

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

Complaint No.WBRERA/COM000882

ABBB Solutions Pvt. Ltd..... Complainant

Vs

M/s. Merlin Projects Ltd..... Respondent No.1

Kothari Hosiery Pvt. Ltd..... Respondent No.2

Sl. Number and date of order	Order and signature of the Authority	Note of action taken on order
01 18.09.2024	<p>Advocate Mr. Dipak Mukherjee (Mobile - 9831161839 email Id: drmlaw@yahoo.com) and Mr. Abhijit Bishayee (Mobile - 9831142741 and email - abhijitbishayee@yahoo.com), being Authorized Representative of the Complainant, are present in the physical hearing filing Vakalatnama and signed the Attendance Sheet.</p> <p>Smt. Deepa Das (Mobile 9836301188, email - deepa.das@merlinprojects.com) and Smt. Samanya Sengupta, being Authorized Representatives of the Respondent no.1, are present in the physical hearing today on behalf of the Respondent no.1, filing hazira and authorization and signed the Attendance Sheet.</p> <p>Heard both the parties in detail.</p> <p>As per the Complainant, the fact of the case is that:-</p> <p>4.1. The Kothari Hosiery Pvt. Ltd., the Respondent no.2, as the "Land Owner" and Merlin Projects Ltd, the Respondent no.1, as the "Developer" by way of a sub-lease agreement dated 01.08.2024 in lieu of receipt of full consideration of Rs.80,17,789/- allotted the complainant a commercial Unit being numbered 606 of approximately 1462 sq.ft., for a period of 971 years.</p> <p>4.2. That developer had handed over the said commercial unit to the complainant for occupation sometimes in 2014 without any effective legal transfer as the complainant was not provided with any completion certificate.</p> <p>4.3 Much later some time during 2018, the Respondent no.1-Developer had provided the Complainant, a copy of demand, raised by Nabadiganta Industrial Township Authority dated 30.11.2018 of completion certificate fees of Rs.3,20,789/- upon the land owner - Kothary Hosiery Pvt. Ltd. (Respondent no. 2 hereinabove), but, failed to provide any copy of completion certificate issued upon the building</p>	

(DN 10, Sector V, Salt Lake City, Kolkata -700091) till this date of filing of Complaint Petition.

- 4.4 That the Respondent no.1- Developer had promised to all the office owners of the said building viz. '**Merlin Matrix**' including the Complainant, that the sub-lease will be registered in accordance with law. However, since the sub lease agreement was executed with the Complainant on 01.08.2014, in spite of several requests, the Developer had failed and neglected to execute registration of the necessary deed of Sub-Lease with the complainant, for Unit 606, in accordance with law.
- 4.5 That the Complainant paid full consideration amount for the aforesaid Unit No. 606 on the 6th floor and the Developer had received and accepted the entire consideration money without any objection and demur. After execution of the Agreement of Sub-Lease, the Developer had assured verbally that the said sub-lease agreement will be registered or the necessary deed of sub-lease will be executed and registered within six months from the date of execution of the said Agreement, but have failed and neglected to keep up to its promise and till date had not make any attempt to execute and register the Sub-Lease Agreement/Deed. The Complainant out of the entire agreed consideration of Rs.72,00,000/- alongwith deposits for Generator, Electrical transformer and meter, water treatment plant, appointment of property tax, legal documentation and electrical deposit @Rs.5000/- KVA, as mentioned in the sixth schedule of the Agreement, thus paying a sum total of Rs.80,17,789/- for Sub-Lease.
- 4.6 That almost 10 yrs have passed without the Developer and Land owner effecting the registration of the said sub lease agreement / deed in respect of the said property and for that the Complainant had to bear huge monetary losses since the Urban Development Department, West Bengal who had imposed a penalty of Rs.98,610/- for non registration of the property and the said amount has been paid by the Complainant/other occupier of unit as per the rules of the Department of Urban Development.
- 4.7 That since 2014, till as on date, the Developer had failed to form an Association of Allottees for building maintenances but continued to charge exorbitant maintenance charge of Rs.5.50/- per sq.ft and collect the same through its sister concern being M/s. Kaladrishti Properties Pvt. Ltd. The continued unilateral engagement of Kaladrishti Properties Pvt. Ltd by the Developer are against the letter and spirit of the extant agreement as well as in violation of its obligations as defined under RERA.
- 4.8 The Complainant had raised strong protest against the unilateral imposition of the exorbitant maintenance charges through M/s. Kaladrishti Properties Pvt. Ltd., and in spite of repeated clarifications on the issue, the Developer failed to provide the breakup of the maintenance charges to the complainant.

