

REAL ESTATE REGULATORY AUTHORITY, BIHAR

Before the Single Bench of Mr. Naveen Verma, Chairman

Case No.: CC/1119/2021

Murlidhar Singh & Kamani Singh

...Complainant

Vs.

M/s Singh Engicon Pvt. Ltd

...Respondent

Project: Crystal Apex

ORDER

05-05-2022 The matter was last heard on 13.04.2022.

In this complaint filed under section 31 of the Real Estate (Regulation and Development) Act, 2016, the allottees have stated that they had entered into an agreement for sale on 09.05.2013 with the respondent company for purchasing of Flat bearing Flat No.03, in wing- C, measuring 2006 sq.ft. at 5th Floor along with parking space for the total consideration amount of Rs.80,01,690/- out of which they had paid Rs.69,50,000/-. However, the promoter has failed to complete the construction work even after receiving considerable amount of payment despite the fact that the project was to be completed by March 2016 as per agreement schedule. It has been submitted that the allottees are ready to pay the balance amount through Bank loan at the time of execution of sale deed.

It has also been submitted that on 04-10-2021, complainants have received a letter from the respondent stating therein that agreement is being unilaterally cancelled on grounds of delayed payment. This has been done despite the fact that the allottees have not failed in depositing the payment in accordance with the stages of

completion of different construction stages, as per inspection of site by SBI RACPC, Patna and their schedule for disbursement of loan. The allottees have filed this matter for giving directions to the promoter to immediately handover the possession of flat and execute the absolute sale deed in their favor. They have also prayed for directions to the promoter to pay compound interest, compounded annually on the amount paid from the date of first payment i.e. 09-02-2013 till the date of actual refund as well as for compensation for delay in actual handing over of the flat and for the litigation cost.

The complainants have placed on record Bank Loan Disbursement receipts; Agreement for Sale dated 09-05-2013 and cancellation letter dated 30-09-2021 issued by the promoter.

The promoter has filed its reply on 08-04-2022, stating therein that the allottees have suppressed the facts; that they had completed the construction of flat in question as per the time stipulated in the agreement for sale dated 09-05-2013; and that the complainants themselves have been consistent payment defaulter right from the time of the booking of the flat. It has been stated that as per clause 9 of the agreement dated 09-05-2013, the possession of flat was to be delivered only upon the payment of full consideration amount and that clause 12 of the agreement mentions that timely payment was the essence of the agreement for sale. It has been submitted that respondent has handed over the possession of the similar flat on the above floor of the same wing i.e. wing C to the other purchasers of the project from 2016 onwards and plea of the complainants regarding non completion of project is not correct.

It has been further submitted by the promoter that as per schedule C of the agreement, against the initial agreed payment of Rs.25,00,042.2/-(including tax and late fine) the allottees paid only Rs.10,00,000/- but yet they allowed the complainants to enter into said agreement in good faith. It is also submitted that complainants were habitual defaulter in the payment and enclosed a chart in respect to that in Para-7 of the reply.

The promoter also submitted that they had informed the complainants on 05-01-2017 that their flat was complete and ready for taking the possession after clearing the dues, but despite assurances they did not clear the dues. Several demand letters were sent ,which are annexed with the reply, but even after that, no action was taken by the complainants to clear the dues and ultimately last reminder was sent on 15-09-2021. The promoter has stated that after sending last reminder letter for payment and after waiting for 14 days, they acted in accordance to section 11(5) of the RERA Act, 2016 and cancelled the allotment of the flat in the terms of the Agreement for Sale dated 09-05-2013. It has been further submitted by the respondent that letters dated 30-09-2021, 22-10-2021, 17-11-2021 and 04-12-2021 were issued to complainants requesting them to initiate the process of refund.

The Respondent has placed on record Absolute Sale deed dated 23-01-2016 executed in favor of allottees of C wing, copy of various mail sent to complainant, copy of FIR & media report, several payments reminder letters, cancellation letters dated 30-09-2021, mail regarding initiation for the return of payment & Statement of Account.

The matter was heard at length.

The learned counsel for complainants submitted that despite having paid almost Rs.70,00,000/- against the total consideration value of Rs.80,00,000/, the respondent unilaterally cancelled the booking. He argued that while the respondent stated in para 5 of their reply that the project is complete, they have not submitted the completion certificate although they have submitted in their reply that the building was completed in March, 2016. He further submitted that while the complainants have received some of letters, the notices for payment were not received by them and were knowingly sent to wrong email address. He referred to the quarterly statements filed by the promoter wherein the CA and Engineer have stated that the project is not fully complete and also filed the Bank report before the Bench and submitted that the loan was disbursed by the Bank on the basis of stage of construction after site verification by S.B.I. He mentioned that the project was registered with RERA in 2018 and a query dated 15/09/2021 was sent on their application for extension of registration. The learned counsel submitted that the respondent is selling the flat to someone else for more money and that they cannot cancel the registered agreement.

