

REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR
Telephone Bhavan, Patel Nagar, Patna-800013.
Before the Single Bench of Mr Naveen Verma, Hon'ble Chairman

Case No. CC/384/2019

Alok Kumar SinghComplainant

Vs

M/s Ramsuyash Projects & Marketing Pvt. Ltd &Ors.....Respondents

Project: Meera Apartment

ORDER

14-2-2022 The matter was last heard on 24-1-2022 along with the batch of cases.

The case of the complainant is that the respondent approached him with a proposal to buy a flat in the Meera Apartment developed by them. Agreement for Sale dated 27.02.2010 was executed between the complainant and the respondent for purchase of flat known as Upper Ground Floor No.1, earmarked from the front side towards the eastern side on the Upper Ground Floor of the building having super built up area of 2048 sq.ft for a total consideration of Rs. 50,39,500/-. The complainant has stated that the respondent had taken the land admeasuring 5220 sq ft situated at Mohalla - Patliputra Colony, Mauja-Mainpura, Survey Thana- Phulwari bearing Survey plot no.- 1523, Khata No- 617, Tauji No.- 5505 under P.S.- Patliputra from the landowner namely Smt. Meera Prakash for construction of an apartment. It has been alleged that the promoter in light of the aforementioned agreement to sale started accepting the consideration amount from the complainant and as such the complainant paid a sum of Rs. 42 Lakhs.

It has been alleged that while the date of completion of the project as per the aforementioned agreement was June 2010 whereby the promoter was supposed to execute the final sale deed with the complainant, but the respondent failed to complete the project and ,as

such, the agreement was extended. Later, as alleged the respondent company stopped communicating with the complainant and as such the complainant filed a title suit bearing no.- 520/2014 which is still pending before the Learned Court of Sub-judge II, Patna. The complainant also filed a complaint case bearing Complaint Case No- 2931(c) of 2013 and upon learning of filing of case bearing no. RERA/CC/115/2018, the complainant has filed the instant case praying for allotment of the flat under question; to pay compensation of Rs.5 Lakhs for mental agony and harassment and to pay Rs. 1 lakh as the cost of litigation. The complainant has sought for interim relief of restraining the respondent company from transferring the disputed flat to any other person.

During the course of hearing before the Bench of Member, Shri R.B Sinha, the complainant submitted that the Director of the respondent company is absconding and is traceless. The Bench was further informed that although the agreement for sale has been executed with the complainant, the sale deed was registered in the name of a third person. The complainant further submitted that although he had sought allotment of flat but now since there are no flats available in the project, he now wants refund of the paid amount with interest.

The Bench notes that Respondent no.1 namely M/s Ramsuyash Projects & Marketing Pvt. Ltd has not appeared on any of the dates of hearing nor any reply has been filed. The Bench further notes that ICICI Bank Limited, who had taken part of the premises on lease, has been made Respondent no. 2 in the case by order of the Bench of Shri R B Sinha dated 28-01-2019 and that Rahul Kumar and Poonam Singh, the owners of the said premises in which the bank was functioning, have been made Respondent No.3 and 4 on the prayer of the Respondent No.2 through their petition filed on 14-03-2019.

The learned counsel appearing on behalf of Respondent No. 2 namely ICICI Bank Limited has filed petitions stating therein that they are neither necessary nor proper party to the case and therefore prayed for deletion of their name. It was submitted that the flats on the ground floor G1 and G2 were leased out to the Bank vide lease deed no. 1861 dated 14.02.2014 between Respondent no. 3 and 4 and ICICI Bank Limited, which now stands vacated. The counsel further informed that as per

direction of the Authority, Rs 25 lakhs rent was deposited with the Authority for payment to the rightful claimants Rahul Kumar and Poonam Singh (Respondent No. 3 and 4) who had signed the Indemnity Bond claiming that the flat G1 and G2 is allotted to them. On the last date of hearing, the Bench has allowed the payer of the Respondent No. 2 and expunged Respondent No.2 ICICI Bank Limited from the case as there were no grievances against the Bank.

