

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

Complaint No.WBRERA/COM000078 & COM000314 (erstwhile WBHIRA)

Ruchita Sethi and Nikhil Shah.....Complainant
Vs.
Soumita Construction Pvt. Ltd..... Respondent

Sl. Number and date of order	Order and signature of Officer	Note of action taken on order
2 ----- 15.06.2023	<p>Advocate Vinit Sharma is present on behalf of the Complainant in the online hearing filing hazira and vakalatnama through email.</p> <p>Advocate Masooma Khan is present in the online hearing on behalf of the Respondent, being its Authorized Representative, filing hazira and authorization through email.</p> <p>Complainants submitted a Notarized Affidavit, containing their total submission, dated 16.05.2023, as per the last order of the Authority dated 27.04.2023, which has been received by this Authority on 19.05.2023.</p> <p>Let the said Affidavit of the Complainant be taken on record.</p> <p>The Respondent has sent Notarized Affidavit containing his Written Response dated 14.06.2023 which has been received by the Authority through email.</p> <p>Let the said Affidavit of the Respondent be taken on record.</p> <p>At the time of hearing, it has come to the notice of the Authority that on the selfsame matter, the Complainant had filed</p>	

a Complaint case bearing number COM000314 before the erstwhile WBHIRA Authority .The said matter was heard by the erstwhile WBHIRA Authority. After that Hon'ble Supreme Court of India struck down WBHIRA Authority 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. COM-000314 stand transferred to this Authority. As on the selfsame matter the present Complaint bearing no. WBRERA/COM 000078 has been filed by the Complainant and already both parties have submitted Affidavits, therefore, this Authority is hereby pleased to close and dismiss the Complaint no. COM-000314 and this Authority shall proceed with hearing of this present Complaint Petition bearing no. WBRERA/COM 000078.

Heard both the parties in detail.

As per the Complainants he booked a flat bearing No. 8D on the 8th floor, Tower-2 having total area of about 1014 Sq ft along with parking and other facilities in the project of the Respondent Company named as **'The County'** at P.S.-Bishnupur, Kolkata - 700 104, and the Memorandum of Understanding (MoU) was executed between the parties on 19.09.2013 and allotment letter was issued on 15.12.2014 to the Complainants.

As per the MoU, Complainants have paid total amount of Rs.14,30,437/- (Fourteen lakhs thirty thousand four hundred thirty seven only) time to time to the Respondent Company i.e. M/s. Soumita Construction Pvt. Ltd., out of total consideration amount of Rs.22,24,989/- (Twenty two lakhs twenty four thousand nine hundred eighty nine only) of the flat. The project has been miserably delayed for which the Complainant has suffered a lot.

The Complainant at the time of hearing stated that out of the said amount, the Respondent has refunded the amount of Rs.1,00,000/-only till date. The Respondent failed to refund the balance amount of Rs.13,30,437/- along with interest.

Therefore, the instant Complaint has been filed by the Complainant before the Authority for refund of the balance of the Principal Amount paid by him as mentioned above along with interest @SBI PLR + 2% p.a., till the realization of full refund from the date of each payment.

The Advocate of the Respondent stated at the time of hearing that the Complainants herein are Investors and not consumers, therefore, they will not come under the purview of RERA Act.

After examination of the Notarized Affidavits of both the 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 the principal amount paid by the Complainant along with interest at the rate of SBI PLR +2% p.a. for the period 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.

There is no distinction between 'investor' and 'consumer' under the RERA Act therefore whether the Complainants are investor or not is irrelevant in the matter of applying the provisions of RERA Act and Rules made thereunder.

Hence it is hereby,

Ordered,

That the Respondent shall refund the Complainant the balance amount of the total Principal Amount paid by the Complainant amounting to Rs.13,30,437/- (Rupees Thirteen lakhs thirty thousand four hundred thirty seven only) along with interest @ SBI Prime Lending Rate + 2%, for the period 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 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.

Complaint 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 real estate project named '**The County**', as determined by this Authority, as per the provision contained in section 63 of the Real Estate (Regulation and Development) 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