

West Bengal Real Estate Regulatory Authority
Calcutta Greens Commercial Complex (1st Floor)
1050/2, Survey Park, Kolkata- 700 075

Complaint No. WBRERA/COM000782

Surajit Kar and Sandhya Kar Complainants

Vs

M/s. Joy Majumder & Co..... Respondent

Sl. Number and date of order	Order and signature of the Authority	Note of action taken on order
01 31.07.2024	<p>Advocate Mr. Raju Baroi (Mob. No. 9038831146 & email Id: baroiraju24@gmail.com) is present in the physical hearing on behalf of the Complainant filing Vakalatnama and signed the Attendance Sheet.</p> <p>Advocate Mr. Bodhisattya Haldar (Mob. No.9804185323 & email Id: advocatebaldar@gmail.com) is present in the physical hearing today on behalf of the Respondent filing Vakalatnama and signed the Attendance Sheet.</p> <p>Heard both the parties in detail.</p> <p>As per the Complaint petition, the fact of case is that,-</p> <p>The Complainant Mr. Surajit Kar, S/o Mr. Sudip Kumar Kar, aged about 32 yrs, by profession service, is filing this complaint on behalf of himself and his mother Mrs. Sandhya Kar, w/o Mr. Sudip Kumar Kar, aged about 68 yrs, by profession retired, both r/o 122, M.B.Road, North 24- Pgs, Kolkata, West Bengal 700049 is filing this complaint on behalf of the complainants as they are bona fide joint owners of a residential flat being Unit No. 4B4, on the 4th floor, in Block B, measuring 988 sq.ft. (super built up area)(more or less) alongwith one covered car parking space on the ground floor of the proposed G+IV storied residential cum commercial building know as 'JMC Arcadia' of the Respondent Promoter Company situated at Mouza North Nimta, J.L. No. 2, R.s. No. 102, Touzi No. 172 & 173, comprising Dag Nos. 2897 & 2898 appertaining to Khatian No. 1938, 935 being holding no/municipal premises no.128(132), Madhusudan Banerjee Road, P.S.: Dumdum Municipality, Old Ward No. 26, New Ward No. 20, A.D.S.R. office Cossipore, Dum Dum in the District of 24-Pgs (North), W.B. -700 049 vide an Agreement for Sale dated 08.04.2021 and a Registered Deed of Sale dated 08.04.2022 registered with the Additional Registrar of Assurance Office of the ARA-II, Kolkata, under Book 1, Vol. No. 1902-2022, pages 169686 to 169728, being no. 03940 for the year 2022.</p> <p>2. That the Complainants' rights are protected under the RERA Act, 2016, which have been violated by the Respondent and hence the claim fails within the jurisdiction of this Authority.</p> <p>3. that the respondent M/s. Joy Majumder & Co. is a proprietorship firm, having its registered office at 19, Lake Avenue (Late Tapan Chowdhury Avenue), P.S. Tollygunge, P.O. Sarat Bose Road, South 24 Pgs, Kolkata - 700 026, (West Bengal, represented by its sole proprietor, Mr. Joydeep Majumder, s/o late Manik</p>	

Majumder, aged about 66 yrs. r/o 42/217, New Ballygunge Road, P.S. Kasba, P.O. Bediadanga, South 24- Pgs, Kolkata 700026, W.B., was approached by the complainants sometime around 01.04.2021 for booking the said unit in the said project "JMC Arcadia" since they were promised possession and delivery of the said unit by October, 2022. The Respondent had also promised to register the said project "JMC Arcadia" under erstwhile WBHIRA/WBRERA and had also promised to provide the completion certificate and possession certificate to the Complainants upon completion of the said unit by October, 2022.

4. That the Respondent failed to complete the said unit by October 2022. That completion certificate for the said project "JMC Arcadia" and for the said unit has also not been provided by the Respondent to the Complainants and the said project JMC Arcadia has also not been RERA registered by the said Respondent till date.

