

ORDER SHEET

WEST BENGAL HOUSING INDUSTRY REGULATORY AUTHORITY

Complaint No. COM-000014

Shri . Siba Kumar Mukhopadhyay.....Complainant

AND

Shri Samar Nag MD of Shelter Projects Ltd. .Respondent

Sl. Number and date of order	Order and signature of Officer	Note of action Taken on order
4 ----- 30-04-2019	<p>An online complaint was received as per Section 31 of the West Bengal Housing Industry Regulation Act, 2017 vide complain No. COM-000014 dated 04/11/2018 to the WB Housing Industry Regulatory Authority from Complainant Shri Siba Kumar Mukhopadhyay, UD 08-0203 Udayan the condoville 1050/1 Survey Park Kolkata-700075 against Shri. Samar Nag MD of Shelter Projects Ltd Eternity Building DN-1 Salt Lake Sector 5 Salt Lake City Kolkata-700091 and as per Rule 36 of the West Bengal Housing Industry Regulation Rules, 2018, notice was issued for the alleged contravention and the Respondent as well as the complainant was directed appear for hearing on 29.11.2018 in the Office of the WB Housing Industry Regulatory Authority along with relevant documents.</p> <p>On 29.11.2018, Shri Siba Kumar Mukhopadhyay, the complainant, and authorised representative of the respondent along with advocate appeared for hearing.</p> <p>The complainant submitted that he has booked 2 flats numbers T-1/4A & T-1/3E on 18/08/2010 with a booking amount of Rs. 7,41,608/- and Rs.7,26,138/- (total amount Rs. 14,67,746) respectively in the project launched by Bengal Shelter (CCAP) called Anadahara and post payment there was no written communication from the company in-spite of several phone calls. On 13 June 2013, after several follow-ups the complainant was able to meet with the Respondent and an agreement was drawn up by Shelter Group wherein it was stated that the project would start within 18 months from the date of agreement. The agreement was duly signed by the authourised signatory of Shelter Infra Projects Limited and since 2013 there has been no communication from the end of the Respondent. The complainant has tried to contact the Respondent several times but failed. The complainant has also written letters on 04/04/2016, 26/09/16, 27/04/18 and emails dated 09/04/16, 13/04/16, 23/04/16, 23/07/16 but have not received any reply from the Respondent.</p>	

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During the hearing the Representative of the respondent has sought time to file Written Statement on their defence. Accordingly, the next date of hearing was fixed on 06.12.18 at 1.00 p.m.

On 06.12.2018, both the parties appeared for hearing. The Respondent filed written statement and in the same the Respondent submitted that the present matter is not maintainable under West Bengal Housing Industry Regulation Act, 2017 since u/s 3 of the said Act as registration for the real estate project with the Housing Industry Regulatory Authority is compulsory and in the present case the real estate project was not registered under the aforesaid Act.

The Respondent further submitted that certain complaint has been filed by aggrieved parties of the said real estate project before the Hon'ble State Commission and District Forum under the Consumer Protection Act, 1986 for the self same cause of action hence the present matter falls under the purview of the principle of res-judicate.

During the hearing, on query the respondent stated that the project is not completed yet and the project is not abandoned.

I have gone through the complaint, the documents and submissions made by the parties.

It is fact:-

- i) That the complainant has duly made payment to the respondent for the two flats in the said project and respondent has duly accepted the fact during hearing,
- ii) That the said flats has not been handed over to the applicant.
- iii) That the matter which is pending before the Hon'ble State Commission and District Forum has not been filed by the applicant and the applicant is not a party in said matter. Moreover, final order has not been passed by the Hon'ble State Commission and District Forum in the said matter and the same is still pending. Hence, the present matter does not fall under purview of res-judicate.
- iv) That since the project is ongoing on the date of commencement of Housing Industry Registration Act, 2017 and completion certificate has not been issued by the competent authority in respect of the said real estate project, the instant case very much falls within the purview of the said Act.
- v) That the Respondent has violated Section 17 of the West Bengal Housing Industry Regulation Act, 2017 by not providing possession of the said flats to the Complainant within the stipulated time.


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It is hereby ordered that the respondent shall refund the entire amount of Rs. 14,67,746/- plus interest @12% per annum as per the agreement till on 01.06.2018 i.e., the date of commencement of West Bengal Housing Industry Regulatory Authority Act and from 01.06.2018 the interest shall be as per the State Bank of India Prime Lending Rate plus 2% per annum as per Rule 18 of the West Bengal Housing Industry Regulatory Authority Rules, 2018 till the payment made by the complainant. The respondent is directed to pay the entire amount along with interest within a period of 45 days from the date of communication of the order. A compliance report shall be submitted by the Respondent within 10 days thereafter.

The matter is thus disposed of.

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



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Designated Authority
Housing Industry Regulatory Authority
West Bengal