

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

Complaint No.WBRERA/COM (PHYSICAL) 000241

Chittaranjan Choudhury & Ors..... Complainants

Vs.

Forum Projects Private Limited..... Respondent

Sl. Number and date of order	Order and signature of the Authority	Note of action taken on order
02 23.04.2025	<p>Senior Advocate Arindam Banerjee and Advocate Soumava Mukherjee (Mobile – 9903836098 and email – soumava.mukherjee88@gmail.com) are present on behalf of the Complainants in the hearing physically filing vakalatnama and signed the Attendance Sheet.</p> <p>Senior Advocate Jishnu Chowdhury, Mr. S.K. Singhi, Smt. Riti Basu, Advocate Ritoban Sarkar, Advocate Piyali Pan and Advocate Jhanvi Jain (Mobile – 7600687470 and email – piyali.pan@skspartners.law) are present in the hearing physically on behalf of the Respondent filing vakalatnama and signed the Attendance Sheet.</p> <p>Today this matter is taken up for 2nd day of the Admission hearing and consideration and adjudication of the interim reliefs prayed by the Complainant.</p> <p>Heard both the parties in detail.</p> <p>The main contentions of the Complainant as per the submission of the Advocate of the Complainant at the time of hearing today are,-</p> <p>1) Ten Complainants - Allottees have jointly filed this Complaint Petition against the Respondent Promoter Company Forum Projects Private Limited and others relating to the project named 'Atmosphere - The Luxurious Condominium' (hereinafter referred to as the 'said project') situated at Municipal premises no.1001/A, Eastern Metropolitan Bypass, adjacent to</p>	

Science City, Kolkata – 700046. The Complainants have purchased flats in the said project.

- 2) The said project is registered with erstwhile WBHIRA bearing registration no. HIRA/P/KOL/2018/000257 dated 08.12.2018.
- 3) Complainants alleged that 11 different types of Agreement for Sub-Lease and 7 different types of Deed of Sub-Lease have been executed with the Allottees by the Respondent. They(Respondent) have uploaded / submitted a proforma Agreement for Sub-Lease and proforma Deed of Sub-Lease at the time of registration of the said project with the erstwhile WBHIRA / WBRERA website but diverse types of Agreements have been executed by the Respondent Promoter with different allottees and diverse types of Deed of Sub-Lease have been executed by the Respondent-Promoter in violation of the provisions of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the 'RERA Act').
- 4) The Respondent obtained the sanctioned building plan from Kolkata Municipal Corporation on 06.06.2011. Construction was commenced in terms of the said plan on 14.06.2011. Most of the allotments were made based on the said original sanctioned building plan of 06.06.2011. Subsequently, the Respondent Promoter unilaterally modified the project by applying for sanction of a revised plan for the construction of one additional duplex each over the highest floor that is 35th floor of each tower of the said project. The Complainant alleged that **the Promoter has not taken prior written consent of two-thirds of the existing Allottees in violation of section 14 of the RERA Act, 2016** (para 13 of the Complaint petition).
- 5) The Respondent Promoter without the prior written consent of two-thirds of the Allottees has illegally converted common areas at first floor referred to as the **“E” Deck level** into an **additional Apartment being 83rd Apartment**. As per the Complainant this is an illegal conversion of an area designated as a triple height open landscape zone and lounge as per the building permit no.201807204 dated 05.11.2018 and despite the same being categorically listed in the 5th schedule under “E” Deck of the

Apartment allotment and indenture of Sub-Lease as part of project's common area and Facilities and Amenities.

- 6) As per the Complainant, the purported revised sanctioned plan of 05.11.2018 only mentions 82 numbers of apartments including one duplex on each tower above 35th floors. Therefore, as on date there has been no requisite sanctioned plan obtained by the Promoter from the KMC to sale any area on the first floor of the project.
- 7) The construction of the 83rd Apartment at the E-Deck Level on the first floor of the project being illegal and unauthorized, shall also be evident from the fact that the Respondent did not and could not include the same in the '**carpet area statement**' as submitted with the RERA Authority. **It is pertinent to note that unless a carpet area is disclosed before the RERA Authority, the same cannot be made available for sale.**
- 8) Complainant also stated that a **special fund of Rs.35 Crores** was created by the Respondent Promoter out of the sale price received from the Allottees and the said special fund shall be handed over to the Association **after 3 years** from the date of obtaining C.C. of the said project, while handing over the management and control of the administration of the project to the Association, as per the Sub-Lease Deed, Agreement for Sub-Lease, related to '**Maintenance Free Complex**'. The above special fund has been created from the consideration amount paid by the allottees (point no.19 of the Complaint Petition). The Complainant stated that till date the special fund has not been delivered to the Association of Allottees.
- 9) The project was widely advertised and declared by the Respondent as '**Maintenance Free Project**' till 3 years after the date of obtaining of the C.C. / O.C. but they clearly violated the same.
- 10) Similarly, a separate sinking fund deposit of Rs.1,000/- per square feet for the total construction area equivalent to about 6 Lakhs square feet was created by the Respondent Promoter. Such sinking fund is to the tune of **Rs.60 Crores**. The Respondent Promoter was also under an obligation to handover the said

