

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

Complaint No.WBRERA/COM000994

Jitesh Sah & Payal Shaw..... Complainants

Vs.

1. Bengal Greenfield Housing Development Company Limited..... Respondent No.1.
2. Greenfield City Project LLP Respondent No. 2
3. Srijan Realty Pvt. Ltd. Respondent No.3.
4. N.K. Realtors Private Limited Respondent No. 4.

Sl. Number and date of order	Order and signature of the Authority	Note of action taken on order
01 12.09.2024	<p>Complainant is present in the online hearing filing hazira through email.</p> <p>Smt. Apurbaa Ghosh, being Legal Executive of Respondent no.3, Srijan Realty Pvt. Ltd. (email Id: apurbaa@srijanrealty.in) is present in the online hearing on behalf of the Respondent No.3. She has directed to send her Authorization to the Authority through email immediately.</p> <p>Being Legal Executive of Respondent no.3, Smt. Apurbaa Ghosh can only represent Respondent no.3 and she cannot be Authorized Representative of other Respondents.</p> <p>Other Respondents are absent despite due service of hearing notice through speed post and also by email.</p> <p>Let the track record of due service of hearing notice to the other Respondents be kept on record.</p> <p>Heard both the parties in detail.</p> <p>As per Complainants, the fact of the case is that, being attracted to their advertisements, the Complainant alongwith his wife Payal Shaw purchased a flat being the Unit No. 4C on the 4th Floor of the Building, Block 38, along with Super Built Up area of 1323 Sq.ft on 4th floor of building, block No. 38 in Phase No - V of the housing Complex of the Respondent Companies named as 'Greenfield City Elite' under construction on the Schedule -A Land together with the right to park 1 (one) car -in Open independent (parking No. 1437) space on the Ground Floor of or around the Building Block lying and situated at Municipal Holding No. E3 - 398, under ward No. 15 (new) previous ward no. 14, under Police Station Maheshtala, in the District of South 24-Pgs, Greenfield City Project, P.S.</p>	

Maheshtala, Kolkata – 700141, W.B. @total consideration amount of Rs.67,44,422/-only.

That they have applied for home loan with HDFC Bank which sanctioned a loan of Rs.49,00,000/-in favour of the Complainants vide loan account No. 686628472.

That they have paid Rs.6,50,000/-at the time of booking as per their instrucionts. Thereafter as per their up to date demand as on 31.03.2023, they paid through our lender bank a sum of **Rs.36,49,627/-**on 29.03.2023 vide UTR No. 303309965225 credit to Greenfield City Project LLP Escrow Account 00140350009874, HDFC Bank Ltd., believing upon their representation that this was the sum which was due in addition to the aforesaid amount of Rs.**6,50,000/-** as on 31.03.2023.

The price for open car parking space is Rs.3,50,000/-only charged in addition to cost of the flat.

Thereafter they came to know that selling open car parking is forbidden by law and has got no legal sanction. Immediately after coming to know about such unfair practice and illegal sale of open car parking, they enquired and came to know that they have sold more than 4000 nos. of open car parking in the same Housing Complex. Unlike they have allotted a specific open car parking no to them, they have also specified particular open car parking nos. to those thousands of buyers.

It is humbly submitted by the Complainants that this act of sale of open parking space is a blatant violation of the law. It is submitted that the sale of open parking space as independent units or flats is illegal as these areas are extended as “common areas and facilities” for all the owners. As per section 2(n)(iii) of the RERA Act, 2016 “common areas” includes “open parking areas”. Further, Section 19(3) of the said Act mandates that the Association of allottees shall be entitled to claim the possession of the common areas.

That, as the common areas include open parking spaces and that other flat owners are also entitled to the same, it is submitted that it is outside the Respondent’s authority to sell open parking spaces, as it shall lead to the exclusion of other flat owners from accessing the same. It is submitted that the respondents are selling particular and designated open parking areas to individual flat owners and the said act jeopardizes the rights to common areas for other flat owners, who are entitled to the same.

That the respondent has committed a series of illegal transactions by selling these open parking lots. It is submitted that the fact that the respondent sold open parking space to such a significant number of buyers shows the malafide intention of the respondent to defraud buyers, gain wrongfully and bind them into this grossly illegal act that the respondent has committed. Further, the respondent has planned future sale of a plethora of open parking space, which has the effect of defrauding numerous buyers in the future.

That, the aforesaid act of the developers is unfair trade practice as they have sold various open parking pace for Rs. 2 lacks to 3.5 lacs to over 4000 residents in the complex. The fact that they have misrepresented such a significant number of people, including them, is proof of the fact that they have malafied intentions to defraud buyers and bind

them into this blatantly illegal act they are committing.

The complainants craved leave for producing other relevant documents/evidence at the of hearing.

The Complainants pray before the Authority for the following reliefs:-

1. Refund of the entire Principal Amount received by the Respondents along with 24% interest per annum.
2. Compensation against all losses to be suffered by them for foreclosure of bank loan including EMIs already paid, interests, foreclosure charges etc.;
3. Pay compensation of Rs.20,00,000/-for mental agony and harassment to them;
4. Cancel all the allotments of open car parking areas sold so far and refund money to the buyers with interest;
5. Publish a notification in newspaper and the notice board of the society informing that open car parking areas are part of common areas and as such no person has the right to park his car at any specific parking no as matter of right;
6. Tender unconditional apologies for all such illegal acts committed by the Respondents with undertaking no to repeat the same in future.
7. Wipe off/erase numbering of all the open car and bike parking from the common areas with immediate effect;
8. Compensate the stamp duty and registration fees paid by the Complainants to Govt. for registration of Agreement for Sale and also to provide copy of Registered Agreement for Sale to them;
9. Revoke their registration and restrain the respondents from selling open parking and continuing such project work;
10. In view of facts stated in the preceding paragraphs, the complainants also humbly pray to the Hon'ble Authority under sections 37 and 38 of the RERA Act, 2016 for compensation to the tune of Rs.30,00,000/-from the respondent for the financial loss that the Complainant has suffered along with the excruciating mental distress, which occurred due to the malicious intention of the Respondents.

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:-

Let Smt. **Payal Shaw** wife of the Complainant **Mr. Jitesh Sah** be included as a **Joint Complainant** in this Complaint Petition as she is the Co-Allottee of the subject matter flat and therefore she is a **necessary party** for adjudication of this matter.

The **Complainants** are directed to submit their total submission regarding their Complaint Petition on a Notarized Affidavit annexing therewith notary / self attested copy of 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 scan copies, within **15 (fifteen)** days from the date of receipt of this order through email.

The **Complainants** are further directed to send a scan copy of their Affidavit alongwith annexure to the email id of the Authorized Representative of the Respondent no.3, as mentioned above.

The **Respondents** are hereby directed to submit their Written Response on Notarized Affidavit(s) regarding the Complaint Petition and Affidavit of the Complainant, annexing therewith notary attested supporting documents, if any, and send the Affidavit(s) (in original) to the Authority serving a copy of the same to the Complainant, both in hard and scan 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.

The **Respondents** are further directed to specifically mention in their Notarized Affidavit that whether they have taken registration for the project from erstwhile **WBHIRA/WBRERA**. If yes, they shall provide the Registration number with date and if they have not taken registration, the reason for not taking the registration shall be provided in their Affidavit(s).

Fix **19.11.2024** for further hearing and order.

Sd/-

(JAYANTA KR. BASU)

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:

Sde

12.09.2024

Special Law Officer

West Bengal Real Estate Regulatory Authority