

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

Present: 1. Justice Rabindranath Samanta  
Hon'ble Chairperson  
  
2. Dr. Subrat Mukherjee  
Hon'ble Administrative Member

**WBREAT/APPEAL NO. – 013/2025**

**PS Group Realty Pvt. Ltd.** ..... Appellant  
1002, E.M. Bypass, Front Block,  
Kolkata – 700 105.

- Vs -

**Ayush Tradelinks Private Limited** ..... Respondent  
'Ganges Garden', Block-C1, 106, K. C. Singha Road,  
P.S. & P.O. Shibpur, Howrah – 711 102

**With**

**WBREAT / APPEAL No. – 016/2025**

**Babita Jodhani** ..... Appellant  
(on behalf of **Ayush Tradelinks Pvt. Ltd.**)  
'Ganges Garden', Block-C1, 106, K. C. Singha Road,  
P.S. & P.O. Shibpur, Howrah – 711 102

- Vs -

**PS Group Realty Pvt. Ltd.** ..... Respondent  
1002, E.M. Bypass, Front Block,  
Kolkata – 700 105.

Mr. Arindam Banerjee, Advocate  
Mr. Raja Baliyal, Advocate  
Mr. Rajarshi Ganguly, Advocate  
Ms. Vidhya Bhusan Upadhyay, Advocate

**For the Appellant in WBREAT/APPEAL  
No.013/2025 and for the Respondent in  
WBREAT/APPEAL No.016/2025**

Mr. Vinod Kumar Jodhani, Authorised  
Representative

**For the Respondent in WBREAT/APPEAL No.  
013/2025 and for the Appellant in  
WBREAT/APPEAL No.016/2025**

**Heard on : 04.12.2025**

**Judgment on : 06.01.2026**

**Dr. Subrat Mukherjee, Administrative Member :**

Aggrieved by an Order dated 27/02/2025 passed by the learned West Bengal Real Estate Regulatory Authority (hereinafter referred to as the 'Regulatory Authority') the Appellant P.S. Group Realty Private Limited (hereinafter referred to as 'P.S. Group') approached this Tribunal by preferring the appeal being WBREAT / APPEAL No.013/2025.

Briefly stated, the facts which led to the filing of the complaint with the learned Regulatory Authority by the Complainant/Respondent are as follows :

Babita Jodhani (hereinafter referred to as 'Mrs. Jodhani') representing Ayush Tradelinks Private Limited filed a complaint against P.S. Group as Respondent before learned Regulatory Authority. The complaint, being registered as Complaint No.WBRERA/COM000487 dated 21/08/2023 sought primarily two reliefs mentioned below:-

- I) Final calculation & settlement based on actual carpet area of commercial space allotted to her with refund of the amount along with interest for the shortage of area.
- II) An order to hand over possession and pay compensation for delayed possession as per Section 18 of the West Bengal Housing Industry Regulation Act, 2017 (hereinafter referred to as 'WBHIRA Act') / The Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'RERA Act'), since the possession was delayed despite payment of the entire consideration amount by 27/01/2023.

The learned Regulatory Authority, after receiving the complaint directed the Chairman, Newtown Kolkata Development Authority (hereinafter be referred to as 'NKDA'), by order dated 09/07/2024 to cause physical measurement of the carpet area of the office space. An inspection was conducted on 13/08/2024 by the Executive Architect of NKDA in the presence of representatives of both P.S. Group & of Babita Jodhani to measure office space No.631 in the commercial building '**ABACUS**'. The carpet area, mentioned as per the Agreement for sale between P.S. Group and Babita Jodhani was 390 square feet. The Executive Architect, NKDA submitted a report dated 04/09/2024, recording that after measurement the carpet area was found to be 380 Sq. Ft.

