

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

Complaint No. WBRERA/COM 000820

Santanu Karmakar ..... Complainant

Vs.

Bengal Emami Housing Limited.....Respondent no.1

West Bengal Housing Board.....Respondent no.2

Sl. Number and date of order	Order and signature of the Authority	Note of action taken on order
04 13.04.2026	<p>Advocate Ashique Mondal (mobile no:- 9831347686 and email id:- <a href="mailto:ashiquemondaladv@gmail.com">ashiquemondaladv@gmail.com</a>) along with Advocate Shahmeraz Alam is present physically on behalf of the Complainant by signing the Attendance Sheet.</p> <p>Advocate Sayan Banerjee (mobile no:- 9044566151 and email id:- <a href="mailto:sayancllst@gmail.com">sayancllst@gmail.com</a>) is present in today's hearing physically on behalf of the Respondent No.1 by filing hazira through email.</p> <p>Respondent No. 2 is absent, despite hearing notice served to them through email.</p> <p>Since the Respondent No.2 is absent on all the occasions, the instant matter is being adjudicated on the basis of submission of affidavits, documents and oral submission by Complainant as well as the Respondent No.1.</p> <p>The Advocate appearing on behalf of Respondent No.1 referred provision of clause 12.1 of the Agreement for Sale having 9(nine) force majeure conditions and submitted that by virtue of that the Complainant is not eligible to get interest due to delay in handing over of the possession of the flat. He further stated that their project was delayed due to Covid pandemic and also some other factors like delay in obtaining Fire NOC etc. He also mentioned that even Supreme Court has given judgment that due to Covid pandemic the construction projects shall be allowed for extension.</p> <p>The Advocate of the Complainant stated that as per the provision of section 6 Real Estate (Regulation and Development) Act, 2016 force majeure shall mean a case of war, flood, drought, cyclone, earthquake or any other nature affecting the regular development of the Real Estate project. In the instant complaint matter the "force majeure" event was only Covid Pandemic, for which, an extension of 9(nine) months was allowed for all ongoing projects by virtue of which, the same was also allowed to the project of the Respondent. Apart from those events mentioned on section 6 of Real Estate (Regulation and Development) Act, 2016 Act, no other events are eligible to be considered as "force majeure" event. As such, Complainant is eligible to get interest due to delay in handing over the possession to the Complainant beyond the stipulated date of possession with</p>	

extension of 9(nine) months allowed by the Authority for Covid pandemic.

After hearing both the parties and going through the affidavits and other documents, the Authority observes that the Respondent was to handover the possession of the flat to the Complainant by 31.12.2019 with a grace period of 6(six) months i.e. 30.09.2020. However, along with other ongoing projects an extension for 9(nine) months for the Covid pandemic was allowed to the project of the Respondent also, which ended on 30.06.2021. The Respondent obtained occupancy certificate from the competent Authority on 04.08.2022 and offered possession of the flat to the Complainant on 17.10.2022. The Respondent though opposed the eligibility of the Complainant to get interest but could not justify the same through his submission. Apart from mentioning the reason of Covid the Respondent also mentioned the ground of delay in obtaining clearance of the competent Authority, viz. Fire NOC etc. as reason for not handing over the flat within time. But such delay in obtaining statutory clearance from the competent Authority Respondent is not eligible to be considered for condoning of the delay in handing over possession of the flat to the complainant homebuyer or under "force majeure" as submitted by the Ld' Counsel for the respondent 1 .

As such, the Authority is of the opinion that Respondent is liable to pay the Complainant interest due to delay in handing over the possession of the apartment at the rate SBI PLR plus 2% on the principal amount invested by the Complainant for a period starting from 01.07.2021 to 15.08.2022 i.e. up to the day before offering possession to the Complainant.

Now, the Authority is hereby pleased to give the following direction:-

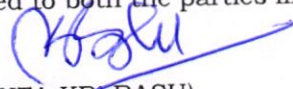
As per provision of section 18 of Real Estate (Regulation and Development) Act, 2016 read with Rule 18 of WBRERA Rules, the Respondent shall refund the Complainant the interest at the rate SBI PLR +2 per cent to be calculated for a period starting from 01.07.2021 to 15.08.2022 on the principal amount of Rs. **90,19,580/-** through bank transfer within **45 (forty-five) days** from the date of receiving this order of this Authority by speed post or by email whichever is earlier.

The Complainant shall send his bank account details to the Respondent within **5 (five) days** from the date of receiving this order through email.

The Complainant is at liberty to appeal before the Adjudicating Officer by filing Form N for other compensation related matters.

With this direction the instant matter is hereby disposed of.

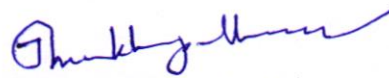
Let copy of this order be served to both the parties immediately.



(JAYANTA KR. BASU)

Chairperson

West Bengal Real Estate Regulatory Authority



(TAPAS MUKHOPADHYAY)

Member

West Bengal Real Estate Regulatory Authority