The learned counsel Ms Parul Prasad, appearing for Respondent No. 3 and 4 Mr. Rahul Kumar and Mrs. Poonam Singh has also filed an application stating therein that they are not necessary parties to the case as the onus lies on the promoter to obtain the completion certificate. The learned counsel has further stated in her application that they are bonafide purchasers of flats G1 and G2 and registered sale deeds have been executed in their favour.

The landowner Meera Prakash has filed her supplementary affidavit and written notes of arguments wherein it is stated that a development agreement was executed between the respondent company and Meera Prakash on 23.04.2009 which was duly registered on 03.07.2008. The landowner has stated that she is the rightful owner of flat No. G1 on the Ground floor. It has further been stated that the respondent company executed a supplementary development agreement by forging signature of the Meera Prakash for which a criminal case bearing Complaint Case No. 30352(C) of 2014 was filed before the Learned Chief Judicial Magistrate, Patna for the fraud committed. The Bench notes that the court of learned Chief Judicial Magistrate was pleased to take cognizance against the Director of Respondent No.1 u/s 420, 468 and 323 of the Indian Penal Code on 20.04.2016. It has further been alleged that the construction of the flat is not complete. The landowner has also mentioned in her arguments that a title suit bearing case no. T.S. 257/2019 has also been filed by Respondent No. 4 Mrs. Poonam Singh which is pending before the Civil Court, Patna. Mr. Sharad Shekhar, learned counsel for the landowner orally informed the Bench that the share division as per the development agreement was 45%-55% and the respondent company has sold all the flats falling in its share.

On a query by the Bench on the last date of hearing , Ms Parul Prasad, learned counsel of the Respondent no. 3 & 4 informed that arbitration was initiated by the landowner Meera Prakash wherein ex-parte order was passed by the Arbitrator.

On the last date of hearing, the complainants have prayed for refund of the deposited amount with interest.

Having gone through the records of the case and considering the submissions of the parties present, the Bench notes that the flat in question falls in the share of the landowner but the agreement has been executed with the respondent company. The Bench further observed that in other cases in this project, more than one agreement has been signed for the same flat, final conveyance deed has been executed with someone else without cancelling the agreement for sale executed with the third party. Since a particular flat has been allotted and registered to more than one person, the question of forming an association of allottees as directed by the Bench earlier does not seem feasible.

The Bench observes that if the Director of the respondent company has executed a deed of absolute conveyance with some other person despite having a registered agreement to sale with the complainant, the appropriate forum to redress the grievance of the complainant would be a Court of competent Civil jurisdiction. The Real Estate (Regulation and Development) Act, 2016 does not give the mandate to the Authority to declare a registered sale deed as null and void. The Authority can pass orders for completion of flats, handing over of possession or refund of deposited amount. So far as the question of completing the work after formation of association of allottees is concerned, the Bench notes that since there is a dispute with respect to the flat in question, the action u/s 8 of the Real Estate (Regulation & Development) Act, 2016 can be taken only when the legal entitlement to the flat in question is clear.

In the present matter , the complainants have sought refund of the principal amount paid by him with interest. Hence, taking into consideration the submissions that Rs 42 lakhs have been paid by him which has nor been rebutted by the respondent, the Bench hereby directs the respondent company and its Directors to refund the principal amount

of Rs 42 lakhs along with interest on the deposited 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 receiving the payment till date of refund within sixty days of issue of this order.

The Bench clarifies that the liability of the Directors of the company to refund the amount would not cease to exist even if the company is no longer in existence. If the payment is not made within sixty days, the complainants would be at liberty to approach the Authority for execution of its orders which would then take action to recover this amount as arrears of land revenues. The complainants are urged to give the present address of the Directors of the respondent company so that the order could be pasted on their premises. The complainants are also requested to give details of the properties owned by the Directors of the respondent company as this would facilitate in recovering their due amount.

Since the respondent company has continuously violated the orders and directions issued by the Bench from time to time, a penalty of Rs 1 lakhs is imposed upon the Directors of the respondent company to be paid within 30 days from the date of the order.

The complainants may file a case before the Civil Court and /or a criminal matter for the fraud that has purportedly been committed by the respondent company.

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

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

Sd/-
Naveen Verma
Chairman