

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

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

WBREAT/APPEAL NO. – 006/2024

**Shri Joydeep Majumder, Director,
Senco Infrastructure Pvt. Ltd.**
411/20, Hemanta Mukhopadhyay Sarani (Gariahat Road),
Kolkata- 700 029.

..... Appellant

-Vs -

Sudip Kumar De
Flat No.1A, First Floor,
950, Pelican Nature, Kamalgazi,
P.O.-Narendrapur, South-24-Parganas,
PIN.- 700 103.

..... Respondent

Mr. Bodhisattya Haldar, Advocate,
Mr. Sudip Kumar De in person

For the Appellant
For the Respondent

Heard on : **23.08.2024**
Judgment on : **17.09.2024**

Rabindranath Samanta, J:-

This appeal has been preferred challenging the Order dated 31.01.2024 passed by the West Bengal Real Estate Regulatory Authority (hereinafter referred to as the Regulatory Authority) in Complaint No. WBRERA-COM000334.

By the Impugned Order, the learned Regulatory Authority directed the Appellant to deliver possession of the flat booked by the Respondent/Complainant along with keys within thirty days from the date of receipt of the order. Besides, the Appellant was directed to pay interest to the Respondent for the delay in delivery of possession for the period starting from 12.01.2022 till the date of actual delivery of possession @SBI PLR +2% per annum on the amount of Rs.39,86,580/-(Rupees thirty nine lakh eighty six thousand five hundred eighty only) paid by the Respondent. By the same order the Respondent/Complainant was directed to pay interest on the amount of Rs.4,40,820/- (Rupees four lakh forty thousand eight hundred twenty only) @SBI PLR+2% per annum for the period starting from 25.06.2022 i.e. the date of Registration of the Flat

till the actual delivery of possession. Both the parties were at liberty to adjust the amounts and pay the remaining amount to the other party and such payment shall be made by bank transfer.

The Appellant assails the impugned order, *inter alia*, on the grounds that learned Regulatory Authority erred in directing the Appellant to pay interest from 12.01.2022 whereas the Appellant issued possession letter and registered the Deed of Conveyance in respect of the flat in favour of the Respondent. The Appellant submits that the learned Regulatory Authority has erroneously directed the Respondent to pay interest on the amount of Rs.4,40,820/- (Rupees four lakh forty thousand eight hundred twenty only) instead of Rs.8,15,752/- (Rupees eight lakh fifteen thousand seven hundred fifty two only) which is due from the Respondent to the Appellant from the date of Execution of the Conveyance Deed on 25.06.2022. Hence, the Appellant prays that the impugned Order dated 30.01.2024 be set aside.

Before we dispose of the appeal, the background facts of the matter need to be portrayed.

The factual matrix as emanating from the Complainant filed by the Respondent/Complainant with the learned Regulatory Authority, may be summed up as under:

The Respondent purchased a flat being No. '3E' together with a car parking space of a project namely 'Southern Sky' at Kumrakhali, P.S. Sonarpur, at present Narendrapur, South-24-Parganas. Before purchasing the flat, an Agreement for Sale was entered into between the Respondent/Complainant and the Appellant on 12th April, 2021. As per the agreement, possession of the flat was to be delivered to the Respondent on or before 12 January, 2022. It was recited in the agreement if the Appellant /Developer failed to give possession of the flat to the Respondent within the stipulated period, the Developer would pay interest on the amount paid by the Respondent, as per then prevailing rate of bank interest.

Despite several requests made by the Respondent to the Appellant both verbally and in writing to deliver possession of the flat to him, the Appellant failed to complete the flat for occupation and deliver possession of the same to him.

