

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/1312/2020

Manoj Kumar.....Complainant

Vs

M/s Shree Loknath Baba Homes Pvt. Ltd Ors.....Respondents

Project: Sarvoyani City

ORDER

18-2-2022 The matter was last heard on 28-1-2022 along with the batch of cases.

The case of the complainant is that he booked a flat bearing no. A-509 having 1290 sq ft having total cost of Rs. 15 lakhs with Rs 2.50 lakhs for amenities. A memorandum of understanding was executed between the complainant and the respondent company on 23.03.2017. It is stated that one Rohit Kumar informed the complainant that map for the building would be approved within one or two months and thereafter they shall complete the construction of the building within 48 months or maximum within 56 months positively. Upon demand of prospectus, sanctioned plans, lay out plans along with specification, time schedule of the completion of project, the complainant was informed that the documents would be handed over later but it has not been produced and handed over to the complainant till date.

It has been stated that while the respondent company was entitled to take 10% of the total amount upon acceptance of offer and before the agreement , they demanded more than 10%. It has been alleged that Respondent No. 3 obtained the signature of the complainant on a pre-typed Non Judicial Stamp of Rs. 1000 on 23.03.2017, saying it to be agreement for sale of the flat whereas it was a Memorandum of Understanding.

The complainant has stated that he paid Rs. 5 lakhs vide cheque dated 26.12.2016, Rs. 2 lakhs vide cheque dated 04.09.2017, Rs. 2 lakhs vide another cheque dated 04.09.2017 and Rs. 2 lakhs vide cheque dated 24.03.2017 against which money receipts were issued. It is alleged that Rohit Kumar called for the entire documents relating to the flat from the complainant on 22.10.2019, forcefully obtained the signature of the complainant on a pre typed Memorandum of understanding and changed the Flat No. from 509 to 504. It is alleged that when the complainant requested to handover the possession of the flat, the respondent company refused and instead pressurized the complainant to withdraw from the project. Thereafter the respondents served the complainant a notice dated 03.01.2020 asking the complainant to pay Rs. 6,02,000/- extra within a period of one month in the name of structural changes and increase in area of 172 square feet at present market rate/value to which a reply dated 13.01.2020 was duly sent by the complainant.

Hence, the complaint has been filed praying for quashing notice dated 03.01.2020 sent by the respondent company and after quashing the notice dated 03.01.2020 the respondents be directed to charge for the additional area at the rate of per square feet as is charged at the time of agreement, direction regarding not to pressurize the complainant to withdraw from the project rather possession of the Flat be handed over to the complainant, direction regarding production before this Authority the previous and changed maps, plans approved for construction of the apartment namely "SARVAYONI CITY".

The complainant has placed on record memorandum of understanding dated 23.3.2017, money receipt dated 09.06.2018 for Rs 3.50 lakhs, money receipt dated 19.09.2017 for Rs 2 lakhs, money receipt dated 07.09.2017 for Rs 2 lakhs, money receipt dated 24.03.2017 for Rs. 2 lakhs, money receipt dated 25.12.2016 for Rs. 5 lakhs, memorandum of understanding dated 09.06.2018, letter dated 03.01.2020 by the respondent company and reply notice dated 13.01.2020 by the complainant.

No reply has been filed by the respondent company but the learned counsel for the respondent company was present on all the dates of hearing and has opposed the submission of the complainant.

During the course of hearing before this Bench, the learned counsel appearing on behalf of the complainant submitted that the complainant is not ready to pay the amount of Rs 6,02,000/- for the increase in the area but is willing to pay at the rate of Rs 1162 per sq ft which was mentioned in the agreement. However, subsequently he agreed to pay up to Rs. 2,50,000/- only if the flat is completed and handed over within a time frame.

The learned counsel for the respondent company submitted that the project is of 9 floors and work till 7-8th floor is complete. The Bench was further informed the respondent company has applied for revalidation of map with the competent authority and the application for extension of registration is pending before the Authority.

The parties attempted to settle the matter amicably but it seems no settlement has been arrived at till date.

After the last date of hearing, although the respondent has provided a copy of the map but the learned counsel for the complainant has stated in his written submission that old and revised map has not been given to him even after specific direction by the Bench.

The Bench observes that the promoter can make changes to the agreed map and design only after taking the consent of the allottees as laid down under the Real Estate (Regulation & Development) Act, 2016. In this matter, admittedly the area of the flat has been enhanced for which the promoter is demanding payment at the market rate.

The Bench notes that the allottee is ready to pay an amount higher the rate mentioned in the memorandum of understanding for the increased area, which is a fair offer in the given circumstances. The Bench observes that the promoter is unfairly demanding the market rate for an area enhanced by them without taking the consent of the allottees.

The Bench, therefore, directs the respondent to accept the amount of Rs 2,50,000/- offered by the complainant for the additional area of 172 sq ft, which is over and above the carpet area agreed initially.

The respondent company is also directed to indicate the date of completion of the flat and handing over of possession to the complainant within 30 days of the order.

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

Sd/-
Naveen Verma
Chairman