Before proceeding further, it is apposite to mention the operative portion of the impugned Order, dated 27/02/2025, passed by the learned Regulatory Authority, in Complaint No. WBRERA/COM000487, which is as follows :

- "a) The Affidavit submitted by the Respondent, *suo motu*, regarding measurement of carpet area as calculated by the Executive Architect NKDA, is not acceptable by this Authority as the Respondent did not raise any objection at the time of inspection

though the measurement was done in presence of both the Complainant and the Respondent.

b) The Report received from the Executive Architect, NKDA, as per last order of the Authority dated 07/09/2024 is hereby accepted by this Authority as the same has been prepared as per order of this Authority and in presence of both the Complainant and the Respondent. Moreover, NKDA being Government Autonomous Body and plan sanctioning authority was entrusted for final measurement of the carpet area and to submit the report accordingly.

c) The Respondent should refund the excess amount, if any, received from the Complainant as per calculation of the carpet of 380 sq. ft. as calculated by the Executive Architect, NKDA along with interest at the rate of SBI PLR+ 2% per annum within 45 days from the date of receipt of this order of the Authority through e-mail.

d) The Complainant shall send her bank account details, in which she wants to receive the payment, to the Respondent within 3 days from the date of receipt of this order of the Authority through email; and

e) The Complainant will not get any interest for the delay period in getting possession as the possession notice was served upon her by the Respondent in due time but she did not take possession on the ground of finalization of the measurement of the carpet area.”

Now, being aggrieved by the direction for refund of the money with interest, P.S. Group has filed this Appeal being WBREAT/APPEAL No.013/2025 and, also being aggrieved by non grant of interest for the period of delay in possession of the office space No.631, Mrs. Jodhani has filed the Appeal being WBREAT/APPEAL No.016/2025 with this Tribunal.

Both the appeals have been heard analogously since they arose out of same cause of action and originated from the same impugned Order.

Background facts which are necessary for adjudication of the appeals may be adumbrated as follows:-

The Appellant of appeal WBREAT/APPEAL No.013/2025 i.e. P.S. Group, the promoter, applied for registration of a commercial project known as 'ABACUS', situated in the area under administrative control of NKDA. The said project was registered under West

Bengal Housing Industry Regulation Act, 2017 (WBHIRA) bearing Registration No. HIRA/P/NOR/2018/000011 dated 24<sup>th</sup> September, 2018.

An Agreement for Assignment dated 02/05/2019 was executed between the P.S. Group, the promoter and the Ayush Tradelinks Private Limited represented by Mrs. Jodhani, in respect of office space No.631 on the 6<sup>th</sup> floor of the project 'ABACUS', having a carpet area of 390 Sq. ft. Payment plan was annexed to the Agreement and payments were made as per the payment plan.

The Total Consideration of the Apartment was of Rs.36,88,250/- (Rupees Thirty-six Lakh Eighty-eight Thousand Two Hundred Fifty only) including the final instalment as mentioned in payment schedule payable at the time of 'possession', which was paid on 27/01/2023. Meanwhile, the promoter, by e-mails dated 01/02/2023 and 02/03/2023, informed Mrs. Jodhani that they were processing the possession documents to complete the handover.

During the first site inspection on 09/02/2023, Mrs. Jodhani, the allottee observed the carpet area (primarily on the basis of floor tiles installed), appeared to be less than the carpet area, mentioned in the Agreement for Assignment, i.e. 390 Sq. ft. and informed the P.S. Group who acknowledged the fact vide their e-mail dated 9<sup>th</sup> February, 2023.

However, the facility manager of ABACUS of PS group informed by e-mail dated 10/02/2023 that the area is 390 Sq. ft. as per the Agreement signed between the parties. On demand, P.S. Group submitted measurement showing the carpet area as 390.46 Sq. ft. (12'10" X 30'6") vide e-mail dated 13.02.2023.

But, the allottee, Mrs. Jodhani Challenged this measurement by an email dated 13.02.2023. On 14.02.2023, promoter informed that the schedule of handing over of possession date will be informed later. Next week Promoter finally informed the allottee to take possession, but the possession document had a clause that the assignee is satisfied as to the total area forming part of the said office unit and built up area was mentioned to be 585 Sq. ft.