Initially, the Respondent applied for Home Loan from State Bank of India, Kamalgazi More Branch. Since the Appellant failed to furnish Conversion Certificate in respect of the land of the project to the Respondent, he could not get the loan from SBI. On the contrary, the Appellant forced him to take loan from a Financial Institution namely LIC HFL through his own channel and registered the flat in his name citing reason that LIC HFL would not disburse loan unless the Deed of Conveyance was registered for the flat. However, the Appellant promised him that he would

hand over possession of the flat within one month from the date of registration. Unfortunately, the Appellant in breach of his promise failed to deliver possession to him. The Respondent has paid the entire consideration of Rs.44,27,400/- (Rupees forty four lakh twenty seven thousand four hundred only) to the Appellant. Under such circumstances, the Respondent/Complainant sought direction upon the Appellant to deliver possession of the flat to him without any further delay and pay him the accrued interest on the amount of money paid by him. Besides, he sought direction upon the Appellant to pay Rs.12,000/- (Rupees twelve thousand only) per month to him which he paid as rent for his rented accommodation as compensation from 12th January, 2022 till the date of delivery of possession.

The Appellant contested the complaint by filing a Written Response by way of an affidavit. The Appellant states in his affidavit that the Respondent/Complainant booked a residential flat being Unit No. 3E, measuring 1102 sq. ft. (super built up area) on the 3rd Floor of the Project namely 'Southern Sky' together with a car parking space at Kumrakhali, P.S. Sonarpur, Dist. South-24-Parganas by paying a booking amount of Rs.1,00,000/-(Rupees one lakh only) on 15.03.2021. Till 31.03.2022, the Respondent paid a total amount of Rs.4,42,740/- (Rupees four lakh forty two thousand seven hundred forty only) against the total consideration of Rs.48,02,152/- (Rupees forty eight lakh two thousand one hundred fifty two only) [Rs.44,27,400/- for Flat and Car Parking space plus Rs.44,274/- as Legal Charge plus Rs.2,21,370/- as GST (@of 5%) plus Rs.1,09,098/- as extra Development Charge plus Rs.10,000/- as Stamp Duty]. Upon repeated requests made by him to pay the balance consideration of Rs.43,69,412/- (Rupees forty three lakh sixty nine thousand four hundred twelve only), the Respondent paid a sum of Rs.4,44,660/- (Rupees four lakh forty four thousand six hundred sixty only) on 23.06.2022 and promised to pay the balance amount of Rs.39,14,752/-(Rupees thirty nine lakh fourteen thousand seven hundred fifty two only). The Respondent obtained home loan of Rs.35,40,000/- (Rupees thirty five lakh forty thousand only) from LIC HFL and agreed to pay the rest amount of Rs.3,74,752/-(Rupees three lakh seventy four thousand seven hundred fifty two only) as self-contribution. The Appellant came to know that on the date of execution of the Deed of Conveyance on 25.06.2022 LIC HFL disbursed only Rs.30,99,000/- (Rupees thirty lakh ninety nine thousand only) and the remaining amount of Rs.4,41,000/- (Rupees four lakh forty one thousand only) would be paid after a few months. Believing that the LIC HFL disbursed the remaining amount of Rs.4,41,000/- and Respondent would pay the remaining balance of Rs.3,74,742/- as self-contribution, the Appellant executed and registered the Deed of Conveyance in favour of the Respondent. But, after execution

and registration of the sale deed, the Respondent did not pay a single penny to him. The Appellant, in the month of April 2023, demanded the balance home loan amount of Rs.4,41,000/- from LIC HFL, but the Appellant came to know that because of the instruction of the Respondent LIC HFL did not disburse the amount. On such grounds and denying the allegations as made by the Respondent in the complaint the Appellant sought dismissal of the complaint.

Upon hearing the learned Advocates for the Appellant / Promoter and the Respondent in person and on consideration of the affidavits filed by the parties and the documents on record the learned Regulatory Authority passed the impugned Order as quoted above.

Now, the question which begs our reconsideration is whether the impugned Order is sustainable?

In the Appeal, the Respondent has filed affidavit in opposition and the Appellant has filed affidavit in reply.

