

**BEFORE THE WEST BENGAL REAL ESTATE APPELLATE TRIBUNAL
KOLKATA - 700 075**

WBREAT / APPEAL No. – 05/2024

- Present: 1. Justice Rabindranath Samanta
Hon'ble Chairperson
2. Shri Gour Sundar Banerjee
Hon'ble Judicial Member
3. Dr. Subrat Mukherjee
Hon'ble Administrative Member

M/s Shrishti Infrastructure Development Corporation Ltd.

..... Appellant

Plot X-1, 2 & 3 Block EP, Sector-V, Salt Lake City, Kolkata -700091

- Vs -

1. Partha Pratim Biswas

..... Respondents

2. Aditi Biswas

Flat No.8-SB, Manikaran, 3B, Rammohan Mallick
Garden Lane, Kolkata - 700075

Mr. Arghya Chakraborty, Advocate,
through virtual mode.

For the Appellant

Partha Pratim Biswas and Aditi Biswas
in person through virtual mode

For the Respondents

Order No. 7 dated 21/08/2024

The Appellant M/s. Shrishti Infrastructure Development Corporation Limited is represented by Mr.Arghya Chakraborty, learned Advocate through virtual mode.

Learned Advocate for the Appellant submits that the Appellant paid the 5th instalment i.e. the last instalment of Rs.39,26,999/- (Rupees thirty-nine lakh twenty-six thousand nine hundred ninety-nine only) to the Respondents on 10th August, 2024 by bank transfer to the bank of the Respondents.

The Respondents Mr. Partha Pratim Biswas and Ms. Aditi Biswas appearing in person through virtual mode submit that they received the last instalment of Rs.39,26,999/- (Rupees thirty-nine lakh twenty-six thousand nine hundred ninety-nine only) from the Appellant on 10th August, 2024.

Learned Advocate for the Appellant submits that since the Appellant has paid all the instalments, the appeal be disposed of in terms of the agreement dated 08.04.2024 for full and final settlement. The Respondents submit that the appeal may be disposed of in terms of the compromise in writing entered into between them.

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This appeal arises out of the final order dated 11.09.2023 passed by the learned West Bengal Real Estate Regulatory Authority (hereinafter referred to as 'the Regulatory Authority') in Complaint No.WBRERA/COM000335 (erstwhile WBHIRA). By the impugned order the learned Regulatory Authority directed the Appellant to refund the Principal Amount of Rs.1,11,87,270/- (Rupees one crore eleven lakh eighty-seven thousand two hundred seventy only) along with interest @ SBI Prime Lending Rate plus 2% per annum to the Respondents / Complainants for the period starting from the respective dates of payments made by the Complainants till the date of realisation. Aggrieved by the impugned order, the Appellant has approached this Tribunal by preferring the instant appeal.

The facts which led to the filing of the complaint by the Respondents / Complainants may briefly be stated as follows :-

- The Respondents booked an apartment measuring 1250 sq.ft. at the consideration of Rs.1,18,75,000/- (Rupees one crore eighteen lakh seventy-five thousand only) on the 3rd Floor of a Project namely 'THE V Privileged Living', New Town, Premises No.CBD/2, Action Area-II, Mouza – Jatragachi, Rajarhat, North 24 Parganas. In this regard an agreement dated 31.10.2014 was entered into between the Appellant and the Respondents. As per the agreement, the possession of the apartment was scheduled to be delivered to the Respondents in April, 2015. Though the Respondents paid the amount of Rs.1,11,87,270/- (Rupees one crore eleven lakh eighty-seven thousand two hundred seventy only) during the period from 18.07.2013 to 08.12.2014, the Appellant failed to deliver possession of the apartment to the Respondents within the stipulated timeline of April, 2015. Hence, the Respondents withdrew themselves from the Project and approached the Regulatory Authority seeking refund of the amount they paid to the Appellant with statutory interest thereon.
- During the pendency of the appeal, the Appellant and the Respondents settled the matter and they entered into a compromise in writing.

Paragraph 3 of the agreement / compromise, pertaining to settlement of the claim, *inter alia*, reads as under :-

“The owner will refund full amount paid by the allottee i.e. Rs.1,11,87,270/- (Rupees one crore eleven lakh eighty seven thousand two hundred seventy only) along with Rs.95,16,723/- (Rupees ninety five lakh sixteen thousand seven hundred twenty-three only) being the interest and / or compensation and / or penalty as the case may be aggregating to Rs.2,07,03,993/- (Rupees two crore seven lakh three thousand nine hundred ninety-three only) to the allottee in the following manner:

- a) Rs.50,00,000/- (Rupees fifty lakh only) on 08/04/2024 by cashier's cheque.
- b) Rs.39,25,998/- (Rupees thirty-nine lakh twenty-five thousand nine hundred ninety-eight only) on or before 15/05/2024 by Bank Transfer to the bank account of the allottee, Bank details provided above.
- c) Rs.39,25,998/- (Rupees thirty-nine lakh twenty-five thousand nine hundred ninety-eight only) on or before 15/06/2024 by Bank Transfer to the bank account of the allottee, Bank details provided above.

- d) Rs.39,25,998/- (Rupees thirty-nine lakh twenty-five thousand nine hundred ninety-eight only) on or before 15/07/2024 by Bank Transfer to the bank account of the allottee, Bank details provided above.
- e) Rs.39,26,999/- (Rupees thirty-nine lakh twenty-six thousand nine hundred ninety-nine only) on or before 15/08/2024 by Bank Transfer to the bank account of the allottee, Bank details provided above.”

On consideration of the compromise in writing and the mode of payment of the instalments as excerpted above, this Tribunal felt it wise to monitor the payment of the instalments by the Appellant. Accordingly, this appeal was posted for hearing from time to time to see whether the payments were being made in strict compliance of the terms of the compromise. While the appeal was fixed for hearing on 17.05.2024, 19.06.2024 and 18.07.2024, we found that the Appellant paid the second instalment, third instalment and fourth instalment as per the timeline as spelt in the agreement/compromise.

Today the Appellant has paid the fifth i.e. the last instalment of Rs.39,26,999/- (Rupees thirty-nine lakh twenty-six thousand nine hundred ninety-nine only).

Therefore the Appellant has paid the entire amount of Rs.2,07,03,993/- (Rupees two crore seven lakh three thousand nine hundred ninety-three only), as settled to the Respondents.

In view of the above, the appeal is disposed of in terms of the agreement / compromise dated 08.04.2024 on full and final settlement. The agreement / compromise dated 08.04.2024 do form a part of this order.

Execution application, if any, filed by the Respondents in the learned Regulatory Authority shall stand as dropped on full satisfaction.

No order as to costs.

Let a copy of this order be communicated to the Appellant through its learned Advocate and the Respondents by e-mail immediately.

Let a copy of this order be also communicated to the learned Regulatory Authority for information.

Sd/-

JUSTICE RABINDRANATH SAMANTA
Chairperson
West Bengal Real Estate Appellate Tribunal

Sd/-


GOUR SUNDAR BANERJEE
Judicial Member
West Bengal Real Estate Appellate Tribunal

Sd/-

DR. SUBRAT MUKHERJEE
Administrative Member
West Bengal Real Estate Appellate Tribunal

By Order of WBREAT

Dated: 21-08-2024


Section Officer
W. Bengal Real Estate Appellate Tribunal
Authorized Signatory
West Bengal