

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

Complaint No.COM 000130 (erstwhile WBHIRA)

Ashish SahaComplainant

Vs.

Nestwood Estates Pvt. Ltd..... Respondent

Sl. Number and date of order	Order and Signatures of Authority	Note of action taken on order
(4) Execution ----- 17.07.2023	<p>Complainant is present in the online hearing filing hazira through email.</p> <p>Respondent is absent in the online hearing despite due service of notice by speed post and also by email.</p> <p>Let the track record of the due service of hearing notice to the Respondent be kept on record.</p> <p>Today this matter is taken up to review the progress and status of the Execution proceeding before the District Magistrate of North 24-Parganas. The final order bearing order no. 05 dated 04.12.2019 in this matter was passed by the erstwhile WBHIRA Authority.</p> <p>As the Respondent Company named as 'Nestwood Estate Private Limited' did not comply the said final order dated 04.12.2019, so the Complainant had filed an application on 11.03.2020 praying for execution of the said order before the erstwhile WBHIRA Authority. On the basis of the application for execution, the erstwhile WBHIRA Authority took up the matter for execution hearing and it was heard on 10.09.2020, 06.01.2021 and 28.01.2021.</p>	

By the order dated 28.01.2021 and in accordance with the provisions of section 40 of the erstwhile West Bengal Housing Industry Regulation Act, 2017 read with Rule 27 of the erstwhile West Bengal Housing Industry Regulation Rules, 2018, the matter was sent for execution to the District Magistrate of North 24-Parganas in whose jurisdiction the subject matter project property is situated, for recovery of the refund amount due as arrears of land revenue, as per the provisions of the Bengal Public Demand Recovery Act, 1913.

Subsequently on 4th May, 2021, the West Bengal Housing Industry Regulation Act, 2017 was declared ultra vires and the said Act was struck down by Hon'ble Supreme Court of India.

It should be mentioned here that by the Order of the Hon'ble Supreme Court 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 & Collector North 24-Parganas & Ors., the Apex Court has been pleased to direct-

"1. By the Judgment of this Court dated 4 May 2021 in Forum for Peoples Collective Efforts (FPCE) v State of West Bengal, The West Bengal Housing Industry Regulation Act, 2017 was held to be ultra vires in view of the provisions of the Central Act [Real Estate (Regulation and Development) Act, 2016].

"2. In the present case, an order was passed on 18 December 2019 in favour of the petitioner who is a home buyer under the WB-HIRA against the sixth respondent. The petitioner instituted an application for execution on 12 February 2020 in which a show cause notice was issued. An order dated 16 March 2021 was passed directing the refund due to be recovered as arrears of land revenue. The WB-HIRA Act was declared unconstitutional by this Court subsequently, on 4 May 2021, as noted above. 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, as if they were issued under the RERA.

3. 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.

4. The High Court, in the present case, dismissed the petition on the ground that it was only this Court under Article 142 of the Constitution which could issue an appropriate clarification.

5. Since a clarification has been issued in the above terms by this Court, the order of the High Court shall stand subsumed by the directions issued above.

6. On the request of Mr J Sai Deepak, learned counsel for the petitioner, we direct the Authority shall proceed to execute the order which has been passed in favour of the petitioner expeditiously, within a month from the date of receipt of a Certified Copy of this order by the executing forum”.

Therefore, as per the above direction of the Hon’ble Supreme Court, the Complaint No. COM-000130 stand transferred to this Authority and this Authority shall now proceed with the review of the Execution Proceeding pending before the District Magistrate North 24-Parganas.

At the time of hearing the Complainant submitted that from the office of the D.M. North 24-Parganas he was informed verbally that this matter had been sent to the S.D.O. Bidhannagar office and S.D.O. Bidhannagar office informed him that no matter was referred to them from the D.M. North 24-

Parganas office in this regard. The Complainant made several visits to both the offices and pursued the matter at his best but all his attempts went in vain.

After hearing the Complainant, the Authority is of the considered view that no substantial progress has been made in the execution proceeding before the D.M. North 24-Parganas.

It should also be mentioned here that by the Order of the Hon'ble Supreme Court dated 12.05.2023, as mentioned above, the Apex Court has been pleased to direct – “We direct that the Authority shall proceed to execute the order which has been passed in favour of the Petitioner expeditiously within a month from the date of receipt of Certified Copy of this order by the executing forum.”.

As the present case stands in the similar footing with the case of **Saptaparna Ray Vs. District Magistrate North 24 Parganas**, as mentioned above, therefore similar observation of the Hon'ble Supreme Court shall be applicable to the present case.

Therefore, D.M. North 24-Parganas is hereby directed to execute the order dated 04.12.2019 which have been passed in favour of the Complainant, expeditiously, within a month from the date of receipt of certified copy of this order, as per the provisions of section 40 of the Real Estate (Regulation and Development) Act, 2016 read with Rule 25 of the West Bengal Real Estate (Regulation and Development) Rules, 2021.

He is also directed to send copy of the communications made by him with different Authorities under his jurisdiction so that the Complainant will be sufficiently informed about the development and status of the execution proceedings and pursue the matter accordingly.

Be it mentioned here that section 40 of West Bengal Housing Industry Regulation Act, 2017 and the Real Estate

(Regulation and Development) Act, 2016 Act are similar provisions and Rule 27 of the West Bengal Housing Industry Regulation Rules, 2018 and Rule 25 of the West Bengal Real Estate (Regulation and Development) Rules, 2021 are similar provisions.

The Secretary, West Bengal Real Estate Regulatory Authority (WBREERA), is directed to send certified copies of orders of this Authority dated 04.12.2019 and 28.01.2021 and also send this order of the Authority to the concerned District Magistrate, North 24-Parganas, within 10 days from today.

Let the copy of this order be served to both the parties by speed post and also by email immediately.

This execution matter shall be again reviewed in the month of December, 2023.

(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