

**IN THE COURT OF ADJUDICATING OFFICER,
REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR, PATNA**

**RERA/CC/387/2019
RERA/AO/84/2019**

Sri Kali Charan, S/o Suresh Prasad,
Flat No.203, At-Ramgarhia, P.O.-Ara,
District-Bhojpur, PIN-802301 ... Complainant

Versus

(1) M/s Lysin Engineer Pvt. Ltd.
Through its Director, (2) Mr. Md.
Imran Khan, S/o Mr. Hashim Ali
Khan, At-Gulshan Marzina, Opp-West
Point School, Samanpura, Raja
Bazar, P.O.-B.V. College, P.S-Shastri
Nagar, Patna-800014. ... Respondents

Present:

**Sri Ved Prakash
Adjudicating Officer**

Appearance:

For Complainant

In Person

For Respondents

1. Mr. Akash Keshav, Advocate
2. Mr. Shashwat, Advocate
3. Mr. Varun Shekhar, Advocate

ORDER

27-09-2019

This complaint petition is filed by the complainant, Kali Charan against the Respondent No.1 M/s Lysin Engineers Pvt. Ltd. through its Director, Respondent No.2, Md. Imran Khan u/s 31 read with Section 71 of Real Estate (Regulation and Development), Act, 2016 (hereinafter referred as the "Act,

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2016”) for payment of interest of one year on loan amount, which is being paid by the complainant to the L.I.C. Finance and further for delivery of the possession of the flat booked by the complainant. He has further sought relief against the Respondents to relieve him from payment of G.S.T. claimed by them from him.

2. In nutshell, the case of the complainant, Kali Charan is that the complainant has finalised the talk with Md. Imran Khan, Director of M/s Lysin Engineers Pvt. Ltd. to sell/purchase of flat No.203 having carpet area of 710 sq.ft., built up area 1070 sq.ft. in “Sneh Chhavi Vatika Apartment” along with garage/open parking in basement floor and proportionate share in land situated at Mohalla-Vijay Vihar Sahkari Grih Nirman Samiti Ltd., Mauza-Danapur Sahajadpur, Thana-Danapur, District-Patna on consideration of Rs.32.00 lacs, wherein open car parking space and G.S.T. charges were included. It was also disclosed at the same time that the Apartment/Project is registered with RERA, Bihar and it has to be completed till December, 2018 and they will hand over him possession of the flat till March, 2019. Therefore, the complainant has paid Rs.51,000/- on 09-11-2018 as booking amount and the Respondents have crossed the G.S.T. Column in receipt of the said amount. L.I.C. Housing Finance Ltd. has granted home loan of Rs.25.00 lacs to complainant, in which

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95% has been directly paid to the Respondents and the remaining Rs.6,59,000/- has also been paid to them through cheque. However, dues have been mentioned in other receipts at the place of G.S.T. by the Respondents. The Respondents have not discussed about G.S.T. prior to the registration of Agreement for Sale with the complainant. On 18-12-2018, the Respondent No.2 has urgently got registered the Agreement for Sale at Danapur Registry office, Patna. When the complainant visited on the site on next day of registration, he has found that there was no plaster in flat of the complainant as well as in common area. The Respondent No.2 after taking photograph of other flat has got released Rs.20.00 lacs out of Rs.25.00 lacs loan sanctioned by L.I.C. Finance against the complainant. The said information was given to the complainant at late stage, so the complainant communicated such information to the Agent of L.I.C. Finance office through phone. Thereafter, on 15-01-2019 the Respondent No.2 has further got released Rs.3,75,000/- out of Rs.5.00 lacs on behalf of the complainant from L.I.C. Finance. But, even then the flat was at the same stage without any progress in the construction. On meeting with the Respondent No.2, he had assured that he will deliver the possession of the flat in last week of March and the Respondent No.2 at that juncture also has not talked about G.S.T. claims from the complainant. All on a sudden on 20-01-2019 the

