

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

Complaint No.COM 000198 (erstwhile WBHIRA)

Dinesh Chandra Agarwal..... Complainant

Vs

Tapajyoti Khan..... Respondent no.1

Dilip Saha.....Respondent no.2

Sima Dey..... Respondent no.3A

Sourav Dey..... Respondent no.3B

Rita Dey..... Respondent no.4

Suranjana Dey..... Respondent no.5

Sanjoy Kumar Dey..... Respondent no.6

Seema Kundu..... Respondent no.7

Sl. Number and date of order	Order and signature of Authority	Note of action taken on order
Review (02) 26.09.2024	<p>Complainant Dinesh Chandra Agarwal (Mobile 9836689055, email – <a href="mailto:dinesh27110@yahoo.com">dinesh27110@yahoo.com</a>) alongwithhis Advocate Mr. Mrinal Kanti Ghosh (Mob. No. 9830874095 &amp; email Id: <a href="mailto:advmrinalghosh@gmail.com">advmrinalghosh@gmail.com</a>) is present in the physical hearing today filing Vakalatnama and signed the Attendance Sheet.</p> <p>Advocate Mr. Abhishek Shaw (Mob. No. 9143059390 &amp; email Id: <a href="mailto:abhishekshaw10@gmail.com">abhishekshaw10@gmail.com</a>) is present in the physical hearing today on behalf of the Respondent No. 3A and 3B, filing Vakalatnama and signed the Attendance Sheet.</p> <p>Sri Dilip Saha (Mobile – 8777358575), another Review Petitioner and Respondent no.2 alongwith Advocate Mr. Subhro Kanti Roy Chowdhury, is also present in the hearing through online mode.</p> <p>Heard all the parties in detail.</p> <p>Today was fixed for hearing of two Review Petitions, one filed by the Respondent no.2 and the other filed by the Respondent no.3A and 3B.</p> <p>Heard all the Ld. Advocates of the Review Petitioners in detail and re-examined the case records.</p>	

Now this Authority shall proceed to consider the Review Petition filed by the Respondent no.2 at first.

**First**, in his Application dated 29.07.2024, the Review Petitioner, the Respondent No.2 has described himself to be the **Assignor of M/s M.K Designer, the Developer** but in support thereof he could not produce any document before this Authority.

On the other hand from the Agreement dated 25.08.2005 annexed to the Affidavit dated 30.01.2024 filed by the Complainant it appears that Shri Dilip Saha is the **Assignor of the Landlords** and not of M/s M.K. Designer, the Developer. The documents filed by the Complainant has never been contradicted by the present Review Petitioner. Smt. Mahamaya Khan, the erstwhile Developer and proprietor of M/s M. K. Designer, since deceased, has now been substituted by her only son Shri Tapajyoti Khan who has already entered his appearance in this proceeding and filed his statement on Affidavit. So, the statement of Mr. Dilip Saha, Respondent no.2, does not appear to be true. He has also never opposed addition of the son of the deceased Developer Late Mahamaya Khan, as a Party Respondent to the proceeding. Accordingly, he cannot apply anything or make any statement on behalf of the Developer.

**Since, the Complainant is claiming flat no.1D in the first floor from the Developer's Allocation and not from the Landowners' allocation, Shri Dilip Saha, the Assignor of the Land owners has no cause of action to file the instant Review Petition.**

**Secondly**, in so far as the question of regularization of the ground floor of the premises is concerned, the Review Petitioner **did not file the Completion Certificate (C.C)** issued by the Kolkata Municipal Corporation before this Authority. So this Authority cannot accept the statement of the Review Petitioner that the illegal construction in the ground floor of the said premises has been regularized, to be true.

More so, the Kolkata Municipal Corporation (KMC) vide its letter No. EE/B/I/242/14-15 dated 26.11.2014 strictly prohibited the Complainant from entering into the Ground Floor without **Completion Certificate (C.C)**.

Regarding absence of the Respondent No. 2 on all the previous dates fixed for hearing, he could not show any specific reason which was unavoidable for him.

On the other hand, the Review Petitioner himself as Assignor and constituted attorney of the Landlords, vide his letter dated 02.07.2015 (as transpires from Annexure 'M' at page 74-75 of the Affidavit of Complainant dated 24.07.2023) offered the Complainant flat no.1D in the first floor of the said premises.

Now this Authority shall proceed to consider the Review Petition filed by the Respondent no.3A and 3B.

These Review Petitioners have been added as Respondents No. 3A and 3B after demise of their predecessor-in-interest, the erstwhile Respondent no.3. So, they cannot travel beyond the statements and contentions made by Respondent no.3 during his lifetime. In their Affidavit dated 05.09.2024, they have categorically stated that "the present Substituted Respondents don't intend to deviate from their standing Affidavit filed by their predecessor". In his Affidavit dated 09.02.2024, the deceased Respondent

no.3 admitted the claim of the Complainant.

The Review Petitioners could not show this Authority any error apparent on the face of the Order dated 19.03.2024. Furthermore, there is an Alternative Remedy by way of filing Appeal under Section 44 of the Real Estate (Regulation and Development) Act, 2016. Neither of the Review Petitioners could adduce any other new evidence in support of their contentions.

Rather in his Affidavit dated 16.02.2024, the only son and Successor-in- Interest of the Developer, the present Respondent No. 1 has admitted the claim of the Complainant and expressed his willingness to handover physical possession of Flat No.1D in the first floor of the said premises and make the Deed of Conveyance in favour of the Complainant. Be it mentioned here that, flat No. 1D is in the Developer's allocation.

None of the Review Petitioners have challenged the veracity of documents filed by the Complainant.

It thus appears that the Review Petitions have been filed without having any cause of action or any cogent reason and those have been filed only for delaying the adjudication process of this Authority which is against the intention behind the legislation.

In view of the above, both the Review Petitions stand dismissed.

Let copy of this order be served to all the parties immediately.

Let a copy of this order be uploaded in the WBRERA website under the heading 'Authority Orders'.



(JAYANTA KR. BASU)

Chairperson

West Bengal Real Estate Regulatory Authority



(TAPAS MUKHOPADHYAY)

Member

West Bengal Real Estate Regulatory Authority