

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

Complaint No.WBRERA/COM000040 & COM000662

Bharati Das & Asis Das.....Complainant

Vs.

Maa Batai Construction & Sushil kumar Sharma..... Respondent

Sl. Number and date of order	Order and signature of Officer	Note of action taken on order
3 ----- 12.06.2023	<p>Complainant is present in the online hearing filing hazira through email.</p> <p>Shri Sushil kumar Sharma, the Sole Proprietor of M/s Maa Batai Construction and Respondent of this matter is present in the online hearing filing hazira through email.</p> <p>As per the last order of the Authority dated 26.04.2023, the Complainant has submitted a prayer on Notarized Affidavit dated 15.05.2023 praying for inclusion of the name of Shri Asis Das as joint Complainant and inclusion of the name of M/s Maa Batai Construction as another Respondent.</p> <p>Let the said prayer of the Complainant on Affidavit be taken on record. It is duly considered and granted.</p> <p>As per the prayer of the Complainant, 'Maa Batai Construction' is hereby included as a Respondent No. 1 and Shri Asis Das is hereby included as joint Complainant.</p> <p>Let hence forth in all the records of this matter, these rectifications be recorded.</p> <p>Complainants have submitted another Notarized Affidavit dated 15.05.2023 containing their total submission regarding this Complaint Petition, as per the last order of the Authority</p>	

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dated 26.04.2023, which has been received by the Authority on 17.05.2023.

Let the Notarized Affidavit dated 15.05.2023 of the Complainant be taken on record.

Respondent submitted Additional Written Submission on Notarized Affidavit dated 30.05.2023, as per the last order of the Authority dated 26.04.2023, which has been received by the Authority on 02.06.2023.

Let the said Additional Written Submission of the Respondent be taken on record.

Heard both the parties in detail.

At the time of hearing, it came to the notice of the Authority that on the selfsame matter, the Complainant had earlier filed a Complaint case bearing number COM000662 before the erstwhile WBHIRA Authority .The said matter was not admitted for hearing till the struck down of the WBHIRA Authority by Hon'ble Supreme Court of India by an order dated 04.05.2021.

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 North 24 Parganas & Ors., the Apex Court has been pleased to direct-

"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.

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.COM000662 already stand transferred before this Authority. As no hearing was done for that Complaint Petition before the erstwhile WBHIRA and on the selfsame matter the present Complaint bearing no. WBRERA/COM000040 has been filed by the Complainant therefore the Authority is hereby pleased to close and dismiss the earlier Complaint no. COM 000662 and this Authority shall now proceed with hearing of this present Complaint Petition bearing no. WBRERA/COM 000040.

The case of the Complainant is that an Agreement for Sale was executed between the Respondent and the Complainant on 11th August, 2017 for purchase of a flat by the Complainant bearing flat No. 201 in the Project named 'Maa Batai Apartment' in the 2nd Floor, situated at Andul Station Road at Howrah, Total value of the said flat is Rs.15,54,000/-(Rupees fifteen lakhs fifty four thousand) only. Total payment made by the Complainant till date is Rs.11,00,000/-(Rupees eleven lakhs) only in this regard as stated in the Complaint Petition.

Complainant prays for the relief of termination for the said Agreement for Sale and refund of the total money paid by her along with interest and compensation as the Respondent failed to complete the construction and handover the said flat within schedule time i.e. within 30.09.2018 as per the Agreement for Sale.

After examination of the Notarized Affidavits of both the

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parties and Notary Attested documents placed on record and after hearing both the parties in the online hearing, the Authority is of the considered view that the Respondent has failed miserably in his obligation to hand over possession of the Apartment to the Complainant within the scheduled time line and therefore he is liable to refund back the principal amount of Rs.11,00,000/- (Rupees eleven lakhs only) paid by the Complainant along with interest at the rate of SBI PLR +2% starting from the date of respective payments made by the Complainant till the date of realisation, as per the provisions contained in section 18 of the Real Estate (Regulation and Development) Act, 2016 read with rule 17 and 18 of the West Bengal Real Estate (Regulation and Development) Rules, 2021. The Respondent also did not register the Agreement for Sale, executed between the Complainant and Respondent.

The Respondent also violated the provisions of RERA Act by constructing the 4th Floor without getting the Sanctioned Plan in this respect from the Competent Authority. He also violated the provisions of this Act by selling the said flat to any third person without due process of law.

Hence it is hereby,

Ordered,

That the Respondent shall refund the principal amount of Rs.11,00,000/- (Rupees eleven lakhs only) along with interest @SBI Prime Lending Rate + 2% starting from the respective dates of payments made by the Complainant till the date of realisation.

The refund shall be made by bank transfer to the bank

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account of the Complainant, within 45 days from the date of receipt of this order of the Authority by email.

The Complainant shall send his bank account details in which he wants to take the refund amount, to the Respondent by email within, 3 days from the date of receipt of this order of the Authority by email.

The Respondent did not get the said project registered under the erstwhile WBHIRA or under WBRERA Authority, which is mandatory in this case as he has not yet obtained Completion Certificate (C.C) for the project, as per provisions contained in section 3 of the Real Estate (Regulation & Development) Act, 2016.

The Special Law Officer, WBRERA is therefore directed to initiate separate proceeding under the provisions contained in section 3 of the said Act for non-registration of the said project before the WBRERA Authority.

Complainant is at liberty to file an Execution Application on any plain paper annexing a copy of this Order, to this Authority, if the Respondent defaults to comply this order either in full or in part within the specified time period as mentioned in this order. In that case Respondent shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to five percent, of the estimated cost of the instant project of M/s Maa Batai Construction, as determined by this Authority, as per the provision contained in section 63 of the Real Estate (Regulation and Development) Act, 2016.

The Complainant also prayed for compensation for mental

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harassment, agony etc. The Complainant is at liberty to file an application, as per Form-N of the WBRERA Rules, 2021, for compensation before the Adjudication Officer to be appointed by this Authority in due course of time, praying for compensation as per the provisions of section 71 of the RERA Act, 2016.

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

With the above directions the matter is hereby disposed of.



(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