

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

Complaint No.WBRERA/COM000702

Angshuman Bhattacharya..... Complainant

Vs

Merlin Projects Limited..... Respondent no.1

Saket Mohta..... Respondent no.2

Sl. Number and date of order	Order and signature of Authority	Note of action taken on order
04 13.12.2024	<p>The Complainant has filed an Appeal bearing no. WBREAT/APPEAL No.- 20/2024 before the Hon'ble West Bengal Real Estate Appellate Tribunal (hereinafter referred to as 'WBREAT') by challenging the order dated 09.08.2024 passed by this Authority.</p> <p>On 14.11.2024, Hon'ble West Bengal Real Estate Appellate Tribunal (WBREAT) has been pleased to direct the following in the said Appeal mentioned above:-</p> <p>“In the result, the appeal succeeds.</p> <p>Accordingly, the appeal is allowed on contest, but without any cost.</p> <p>The Order dated 9th August, 2024 passed by the learned Regulatory Authority in Complaint No. WBRERA/COM 000702 is hereby set-aside. Consequently, all the directions passed by the Order dated 9th August, 2024 also stand set-aside.</p> <p>The learned Regulatory Authority is directed to dispose of the complaint by passing a reasoned final order on consideration of the Affidavits exchanged by the parties and the documents already on record within 4 (four) weeks from the date of communication of this order.”.</p>	

The abovementioned order has been received by this Authority on 14.11.2024, therefore, in compliance with the said order of the Hon'ble WBREAT, this Authority is under the obligation to dispose of the Complaint no. WBRERA/COM 000702 within 4 (four) weeks from 14.11.2024.

By the said order, Hon'ble WBREAT set-aside the order of this Authority dated 09.08.2024 and directed this Authority to dispose of the matter as per the documents and Affidavits already on record.

But this Authority is now under a serious confusion regarding how it will do justice to this matter, as on 09.08.2024, at the time of hearing, one of the party (Respondent) on Affidavit submitted that they have enclosed plan dated 19.09.2018 with their Affidavit dated 24.07.2024, which was done by bonafide mistake on their part as the junior advocate who has prepared the annexure of the Affidavit does not have the knowledge where the date of the plan is usually recorded. On 09.08.2024, the Respondent on Affidavit submitted before the Authority the plan dated 20.05.2017, serving a copy of the same to the Complainant, stating the same to be the correct plan which was submitted by them with their Application for Revision dated 19.06.2017 before the KMC.

The Respondent also stated that, at the time of preparing the Written Notes of Arguments, it has come to their notice that the abovementioned mistake has occurred on their part and so they prayed before this Authority on 09.08.2024 for necessary rectification of the said mistake by submitting a Supplementary Affidavit dated 31.07.2024 in which they have enclosed plans dated 20.05.2017 which were actually submitted alongwith their Application for Revision of Sanctioned Plan before the KMC on 19.06.2017 and the Respondent also prayed for **unconditional apology** in this regard for this mistake.

Under such circumstances, as mentioned hereinabove, if this Authority continue with disposal of this matter, in compliance with the order of Hon'ble WBREAT dated 14.11.2024, there might be Miscarriage

of Justice, as the Respondent on Affidavit submitted before this Authority on 09.08.2024 that the plan attached with the Affidavit dated 24.07.2024 has been incorrectly annexed by a clerical error.

Although this Authority, in its order dated 02.07.2024, stated that,- "The hearing of this matter is completed today. Fix 09.08.2024 for final order.", but when a party on 09.08.2024 submits voluntarily and out of its own that an error has been occurred inadvertently on their part then the Principle of Natural Justice demands that he should be given an opportunity to place the correct document on record in place of the document which he has submitted erroneously on the previous date. In this regard, sub-section (2) of section 38 provides that,-

"section 38(2). The Authority shall be guided by the principles of natural justice and, subject to the other provisions of this Act and the rules made thereunder, the Authority shall have powers to regulate its own procedure."

This Authority feels the necessity of adjudication and disposal of this matter in furtherance of the Principle of Natural Justice and Fair Play in accordance with the provisions of the said Act thus a Report was sought by this Authority in its order dated 09.08.2024 from the Kolkata Municipal Corporation (KMC) containing the details of the Application for Revision of Plans submitted by the Merlin Projects Limited (Respondent No.1) vide their letter dated 19.06.2017 and regarding the fact of approval of the same by the KMC to adjudicate the matter on the basis of correct documents and obtaining the Report from an independent Govt. Body / Authority. As such this Authority had taken steps for the same in the interest of justice. Now the order of Hon'ble WBREAT dated 14.11.2024 has been issued thereby making WBRERA unable to act on the basis of the KMC Report, as sought for.

Hence, under these compelling circumstances, this Authority has no other option but to seek a **Clarification/Guidance/Directives/Permission** from the Hon'ble WBREAT so that this Authority can provide one or more hearing(s) to both the parties and after receiving the **Report** from Kolkata Municipal

Corporation (KMC), containing the details of the Application for Revision of plans submitted by the Merlin Projects Limited (Respondent no.1) vide their letter dated 19.06.2017 and approval of the same by the KMC in this regard, and ascertaining the correctness and veracity of the documents submitted by both the parties, this Authority can judiciously dispose of this matter following the Principles of Natural Justice.

With the above prayers, this matter is placed before the Hon'ble WBREAT so that Hon'ble WBREAT provides the necessary **Clarification/Guidance/Directives/Permission** in this regard to this Authority.

Secretary WBRERA is hereby directed to immediately send this order containing the prayer of this Authority to the Hon'ble WBREAT for its kind consideration and necessary **Clarification/Guidance/Directives/Permission**.



(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