Mr. Bodhisattya Halder, learned Advocate appearing for the Appellant submits that the Respondent booked the flat along with a car parking space at the total consideration of Rs.48,02,152/-(Rupees forty eight lakh two thousand one hundred fifty two only) including other charges as stated at Para-III, Page-13 of the Agreement for Sale. Out of this consideration amount the Respondent paid Rs.39,86,400/- and an amount of Rs.8,15,752/- is due from the Respondent to the Appellant. Learned Advocate submits that the direction of the learned Regulatory Authority to pay interest on an amount of Rs.4,40,820/- is erroneous. The interest payable by the Appellant is not from 12.01.2022, but from 23.06.2022 when the Deed of Conveyance was executed and registered. Learned Advocate further submits that the project as undertaken by the Appellant is complete for habitation and many flat owners are residing there. Learned Advocate maintains that since the Building Plan was sanctioned in offline mode, Completion Certificate will not be obtained at present offline because Sanction of Plan and issuance of Completion Certificate are now regulated through Online Portal. In such context, Mr. Halder submits that the impugned Order be set aside and the Respondent be directed to pay the balance amount of Rs.8,15,752/- with interest thereon from the date of execution and registration of the Sale Deed on 23.06.2022.

Mr. Sudip Kumar De, the Respondent, appearing in person submits that the consideration amount for purchase of the flat was fixed at Rs.44,27,400/- and it will be evident from the Agreement for Sale entered into between the parties. Mr. De submits that the registered Sale Deed, a copy of which has been filed, will show that the consideration amount payable by him, was of Rs.44,27,400/- and the Memo of Consideration annexed to the Sale Deed evinces that

he paid the entire consideration amount of Rs.44,27,400/-. Mr. De vehemently submits that till today the project including the flat booked by him has not yet been completed for human habitation and because of this the Appellant could not obtain either the Completion Certificate or Occupancy Certificate or both from the concerned Municipal Authority. Mr. De further submits that the Appellant forced him to get the Sale Deed executed and registered on the pretext that unless Deed of Conveyance was registered, the Financial Institution LIC HFL would not disburse the loan amount. In such backdrop, Mr. De submits that the Appellant be directed to complete the project immediately, deliver possession of the flat with car parking space to him without any further delay and pay the statutory interest on the amount of money paid by him from 12th January, 2022 till possession of the flat is handed over to him.

As the pleadings of the parties suggest, the Respondent/Complainant asserts that as per the Agreement for Sale the consideration amount of the flat was fixed at Rs.44,27,400/- and the Respondent has paid this amount to the Appellant prior to registration of the Sale Deed. However, the Appellant asserts that the consideration amount for the flat was fixed at Rs.44,27,400/- plus Legal Charge @1% i.e. Rs.44,274/-, GST @5% i.e. Rs.2,21,370/- and extra development charges of Rs.1,09,098/- totalling Rs.48,02,152/-. It is averred by the Appellant that out of this consideration amount the Respondent upto 23.06.2022 paid an amount of Rs.4,44,600/- and the Respondent obtained home loan of Rs.35,40,000/- from a Financial Institution LIC HFL. He agreed to pay the rest amount of Rs.3,74,752/- as self-contribution. But, LIC HFL disbursed only Rs.30,99,000/-(Rupees thirty lakh ninety nine thousand only). As such, an amount of Rs.8,15,752/- is still due to the Appellant from the Respondent.

Perusal of the agreement for sale dated 12.04.2021 between the parties reveals that the total consideration of the flat was fixed at Rs.44,27,400/- (Rupees forty four lakh twenty seven thousand four hundred only) (excluding GST). Besides, as it appears from Part-III of the Agreement, the Respondent was to pay additional / extra charges (one time) which included transformer charges, legal charges, generator back-up charges, advance maintenance charges etc. As delineated in the written response submitted by the Appellant by way of affidavit and in the Memorandum of Appeal, apart from the consideration amount of Rs.44,27,400/- payable by the Respondent, the Respondent before execution and registration of the Deed of Conveyance was to pay the following charges :

- i) Rs.44,274/- as legal charges (1%),
 - ii) Rs.2,21,370/- as G.S.T. (@5%) and
 - iii) Rs.1,09,098/- as extra development charges
- totalling Rs.3,74,742/-(Rupees three lakh seventy four thousand seven hundred forty two only)

According to Appellant, the Respondent paid an amount of Rs.39,86,400/- and an amount of Rs.8,15,752/- is payable by him to the Appellant.