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Respondent No.2 has sent a notice to the complainant on his permanent address and demanded to deposit G.S.T. Rs.3,69,120/- prior to 31-03-2019 @ 12%. The Respondent No.2 has also claimed that he has given notice for demand of G.S.T. through receipts issued in favour of the complainant, which is completely false and forgery on the part of the Respondents. The Respondent No.2 threatened to the complainant that if G.S.T. is not deposited, the work progress of the concerned flat will be stopped. When the complainant again demanded delivery of possession of the flat, the Respondents threatened that they have sought extension of the Registration from RERA, Bihar, which was informed him through Notice dated 25-03-2019. As such, the Respondents have committed forgery on the complainant. It is further stated that such type of occurrence has also been committed by the Respondents on the owner of Flat No.G-103 and when he has seen the receipt of the said owner, he found that the G.S.T. claimed from her by the Respondents is only 8%, whereas the Respondent No.2 has claimed G.S.T. @ 12% from the complainant. It is further case that the complainant is paying E.M.I. @ Rs.23,222/- per month and neither he got delivery of possession of the flat nor there is possibility to get it soon and in addition, the load of G.S.T. is also being given to him by the Respondents. It is further case of the complainant in

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supplementary reply that in Agreement for Sale the G.S.T. has been included in the total consideration Rs.32.00 lacs. So, it is liability of the Respondents to pay the G.S.T. as per existing rate, which has been collected by them from the complainant. The notice for the dues of G.S.T. amounts to violation of agreement. The flat allotted to the complainant is still incomplete. The time of completion can only be extended for the reason of Force Majeure, but in the present case there is no reason for Force Majeure, although the Respondents have got extension of this project from RERA, Bihar till 25-12-2019. But, in present situation it is apprehended that the project may not be completed as per extended schedule. The Respondents in para-9 have accepted the Agreement for Sale, but in para-8 they are denying the contents of the same Agreement. It is specially denied that that the total cost of flat was negotiated as Rs.32.00 lacs excluding G.S.T. This assertion of the Respondents is against the law, as the cost of the flat always includes G.S.T. In this way, the complainant is being mentally and physically harassed by the Respondents. So, the above reliefs may be granted against the Respondents.

3. On appearance, the Respondents have filed reply and have stated *inter-alia* that all allegations made by the complainant are false, frivolous, vexatious, malafide, baseless and have been alleged with a motive to harass the Respondents.

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In the instant matter, the date of Agreement for Sale is not disputed. However, there are certain key omissions in the averments made by the complainant, which can cause grave mis-carriage of justice. It is denied that the Agreement for Sale with the complainant was fraudulently obtained. The complainant has complete knowledge about the development status and had inspected the same and only after his satisfaction the said Agreement for Sale was executed between the parties. The said project got its Registration Certificate from RERA, Bihar on 10-08-2018 bearing Registration No.BRERAP00307-1/220/R-133/2018. The validity of registration of the project was for a period of 05 months commencing from 10-08-2018 and ending with 26-12-2018. It is pertinent to mention that as per payment plan mentioned in Schedule-C of the Agreement for Sale, the payments were received and receipts for the same were issued to the complainant. The G.S.T. was not charged and the same was communicated and notified in the payment receipts. Due to Force Majeure, the said project was unable to meet its deadline i.e. 26-12-2018. Therefore, the Promoter applied for extension of the registration of project u/s 6 of the Act, 2016. Thereafter, RERA, Bihar was pleased to grant extension certificate and extended the validity of registration of the project for a period of one year i.e. up to 25-12-2019. It is also important to note that

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all conditions laid-down by the RERA, Bihar were adhered and followed in its true spirit. The information of extension of validity of project was duly informed to all the Allottees including the complainant. It is established fact that G.S.T. is an indirect tax, which is paid by each consumer. Therefore, in the instant case, the complainant being customer is under obligation to pay the G.S.T. at the prescribed rate notified by the appropriate authority. It is further case that on 27-02-2019 the Respondents have sent notice to the complainant bearing no.Lye/146/19 whereby they informed him to pay the due G.S.T. Rs.3,69,120/-. Further, two more notices were sent by the Respondents on 25-03-2019 and 16-04-2019 bearing letter No.Lye/148/19 and Lye/152/19 respectively informing the complainant about the G.S.T. dues amount and its immediate payment, but no heed was paid to the notices. In utter shock and surprise, the complainant has filed this complaint petition before this Court and notice issued by RERA, Bihar is duly served. Hence, in light of above facts and circumstances, the complaint case may be dismissed.