sinking fund to the Association of Allottees simultaneously with the handing over of the project to the said Association. Till date the said sinking fund to the tune of about Rs.60 Crores has not been handed over to the Association of Allottees.

- 11) As per the Complainant, Respondent Promoter flatly refused to continue maintaining the common areas, facilities and amenities **on and from 01.10.2023**. This compelled the flat owners' association to take up the job of maintenance on and from 01.10.2023 till date. The Association has had to expend an approximate amount of Rs.10 Crores upto 28.02.2025 for the said purpose. The liability of maintenance being with the Promoter, the aforesaid fund utilized by the Association is liable to be made good and / or replenished by the Promoter.
- 12) Complainant stated that the Promoter also failed to maintain the essential services such as HT and LT electrical systems, sewage treatment plan (STP), Fire Protection System etc.
- 13) Recently on or about 11.12.2024, a physical possession notice being displayed and/or affixed by a person describing himself as **Receiver** appointed by Hon'ble Justice Retired Rajesh Tandon purporting to be the sole arbitrator in an ongoing purported reference between one **Menoka Constructions Private Limited** and the Respondent Promoter. It is pertinent to note that Menoka Constructions Private Limited is owned by the Respondent no.2 (Rahul Saraf) and Respondent no.3 (Vidyut Saraf) which can be corroborated from the documents publicly available with the Ministry of Corporate Affairs. Therefore it is apparent that the purported transaction and / or disputes between the Respondents and said Menoka Constructions Private Limited as sought to be portrayed by the Respondent are absolutely fraudulent and related party transactions.
- 14) **The Complainant** stated that the sinking fund of Rs.60 Crores, Special Fund of Rs.35 Crores and Rs.15 Crores (approx) as reimbursement for maintenance charges have not been handed over to the Association of Allottees by the Respondent Promoter till date and the Respondent Promoter can any time go away with the said funds without transferring it to the Association of

Allottees. Therefore, Interim orders of Stay on restriction on alienation of the project / part of project and restriction on alienation of the common areas of the project are very much required and immediately required to be granted by this Authority to protect the hard-earned money of the Complainants and all the Allottees of the said project.

Complainant prays before the Authority for the interim orders as follows:-

- a) Restrain the Respondent / Promoter from in any manner dealing with, alienating, transferring, parting with possession, and / or disposing of any part or portion of the said project;
- b) Restrain the Respondent / promoter from in any manner dealing with, alienating, transferring and / or parting with possession and / or disposing of any part or portion of the common area common areas and facilities of the said areas common areas and facilities of the said project;
- c) Direct the Promoter / Respondent to pay an amount of Rs.15,14,22,306/- alongwith applicable interest accrued thereon;
- d) Appointment of Chartered Engineer / Surveyor;
- e) Receiver;
- f) Such further order or orders and / or directions or directions as this Learned Authority may deem fit and proper.

Advocate of the Respondent stated the following at the time of hearing:-

- 1) The Application for Revision of plan was done in the year 2016, therefore, there arises no question of taking prior written consent of two-thirds of the existing allottees as in the year 2016 neither HIRA nor RERA came into force.
- 2) There is no urgency in giving interim orders on any of the prayers made by the Complainant and also there arises no question of transferring common area to any third party.

- 3) There is no consequential deviation between the proforma Agreement for Sub-Lease and Deed of Sub-Lease uploaded with WBRERA and executed with different Allottees.
- 4) The flat in question at E-Deck level on first floor was constructed after obtaining the sanction plan duly approved by the plan sanctioning authority (K.M.C) ,the construction has been completed, CC has been obtained.
- 5) The roof right of the allottees has not been hampered .As the roof is open to air and property of the allottees. Now, instead of 35th floor now the roof is available on a 37th floor.
- 6) The Special Fund of rupees 35CRORES is being utilized for maintenance of the project as no maintenance charge are being collected by the respondent company
- 7) The question of transferring fund if arises to be done to the Association of allottees after its formation.

