

**REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR**  
**Before the Single Bench of Mrs. Nupur Banerjee, Member**

**Case No: RERA/CC/124/2023**

**Sudhir Kumar**

**...Complainant**

**Vs.**

**M/s HRB Construction Pvt. Ltd.**

**...Respondent**

**Project: Sahdeo Residency**

**22/07/2024**

**ORDER**

The matter was last heard on 26.04.2024 and was fixed for orders on 14.06.2024. However, due to pre-occupation of the Bench in other matter, order could not be pronounced on the date fixed. On that date, Mr. Punit Kumar, Advocate appeared on behalf of the complainant. Mr. Raj Krishna Jha, Advocate appeared on behalf of the respondent.

In this case, the complainant has prayed for a direction to the respondent to give possession of the flat at the earliest with all amenities as well as Rs.5.00 lakh as a compensation for mental harassment and the interest due to delay in handing over the possession of the flat with reasonable cost and also prayed for an order to stay further construction activity and handover/ registration of any flat on the said land property.

In short, the case of the complainant is that the complainant has booked a 2-bedroom flat bearing Flat No.106 on 1st floor having an area of 950 sq.ft. with one covered car parking vide allotment letter dated 15.10.2021 in the said project for a consideration of Rs.30.00 lakh out of which he has paid Rs.7,76,525/- including registry charges in the respective year 2019-21. It is stated that after taking the payment, the developer never offered for the registered agreement, then the respondent assured that since the project is delayed, so the registered agreement will be done after getting statutory approval from the concerned authority and finally executed the agreement on 09.05.2022. After several visit and persuasion it has come to know that the said agreement was prepared by the developer and the developer intentionally tried to take undue advantage of innocence of the complainant and executed the agreement without giving opportunity to have a look of the agreement whereas after reading of the agreement the complainant came to know about consideration of the flat i.e. Rs.34.25 lakh which is contrary to the allotment letter dated 15.10.2021. Thereafter the complainant visited several times to the office of respondent and requested for the same. They assured the complainant to redress his grievance very shortly and the agreement will be rectified at the time of registry but again they sat tight over the matter. It is further stated that inspite of redressing the grievance, they all of a sudden served demand letter dated 21.09.2022 for rest payment in 30 days, otherwise flat will be declared cancelled. The complainant also sent a reply on 18.10.2022 to the respondent requesting to provide the relevant documents so that he may arrange the rest amount. Thereafter the respondent gave notice dated 21.10.2022 and the notice dated 07.12.2022 by cancelling the said flat without giving any opportunity against which the complainant finding no way also gave a legal notice dated 23.12.2022 in lieu of which they replied through notice dated 03.01.2023. It is

also stated that the respondent has given assurance that the consideration amount in the agreement will be rectified very soon but till date they have failed to do so. On request the respondent has not supplied the relevant documents demanded by the Bank. It is also stated that the complainant is a contractor who wished to purchase the said flat from his hard earned money but unfortunately he could not do the same due to ill and dishonest motive of the respondent delayed the possession of the flat as well as money. Hence, this complaint.

The complainant has placed on record the copy of the allotment letter dated 15.10.2021, details of payment and the agreement dated 09.05.2022.

A counter affidavit has been filed on behalf of the respondent stating therein that it is true that the provisional allotted Flat No.106 at 1<sup>st</sup> floor was given and the total consideration amount was Rs.30.00 lakh including facilities and amenities and the terms of payment has been mentioned in the allotment letter. The complainant paid a total sum of Rs.6.01 lakh on different dates and after that no any payment was made. The complainant also did not follow the terms and conditions of the agreement and subsequently the respondent made fresh sale agreement with one Mr. Amit Kumar on 28.12.2022 and agreement dated 15.03.2023. It is stated that on 26.08.2022 registered agreement was made in which it was mentioned that payment must be made within a week but till 21.09.2022 total instalment was not paid and notice was sent on 21.09.2022 and again one month time was given to him for payment of entire instalment and accordingly, the allotment of flat was cancelled on 21.10.2022. Thereafter on 07.12.2022 again notice was sent to the complainant for receiving the cheque with regard to booking refund amount but till now payment has not been received. It is further stated that the complainant has violated the terms and conditions mentioned in the registered agreement dated 26.08.2022 which has not been attached by the complainant, so he has not come before the learned Authority with clean hands. Hence, this complaint petition is fit to be dismissed and he does not deserve to get any compensation or relief as sought for in this case. In para-7 of the counter affidavit it is stated that the respondent is ready to return the paid amount of Rs.6.71 lakh to the complainant after deducting 10% as per terms and conditions in the registered agreement.