Admittedly, a Deed of Conveyance / Sale Deed in respect of the flat together with a car parking space booked by the Respondent / Complainant was executed and registered on 25.06.2022. Memorandum of Consideration annexed to the Deed of Conveyance evinces that the Appellant / Promoter received Rs.1,00,000/- on 15.03.2021, Rs.3,42,740/- on 12.04.2021, Rs.4,44,660/- on 23.06.2022 and Rs.35,40,000/- on 27.06.2022(should be 25.06.2022). By such mode of payment, the Appellant received the principal consideration amount of Rs.44,27,400/-. Such being the factual position, the Appellant is now estopped from making any plea that he has not received the principal consideration amount of Rs.44,27,400/-. What we find from the recitals of the Agreement, Part-II and Part-III appended to the agreement, an amount of Rs.3,74,742/- is still due from the Respondent to the Appellant as a balance amount out of the total consideration amount including the charges as depicted above.

It is submitted on behalf of the Respondent that as per the conditions of the Agreement, the Appellant was to deliver possession of the flat to him by 12.01.2022. It is contended by him that the Project including the flat has not yet been completed for human habitation and because of this the Appellant could not obtain either Completion Certificate or Occupancy Certificate from the concerned Municipal Authority. In such circumstances, the Respondent urges that the Appellant be directed to pay the statutory interest on the amount of money paid by him from the date of payment of the amount till possession of the flat is delivered to him.

According to Section 11(4)(b) of the Real Estate (Regulation and Development) Act, 2016 the Promoter shall be responsible to obtain the Completion Certificate or the Occupancy Certificate, or both, as applicable from the relevant Competent Authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be. On the other hand, Section 19(10) of the Act enjoins that every allottee shall take physical possession of the apartment, plot or building as the case may be within a period of two months of the Occupancy Certificate issued for the said apartment, plot or building as the case may be. In the model Agreement for Sale at Annexure-‘A’ appended to the West Bengal Real Estate (Regulation and Development) Rules 2021 under the heading ‘Procedure for taking possession’ provides that the Promoter upon obtaining the Occupancy Certificate from the Competent Authority shall offer in writing the possession of the apartment to the allottee in

terms of the Agreement to be taken within three months from the date of issue of such notice and Promoter shall give possession of the apartment to the Allottee.

The aforesaid provisions of the Real Estate (Regulation and Development) Act, 2016 and the terms of the model Agreement as excerpted above, clearly demonstrate that possession of flat/apartment cannot be delivered to an allottee without obtaining Completion Certificate or Occupancy Certificate by the Promoter from the concerned Municipal Authority.

Section 3 of the RERA Act mandates that unless a Completion Certificate in respect of a project is issued, the project shall be termed as ongoing project. As the factual aspects emerge, the Appellant has failed to obtain either Completion Certificate or Occupancy Certificate from the concerned Municipal Authority i.e. Rajpur-Sonarpur Municipality.

Endeavour has been made on behalf of the Appellant to impress by producing a Certificate issued by Ms. Sarbani Majumdar, an Architect, that since the building plan in respect of the project was sanctioned in offline mode and since online mode has been introduced, no Completion Certificate is now obtainable in respect of the Sanctioned Plan issued before hand through offline mode. But, the Municipal Law, occupying the field, speaks otherwise. In this regard, it will be pertinent to refer to Section 212 of the West Bengal Municipal Act, 1993. Section 212 of the Act reads as under :

“S. 212. Completion Certificate – (1) Every person submitting an application with building plan or a work to which such application relates shall, within one month after the completion of erection of such building or execution of such work deliver or send or cause to be delivered or sent to the Municipality a notice, in writing, of such completion accompanied by a certificate in such form as may be prescribed and shall give to the Municipality all necessary facilities for inspection of such building or work.