4. On the basis of the pleadings and submissions of the parties and their learned lawyers, the following points are formulated to adjudicate this case:-

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- (1) Whether the Respondents are entitled for accrued G.S.T. Rs.3,69,120/- @ 12% against the complainant?
- (2) Whether the Respondents are entitled for G.S.T. @ 8%/5% against the complainant?
- (3) Whether the complainant is entitled for interest and rent during extended period against the Respondents on the loan amount paid by the complainant to L.I.C. Housing Finance?
- (4) Whether the complainant is entitled for delivery of possession of the allotted flat No.203 of "Sneh Chhavi Vatika Apartment" against the Respondents?
- (5) Whether the complainant is entitled for litigation cost against the Respondents?

5. Points No,(1) to (3):

Admittedly, Agreement for Sale between both the parties was executed on 18-12-2018 and the Respondents have agreed to sell flat no.203 having carpet area 710 sq.ft. built-up area 1070 sq.ft. on 2nd floor in "Sneh Chhavi Vatika Apartment" along with garage/opening parking in basement floor with common pool area and proportionate share in land etc. situated at Mohalla-Vijay Vihar Sahkari Grih Nirman Samiti Ltd., Mauza-Danapur Sahajadpur, Thana-Danapur, District-Patna

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on a total consideration of Rs.32.00 lacs and the Respondents have agreed to hand over possession of the flat along with ready and complete common areas with all specifications, amenities and facilities of the project till 26-12-2018, unless there is delay or failure due to war, flood, draught, fire, cyclone, earth quake or any other national calamities (Force Majeure) caused by nature affecting regular development of the real estate project. It was also agreed in para 7.6 that if the allottee does not intend to withdraw from the project, the promoter shall pay the allottee interest at the rate prescribed in the Rules for every month of delay till handing over possession of the flat, which shall be paid by the promoter to the Allottee within 45 days of it becoming due. It was also agreed that the Promoter shall pay all outgoings before transferring the physical possession of the apartment to the Allottees, which it has collected from the Allottees, for the payment of outgoings (including land cost, ground rent, Municipal or other local taxes, charges for water or electricity, maintenance charges, including mortgage loan and interest on mortgages or other encumbrances and such other liabilities payable to competent authorities, banks and financial institutions, which are related to the project). If the Promoter fails to pay all or any of the outgoings collected by it from the Allottees or any liability, mortgage loan and interest thereon before transferring the apartment to the Allottees, the Promoter

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agrees to be liable, even after transfer of the property, to pay such outgoings and penal charges, if any, to the authority or person to whom they are payable and be liable for the cost of any legal proceedings, which may be taken there for by such authority or person.

6. The Respondents have issued demand letters on 27-02-2019, 25-03-2019 and 19-04-2019 to the complainant and demanded G.S.T. amount Rs.3,69,120/- @ 12% on advanced principal amount Rs.30,76,000/- from the complainant and threatened that due to non-deposit of G.S.T., works of the concerned flat has been stopped, whereon the complainant submitted that the Agreement for Sale was executed between both the parties for the concerned flat no.203 on total consideration of Rs.32.00 lacs including G.S.T. and separate G.S.T. charge was not demanded and disclosed by the Respondents at the time of agreement. So at this stage, the Respondents are not entitled to claim G.S.T. @ 12% from the complainant and now he is not liable to pay the same to the Respondent. He further submitted that the Respondents are demanding G.S.T. @ 12% from him, whereas they have demanded G.S.T. @ 8% from one lady Snigdha Kumari, who has executed Agreement for Sale with respect to the flat no.G-103 in the same "Sneh Chhavi Vatika Apartment" with the Respondents, whereon the learned lawyer for the Respondents

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submitted that the mentioning of tax in Agreement for Sale is for local taxes including the land cost etc. But the consumer has to pay G.S.T. on the cost of flat to the Government through the Builder. He further submitted that the G.S.T. collected from the consumers is deposited by the Developer as a tax in Government account. So there is incorrect submission of the complainant.