On raising objection, a physical measurement was conducted on 09/03/2023 in presence of both the parties and carpet area was measured to be 371.54 Sq. Ft. (12'3" X 30'4") without excluding pillars. Since this area was less than the agreed area, the possession could not be completed.

On 17/05/2023, P.S. Group informed Mrs. Jodhani about the proposed registration of property and its possession but issue of carpet area remained unresolved. On 04/07/2023 P.S. Group through a mail informed Mrs. Jodhani that carpet area to be of 380.99 Sq. ft after deducting 40 mm on each side of wall and further stated that the difference of roughly about 9 Sq. ft. is within the allowed limit / tolerance of 3% as mentioned in clause 1.6 of the Agreement. But, Mrs. Jodhani by her mail dated 28/07/2023 informed PS Group that RERA Act did not allow any such tolerance limit. Since there was no further development, Mrs. Jodhani filed a complaint with WBRERA on 21/08/2023 vide Complaint No. WBRERA/COM000487.

Regarding the carpet area and its measurement by NKDA, the learned Senior Counsel of P.S. Group, Mr. Arindam Banerjee, in his argument brought the following main points:-

- (i) The NKDA had just forwarded a sketch without explaining the same.
- (ii) The plaster thickness of the walls of the said office (being 20 mm on all sides) ought to have been deducted in order to arrive at the carpet area. In such case, the said carpet area would come around 385.6095 square feet.
- (iii) 200 mm partition wall had been provided instead of 125 mm, in order to provide the complainant with better wall thickness to accommodate electrical fittings/concealed electrical boxes. Thickness of such wall had been increased on both sides of 125 mm wall. Accordingly, the said additional thickness amounting to 3.762 square feet should be added to 385.6095 square feet to arrive at the correct quantum of carpet area, which amounts to 389.37 square feet or more or less 390 square feet.
- (iv) The project had been registered vide Registration Certificate No. HIRA/P/NOR/2018/000011 dated 24<sup>th</sup> September, 2018. The sanctions and permissions granted to PS Group under WBHIRA are valid and the clauses of the Agreement for Assignment dated 2<sup>nd</sup> May, 2019 are also valid. In the Agreement for Assignment dated 2<sup>nd</sup> May, 2019, Mrs. Jodhani expressly agreed to the tolerance of 3% on the measurement of carpet area. Having done so, Mrs. Jodhani is now estopped from contending otherwise.

The authorized representative of Mrs. Jodhani has argued regarding definitions of carpet area as defined in various statutes and codes apart from WBHIRA and RERA and elucidated the following main points: –

(i) The expression ‘carpet area’ in Rule 2(18) of the KMC Building Rules, 2009 is as follows: –

‘Carpet area’ means the covered area of a building at any floor level, excluding the area of walls and structural members.

(ii) The expression ‘carpet area’ as defined in the National Building Code of India 2016 under Part 3 (Development Control Rules and General Building Requirements) is as provided by

Clause 2.15, which reads as under:

‘Carpet area’ – the covered area of the usable rooms at any floor level excluding the area of the walls.

(iii) The ICS 91.060.01; 91.200 being the Indian Standard Method of Measurement of Plinth, Carpet and Rentable Area of Buildings (Second Revision) (hereafter ‘BIS Standard’) contains a clause being Clause 5 relating to measurement of carpet area wherein the inclusions and exclusions of carpet area have been mentioned. The same indicates that thickness of wall shall be inclusive of finishes.

Thus, according to Mrs. Jodhani, the entire wall thickness of the external walls is liable to be deducted for arriving at carpet area, as it is indicated by the aforesaid definitions in the Rules and BIS Standards.

