

West Bengal Real Estate Regulatory Authority

Calcutta Greens Commercial Complex (1st Floor)

1050/2, Survey Park, Kolkata – 700 075.

Complaint No.WBRERA/COM000131 & COM000504 (erstwhile WBHIRA)

Saswati Ghosh & Satyan Ghosh.....Complainants

Vs.

Amitava Samanta..... Respondent

Sl. Number and date of order	Order and signature of Officer	Note of action taken on order
1 ----- 15.06.2023	<p>Advocate Nirmalya Ghosh and Advocate Hitendra Pramanik are present in the online hearing on behalf of the Complainant filing hazira through email.</p> <p>Advocate Anujit Mookherji is present in the online hearing on behalf of the Respondent filing hazira through email.</p> <p>Heard both the parties in detail.</p> <p>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 COM000504 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.</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>	

“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.COM000504 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/COM000131 has been filed by the Complainant therefore the Authority is hereby pleased to close and dismiss the earlier Complaint no. COM 000504 and this Authority shall now proceed with hearing of this present Complaint Petition bearing no. WBRERA/COM 000131.

As per the Complainants they had plan to purchase a two storied bungalow named '**Dopati**' (G+1) bearing unit no. 203, admeasuring nearly 1344 sq.ft. having constructed area of about 907 sq.ft. in Mouza- Khanzanpur, JL no. 35 within PS – Panrui, District – Birbhum, as per the advertisement made by Amitava Samanta director of India Green Reality Limited the Respondent herein.

At first the Complainants booked one bungalow namely '**Mohor**' bearing unit no. 80 and paid Rs. 7,09,000/- and Agreement For Sale was made on 20.02.2016 with an assurance that the project will be completed within 24 months.

Respondent was unable to honour the said Agreement and offered the Complainants another project namely '**Dopati**' bearing unit no. 203 for total consideration of Rs. 26,10,000/- and adjusting the earnest money of Rs. 7,09,000/- vide new Agreement For Sale dated 23.12.2018 by cancelling the previous Agreement. In the year 2019, Complainant visited the site and observe that there was no sign of any development in the project site as agreed upon and he demanded the refund of the earnest money of Rs. 7,09,000/- from the Respondent. Respondent till date has not refunded the amount.

The Complainant in this Complaint petition prays for the relief of refund of the principal amount of Rs. 7,09,000/- paid by him alongwith interest from the date of deposit to the date of final refund.

After hearing both the parties the Authority is pleased to admit this matter for further hearing and order as per the provisions of Section 31 of the Real Estate (Regulation and Development) Act, 2016 and Rule 36 of the West Bengal Real Estate (Regulation and Development) Rules, 2021.

At the time of hearing today the Advocate of the Respondent submitted that the Respondent will refund the principal amount within 30 days from today.

After hearing both the parties the Authority is pleased to direct the following :-

a) The Respondent is hereby directed to refund the principal amount of Rs.7,09,000/- (Rupees seven lakhs nine thousand only) to the Complainant within one month from today.

b) Both the parties are hereby directed to try for a mutual settlement by amicable discussion regarding the interest to be

paid by the Respondent on the principal amount. If they arrived at a consensus, they will submit a joint Affidavit signed by both of them and send it to the Authority within one month from the date of receipt of this order.

Fix **04.08.2023** for further hearing and order.

Sd/-
(SANDIPAN MUKHERJEE)

Chairperson
West Bengal Real Estate Regulatory Authority

Sd/-
(BHOLANATH DAS)

Member

West Bengal Real Estate Regulatory Authority

Sd/-
(TAPAS MUKHOPADHYAY)

Member

West Bengal Real Estate Regulatory Authority

Certified to be true copy.

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15.06.2023

Special Law Officer
West Bengal Real Estate Regulatory Authority