7. The Respondents have agreed in Agreement for Sale dated 18-12-2018 that the flat no.203 will be delivered complete in all respect to the complainant on 26-12-2018 (para-7.1 of the Agreement for Sale). It shows that the said flat was ready to move, otherwise the Respondents would not have entered into Agreement with the complainant for Sale just 8 days prior to delivery of the flat. It is relevant to note that G.S.T. is not levied on buyers of real estate properties, for which Completion Certificate has been issued at the time of sale and only stamp duty is levied. It is also important that 12% of G.S.T. rate ideally would have been partially off-set by way of taxes paid on inputs by Builders and hence, the actual incidence of G.S.T. under construction for home buyers would have been around 5 to 6%. However, Builders are not passing on the Input Tax Credit (I.T.C.) benefit to consumers. So one proposal has been that 5% G.S.T. for those Builders, who purchase 80% of inputs from registered dealers. Thus, from 1st April, 2019 G.S.T. on

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under construction flats, which are not affordable housing segment has been reduced to 5% without Input Tax Credit (I.T.C.) from 12%. Earlier with I.T.C. G.S.T. on affordable homes has been reduced to 1% without I.T.C. from earlier 8% with I.T.C. It is also important that under construction properties priced up to Rs.45.00 lacs will now be treated as affordable housing project and will attract 1% G.S.T. without I.T.C. Only flats with carpet area of 60 sq.mtr. in Metro Cities, Delhi, Kolkata, Mumbai etc. and 90 sq. mtr. in Non-Metro Cities falling under Rs.45 lacs Cap will be eligible for 1% G.S.T. rate.

8. The Respondents have still not delivered possession of flat to the complainant and not only this, they have got the extension from RERA, Bihar on 28-01-2019 for the said project and now they have to complete the project till 25-12-2019, for which previously they have got RERA Registration for the period commencing from 10-08-2018 and ending on 26-12-2018. In my opinion, on basis of the same the Respondents would have executed the Agreement for Sale for delivery of flat till 26-12-2018 to the complainant. I think, when the Respondents have knowledge that they are not going to complete the project till 26-12-2018, then why they have executed this Agreement for Sale with the complainant only 8 days ago and I further think that it is ill intention of the Respondents to collect the money from the complainant till delivery date 26-12-2018 and

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later on they will tell to the complainant that since the RERA, Bihar has extended the period of completion, so now they are legally correct in saying that the delivery of possession of flat will be given on 25-12-2019. I have to further opine that if there was bonafide intention on part of the Respondents, they would not have dared to enter into such objectionable works with the complainant. As per Section 13(1) of Real Estate (Regulation and Development) Act, 2016, the Respondents were not legally entitled to receive more than 10% of the consideration amount without entering into Agreement for Sale and that is why they have firstly got executed registered Agreement for Sale with the complainant and then received 95% of the consideration of the flat, overlooking the provisions of Schedule-C of the registered Agreement for Sale. It is also very surprising that the Respondents have not brought on record that what was the stage when they got 95% of the consideration amount from the complainant in December, 2018, because as per Schedule-C, they have to take consideration in instalments only after construction of particular phase of the building. Secondly, after receiving advance consideration money Rs.30,76,000/- now with utter violation of law, the Respondents are demanding G.S.T. as per applicable law in December, 2018. It is also important to note that one G.S.T. Council meeting was held on 22-12-2018, wherein it was shown

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by the Government that G.S.T. on housing sector is being reduced in next meeting, which is going to be held in January, 2019. As it is clear that in the next meeting in January, 2019, G.S.T. since 1st April, 2019 has been reduced to 5% for housing sector. The Respondents have further violated by issuing different demand letters on the basis of two rates on the basis of (1) @ 12% from the complainant and (2) @ 8% from Snigdha Kumari, who is known to be the purchaser of flat no.G-103 in the same Apartment. Hence, from all corners, it appears that it is ill-intention of the Respondents, which is making problems to the complainant in depositing G.S.T. for the concerned flat with the Respondents.