Since the project was registered under erstwhile WBHIRA, so before we deal with the points, it will be apposite to refer to the West Bengal Housing Industry Regulation Act, 2017 under which the project ‘ABACUS’ was registered with the West Bengal Housing Industry Regulatory Authority. A forum namely Forum for People’s Collective Efforts (FPCE) challenged the vires of the West Bengal Housing Industry Regulation Act, 2017 before the Hon’ble Apex Court on its constitutional validity. The Hon’ble Apex Court in the decision dated 4<sup>th</sup> May, 2021 in the case of Forum for People’s Collective Efforts (FPCE) Vs. State of West Bengal reported in (2021)3 SCC 599, struck down the Act as ultra vires the Constitution. However, the Hon’ble Apex Court has observed that striking down of WBHIRA will not affect the registrations, sanctions and permissions previously granted under the

legislation prior to the date of the Judgment. The Hon'ble Apex Court in a subsequent Order dated 12/05/2023 passed in the case of Saptaparna Ray Vs. District Magistrate and Collector, North 24 Parganas and Others [petition for Special Leave to Appeal (C) No. 16908/2022], has held that this principle shall also apply to Orders which were passed whether in original or in the course of execution prior to the date of the Judgment. All such Orders shall be executed in accordance with law, as if, they were issued under the RERA Act. Therefore, in view of such decision of the Hon'ble Apex Court, the registration of the project granted by the then Housing Industry Regulatory Authority shall remain unaffected and all its Clauses will be governed by the provisions of the RERA Act.

Now, at this point in Appeal No.013/2025, we will primarily interpret **carpet area** as defined in WBHIRA/RERA Act and as given in the Agreement signed by Promoter and Allotee and will then find out the validity of area measurement taken by NKDA .

As defined in **Section 2(j) of the WBHIRA Act, 2017-**

“**Carpet area** means the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment.”

**Section 2(k) of the West Bengal Real Estate (Regulation and Development) Rules, 2021** too has the same definition as that of WBHIRA.

The **carpet area** as defined in the Agreement for sale for the said property which is quoted below:-

“**Carpet area** shall mean the usable floor area of office space including area covered by the internal partition walls of the office space but shall exclude the area covered by external walls, area under service shafts, exclusive balcony/verandah/open terrace spaces.”

The measurement of carpet area as done by the NKDA do conform all aspects as defined in the carpet area definition of both WBHIRA and RERA.

On behalf of the Promoter, learned Senior Counsel Mr. Arindam Banerjee has argued that carpet area is to be measured from raw wall to raw wall, and that plaster thickness, wall finishes and enhanced wall thickness provided for electrical fittings must be taken into account. Moreover, Mr. Banerjee argues that shortage of area, if any, then it is within the

permissible 3% variation as per clause 1.6 of Agreement for Assignment between promoter and allottee, signed and agreed by Mrs. Jodhani.

Mrs. Jodhani disputes the method of raw wall to raw wall measurement and relies upon carpet area definitions by WBHIRA and RERA Act. She accepts engineering and municipal standards such as the KMC Building Rules, the National Building Code, and BIS measurement standards.

However, since the project was registered under erstwhile WBHIRA, this submission is required to be tested against the statute of WBHIRA Act, 2017 and WBHIRA Rules, 2018 and Clause 1.7 of Agreement for Sale as appended as Annexure-A to Rule 9 of the WBHIRA Rules, 2018.

First, Rule 9 of WBHIRA Rules, 2018 may be quoted below:

“(1) For the purpose of sub-section (2) of Section 13, the agreement for sale shall be in the form as per Annexure 'A'.

(2) Any application letter, allotment letter or any other document signed by the allottee, in respect of the apartment, plot or building, prior to the execution and registration of the agreement for sale for such apartment, plot or building, as the case may be, shall not be construed to limit the rights and interests of the allottee under the agreement for sale or under the Act or the rules or the regulations made thereunder.”

