

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

Complaint No.WBRERA/COM000248

Akash AgarwalaComplainant

Vs

Emami Realty Limited..... Respondent

Sl. Number and date of order	Order and signature of Authority	Note of action taken on order
01 ----- 19.01.2024	<p>Advocate Ritaja Mukherjee is present in the online hearing on behalf of the Complainant filing hazira and vakalatnama through email.</p> <p>Advocate Hiranyak Gangopadhyay (Mob. No9038252455 & email Id – hiranyak@gagarcollp.com) is present in the online hearing on behalf of the Respondent filing hazira through email. He is directed to send his vakalatnama through email to the Authority after today's hearing.</p> <p>This Complaint Petition was filed before the erstwhile WBHIRA and hearing was held on 19.03.2021. After that on 4th May, 2021, WBHIRA was struck down by Hon'ble Supreme Court of India.</p> <p>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-</p> <p><i>"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</i></p>	

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. COM000436 stand transferred to this Authority. This Authority shall now proceed with hearing of this present Complaint Petition bearing no. WBRERA/COM 000248 and the Complaint petition number COM 000436 filed before erstwhile WBHIRA is hereby closed and dismissed, as both the Complaint Petitions are filed with selfsame cause of action.

Heard both the parties in detail.

As per the Complainant- the Complainant applied for allotment of a flat no. A5-1101 at 11th Floor in Tower A5 with area of approximately 1150 sq.ft. at '**Emami City**' project of the Respondent Company on 14.05.2012 on payment of Rs. 2.00 lakhs.

The Complainant had paid Rs.6,20,113/-on 27.07.2012 and Rs. 3,00,000/-on 31.07.2012, being the total sum of Rs.11,20,113/-i.e. approx 20% of the flat value (out of the total flat value i.e. Rs.54,02,500/-as per payment schedule) 4 years before execution of Agreement for Sub-Lease.

The Agreement for Sub-Lease was executed on 09.05.2016 and then the Complainant received the demand letter cum tax invoice dated 12.06.2019 with a forwarding memo dated 24.05.2019. By the said demand letter cum tax invoice, the Complainant was requested to remit Rs.27,83,945/-which includes an interest of Rs.3,53,860/-on or before 27.06.2019, in reply, the Complainant wrote to the Respondent that Rs.3,53,860/-on account of interest should not be imposed since the completion of the project was substantially delayed and the Complainant

was entitled to get interest in view of inordinate delay. Till date the Complainant had made payment of Rs.46,51,499/-(out of the total flat value i.e. Rs.54,02,500/-as per payment schedule).

Lastly, the Respondent terminated the said Agreement for Sub-Lease by a letter dated 18.02.2020 allegedly on the ground of non-payment of the outstanding payment of Rs.7,51,001/-plus interest of Rs.4,62,670/- (calculated till 31.01.2020). Even when the project was to be completed by July, 2018. It is also written in the said cancellation letter that the Respondent is at liberty to transfer the said flat to any other person.

In this Complaint Petition, the Complainant prays for the following reliefs:-

- a) To direct the Respondent to set-a-side and quash the impugned order of termination/cancellation of the agreement for sub-lease dated 18.02.2020 forthwith;
- b) To direct the Respondent to quantify the interest for culpable delay in construction under clause 6.6 of the Agreement for Sub-Lease and pay and disburse the same to the Complainant;
- c) To direct the Respondent to perform its contractual obligations and duties strictly in accordance with the terms and conditions of the Agreement for Sub-Lease.

After hearing both the parties, the Authority is pleased to admit this matter for further hearing and order as per the provisions contained in Section 31 of the Real Estate (Regulation and Development) Act, 2016 read with Rule 36 of the West Bengal Real Estate (Regulation and Development) Rules, 2021 and give the following directions:-

The Complainant is directed to submit his total submission regarding his Complaint Petition on a Notarized Affidavit annexing therewith notary attested /self-attested supporting documents and a signed copy of

the Complaint Petition and send the Affidavit (in original) to the Authority serving a copy of the same to the Respondent, both in hard and soft copies, within **15 (fifteen)** days from the date of receipt of this order through email.

The Complainant is further directed to send a scan copy of the Affidavit with annexure to the Advocate of the Respondent in his above mentioned email Id.

The Respondent is hereby directed to submit his Written Response on notarized affidavit regarding the Complaint Petition and Affidavit of the Complainant, annexing therewith notary attested/self-attested supporting documents, if any, and send the Affidavit (in original) 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 email whichever is earlier.

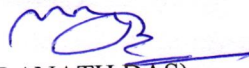
Fix **22.05.2024** for further hearing and order.



(SANDIPAN MUKHERJEE)

Chairperson

West Bengal Real Estate Regulatory Authority



(BHOLANATH DAS)

Member

West Bengal Real Estate Regulatory Authority