9. However, the complainant is also incorrect in his submission that G.S.T. was included in total consideration Rs.32.00 lacs and the same was written in Agreement for Sale. But, in reality it was written therein for local taxes and other charges including land cost etc. Thus, it is correct that G.S.T. has to be paid by the flat purchaser to the Builder/Developer, who will deposit the same with the Government. However, either side has not brought on record the stage of construction of the Apartment on 18-12-2018. So, it is also valuable to note that till 18-12-2018 the structure of the building up to 3rd floor was constructed, as the complainant has stated in his complaint petition that when he visited on next date of

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18-12-2018, he found that there was no plaster in his allotted flat as well as in common area and no work was done on the land and the Respondent No.2 by taking photo of other flat, has got disbursed Rs.20.00 lacs out of Rs.25.00 lacs loan sanctioned to the complainant by L.I.C. Housing Finance. It shows that about 75% work in the project was done on the date of execution of the Agreement for Sale. Accordingly, the Respondents should have to receive only 75% of total consideration amount Rs.32.00 lacs. If construction of the building was complete up to such stage, 75% of the total consideration comes to Rs.24.00 lacs.

10. The Respondents have demanded only 8% G.S.T. from other consumer, Snigdha Kumari and they have not disclosed the stage of completion of her flat like payment schedule etc. in her demand letter in comparison to the demand letter issued to the complainant. As such, on the basis of above discussed materials, I think, 8% G.S.T. from the complainant should also be received by the Respondents, as for failure of the Respondents why the complainant should suffer? It has also not come on the record that the Respondents have deposited G.S.T. @ 12% on the amount Rs.30,76,000/- and that is why they are demanding such amount of G.S.T. from the complainant. Hence, the Respondents are entitled to receive G.S.T. @ 8% from the complainant on the amount of Rs.24.00

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lacs, which will come to Rs.1,92,000/- and he may further receive G.S.T. @ 5% on remaining consideration amount Rs.8.00 lacs, as the rate of G.S.T. has been reduced to 5% since 1st April, 2019, which will come to Rs.40,000/-. Thus, total G.S.T. to be paid by the complainant will come to Rs.2,32,000/. As such, the Respondents are not entitled to collect G.S.T. @ 12% from the complainant. Hence, they are entitled for G.S.T. @ 8% on Rs.24.00 lacs and 5% on Rs.8.00 lacs. Accordingly point no.(1) is decided in negative against the Respondents and in favour of the complainant and point no.(2) is decided in positive in favour of the complainant and against the Respondents.

11. The complainant has demanded interest during the extended period of registration from 26-12-2019 to 25-12-2019 against the Respondents on the loan amount paid by the complainant to the L.I.C. Housing Finance. From the above discussions, it has come on the record that without prior permission of the complainant and by showing photo of other flat, the Respondents have got disbursed Rs.20.00 lacs out of Rs.25.00 lacs loan amount sanctioned by the L.I.C. Housing Finance in favour of the complainant. The complainant could not file any documentary evidence, which may show that the Respondents have shown photo of completion of other flat and the same is being produced in this Court. But, one thing is

