

REAL ESTATE REGULATORY AUTHORITY, BIHAR
Before the Double Bench of Mr Naveen Verma, Chairman,

& Mrs Nupur Banerjee, Member

Case No. RERA/CC/1133/2021

Janki DeviComplainant

Vs

M/s Ghar Laxmi Buildcon Pvt. Ltd.Respondent

Project: Income Tax Residency

ORDER

09-06-2022

13.06.2022 The matter was last heard on 24-05-2022 before the Double Bench.

The complainant has filed this matter for revocation of cancellation of her booking by the promoter on 10.12.2020. The complainant had booked flat no. 607 on 06.12.2015 in Income Tax Residency, a project of M/s Ghar Lakshmi Buildcon Pvt Ltd by making payment of Rs. 1,00,000/-. The agreement for sale was executed on 23.06.2017 for the total consideration amount of Rs. 19,00,000/- which mentions that the complainant had made a payment of Rs. 4.50 Lakhs on various dates – 06.12.2016, 15.06.2016 and 20.03.2017. It has been stated that till 13.11.2019 a sum of Rs. 7.5 lakhs for the aforesaid flat has been paid as per the payment schedule. The complainant has alleged that the respondent company had promised to complete the construction and hand over the flat within 2.5 years but has failed to do so. It has been alleged that the complainant never received any letter from the respondent company as an acknowledgment regarding progress of construction.

The complainant has alleged that suddenly a demand letter was received by her on 28.09.2020 for payment of Rs. 10,45,000/- within 5 days failing which the registered agreement to sale would be cancelled.

The complainant has further stated that she is cancer patient and has to travel to Delhi frequently for medication.

Thereafter, after lapse of few months the complainant received a letter of cancellation on 10.12.2020 . The complainant has stated that they had sent a letter to the respondent on 29.01.2021 expressing her willingness to make the payment as per the schedule of payment mentioned in agreement to sale. Therefore, the complaint has been filed praying for revocation of the cancellation by the respondent company and handover the possession of flat.

The complainant has placed on record a copy of agreement for sale dated 23.06.2017 executed between the complainant and the respondent company and a copy of letter dated 29.01.2021 sent to the respondent company.

Reply has been filed by the respondent company denying the entire allegations of the complainant. The respondent company in its reply has stated that the “flat in question was on hold for two years due to Covid -19”. It has further been stated that three demand letters and three legal notices were sent to the complainant for making payment but there was no response from the complainant. The respondent company has further submitted that they are ready to refund the amount of Rs. 7.50 lakhs to the complainant.

The complainant has filed her rejoinder to the reply and has denied the averment of the respondent company that three demand letters and legal notices were sent but instead, only one demand letter was received. In fact the letter dated 14.11.2019 which the respondent claimed to be a demand letter was actually a cancellation letter. The complainant has reiterated that in their reply sent on 29.01.2021 , it has been mentioned that she was neither served with the demand letters nor was informed about the development of the project.

During the course of hearing, the complainant submitted that the flat was booked under construction linked payment plan and was to be delivered by January 2020. The complainant stated that she is ready to

make the payment of the remaining dues to the respondent company and then take over possession.

Section 13(1) of RERA Act, 2016 “A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with person and register the said agreement for sale, under any law for the time being in force.”

However, since the booking was made much before the Act came into force, the respondent cannot be held guilty of violating this provision but they should ensure that in future bookings, this is strictly adhered to.

Section 19(2) of the Real Estate (Regulation & Development) Act, 2016 says that the allottee shall be entitled to know stage-wise time schedule of completion of the project including the provisions for water, sanitation, electricity and other amenities and services as agreed o between the promoter and the allottee in accordance with the terms and conditions of the agreement for sale.

The Bench observes that the respondent in its reply has informed the stage of construction along with the demand letter.

The Bench, however, agrees that keeping in view the serious health condition of the complainant, they ought to have grant time to her to pay the remaining dues.

Since the demand letters sent by the respondent company also indicated the stage of construction, the complainant ought to have made timely payments as provided in section 19(6) of the Act. The allegation of deliberate latches on the part of the respondent company has not been established.

The Bench therefore feels that the cancellation of the allotment by the promoter is not unjustified in view of the provisions under Section 11(5) of the Act. However, the promoter should have immediately refunded the deposit after cancellation on 10.12.2020, instead of

making the offer to refund, that too, in three installments during the course of hearing in this complaint matter filed before the Authority on 8.11.2021.

The Bench takes note of the submission of the complainant that she is willing to pay the remaining instalments. Rule 17 of the Bihar RERA Rules, 2017 and the model agreement for sale provides for payment of interest in cases of default. If the flat is on hold as mentioned in the reply of the respondent and it is still available they may offer the same flat to the complainant after taking the remaining principal amount and interest, if any. If the flat is not available, the respondent would refund the principal amount of Rs 7.50 lakhs along with interest at the rate of marginal cost of fund based lending rates (MCLR) of the SBI as applicable for three years or more plus one percent within 60 (sixty) days from the date of this order.

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

Sd/-
Nupur Banerjee
Member

Sd/-
Naveen Verma
Chairman