- 4.9 That the complainant had offered to pay maintenance charge @Rs.2.0/- per sq.ft. which was the standard rate of maintenance of all commercial building spaces similarly placed and was communicated to the Developer vide letter dated 10.02.2020 from the Complainant's Advocate Mr. Anil Kumar Das. Further there was no official notice given to the Complainant for appointing Kaladrishi Properties Pvt. Ltd., to collect maintenance charges.
- 4.10 That the complainant had also requested M/s. Kaladrishi Properties Pvt. Ltd., to disclose the maintenance bills raised by itself till date to ascertain the exact amount due as per their self imposed rate of Rs.5.50/- per sq.ft to verify the amount of Rs.10,24,812/- as per their letter dated 06.01.2022, however no response was made by the maintenance company on the said request.
- 4.11 It is submitted that the obligation for maintenance remains with the Developer till complete certificate are obtained by them. The Complainant is therefore under no obligation to pay any maintenance charges till the date of issuance of the completion certificate.

The Complainant prays before the Authority for the following relief(s):-

- a. To execute and register necessary Indenture of Sub-Lease for "Merlin Matrix", Unit No. 606, 6th floor, DN 10, Sector-V, Salt Lake City, Kol-700091 in accordance with law;
- b. Recall, withdraw, cancel and / or set aside the purported quit notice dated 21.12.2023 by the Developer;
- c. To restore electricity and water connection at Unit No. 606 of building in question;
- d. To set up Association of Allottees for building supervision, maintenance and hand over any maintenance corpus from M/s. Kaladrishi Properties Pvt. Ltd.
- e. To prepare financial audit report of M/s. Kaladrishi Properties Pvt. Ltd., regarding income and expenditure of maintenance of DN 10, Sector-V, Salt Lake City, Kol-91 till the date of hand over to Association of Allottees.
- f. To take necessary steps and capital expenditure as per quotation raised by WBSEDCL by the opposite parties for conversion of HT connection to LT connection to facilitate individual LT meters for the Allottees / Complainant in the building.
- g. To hand over a copy of Completion Certificate, Fire NOC with sanctioned plan of DN 10, Sector-V, Salt Lake City, Kol-700091 to the complainant.
- h. To hand over to the complainant a copy of RERA registration and extensions granted if any of DN 10, Sector-V, Salt Lake City, Kol-700091
- i. Interest as may be awarded.

The Complainant prays before the Authority for the following interim

orders:-

- a) Stay on the purported quick notice dated 21.12.2023 by the Developer; and
- b) Direct the Respondents to forthwith restore electricity and water connection at unit no.606 of the building in question; and
- c) To prepare financial audit report of M/s Kaladrishti Properties Pvt. Ltd regarding Income and Expenditure of Maintenance of DN-10, Sector – V, Salt Lake City, Kolkata 700091 till the date and submit the same alongwith monthly financial statements before the Ld. Authority till disposal of the proceedings.

After hearing the Complainant/ 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:-

The **Complainant** is directed to submit its total submission regarding their 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 (seven)** days from the date of receipt of this order of the Authority by email.

The **Complainant** is further directed to send a scan copy of his affidavit alongwith annexure to the email Id of the Authorized Representative of the Respondent no.1, as mentioned above.

The **Complainant** is further directed to provide in a Tabular Form chronologically all the payments made by it specifying date, amount and money receipt number, if any, in the said table in its affidavit.

The **Respondents** are hereby directed to submit their 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.

Fix **26.11.2024** for further hearing and order.

sd/-

(JAYANTA KR. BASU)
Chairperson

West Bengal Real Estate Regulatory Authority

sd/-

(BHOLANATH DAS)
Member

West Bengal Real Estate Regulatory Authority

certified to be true copy.

date

18.09.2024

4