

**REAL ESTATE REGULATORY AUTHORITY, BIHAR**

**Before the Bench of Mr. Naveen Verma, Chairman**

**Case No. RERA/CC/464/2019**

**Irfan Ahmad**

**.....Complainant**

**Vs**

**M/s Bhootesh Construction Pvt. Ltd.**

**.....Respondent**

**Project: Rahmat Tower.**

**ORDER**

10.10.2022: The matter was last heard on 15.9.2022. The respondent has sent their reply by email on 23.09.2022. The complainant sent the rejoinder by email dated 3<sup>rd</sup> October, 2022 and 6<sup>th</sup> October, 2022.

The case of the complainant is that he had entered into agreement to sale with the respondent which was registered on 12.8.2015 for purchase of flat no.303 on the 3<sup>rd</sup> floor at East-South. The total consideration amount was agreed at Rs.15 lakh as per the payment schedule mentioned in the 3<sup>rd</sup> schedule of the agreement. The complainant and the respondent had agreed that Rs.3 lakh had been paid at the time of agreement, 3 lakh was paid through a post dated cheque and the rest amount was to be paid at the date by which possession of the flat of the same apartment was handed over and the Deed of Sale was to be executed.

The complainant has filed the application in Form-M for delivery of the allotted flat; compensation for the rent paid and for issuing direction to the respondent not to demand GST from him.. The complainant has also stated in the online application that the Managing Director of the

company is saying “he will cancel the booking and will give my booked flat to someone else”.

This matter was heard earlier by the then Member, Shri R. B. Sinha then in the Double Bench of Chairman and Member and thereafter, finally in this Bench, The matter was delayed because the Managing Director of the respondent company was in judicial custody for quite some time and number of complaints regarding this project and other projects of M/s Bhootesh Construction Pvt. Ltd. were heard in which the other partner of the company had made various submissions including alleging that the land owner allottee is creating obstructions in completing the project. A notice was also issued to the land owner allottee. A petition was filed by Shri Sudhir Kumar Singh, land owner on 13.9.2021 stating that he had not created any obstruction in construction of the project and that no one had contacted him for this purpose.

On the last date of hearing learned counsel for the respondent had submitted that flat no.303 allotted to the complainant was no longer available as this apartment has been sold to someone else as the complainant had allegedly not made payment in time. He had offered an alternative flat to the complainant in the same floor in the project.

The complainant had refuted the allegation of non-payment of dues and stated that he was not interested in alternative flat. He had submitted that he had made payment in time as per the Agreement to Sale.

In the written reply the respondent had stated that after paying Rs.6 lakh the complainant did not make any further payment although, reminder was sent to him. He

stated that since the payment has not been made as per the agreement, he has allotted the flat to some other person. He also stated that work was stopped in the Corona pandemic but now it has been resumed and 80% of the work is completed. The respondent also offered to allot flat no.304 after the complainant pays the remaining consideration amount and interest on the delayed payment. The respondent also offered to return the advance payment after deducting 25% cancellation charge as per the agreement. The respondent has annexed copies of email sent to the complainant in 2016 for making the remaining payment.

In the rejoinder filed by the complainant it has been reiterated that as per the payment schedule the remaining amount was not required to be paid as the flat has been completed and therefore, the respondent could not have cancelled the booking. It has been stated that the payment was not due as the respondent had never informed that the flat is ready for possession and execution of Sale Deed and hence the cancellation is not in accordance with Section 11 (5) of the Real Estate (Regulation and Development) Act, 2016. He further submitted that the complaint was filed on 24.7.2019 but the respondent did not mention about the cancellation of the allotted flat on various dates on which the hearing took place. The complainant has stated that the flat was to be handed over by March, 2016 subject to conditions of force majeure, Hence, in case of the delayed period the complainant is also eligible for interest. He also sought liberty to file a case before the Adjudicating Officer for seeking compensation. The complainant has expressed

his willingness to take possession of the said flat in a the existing condition or alternatively if the respondent completes the project he would pay the balance amount of consideration.

Perused the record. The registered Agreement to Sale mentions that the land of the project belongs to Md. Irshad Ullah Khan and this land owner had executed the development agreement with the respondent company The petition of Sudhir Kumar Singh as a land owner in this project apparently does not pertain to this project, Rahmat Tower, of the respondent company.

The Authority observes that the submission of the complainant that the respondent had mentioned about the cancellation of the flat for the first time on 30.5.2022 has to be viewed in the context of his apprehension as mentioned in the online petition that the respondent may cancel his booking and allotted to someone else. In the hearing dated 31.9.2020 before the then Member it is mentioned that the complainant apprehends that “this flat has been sold to other person”.

Notwithstanding this the respondent has also not filed copy of the letter stating that the booking of the flat has been cancelled. The respondent also has neither mentioned the date on which the booking has been cancelled nor has explained as to why this was not filed in writing when the matter was taken up for hearing.

The Authority notes that under Section 11 (5) of the RERA Act, 2016, it can intervene if the allottee is aggrieved by the cancellation. The respondent ought to have issue the letter of cancellation if they felt that the terms of

agreement for sale was not fulfilled by the allottee after which the allottee could have approach the Authority as per Section 11 (5) of the Act.

In this matter the promoter has also mentioned that they have allotted flat no.303 to someone else. Even if the Authority accepts the case of the complainant that the cancellation of the booking was bad in law, it cannot take away the right created in favour of some other allottee to whom flat no.303 has now been stated to have been sold. The legality of such allotment or otherwise would have to be examined by a court of competent Civil Jurisdiction. The complainant may approach the Civil Court if he wants flat no.303 for which he had entered into agreement to sale as this Authority cannot take away the right of some other allottee to whom the respondent has sold the same flat.

The terms and conditions of the model agreement for sale as prescribed by Rule 8 of Bihar RERA Rules, 2017 has overriding effect in any Agreement to Sale entered earlier in case the conditions spread out in the Agreement to Sale are not in accordance with the model agreement.

Section 13 (3) of the RERA Act clearly lays down that the promoter cannot accept more than 10% of the cost of the apartment without entering into an Agreement to Sale. Clause 1.11 of the model agreement to sale mentions about the booking amount. This amount cannot exceed 10%. Clause 7.5 mentions that if the allottee proposes to sale/ withdraw from the project without any fault of the promoter, the promoter is entitled to forfeit the booking amount and return the balance amount within 45 days of such cancellation. The claim of the respondent that they

would deduct 25% of the advance paid is clearly not tenable in terms of the law. Even if the promoter is not in fault they could have forfeited only 10% of the project cost assuming that this was, indeed, the booking amount. The promoter would have to return the remaining amount paid by the complainant along with interest. In this matter the promoter is admittedly, at default because the project was to be completed in March, 2016. The issue of pandemic cannot be taken as a cause of delay.

Taking consideration of the above and the fact that the complainant is not willing to accept the alternate offer of flat no.304 as the booked flat 303 has purportedly been sold, the Authority directs the respondent company and its Directors to refund the entire amount of consideration paid, viz Rs.6 lakh along with interest at the marginal cost of fund based lending rates (MCLR) of SBI for three years or more plus 4% from the date of booking till the date of refund within sixty days of issue of this order.

The complainant is at liberty to press his claim for compensation before the Adjudicating Officer.

With these observations and directions the matter is disposed of.

Sd/-

**(Naveen Verma)**  
Chairman