24,607/-, receipt no.009903 dated 05/06/2012 amounting to Rs.4,51,471/-, receipt no.010522 dated 14/08/2012 amounting to Rs.2,25,735/-, receipt no.011827 dated 07/11/2013 amounting to Rs.58,500/- (interest on daily payment) and receipt no.012617 dated 04/01/2016 amounting to Rs.2,25,735/-. Total amount of Rs.42,77,728/- and interest amount of Rs.64,138/- has been paid by the Complainant till date. The copy of receipts filed at the time of hearing are kept on record.

The Respondent company was served the copy of the complaint petition along with the copy of the agreement for sale, containing provisions for imposing obligations on the part of the Respondent Company to deliver the possession as per agreement or pay admissible compensation in the event of Respondent not in a position to offer the allotment and refund the money collected from the Complainant. Respondent Company did not dispute the claims and facts stated in the complaint petition and their obligations in the agreement for sale, but took the plea before this Authority by filing Affidavit that M/s Bengal Unitech Infrastructure Pvt. Ltd is a subsidiary Company of the M/s Unitech Ltd and the projects of Unitech Ltd are sub judice in Apex

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Court in SLP (Crl) Nos.5978-5979 of 2017 and therefore, this Authority, accordingly to Respondent, does not have jurisdiction to dispose of the complaint application in the present form. However, Respondent Company also stated in its written submission on 30/05/2019 that the apartment of the Complainant is ready for possession and offered the Complainant that the possession can be delivered in September, 2019. There has been no progress on such offer made by the Respondent Company.

As per SLP (Crl.) Nos.5978-5979 of 2017 in the matter of Sanjay Chandra & Anr. -Vs- State Govt. of NCT of Delhi, by an order dated 30/10/2017 of the Hon'ble Supreme Court of India M/s Unitech Ltd. has been impleaded as petitioner No.3 but the Respondent did not submit any stay order passed by Hon'ble Supreme Court in this matter or any direction passed by the Hon'ble Apex Court restricting the jurisdiction this Authority to pass orders as per the WBHIRA Act, 2017 and rules made there under. This Authority is duty bound to proceed under Rules 36(2) of WBHIRA Rules, 2018 on the complaints filed under section 31 of the WBHIRA Act, 2017 in absence of any specific orders passed by Appellate Court/Apex Court restricting jurisdiction of the WBHIRA Authority.

Today during the hearing it is found that the property is not yet ready for delivery of the possession and there is no specific time line offered from the Respondent as to when the possession can be delivered to the Complainant.

Complainant vehemently denied the claims made by the Respondent company that flat is ready for delivery of possession and pray orders for refund along with admissible interest compensation in terms of sale agreement. Let the written declaration filed at the time of hearing be kept on record.

Heard both the parties and examined the facts and documentary evidences. The Respondent admitted the claims made in documentary evidence and facts filed by the Complainant.

In view of the submissions made on behalf of the Respondent Company offering the possession of the property as per agreed payment schedule and

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the time for delivery of possession and claim of the Respondent that the property is ready for delivery, the Respondent Company is directed to deliver the possession within two weeks of receipt of this order. The delivery of the possession has to comply all the requirements of the agreement for sale and should be acceptable to the Complainant as per obligations of the agreement. In the event of Respondent Company is not in a position to comply the order and deliver the possession as per order of this Authority, this Authority shall hear both the parties on next date of hearing and issue the final order as regards refund and compensation as admissible.

Let copy of this order be sent to both the parties.

Fix the matter for final hearing and orders on 18/12/2019.



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