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clear that out of the loan sanctioned amount Rs.25.00 lacs, Rs.20.00 lacs has been got disbursed by the Respondents without completion of the concerned flat and without permission of the complainant. The Respondents could not produce any permission letter of the complainant to get disbursed Rs.20.00 out of the loan amount sanctioned to him by the L.I.C. Housing Finance. There is naturally some dark point from the side of the Respondents, by which the complainant has been affected and he is also paying interest of the loan released from L.I.C. Housing Finance. So such amount of interest must be paid to the complainant by the Respondents, as the complainant is expected to bear the burden of interest on loan, due to deceitful act of the Respondents. In addition to the above facts, it has been seen that the Respondents have agreed to the complainant to deliver him possession of the flat on 26-12-2018 and without information to him got RERA registration extended from 26-12-2018 to 25-12-2019. So also the Respondents have violated the provisions of Section 18(proviso), 19 (1 to 5) of the Act, 2016 and they must pay interest and compensation for their fault to the complainant. The complainant has not furnished as to how much interest he is paying on loan amount and how much amount he is paying as house rent in place of the flat allotted to him, after date of delivery of possession of the flat on

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26-12-2018. As per para 7.6 of Agreement for Sale the Respondents shall pay rent in each and every month, of flat in place of his concerned flat till delivery to him. In my opinion, though the rate of interest on loan amount as well as actual house rent of the flat being paid by the complainant has not come on record, Rs.5,000/- per month may be assessed as appropriate interest being paid by the complainant and Rs.10,000/- per month may be assessed as appropriate house rent in form of compensation to the complainant for his mental and physical harassment also, as per Section 72 of the Act, 2016. Hence, the Respondents have to pay total amount of Rs.15,000/- per month since 26-12-2018 till actual delivery of flat to the complainant. Hence, point no.(3) is decided in positive in favour of the complainant and against the Respondents.

12. Point No.(4):

The complainant has demanded earlier delivery of possession of the flat, as such he has not withdrawn from the claim of the flat. So it is duty of the Respondents to deliver the possession of the flat to the complainant atonce. But the Respondents have got extended RERA registration till 25-12-2019, so they may complete the flat of the complainant along with other agreed amenities up to above mentioned time and they have also chosen to deliver the same before

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25-12-2019 and if the Respondents succeed in making delivery of the flat to the complainant, then they will be absolved from the liability of the rent to be paid to the complainant from the date of delivery of possession of the flat. Hence, the complainant is entitled for early delivery of possession of the flat against the Respondents. Accordingly, point no.(4) is decided in positive in favour of the complainant and against the Respondents.

13. Point No.(5):

The complainant has run from pillar to post for getting his reliefs from the Respondents, for which he would have visited the Respondents as well as their staff several times, but they have not given any attention towards the reliefs of complainant till filing of this case. I think, the complainant would not have incurred more than Rs.10,000/- in Court fee, conveyance to the office of the Respondents, A.O. Court in RERA, Bihar, documentation etc. So, this amount of litigation cost must be paid by the Respondents have to the complainant. Therefore, the Respondents have to pay litigation cost of Rs.10,000/- to the complainant. Accordingly, point no.(5) is decided in positive in favour of the complainant and against the Respondents.

Therefore, the complaint case of the complainant is allowed on contest with cost of Rs.10,000/- (Rupees ten

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thousand only) against the Respondents. The Respondents are directed to pay Rs.5,000/- (Rupees five thousand only) per month as interest on loan amount sanctioned by the L.I.C. Housing Finance during the extended period of RERA Registration to the complainant and they are further directed to pay Rs.10,000/- (Rupees ten thousand only) per month as house rent as compensation for his mental and physical harassment till delivery of the possession of the flat to him. The Respondents are further directed to receive G.S.T. @ 8% on advance consideration amount Rs.24.00 lacs (Rupees twenty four lacs only) and further to receive G.S.T. @ 5% on remaining consideration of Rs.8.00 lacs (Rupees eight lacs only) from the complainant and the Respondents are not entitled to receive G.S.T. @ 12% as claimed against the complainant. The respondents are further directed to deliver possession of the flat no.203 to the complainant on or before 25-12-2019. The Respondents are directed to comply the order within the stipulated period, failing which the complainant shall have the right to enforce the same through process of the Court.

Sd/-
(Ved Prakash)
Adjudicating Officer
27-09-2019