After hearing both the parties, prima facie it appears to the Authority that the Respondent Promoter has made some construction in the common areas of the project in violation of the provisions of the RERA Act, 2016. There is unauthorized construction in the first floor, "E" Deck level, 83rd no. of Apartment is objected and complained by the Complainant beyond the revised Sanction plan of the K.M.C and Approved number of flats as per Registration Certificate No HIRA/P/KOL/2018/000257 granted by the erstwhile WBHIRA dated 08/12/2018.. There are also constructions made on the roof of the said project as submitted by the Complainant whereas roof has been described as common area in the Agreement as well as in the Deed of Sub-Lease.

The Authority feels it necessary to get the project examined by the Plan Sanctioning Authority, i.e, K.M.C and a team of officers presently posted at the office of WBRERA to physically visit the project and submit reports in the presence of both the parties and/or their Authorised representatives.

The Authority is of the opinion that whether these constructions have been done following all the legal provisions are required to be adjudged by submission of Affidavit with supporting authenticated documents from both parties. Moreover, whether there is any violation of **section 14 of the RERA Act, 2016** that also required to be examined. But it is evident from the records

available at the end of WBRERA Authority that the Registration Certificate no. HIRA/P/KOL/2018/000257 dated 08.12.2018 of the project states that there are 82 Apartments but actually there are 83 Apartments as submitted by both the parties. Also the Carpet area Statement which has been uploaded by the Respondent Promoter at the time of registration depicts that there is no Apartment in first floor, only there is common area, amenities and facilities in the first floor of the project. So this Authority is of the considered opinion that interim order of stay as prayed by the Complainants in the Complaint Petition at point no. (a) and (b) at page 35 are required to be granted until further order in this matter.

After hearing both the parties, the Authority is hereby 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:-

- a) **An interim order of stay is hereby granted to restrain the Respondent / Promoter from in any manner dealing with, alienating, transferring, parting with possession, and / or disposing of any part or portion of the said project, till disposal of this matter or until further order, whichever is earlier,; and**
- b) **An interim order of stay is hereby granted to restrain the Respondent / promoter from in any manner dealing with, alienating, transferring and / or parting with possession and / or disposing of any part or portion of the common areas and facilities of the said project, till disposal of this matter or until further order, whichever is earlier,; and**
- c) The Complainants are hereby directed to send the hard copy of their Complaint Petition supported by Notarized Affidavit dated 24.03.2025 alongwith annexure to the Respondent preferably within **1 (one)** day from the date of receipt of this order of the Authority by email; and also submit copies of the Agreement and Deed of Sub-Lease individually executed between the complainants and the Respondant

Promoter/s through Notarized Affidavit/s both to this Authority and to the Respondents, and

- d) The Respondent is hereby directed to submit its Written Response on notarized affidavit regarding the Complaint Petition, annexing therewith notary attested copy of supporting documents, if any, and send the Affidavit (in original) to the Authority, serving a copy of the same to the Complainants, both in hard and scan copies, within **7 (seven)** days from the date of receipt of this order of the Authority through email; and
- e) Complainant shall submit a Rejoinder / Reply on Notarized Affidavit to the Written Response of the Respondent, annexing therewith notary attested copy of supporting documents, if any, and send the Affidavit (in original) to the Authority, serving a copy of the same to the Respondents, both in hard and scan copies, within **7 (seven) days** from the date of receipt of Written Response of the Respondent, by post or by email, whichever is earlier.
- f) The Commissioner, Kolkata Municipal Corporation (K.M.C) is requested to arrange for inspection by the Competent Authority on the following-

1).Whether the construction of the above mentioned project, "**Atmosphere- The Luxurious Condominium**" including that in the **E - deck level** as well as the **penthouses** on the top floor has been done as per sanction plan of the Kolkata Municipal Corporation Authority, details thereof to be mentioned.

2).Details of common area including its measurement as per the original sanction plan (**6th June, 2011**) and the revised sanction plan (**5th November, 2018**) mentioning deviation, if any.

3).Total number of car parking of different category available with the project as per the original and revised sanction plan and Actuals at site.

4). Total number of flats sanctioned as per original and revised sanction plan and Actual at site as on date.

g). The officers from WBRERA to physically visit the site and verify locally whether if the details and the documents submitted by the Respondent promoters while applying for registration of the said project are being adhered to and complied with in the presence of both the parties and /or their authorized representatives and submit report before this Authority.

Fix **16.05.2025** for further hearing and order.



(JAYANTA KR. BASU)

Chairperson

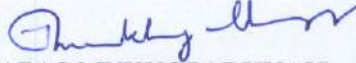
West Bengal Real Estate Regulatory Authority



(BHOLANATH DAS)

Member

West Bengal Real Estate Regulatory Authority



(TAPAS MUKHOPADHYAY)

Member

West Bengal Real Estate Regulatory Authority