(2) No person shall occupy or permit to be occupied any such building or use or permit to be used any building or any part thereof affected by any such work until permission has been granted by the Municipality in this behalf in accordance with the rules and the regulations made under this Act:

Provided that if the Municipality fails, within a period of thirty days of receipt of the notice of completion, to communicate its refusal to grant such permission, (such person may make a representation in writing to the Chairman, and the Chairman shall, after such inquiry as he may

think fit and after giving such person an opportunity of being heard, grant such permission, or communicate his refusal to grant such permission stating the reasons therefor, within a period of thirty days from the date of receipt of the representation as aforesaid failing which) such permission shall be deemed to have been granted.”

Rule 34 of the West Bengal Municipal (Building) Rules, 2007 speaks of Occupancy Certificate. Rule 34 provides that within fifteen days of receipt of the notice of completion of building or work, the Board of Councillors or the authorized representative in this behalf shall inspect the building or work and shall satisfy itself or himself that the erection of the building or the execution of the work has been done in accordance with the sanctioned plan. Within fifteen days from inspection, the Board of Councillors shall, if it is satisfied that the building or the work has been completed in accordance with the sanctioned plan, issue an Occupancy Certificate, in Form ‘H’. The Board of Councillors shall not permit connections to be made to municipal water mains and municipal drains from any new building in respect of which Occupancy Certificate has not been issued. Form ‘H’ prepared in consonance with Rules 34(2), 34A and 34B of the West Bengal Municipal (Building) Rules, 2007 prescribes granting various kinds of Occupancy Certificate viz. Occupancy Certificate in full, Partial Occupancy Certificate and Blockwise Occupancy Certificate. It is trite to say that Occupancy Certificate is issued certifying a building to be fit for occupation / partial occupation or blockwise occupation.

To deal with the contention of the Respondent in his Affidavit in Opposition that the project was not fit for occupation since Completion Certificate or Occupancy Certificate was not issued, the Appellant by producing a letter dated 06.08.2024 issued by Ms. Sarbani Majumdar, an Architect, states that because of sanction of the building plan of the project was made offline and sanction of plan is now processed through online mode, issuance of Completion Certificate in respect of the earlier sanctioned plan is now at hold since August, 2021 with the introduction of a portal OBPAS (online sanction process).

While the statutory provisions under Section 221 of the West Bengal Municipal Act, 1993 and Rules 34, 34A and 34B of the West Bengal Municipal (Building) Rules, 2007 mandate issuance or granting of Completion Certificate and Occupancy Certificate in respect of a building certifying the building to be fit for occupation, the aforesaid letter of the Architect cannot be acceptable as a statutory document ignoring the mandatory provisions as above. It seems to us that the Architect Ms. Sarbani Majumdar issued the Certificate in her individual capacity and not

as an official or authorized representative of the concerned Municipal Authority i.e. Rajpur-Sonarpur Municipality.

Therefore, from the aforesaid legal and factual scenario as above, it may be held that the building of the project undertaken by the Appellant has not been made complete. Therefore, permitting an allottee or a flat owner to occupy a flat of the project without obtaining Completion Certificate or Occupancy Certificate or both is strictly prohibited by law. As Section 17(2) of the Real Estate (Regulation and Development) Act, 2016 enjoins, after obtaining the Occupancy Certificate and handing over the physical possession to the Allottees in terms of sub-section (1), it shall be the responsibility of the Promoter to handover the necessary documents and plans, including common areas to the Association of the Allottees or the Competent Authority as the case may be, as per the local laws.

While obtaining Completion Certificate as well as Occupancy Certificate by the Promoter is a statutory mandate, the claim of the Promoter that the project is fit for human habitation as many flat owners are occupying their respective apartments in the project is not warranted by law.

It appears from the Agreement for Sale dated 12th April, 2021 that the Promoter agreed that he would deliver possession of the flat to the Respondent /Complainant within nine months from the date of execution of the Agreement i.e. within January 12, 2022. It appears that before 12th January, 2022, payment of the consideration money could not be made by the Respondent / Complainant. As pointed out above, the Memo of Consideration annexed to the registered Deed of Conveyance dated 25th June, 2022 shows that on 27.06.2022 (should be 25.06.2022), the Appellant received Rs.35,40,000/-(Rupees thirty five lakh forty thousand only) from the Respondent through the Financial Institution LIC HFL.