The learned counsel for the respondent stated that the complainants had never flagged the issue of delay from the date of booking till the date of termination; rather in their letter dated 18-09-2021 addressed to the promoter, they had agreed for the judicious late fine imposed on them for not making the payment in prescribed manner. The learned counsel for the respondent submitted that complainants were habitual defaulter with regard to the payment and not paid the remaining amount as per the payment schedule even after several reminders. The respondent further submitted that several

notices were sent to the complainants between 2015-18 to pay the remaining consideration amount but, the complainants neither sent reply of the notices nor paid the remaining consideration amount as per the payment schedule and instead directly filed the present case before the Authority without giving any reply to notices and payment reminder sent by respondent. The learned counsel also stated that the complainants have not paid any amount after 2017 which is in violation to the terms and conditions of agreement for sale dated 09-05-2013. The learned counsel for the respondent countered the submission that letters/notices were not delivered to the allottees stating that the complainants reside within the radius of 1 km from the project and all correspondence were sent on the email id provided by the complaints. Referring to the report of the C.A. it was stated that at that time allottees were residing in the project and a letter dated 5/01/2017 was sent to the complainants / SBI and all other allottees to pay the final consideration and resolve the measurement issues of the respective flats. She submitted that the allotment was cancelled as per the Sec 11(5) of the RERA, Act and a cancellation letter was sent to the complainant on 30/09/2021 and it was transferred to new allottee on 02/02/2022. The learned counsel for the promoter stated that the action of the complainants was in clear violation of section 19(6) of the RERA Act, 2016.

On 27-04-2022, the promoter filed supplementary affidavit stating in para 13 that currently they were using rest of the unsold flats for their own purpose and do not intend to sell as of now. It was submitted that the apartment was complete and the reports of the CA and Engineer was related to other wings of the Project. Further, a sale deed was executed on 23/01/2016 by the promoter with another allottee in the same building after completion of the flat. It has also been

submitted that the project was complete but as they finalize the interior work of the flat after the allottee pays the total consideration amount, the flat is shown under construction. The promoter has challenged the genuineness of the site inspection report filed by the complainants as an earlier inspection report had shown more construction than the latter one. They have reiterated that because of consistent payment defaults and unwillingness of the complainants to make further payments, the respondent had no option but to send the last reminder/notice for payment on 15-09-2021 and it was mentioned in the aforesaid letter that failing which, they would be forced to terminate the agreement dated 09-05-2013 with the terms of the agreement. It has been further submitted that despite the letter dated 15-09-2021, no payments were made and hence, on 30-09-2021, the respondent terminated the agreement for sale dated 09-05-2013 as per clause 13 of the aforesaid agreement and requested the complainants to collect the refund amount.

The Authority takes note that the reliefs sought by the allottees includes handing over of possession and executing the deed of conveyance, when admittedly the booking of the apartment has been cancelled. The basic issue is to decide whether the action of the promoter is in consonance with the provisions of section 11(5) of the Act.

The complainants have relied on the order passed by the Hon'ble Punjab and Haryana High Court in case of Brahm Dutt Vs. Sarabjit Singh decided on 06.11.2017 and blog of SCC online. Both the judgments deal with unilateral cancellation of agreement.

The promoter has filed copies of mails sent to the allottee. The allottees have not denied that they did not make the full payment as per

the agreement to sale. In fact, the documents filed and the submissions made indicate that the complainants have not made the full payment. Their assertion that their flat was not complete has also not been backed by any other evidence except the report by the SBI. In view of the affidavit of the promoter, both the inspection reports of the SBI officials may be sent to the Chief General Manager, SBI , Patna so that the veracity of the reports can be confirmed.

Be that as it may, the issue remains that the allottees had defaulted for which a number of notices were issued. The Authority is not inclined to accept oral submissions of the complainants that the notices were not received when the respondent has given documentary evidence of the same. Hence the Authority is of the view that notices were issued to the complainants and they did not send any reply. Under these circumstances , both the judgments cited above are not applicable in the present case as the matter is not of unilateral cancellation of booking . In the present case, notices for payment were issued to the complainants and after that final notice before cancellation was also issued but, the complainants did not perform their obligation as per their agreement. Hence the action of the promoter does not suffer from any infirmity. On a query from Bench about the availability of the flat booked by complainants, the respondent replied that flat is not available now as third party interest has already been created.

The Authority , therefore , observes that the promoter is entitled to cancel the allotment in accordance to the terms of Agreement under section 11(5) of the Act. The allegations of delay or deliberate latches or short comings on the part of the respondent have not been

established and as such, the claim for handing over possession after execution of sale deed in respect of this flat is devoid of any merit.

However, the promoter has admittedly taken Rs 69.50 lakhs from the complainants against the total consideration amount of Rs 80 lakhs. If the complainants were habitual defaulters as alleged by the respondent, they should have cancelled the booking after following the due process initially itself. During hearing it was stated that the complainants did not make any payment after 2017; yet the promoter allowed them leeway and gave considerable time. The last notice was issued as late as 15.9.2021 and albeit after cancellation, the allottee have expressed their willingness to pay the remaining amount. They had also earlier indicated to discuss the interest and late fees as stated by the learned counsel for the respondent during hearing.

The Authority notes that following its directions to file an affidavit with respect to number of flats unsold in the project, the respondent has filed a supplementary affidavit on 27.04.2022 submitting that currently they are using rest of the unsold flats for their own purposes and do not intend to sell them as of now.

It is apparent , therefore, that the promoter has unsold flats and the allottees are willing to pay the entire amount. The Agreement to Sale , as prescribed by the Bihar RERA Rules, 2017 indicates that the promoter may charge interest from allottees who have defaulted in making payments. Both the promoter and the complainants can arrive at a mutually acceptable solution if the promoter wishes to offer one of the unsold flats for sale. However, no directions can be given on this issue.

The Authority observes that if the promoter does not offer an unsold flat to the complainants as suggested above, they are bound to refund the deposit along with applicable interest. It directs the respondent company and their Directors to refund the entire principal amount of Rs.69,50,000/- along with interest on such amount at the rate of marginal cost of fund based lending rates (MCLR) of State Bank of India as applicable for three years or more plus four percent from the date of taking the payment till refund within sixty days of issue of this order.

The complainants are at liberty to press their claim for compensation before the Adjudicating Officer.

With these directions and observations, the matter is disposed of.

Sd/-

Naveen Verma
(Chairman)