

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

Complaint No.COM 000198 (erstwhile WBHIRA)

Dinesh Chandra Agarwal ..... Complainant

Vs.

Smt. Mahamaya Khan and Ors. .... Respondents

Sl. Number and date of order	Order and signature of Officer	Note of action taken on order
02 27.07.2023	<p>Complainant is present in the online hearing filing hazira through email.</p> <p>Respondents are absent in the online hearing despite due service of notice of hearing through speed post and also by email.</p> <p>Let the track record of due service of hearing notice by Indian Speed Post to the Respondents be kept on record.</p> <p>This Complaint Petition was filed before the erstwhile WBHIRA and hearing was held on 25.02.2020. After that on 4th May, 2021, WBHIRA was struck down by Hon'ble Supreme Court of India.</p> <p>It is pertinent to mention here in this connection that by the Order of the Hon'ble Supreme Court of India dated 12.05.2023 in the Case No. Special Leave to Appeal (C) No(s). 16908/2022 in the matter of Saptaparna Ray Vs. District Magistrate North 24 Parganas &amp; Ors., the Apex Court has been pleased to direct-</p> <p>"This Court observed that the "striking down of WB-HIRA will not affect the registrations, sanctions and permissions previously granted under the legislation prior to the date of this judgment". This principle shall also apply to orders which were passed whether in original or in the course of execution prior to the date of the judgment. All such orders shall be executed in accordance with law,</p>	

as if they were issued under the RERA.

Moreover, we clarify that all complaints which were filed before the erstwhile authority constituted under WB-HIRA shall stand transferred to and be disposed of in accordance with law by the authority which is constituted under the Central Act. Any person aggrieved by an order passed under WB-HIRA will be at liberty to pursue the corresponding remedy which is available under the RERA.”

Therefore, as per the above direction of the Hon’ble Supreme Court the Complaint no. COM-000198 stand transferred to this Authority and this Authority is now proceed with hearing of this present Complaint Petition bearing no. COM 000198 from the stage upto which erstwhile WBHIRA has conducted the case.

Heard the Complainant in detail.

The Complainant submitted a Notarized Affidavit dated 24.07.2023 affirmed by him containing his submission regarding this Complaint Petition, which has been received by this Authority on 26.07.2023. It appears from Annexure “ D” that is a reply bearing no. EE/BR-I/ O40/19-20 dated 19.07.2019 under the Right to Information Act, 2005 given by the Kolkata Municipal Corporation appended to the said affidavit that the Developer or Land Owners have not applied for Completion Certificate in respect of the entire premises till 19.07.2019. Let the said affidavit of the Complainant be taken on record. The Complainant submits that since then both the Developer and Land Owners are keeping mum over the matter till date. The Respondents have not yet been able to produce the Completion Certificate in respect of the said building.

They are not handing over any legally constructed flat in the said

building with all required papers . They are keeping mum over the entire matter. The Complainant alleged that despite several requests the Respondents have not informed the Complainant anything in this regard.

The Complainant submits that the Complainant entered into a Registered Agreement (Annexure “E”)(running page nos. 25-46) and a Notarized Agreement (Annexure “F”)(running page nos. 47-54) both dated 07.03.2006 for Sale that was executed amongst the Complainant and Respondent no. 1 and 2 who were the registered General Power of Attorney holder of the other Respondents. In terms of the said Agreement, he claimed for handing over possession of a legally constructed flat in the said building at 35B, Khudiram Bose Sarani, P.S.- Tala, Kolkata – 700037 with all required documents. In terms of Said Agreement, either flat no. GE at the ground floor or flat no. 1D at the first floor as agreed to be handed over to the Complainant by the Respondents. Despite being an intending purchaser for valuable consideration, till date the Complainant did not receive the title and possession of a flat as per the said Agreements For Sale dated 07.03.2006 and they are not executing the Deed of Conveyance in respect there of.

The Complainant submits that he has already paid Rs.1000/- (Annexure “E” running Page No. 41) on 07.03.2006, and Rs. 45000/- (Annexure “N”, running page No. 76) on 12.05.2017 against proper receipts to Smt. Mahamaya Khan, since deceased the Respondent No.1 as a part payment of the total valuable consideration amount in respect of the sale of a flat at premises No. 35B, Khudiram Bose Sarani, P.S. Tala, Kolkata-700037. Copies of the said receipts have already been annexed to the affidavit submitted by the Complainant dated 24.07.2023.

The Complainant prayed for the following relief(s) :-

- a) Possession of a legally constructed flat to the Complainant in terms of Agreements for Sale dated 07.03.2006 as soon as possible;


- b) Delivery of copy of Completion Certificate and copies of other legal documents as required for validating the transfer of a flat in the said building;
- c) Necessary order for substitution of Shri Tapajyoti Khan in place of Mahamaya Khan, since deceased, the Respondent no. 1;
- d) Necessary order for substitution of Smt. Rita Dey and Miss. Suranjana Dey in place of Sanjit Kumar Dey, since deceased, the Respondent no. 4.

After hearing the Complainant and going through the records, the Authority is of the considered view that though the Complainant was a tenant long back in the past in the subject premises, he has already left possession of the same. So at present he is not a tenant but an intending purchaser and Allottee in respect of a flat for valuable consideration as there is duly executed Agreements for sale between the Respondents and the Complainant has already paid Rs.46000/- till date in this regard as a part payment of the total consideration for sale and therefore this Authority is satisfied to admit this complaint for further hearing and order as per the provisions of section 31 of RERA Act, 2016 read with Rule 36 of the WBRERA Rules, 2021 . The period to transfer title of the new flat and of handing over possession of the same has also ended long back. So the Authority hereby gives the following directions:-

- a) Let Shri Tapajyoti Khan be substituted as Respondent no.1 in place of Mahamaya Khan, since deceased. Let the records of this matter be amended accordingly.
- b) Let Smt. Rita Dey and Miss. Suranjana Dey, be substituted as Respondent no. 4 in place of Sanjit Kumar Dey, since deceased. Let the records of this matter be amended accordingly.
- c) The Complainant is hereby directed to send hard copies of his Affidavit dated 24.07.2023 to all the Respondents by speed post and send scanned copies of the same to all the Respondents by email, if available, within 3 days from the date of receipt of this order by email.

- d) The Respondents and/or their respective Successors are be directed to produce the Completion Certificate and all other legal documents in respect the of the flat to be transferred to the Complainant at premises no 35B, Khudiram Bose Sarani, P.S, Tala, Kolkata 700037.
- e) The Respondents and / or their respective Successors are also directed to submit his / her Written Response to the Complaint Petition and Affidavit of the Complainant on Notarized Affidavit, annexing therewith copies of supporting notarized attested documents, if any, and send the original Affidavit and supporting notarized attested documents, if any, to the Authority serving a copy of the same to the Complainant, both in hard and soft copies, within 15 (fifteen) days from the date of receipt of the Affidavit of the Complainant either by post or by e-mail whichever is earlier.
- f) Respondents are further directed to remain present either personally or through pleader(s) positively on the next date of hearing before this Authority, failing which, the Authority shall have no other option but to proceed with ex-parte hearing and disposal of this matter for the ends of speedy disposal of justice as per the provision of section 29(4) of the Real Estate (Regulation and Development) Act, 2016.

Fix 09.11.2023 for further hearing and orders.



(SANDIPAN MUKHERJEE)

Chairperson

West Bengal Real Estate Regulatory Authority



(BHOLANATH DAS)

Member

West Bengal Real Estate Regulatory Authority



(TAPAS MUKHOPADHYAY)

Member

West Bengal Real Estate Regulatory Authority