A rejoinder has been filed on behalf of the complainant to the counter affidavit filed by the respondent stating therein that the complainant denies all the averments made in the reply filed on behalf of the respondent. In fact the complainant paid the amount of Rs.7,76,525/- including registry charges through cheque which may be verified from the records and without entering into an agreement no promoter can take advance payment beyond 10% which is violation of Section 13 of the Act. The complainant has reiterated the same facts as made in the main complaint petition. He has referred to a judgment of the Apex Court passed in Civil Appeal No.5785 of 2019 (Ireo Grace Real Tech Pvt. Ltd. Vs. Abhishek Khanna & ors) in which it has been held that no developer can deduct the earnest amount of the allottee whereas the complainant is claiming for the possession of the flat as without cancelling the registered agreement of this complainant, the respondent has entered into another agreement which is null and void in the eye of law.

2<sup>nd</sup> counter affidavit has been filed on behalf of the respondent reiterating the same facts as stated in the counter affidavit.

Learned counsel for the complainant submitted that the complainant wants possession of the flat. The complainant has paid Rs.7,76,525/- against the consideration of Rs.30.00 lakh, including the registry charges etc. As per the allotment letter, the consideration money is Rs.34.25 lakh, Thereafter, he did not pay the remaining amount because he did not get the relevant papers which were required to get loan from the Bank. Thereafter, the promoter sent a demand letter for making payment of remaining amount stating therein that the complainant is a defaulter and he has to pay the remaining amount within 30 days, but the complainant instead of making payment demanded several documents to get loan from the Bank. The respondent instead of providing relevant papers relating to loan disbursement, cancelled the allotment and made agreement with some other person to sell the flat at higher price of Rs.45.00 lakh.

Learned counsel for the respondents apart from other facts submitted that the complainant has not fulfilled the terms and conditions as mentioned in the Agreement for Sale, that is why they have cancelled the booking. He submitted that he cannot give him the possession because the flat has already been sold to other persons. He by referring to an order of the Authority dated 04.03.2022 passed in CC No.210/2023 (Kamlesh Kumar vs. M/s HRB Construction Pvt. Ltd.) submitted that the facts of this case is similar to the case of Kamlesh Kumar (supra).

Perused the records. The Authority notes that the complainant booked Flat No.106 in the project vide allotment letter dated 15.10.2021 on consideration amount of Rs.30.00 lakh out of which he paid Rs.7,76,525/-, which was more than 10% of the consideration amount. Thereafter, an Agreement for Sale was executed between the complainant and the respondent on 09.05.2022 in which in Schedule-C it was agreed between the parties that 10% of the total consideration money would be paid at the time of booking and 25% within seven days of execution of Agreement for Sale, which is not in dispute.

The Authority further takes notes of the fact that after execution of agreement on 09.05.2022 when 25% was not paid within seven days, the respondent sent a demand notice dated 21.09.2022 asking him to make payment within thirty days, failing which booking of flat would be cancelled, which was responded by the letter dated 18.10.2022, wherein he requested to provide all the relevant documents, as mentioned in the letter, to enable him to apply for loan from the Bank. Thereafter, the respondent cancelled the booking of the flat of the complainant vide letters dated 21.10.2022 and informed him to collect cheque of the booking amount vide letter dated 07.12.2022.

Having heard learned counsel for the parties and gone through the aforesaid facts, the Authority observes that the complainant, prima facie, is at fault in not complying with Schedule-C of the Agreement for Sale dated 09.05.2022, wherein it was specifically mentioned that within seven days of execution of the Agreement 25%, apart from 10% of the booking amount, is to be deposited by the complainant but the complainant neither made payment within the specified time nor demanded any document to apply for loan. When the respondent issued demand notice dated 21.09.2022 asking the complainant to make payment within thirty days, failing which booking of flat would be cancelled, the complainant sent a letter to the respondent on 18.10.2022 to

provide him all the relevant documents, to enable him to apply for loan from the Bank. .

The Authority also observes that that the respondent is right in submitting that after execution of the Agreement on 09.05.2022 the complainant remained silent over making payment of 25% within seven days of execution of the Agreement and he woke up only after demand notice was issued on 21.09.2022, whereas he was fully aware while making signature on the Agreement that in terms of Schedule-C of the Agreement that he is to deposit 25% within seven days of the Agreement, which resulted in cancellation of booking of flat vide letters dated 21.10.2022 and 07.12.2022.

Taking into consideration the aforesaid facts and the observations made above, the Authority holds that the prayer made by the complainant cannot be allowed. Accordingly, this complaint is dismissed with a liberty to the complainant to file a fresh case for refund of his principal amount of Rs.7,76,525/-.

As regards claim for compensation is concerned, the complainant is at liberty to press the same before the A.O. as per the provisions of the Act.

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

**Sd/-**  
**Nupur Banerjee**  
**Member**