

REAL ESTATE REGULATORY AUTHORITY, BIHAR

2 nd Floor, BSNL Telephone Exchange, North Patel Nagar, Road No. 10, Patna -800023

Hearing before the Double Bench of Hon'ble Chairman, Mr. Naveen Verma, &

Hon'ble Member, Mrs. Nupur Banerjee

Case No.:-RERA/CC/819/2021

Manoj Kumar Jayaswal.....Complainant

Vs

M/s Phenomenal Projects Pvt. Ltd.....Respondent

Project: NG Town

01.02.2022

O R D E R

This matter was last heard before Double Bench along with the batch cases on 18.01.2022.

The case of the complainant is that in response to an advertisement floated by the respondent for sale of plots/pieces of land in the project “NG Town”, he booked one plot bearing no. B-4, Type- B in Sector- R-2 measuring area 2400 sq. ft. on 09-01-2015. The complainant paid Rs. 20,000/- via cheque bearing no. 000024 of Bank of Baroda and accordingly agreement for sale was executed on 16-02-2016 in favour of the complainant. The complainant further paid Rs. 62,480/- on 16.02.2016 via cheque bearing no. 000054 of Bank of Baroda, Rs. 50,000/- on 12.08.2015 via cheque bearing no. 000041 of Bank of Baroda and Rs. 50,000/- via cheque bearing no. 000091 of Bank of Baroda to the respondent and thereafter it was assured that sale deed of the said plots shall be executed within a period of 3 months after the commencement of the development of work. The total consideration amount is Rs. 3,31,200/- out of which the complainant has paid Rs. 1,82,480/- in total.

The complainant has submitted that till date neither the development work has been commenced nor has the deed of absolute conveyance been executed. Since there was no progress the complainant requested the respondent for refund but the

latter denied to return the full amount. The complainant sent a legal notice dated 17.02.2021 and seeing no response again sent a legal notice on 03.04.2021. This was replied by the respondent admitting the claim of the complainant with offer to return the claim amount as per the terms of the agreement but they did not disclose the amount and the time by when it will be refunded. Hence the complainant has filed the caseseeking relief for refund of the amount paid along with interest at the rate of 18% per annum from 16.02.2016 till the actual realization of the said amount.

The complainant has placed on recordcopy of agreement dated 20.01.2016, receipt dated 09.01.2015 for Rs. 20,000/-; 12.08.2015 for Rs. 50,000/-; 16.02.2016 for Rs. 62,480/-; 12.09.2017 for Rs. 50,000/-, legal notice dated 17.02.2021, legal notice dated 02.04.2021 and reply of legal notice dated 04.07.2021.

The respondent company through its Counsel has filed its reply stating that they have erected four pillars and made proper demarcation. This was intimated to the complainant through various reminders via messages and also through courier /post for taking possession and registration after making full payment but the complainant never turned up. It is further stated that the respondent is ready to refund the amount but as per terms and conditions of the agreement. Since the complainant has paid Rs. 1,82,480/- in four instalments within 32 months therefore the respondent builder should be given appropriate time of at least 6 months and liberty should be granted to pay back the amount at least in 3 instalments. The respondent has placed on recordcopy of agreement, legal notice dated 17.02.2021, reply of legal notice dated 04.07.2021, copies of reminder sent by the respondent and copy of *whatsapp* chats.

On the last date of hearing dated18.01.2022, the learned counsel for the respondent submitted that they are ready to refund the remaining amount to the complainant in 3 instalments.

The Bench observes that the allottee has not refuted the claim of the promoter that he has not paid the remaining amount despite notices having been sent. The promoter as well as the

allottee are required to fulfil the obligations cast on them by various provisions of the Real Estate (Regulation and Development) Act. The allottee has admittedly not paid the entire consideration amount and hence the deed of sale could not have been executed. The promoter has not been able to satisfy the Authority whether the progress of the project was in accordance with the schedule agreed in the agreement to sale.

Under these circumstances, the Bench is not able to come to a conclusion whether interest is payable or not. The complainant is at liberty to press his claim for interest before the Adjudicating Officer.

The Bench takes note of the submission of the respondent that they are ready to refund the remaining amount and hereby directs the Respondent Company and its Directors to refund the amount of Rs. 1,82,480/- to the complainant within two months from the date of order.

Sd/-

Nupur Banerjee
(Member)

Sd/-

Naveen Verma
(Chairman)