5. That the total sale price for the said unit was fixed at Rs. 34,18,800/- and the complainants have already paid a total sum of Rs.33,92,482/- towards the said unit.

6. That the complainants have sent several letters and legal notices through their Ld. Adv., for complete refund of Rs.33,92,482/- paid by the Complainant towards the said unit alongwith interest @18% p.a. for the period starting from the date of payment made by the complainants till date of actual realization of such interest amount since the respondent has failed to deliver possession on time by October 2022 and also failed to provide completion certificate for the said project "JMC Arcadia". But the respondent has refused to pay such amount. The said unit has still not been completed nor does the respondent have any completion certificate for the said project "JMC Arcadia". The complainants have also gathered sufficient evidence and out the inferior quality brick material used by the respondent during the construction of the said unit, leading to dampness in the putty wall of the construction for the said unit.

7. That the complainants have been denied possession and handover of the said unit in a timely fashion, nor they been assured of the completion of the said unit since no completion certificate was provided for the said unit, nor they have been paid compensation for the said unit and due to the poor workmanship and quality of materials used in the said unit. That the complainants are left with no option but to approach this Authority for the following reliefs as the cause of action is a continuing one.

In this Complaint Petition, the Complainant prays before the Authority for the following relief(s):-

1. That the Respondent refund the total amount of Rs.33,92,482/- paid towards the said unit by the Complainants.
2. That the Respondent pay interest @SBI PLR +2% p.a. for the period starting from the date of payment made by the complainants till date of actual realization of such interest amount.
3. That the Respondent cancel the said deed of sale dated 08.04.2022.
4. That the respondent pay Rs.1,00,000/-towards litigation costs and compensation for the harassment, inconvenience, frustration and mental agony suffered by the complainants.
5. That the Respondent registered the said project "JMC Arcadia" with WBRERA.

Complainant prays before this Authority for the following interim relief:-

An interim order of injunction be passed restraining Respondent and his men, agents, associates from disposing and/or alienating and/or encumbering

and/or creating third party right and/or dealing with the suit unit in any manner whatsoever till disposal of this matter.

After hearing both the parties, the Authority is pleased to admit this matter for further hearing and order as per the provisions contained in Section 31 of the Real Estate (Regulation and Development) Act, 2016 read with Rule 36 of the West Bengal Real Estate (Regulation and Development) Rules, 2021 and give the following directions:-

Let the name of **Smt. Sandhya Kar**, being mother of the Complainant Mr. Surajit Kar and Joint Allottee of the present transaction be hereby included as **Joint Complainant** as she is the necessary party for adjudication of this matter.

The **Complainants** are directed to submit their total submission regarding this Complaint Petition on a Notarized Affidavit, annexing therewith notary attested/self-attested copy of supporting documents and a signed copy of the Complaint Petition and send the Affidavit (in original) to the Authority, serving a copy of the same to the Respondent, both in hard and scan copies, within **15 (fifteen) days** from the date of receipt of this order of the Authority through email.

The **Complainants** are further directed to send a scan copy of their affidavit alongwith annexure to the email Id of the Advocate of the Respondent, as mentioned above.

The **Respondent** is hereby directed to submit its Written Response on Notarized Affidavit regarding the Complaint Petition and Affidavit of the Complainant, annexing therewith notary attested/self-attested copy of supporting documents, if any, and send the Affidavit (in original) to the Authority, serving a copy of the same to the Complainant, both in hard and scan copies, within **15 (fifteen) days** from the date of receipt of the Affidavit of the Complainant either by post or by email whichever is earlier.

The Respondent is further directed to specifically state in their Notarized Affidavit that whether they have taken Registration for the subject matter project from erstwhile WBHIRA/WBRERA? if yes, they shall provide the Registration number with date and if they had not taken registration, the reason for not taking the registration shall be provided in their Affidavit.

Fix **09.01.2025** for further hearing and order.


(BHOLANATH DAS)

Member

West Bengal Real Estate Regulatory Authority


(TAPAS MUKHOPADHYAY)

Member

West Bengal Real Estate Regulatory Authority