Clause 1.7 as given in Annexure 'A' of Agreement for Sale under WBHIRA, 2018, Rule 9 may also be quoted here:

“1.7 The Promoter shall conform to the final carpet area that has been allotted to the Allottee after the construction of the Building is complete and the occupancy certificate is granted by the competent authority, by furnishing details of the changes, if any, in the carpet area. The total price payable for the carpet area shall be recalculated upon confirmation by the Promoter. If there is reduction in the carpet area then the Promoter shall refund the excess money paid by Allottee within forty-five days with annual interest at the rate prescribed in the Rules, from the date when such an excess amount was paid by the Allottee. If there is any increase in the carpet area, which is not more than three percent of the carpet area of the apartment, allotted to Allottee, the Promoter may demand that from the Allottee as per the next milestone of the Payment Plan as provided in Schedule 'C'.

All these monetary adjustments shall be made at the same rate per square feet as agreed in para 1.2 of this Agreement.”

It is pertinent now to see Clause 1.6 and 1.7 as given in Agreement

“1.6 The Promoter shall confirm to the carpet area that has been allotted to the Allottee after the construction of the Building is complete and the occupancy certificate is granted by the competent authority, by furnishing details of the changes, if any, in the carpet area. The total consideration of Apartment, Total Tax and the Total Extras and Deposits as mentioned in clause 1.2.1, 1.2.2 and 1.2.3 payable for the carpet area shall be recalculated upon confirmation by the Promoter. If there is reduction more than 3% in the carpet area then the Promoter shall refund the excess money paid by Allottee within 45 (forty-five) days with annual interest at the rate prescribed in the Rules, from the date when such an excess amount was paid by the Allottee. If there is any increase more than 3% in the carpet area allotted to Allottee, the Promoter may demand that from the Allottee as per the next milestone of the Payment Plan, with annual interest at the rate prescribed in the Rules, from the date when such amount was due. All these adjustments shall be made at the same rate per square feet as agreed in Clause 1.2.1 of this Agreement.

1.7 In case of any dispute on the measurement of the Carpet area, the same shall be physically measured after removing all finishes that have been applied / fitted and the cost of removal and refitting of such finishes shall be borne by the Party which raises the dispute in relation to the measurement of Carpet Area.”

So, if we compare clause 1.7 of Annexure annexed with WBHIRA Rules, 2018 with Clause 1.6 of Agreement signed between two parties, then it is noted that there is tolerance limit of 3% in reduction of carpet area in the clause of Agreement, but the same is not in the WBHIRA Rules, 2018. But agreement mentions clearly that if there is reduction of more than 3% in carpet area then the promoter shall refund money to allottee and less than 3% of carpet area is within tolerance limit. This is in violation of Rule 9 of WBHIRA Rules, 2018. Thus, the argument of 3% tolerance by the Promoter is misplaced.

Now, Rule 9 of RERA is also needs to be referred here.

“(1) For the purpose of sub-section (2) of section 13, the agreement for sale shall be in the form as per Annexure 'A'.

(2) Any application letter, allotment letter or any other document signed by the allottee, in respect of the apartment, plot or building, prior to the execution and registration of the agreement for sale for such apartment, plot or building, as the case may be, shall not be construed to limit the rights and interests of the allottee under the agreement for sale or under the Act or the rules or the regulations made thereunder.

(3) The Promoter shall not make any additions and alterations beyond the extent of 5(five) percent in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, as the case may be, without the previous written consent of the Allottee: Provided that the Promoter may make such minor additions or alterations as may be required by the Allottee, or such minor changes or alterations as per the provisions of the Act: Provided further that if the Authority competent to issue approvals is of the view that certain changes in the project are necessary, he may on application of the promoter do so for the reasons to be recorded in writing and in that case consent of allottees shall not be required.”

Now after referring both the Rules of WBHIRA and RERA, it is clear that the intention of law maker was to protect the interest of consumers in real estate sector apart from allowing engineering tolerance, construction adjustments etc. which may be required in real estate project. So, the tolerance is allowed only in sanctioned plan, layout plan, fixtures and amenities which will primarily impact common facilities, structure and construction of building than the individual flat of consumers for which he has signed agreement and paid for allocated carpet area at unit cost.

The measurement of carpet area as done by the NKDA do conform all aspects as defined in the carpet area definition of both WBHIRA and RERA Act.

