

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

Complaint No.WBRERA/COM000704

Tapas Dutta Complainant

Vs

Mani Square Limited.....Respondent

Sl. Number and date of order	Order and signature of the Authority	Note of action taken on order
08 18.08.2025	<p>The complainant along with his advocate Saptarshi Dutta and Mrs. Shaheli Chakrabarti is present in today's hearing through online mode.</p> <p>Advocate Arindam Banerjee along with Advocate Suranjana Chatterjee and Shoham Sen is present in the hearing on behalf of the Respondent through online mode filing hazira.</p> <p>Both the parties have already submitted affidavits, counter affidavits, rejoinder and concluded their verbal submissions. The hearing was concluded on the earlier date and today it was fixed for giving the judgment by the Authority.</p> <p>Fact of the case is that The complainant booked a flat along with a Open Car parking in the project 'Mani Vista' launched by the respondent and entered into an Agreement for Sale on 25th April, 2022 and paid a total amount of Rupees 1,34,02,263/-. As per the agreement for sale, the stipulated date for giving possession of the flat and the car parking Was 30th November 2022 with an additional grace Period of 6 months. As per the complainant, the respondent has wrongfully And illegally collected an amount of Rupees 8,50,000/- from the Complainant towards the cost of an open car parking space violating the provision of section 2(n)(iii) of RERA Act and also failed to handover the possession of the flat Within stipulated time as per provision of clause 7.1 of the agreement for sale signed between the parties. The complainant prayed for adjust/refund of Rs. 8,50,000/- wrongfully collected from him for open car parking along with interest for delay in giving possession as per provision of section 18(1) RERA Act. The Complainant lodged this Complaint Petition before the Authority on 2nd January, 2024.</p> <p>In his affidavit and through verbal submissions at the time of hearings, the advocate of the complainant pointed out that as per provision of Real Estate(Regulation and Development) Act,2016, the respondent cannot sell Open Car Parking Space as it is a Part of common area. The complainant also placed his eligibility to get interest due to delay in handing over possession as per terms and conditions of agreement for sale and also as per provision of the Act.</p> <p>Respondent, through affidavit and verbal submissions at the time of hearings objected the points raised by the complainant and submitted that their</p>	

project was registered under erstwhile WBHIRA in the year 2019. Later on, in the year 2021, the Hon'ble Supreme Court of India passed an order declaring the WBHIRA Ultravirring the Constitution and struck down WBHIRA. However, the Hon'ble Supreme Court upheld all the sanctions, registrations and permissions accorded by The erstwhile WBHIRA Authority till the date of judgment. Also through further judgment the hon'ble apex court upheld all the Orders passed by the erstwhile WBHIRA Authority and Ordered for migration of all WBHIRA registered project to WBRERA. The respondent pleaded that the provision of open parking was not prohibited in WBHIRA Registered Projects and as the Honorable Supreme Court of India allowed all registrations, sanctions and permissions accorded by Erstwhile WBHIRA Authority vide order dated, 4th May 2021, the open parking as per registration of the project under Erstwhile WBHIRA Authority is eligible for Selling.

Regarding the issue in Delay interest, the Respondent submitted that the project was allowed for Extension by WBRERA upto 31st March, 2025. Occupancy Certificate for phase-I was received on 09.08.2024 and Completion certificate was received on 18.12.2024, which means that the respondent has completed the project well before the time allowed by the Hon'ble Authority through the extension order. The Respondent further stated that they provided additional facilities in the said project beyond the scope of the agreement, the benefit of which has also been obtained by the Complainant. On the contrary, the Respondent alleged that the complainant has not made payment against a number of demands raised by them. The Respondent further stated that they already took decision to provide allotment of covered parking to allottees including the complainant to whom 22 Open Car Parking was allotted initially. Hence as per Respondent, the claim preferred before this authority is not tenable and this complaint petition is liable to be dismissed.

The Complainant, through rejoinder Affidavit and also through verbal submissions at the time of hearing that they are not agreeing with the counter Affidavit submitted by the Respondent and again stated that the Respondent cannot sell open parking space as per provision of RERA Act and thereby is under obligation to refund the amount of Rupees 8,50,000/- to the complainant through adjustment or direct refund. The complainant referred the judgment given in the case 'Narendra Gupta - versus - DLF Limited and others (2020)' SCC Online NCDRC 237, in this respect.

