

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/687/2019

Bairister Shahi.....Complainant

Vs

M/s Raman & Kumar Construction Pvt Ltd.....Respondent

Project: Raja Ram Palace

ORDER

18-2-2022

The matter was last heard on 28-1-2022.

The case of the complainant is that he booked a flat bearing no. Flat 408A in the project on 22.04.2015. The complainant has stated in his complaint that the construction of the project was to be completed by 2018 and the total cost of the project was Rs. 34,20,000/-. The complainant has stated that prior to this, a flat was booked at Muneshwar Plaza on 27.01.2012 and he paid the entire consideration amount by 12.07.2013. The complainant had paid Rs 2 lakhs on 27.01.2012 by SBI cheque no.237259, Rs.3.51 lakhs by RTGS on 12.07.2013 meaning thereby a total sum of Rs. 5.51 lakhs was paid by the complainant for the booking made in Muneshwar Plaza. It is stated that the said construction could not take place due to some land dispute therefore the booking was transferred from Muneshwar Plaza to the project on question which was accepted by the complainant. The complainant has alleged that even after lapse of so many years, no construction has taken place in the project and the project is also not registered with the Real Estate Regulatory Authority. The complainant has alleged that when the complainant demanded refund of the amount of Rs 5.51 lakhs with interest, the

complainant was asked to send a demand letter which was duly sent to the respondent company on 06.09.2019 with a reminder letter on 25.09.2019. It is further alleged that the respondent company asked the complainant to visit the office and accordingly the complainant visited the office of the respondent company on 17.10.2019 but only false assurance of refund was given by the respondent company. Therefore, the complaint has been filed praying for refund of booking amount with interest.

The complainant has placed on record receipt dated 12.07.2013 of payment of Rs. 3.51 lakhs through RTGS to respondent company, copy of cheque of SBI dated 27.01.2012 amounting to Rs 2lakhs duly acknowledged by the respondent company, proof of booking of flat at project in question, demand letter dated 06.09.2019 and reminder letter dated 25.09.2019 sent by the complainant.

Reply has been filed by the respondent company wherein the respondent company while admitting the fact of booking of flat and receiving the money from the complainant, has raised preliminary objection with regard to the maintainability of the case. The respondent company has stated that the project could not start as the map was not approved by the competent authority due to some land dispute and it was rejected in 2013. The respondent company has further stated that the complainant was requested several times to take back the deposited money but the complainant chose not to do so and suddenly after lapse of 5 years sent a letter demanding refund of the deposited amount with interest. The respondent company has further stated in its reply that the project was dropped before the commencement of the Real Estate (Regulation & Development) Act, 2016 and therefore the matter is fit to be dismissed on the ground of jurisdiction. The respondent company has also stated that the respondent company is ready to refund the amount of Rs 5.51 lakhs without interest and penalty to the complainant in 5 instalments.

The respondent company has also filed a compilation of judgments passed by the Learned Real Estate Appellate Tribunal, Bihar in REAT Appeal No.1/2019 M/S Pukhraj Developers Pvt Ltd. v. Sri Om Prakash Tiwari & Ors passed on 24.01.2020 and in REAT Appeal No. 14/2021 Nisana Infrastructure Pvt Ltd v. Real Estate Regulatory Authority, Bihar & Anr passed on 20.07.2021.

During the course of hearing, the learned counsel for the respondent company reiterated that the work on the project- Muneshwar Plaza project did not commence as the map of the project in question was sanctioned by mukhiya. He further submitted that the company is trying to obtain approval from the competent authority, which is now the planning authority, and that the company is ready to either hand over the possession to the complainant or refund the deposited amount. However, the complainant has sought refund of the amount with interest as he has already purchased another flat.

On the last date of hearing, the Bench noted that an offer of out of court settlement was also made by the respondent company but the offer was turned down by the complainant as he insisted on refund with interest.

The Bench has gone through the records of the case and the submissions advanced by both the parties as well as the judgments produced by the respondent company. Admittedly , the complainant had booked a flat in the project but the said project could not start as the competent authority had rejected the map in 2013 i.e, much prior to the commencement of the Real Estate (Regulation & Development) Act 2016, on the ground of an ongoing land dispute. Notwithstanding the above, in the interest of allottees, the Authority has been disposing matters with respect to real estate projects where the promoter has taken the deposit and has neither handed over possession nor refunded the amount, even if the project is not ongoing and the map has been duly approved by the competent authority.

In the instant case as is evident from the submissions of the parties and documents produced, the project was dropped. The respondent should have returned the deposit made by the complainant then itself and as they have kept the money for so many years and would have earned interest on that amount, the argument that they would not pay interest on the ground that the issue is not maintainable before the Authority does not appear to be justified. The Hon'ble Supreme Court has settled that the impact of the Act is retroactive and hence bookings made prior to 2016 can be examined by the Authority.

The Bench takes note of the submission of the respondent company that they are willing to make the refund, and urges them to pay the interest, keeping in view that the main object of the Real Estate (Regulation & Development) Act 2016 is to protect the interest of the allottees. The complainant may also approach the Consumer Commission or any other Court for that regard for seeking interest and compensation.

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

Sd/-
Naveen Verma
Chairman