The Tribunal holds that for the purpose of determining carpet area, the controlling standard is the statutory definition under WBHIRA which mandates measurement of net usable floor area excluding wall thickness, plaster, finishes and structural components. The method of raw wall to raw wall measurement advocated by the Promoter and the inclusion of plaster or enhanced wall thickness are not in keeping with the statute.

Clause 1.7 of the Agreement for Sale, framed in consonance with Rule 9 of WBHIRA, operates only after completion of construction and grant of Occupancy Certificate and so carpet area measurement will only be after cementing and plastering of wall with putty etc. where wall is already finished wall. Thickness of this wall is inclusive of all finishes and made finally usable for consumer.

So the WBREAT/Appeal No.013/2025 is dismissed, but without cost.

We may go in WBREAT/Appeal No.016/2025 where Mrs. Jodhani by filing an affidavit has claimed that though the "impugned Order" is in her favour to reimburse for the sought carpet area with interest, but her claim under WBHIRA / RERA Act for delay in possession merely on the ground that the possession notice was served by the Promoter in due time, but she did not take possession on the ground of finalisation of carpet area. Here, we may refer Section 18 of the WBHIRA and/or RERA Act.

**"18. Return of amount and compensation.—**(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—  
(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or  
(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason; he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot or building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the

claim for compensation under this sub-section shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.”

As per Section 18(3), the terms and conditions of the agreement as mentioned therein have all been followed. Mrs. Jodhani has not been able to point out any specific clause in the Agreement between the parties which enabled her to delay the taking over the possession on the plea of the lack of satisfaction regarding the carpet area despite Occupancy Certificate has been obtained by the Promoter and notice of possession having been duly served. It is undisputed that the P.S. Group has duly served the notice upon Mrs. Jodhani to take over possession. It is further undisputed that Mrs. Jodhani has not taken over possession despite such notice since she was required to sign a document to show satisfaction with the carpet area as stated by PS group. Accordingly, Mrs. Jodhani did not take over physical possession till resolution of issue of carpet area. Mrs. Jodhani in her notarized affidavit gave several documents, but there is no document to show that she had ever in writing contemporaneously alleged that despite receipt of notice of possession she has not taken over possession, since she was being asked by P.S. Group to sign a document recording satisfaction regarding carpet area as a condition precedent to physical possession of unit being delivered to her. In the absence of such document the claim of Mrs. Jodhani is weak. There is no clause in the agreement between the parties which enables to delay in taking over possession, the plea of lack of satisfaction regarding the carpet area, despite of all formalities like occupancy certificate etc. observed. There is no valid ground for her to have delayed for taking possession. Mrs. Jodhani could have taken over possession without prejudice to her rights and contentions related to sufficiency of carpet area from any Competent Forum for obtaining possession by a protective Order of that Forum. But, Mrs. Jodhani voluntarily chose to delay that acceptance of physical possession despite request for acceptance being made by the P. S. Group. Accordingly, Mrs. Jodhani’s appeal appears to be without merit.

Accordingly, WBREAT/Appeal No.016/2025 is also dismissed, but without cost.

The Order dated 27/02/2025 passed by the learned Regulatory Authority in Complaint No.WBRERA/COM000487 is affirmed.

The amount deposited by the Promoter with this Tribunal vide Order dated 25/06/2025 be disbursed to the allottee with interest, if any accrued on the amount, as expeditiously as possible.

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

Let a copy of this Judgement be communicated to the respective parties through their learned Advocate and Authorised representative by e-mail immediately.

Urgent Photostat/Certified copies of Judgment, if applied for, be given to the parties upon compliance with requisite formalities.

**I agree**

Sd/-  
**JUSTICE RABINDRANATH SAMANTA**  
Chairperson  
West Bengal Real Estate Appellate Tribunal

Sd/-  
**Dr. SUBRAT MUKHERJEE**  
Technical/Administrative Member  
West Bengal Real Estate Appellate Tribunal