Regarding claim made by the respondent that as the project got extension order from WBRERA allowing them for revised Completion Date and subsequently completing the project before that period they are not under obligation to pay interest to the complainant, the Complainant objected the claim stating that the Extension granted by the Authority does not absolve the rights of the complainant under provisions of RERA. The extension of time enables the promoter to give fresh timeline independent of the time period stipulated in the agreement for sale entered into between both the parties so that the promoter is not suffered with penal consequences laid down under RERA. Further, the extension was obtained unilaterally by the opposite party without having any consent by the complainant. The rights provided under RERA are independent and does not scuffle the rights of the complainant arising out of the provisions laid down in the agreement for sale. In this respect, the complainant referred the judgment given by the Honorable Bombay High Court in the matter 'Neelkamal Realtors Suburban Private Limited - VS-Union of India and others 2018 (1) RCR (Civil) 298(DB). The complainant also mentioned the judgment of Real Estate Regulatory Authority, Punjab in the matter 'Rajendra Kumar Gandhi - VS - M/S ATS Estates PVT Ltd. and the judgment of the Haryana Real Estate Appellate Tribunal, dated, 17th December, 2019 against Appeal no. 208 of 2019 in the matter Magic Eye Developers Private Limited -vs- Rajneesh Arora.

Regarding the claim of the respondent that the complainant has not

made payment against Demand raised by respondents, the complainant stated that the complainant always abided the terms and conditions of the agreement for sale with respect to payment until November 2022 when the last payment was made. The opposite party did not raise any demur against non-payment of dues prior to November 2023 when the complainant sent them a legal notice. Till that date an amount of Rs.1,34,02,263/- was paid to the Respondent. The next demand from the respondent came on 11th October 2023, 10th April 2024 and 27th April 2024 and the last demand was made on 12 February 2025. But those demands were not responded by the complainant due to pendency of the instant complaint petition raised before WBRERA. The complainant is ready to pay the admissible outstanding amount as directed by the Authority in disposing the matter.

So far as the claim of the respondent regarding avoiding additional benefits beyond the original scope of the agreement for sale, the complainant stated that the complainant is provided with similar benefits that the other flat owners are allotted by the developer. The complainant never asked for such benefits from the developer which were provided by them voluntarily and as such it cannot be considered as a ground of non-eligibility of the complainant in getting the delay interest as per provision of the Act.

After hearing both the Parties, going through the Affidavits and other documents, the authority has made the following observations :-

The project was originally registered under WBHIRA. Though the WBHIRA Act was struck down by the Hon'ble Supreme Court, the Sanctions, Registrations and permissions accorded by the erstwhile WBHIRA Authority prior to the date of judgment was allowed to be operative by the Hon'ble Apex court through clear direction in paragraph 84 of the order 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. As such, the Authority is in the opinion that the Project registered under erstwhile WBHIRA is eligible to the norms as laid down thereby. The parking plan sanctioned by the competent authority has no restriction for selling. Hence, the Respondent is allowed to sell Open Car Parking Space, as declared and sanctioned by the competent Authority in the instant project, registered under the provision of WBHIRA.

Now, regarding the point of eligibility of getting Interest by the Complainant due to delay in handing over the possession of the flat, the Authority would like to come on the plea of the Respondent that they got the extension of the project up to 31st March 2025 from the Authority which allows them not to be liable for payment of delay interest. It is to mention here that the respondent himself affirmed on the affidavit that providing Extension to complete the project shall not adversely affect the rights and interests of the allottees. This condition was also specifically mentioned in the Hard copy Order issued by the authority on the basis of which computer generated order was given. In no way such Extension can be a ground for not allowing the complainant to get Delay Interest denying his rights as per terms and conditions of the Agreement for Sale and also the provision of the relevant Section of the Act. The relevant Judgment of the Hon'ble Bombay High Court in the matter 'Neelkamal Realtors Suburban Private Limited - VS—Union of India and others 2018 (1) RCR (Civil) 298(DB) also confirms this observation. As such the Complainant is eligible to get interest due to delay in completion of the project as per provision of RERA Act. However as the project was previously allowed for a general extension of 9 months i.e upto 31.05.2023 due to covid 19 alongwith all other Real Estate Projects the Complainant shall be eligible to get the interest for delay with effect from 01.06.2023.

On the basis of above observations, the authority is now pleased to

give the following directions:-

As per provision of Section 18(1), the Respondent shall pay the complainant interest on the amount of Rs.1,34,02,263/- due to delay in completion of the project beyond the stipulated date @ SBI P.L.R plus 2% to be calculated from 01.06.2023 to 09.08.2024, i.e. up to Date of Occupancy Certificate. The respondent shall adjust this interest amount from the remaining amount of Rs. 5554361/-against the total Consideration value of Rs. 1,89,56,624/- which is due from the Complainant. As the demands for the remaining consideration value as agreed upon by both the parties as per Agreement for Sale, were raised by the Respondent during the pendency of this matter and beyond the stipulated period of Completion date, no interest shall be payable by the Complainant for the same.

The entire payment process including execution of deed of Conveyance and handing over the possession shall be completed by both the parties within 60 days from the date of receiving this order through email


The Respondent is eligible for selling Open Car Parking Space as per declaration in the Registration proposal duly sanctioned by the plan Sanctioning Authority and subsequently registered under Erstwhile WBHIRA and claim of the Complainant in this matter is hereby dismissed.

With this direction, the instant matter is hereby disposed of.

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


(JAYANTA KR. BASU)

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