As discussed above, the timeline as regards payment of consideration amount as delineated in the Agreement for Sale could not be adhered to by the Respondent by 12th January, 2022. The explanation as given by the Respondent, delay in payment of the balance consideration amount was due to belated disbursement of fund from the Financial Institution LIC HFL. The Respondent avers that due to non-furnishing of the conversion certificate by the Appellant, he could not obtain loan from State Bank of India of his choice. From Page-6 of the Agreement for Sale under the heading 'price and other amounts payable by the purchaser/s' it appears that both the parties agreed that where the purchaser had taken loan from Bank /Financial Institution, the schedule of payment would be maintained as per the policies of the Bank/Financial Institution.

The Financial Institution namely LIC HFL disbursed the fund to the Appellant on the date of registration of the Deed of Conveyance on 25.06.2022. This impliedly demonstrates that both the Appellant and Respondent mutually extended the timeline as to payment of the consideration money upto 25.06.2022 when the Sale Deed was executed and registered.

As held above and since the Deed of Conveyance in respect of the flat was registered by the Appellant, the Respondent is liable to pay the balance amount of Rs.3,74,742/- to the Appellant.

Since the Appellant has failed to obtain Completion Certificate as well as Occupancy Certificate and since the Respondent has not withdrawn himself from the project, the Respondent is entitled to get statutory interest on the aforesaid amount of Rs.44,27,400/- from the dates of its payment till possession of the flat is delivered to him. On the Contrary, the Appellant is entitled to get the unpaid amount of Rs.3,74,742/- from the Respondent before the date of delivery of possession of the flat to him. As the failures of the Appellant to adhere to or comply with the mandatory legal requirements as mentioned above speak galore, the Appellant is not entitled to get any interest on such amount of money until the Appellant issues legal notice/letter asking the Respondent to take possession of the flat. Though the Appellant has pleaded in the pleading that he issued notice to the Respondent asking him to take possession of the flat, but no iota of document is forthcoming from the side of the Appellant to substantiate his claim.

In view of the findings as recorded above, the impugned Order passed by the learned Regulatory Authority needs modification.

Therefore, the question as posed for consideration is answered accordingly.

In the light of the observations as above, the Appeal is disposed of by passing the following directions.

The Appellant is directed to obtain Completion Certificate as well as the Occupancy Certificate from the concerned Municipal Authority immediately and after issuing notice of delivery of possession to the Respondent shall deliver possession of the flat together with a car parking space to him immediately thereafter. The Appellant is directed to pay interest @SBI PLR + 2% per annum on the amount of Rs.44,27,400/- for the period starting from 25.06.2022 till the date of delivery of possession of the flat to the Respondent/Complainant. The

Respondent is directed to pay the balance amount of Rs.3,74,742/- to the Appellant before or on the date of delivery of possession of the flat together with a car parking space.

With such directions, the impugned Order passed by the learned Regulatory Authority stands modified.

If no appeal is preferred by the Appellant and the appeal period as per Section 58 of the Real Estate (Regulation and Development) Act, 2016 is over, the Secretary of this Tribunal shall disburse the requisite amount as deposited by the Appellant with this Tribunal as statutory interest which will be calculated from 25.06.2022 till this date. On calculation if it is found that any extra amount has been deposited by the Appellant, the same shall be refunded to the Appellant. However, it is made clear that till the Respondent gets delivery of possession of the flat together with a car parking space, the statutory interest which he will be entitled to get will be recoverable by bringing execution petition before the learned Regulatory Authority in accordance with law.

No Order as to costs.

Let a copy of this Judgment be communicated to all concerned by e-mail immediately.

Send down the case record along with a copy of this Judgment to the learned Regulatory Authority for information.

Sd/-
Justice Rabindranath Samanta
Chairperson
West Bengal Real Estate
Appellate Tribunal

Sd/-
Shri Gour Sundar Banerjee
Judicial Member
West Bengal Real Estate
Appellate Tribunal

Sd/-
Dr. Subrat Mukherjee
Technical/Administrative Member
West Bengal Real Estate
Appellate Tribunal

By Order of WBREAT

Dated:

Authorised Signatory