

REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR
Before the Single Bench of Mr. Naveen Verma, Chairman

Case No.RERA/CC/574/ 2021

Ranjeet Kumar Pandey Complainant
Vs.
M/s Subhgami Real Estate Pvt. Ltd. Respondent

Project: Subhlaxmi Complex.

Present: For Complainant: Mr. R. B.Sah, Advocate
For Respondent : Mr. Jayant Kisto, Advocate

ORDER

18-11-2021: The matter was last heard on 21.10.2021.

The case of the complainant is that he booked a flat bearing no. 308 on 3rd floor in the project by paying Rs. 1,00,001/- as the booking amount on 8.11.2018 via cheque no. 436699 followed by other payments between November 2018 till April 2019 totaling Rs 23 lakhs. The above payment was made without executing an agreement to sale. The total cost of the flat was Rs 50,95,000/-.

The complainant submitted that after repeated requests, a draft Memorandum of Understanding dated 01.06.2019 was shared by the respondent company, which is not in the format prescribed in the Bihar RERA Rules, 2017 and that he has not signed the agreement. He has alleged that the promoter promised to hand over the flat by October 2020, and thus the respondent company fraudulently obtained Rs 23,00,000/- from the complainant on various dates, however till date the foundation of the project is not complete. It is further alleged that the complainant had been requesting the respondent company to sign and register an agreement but the respondent company deferred this on one pretext or the other and when pressure was made by the complainant,

the respondent company sent the above Memorandum of Understanding to the complainant containing contradictory terms in itself. The complainant submitted that perceiving the fraudulent conduct on the part of the respondent company, the complainant wishes to withdraw from the project and seeks refund of the paid amount with interest.

The respondent company has filed its reply denying the allegations leveled against the company. The respondent company has admitted in its reply that the delay caused in the completion of the project was beyond its control. It further stated that the Complainant's wife Mrs. Jaya Pandey who is a nominee as per the KYC form submitted by the complainant, filed an application requesting not to cancel the allotment stating that she had also made some payment towards the booking of the apartment.

The respondent company further submitted that the complainant is only attempting to get the refund since the Complainant has admittedly invested in another project and thus, the complainant cannot be held as an "Allottee" under the definition given in RERA Act, 2016. The respondent company also submitted that allegation of the complainant that contradictory facts are stated in the Memorandum of Understanding (MOU) and that it has neither been signed nor stamped, is not tenable as the complainant is a reasonable prudent person and the draft agreement was given to the complainant and he never turned up with his suggestions and for signing the agreement.

Rejoinder to reply has been filed by the complainant. The complainant has stated in his rejoinder that he had sent a letter dated 30.03.2021 to change the name of nominee and that nominee's name has nowhere been mentioned in the MOU therefore, the nominee has no locus standi in the instant case. It has further been stated that the MOU is not as per the RERA Rules, 2017 and therefore is not valid.

The Bench, after perusing the records and hearing the submissions of both the parties, is of opinion that the complainant falls under the definition of "Allottee" as given under the Act since he has deposited an amount of Rs 23 lakhs to the respondent company as

admitted by both the parties in the draft MOU and therefore the case is maintainable before the Authority.

The Bench also notes that the respondent company has taken the booking of the flat without even getting the project registered with RERA and has therefore violated section 3 of the Real Estate (Regulation & Development) Act, 2016. The registration wing of the Authority is directed to initiate suo motu proceeding as per section 35 and section 59(1) of the Act.

During hearing the learned counsel for the respondent company stated that the project was delayed for reasons beyond his control and is ready to refund the amount to the complainant in installments but is not willing to pay the interest amount since it is a case of voluntary withdrawal. On the other hand, the learned counsel for the complainant emphasized on the refund of principal and interest stating that family disputes cannot be adjudicated by the Authority.

The Bench observes that the promoter has taken the payment of Rs 23 lakhs from the allottee in different phases between November 2018 to April 2019. Even if we accept the reasons for delay in starting the project given by the respondent, the complainant can certainly ask for full refund as work has not commenced as per the verbal agreement. The wording of the draft MOU has no relevance if it is contrary to the agreement to sale as stated in the Bihar Rules, 2017. As per the Bihar Rules, 2017 the promoter can take only 10% of the project cost at the time of booking. In this matter the respondent company has admittedly taken much more without showing progress in construction and therefore their contention that it is matter of voluntary withdrawal cannot be accepted. Further, regardless of the fact that work could not be commenced due to various factors, the fact remains that the amount of Rs 23 lakhs was lying with the respondent company on which it would have earned interest or used elsewhere. Had the promoter adopted the ethical practice of returning the excess amount over the booking amount, then their plea that interest is not payable could have been considered. Since the amount was lying with the respondent

company the interest on the amount of deposit would have to be paid to the allottee by the promoter.

The respondent company has placed on record a letter by the wife of the complainant that she had also made some payment towards the booking of the apartment and that the booking should not be cancelled. The Bench agrees with the contention of the learned counsel for the complainant that a nominee who is not a co-allottee cannot prevent the cancellation of the booking by the sole allottee.

The Bench also notes that the RERA Act 2016 does not empower the Authority to interfere in legal issues going on between the complainant and his wife. However, the Authority cannot totally ignore the plea of the wife of the complainant that she has also contributed towards the payment made for the apartment. Neither party has given any evidence either to substantiate or contradict this assertion. In any case this can be settled either by the court of competent civil jurisdiction/ family court or on the basis of compromise between the complainant and his wife. It is for the respondent company, who has raised this issue, to take a view on whom to make the refund and in what proportion.

On the basis of the submissions and taking into consideration the documents filed by the parties, the Bench hereby directs the respondent company to refund the amount of Rs. 23,00,000/- along with interest calculated at the rate of marginal cost of fund based lending rates (MCLR) of State Bank of India as applicable for two years from the date of receiving the payment till making the actual refund.

With these directions the matter is disposed of.

Sd/-

(Naveen Verma)
Chairman