

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/266/2019

Arun Kumar Verma..... Complainant

Vs

M/s Brahm Engineers & Developers Pvt Ltd.....Respondent

Project: Sri Janaki Bhawan

ORDER

21-2-2022 The matter was last heard on 18-2-2022.

The Bench had passed an interim order on 07-02-2022 directing the respondent company to file a written reply to the supplementary application filed by the complainant. However, no reply has been filed by the respondent company.

The case of the complainant is that he booked a flat in the project bearing flat no. 204 in Block B having 1470 sq ft; an agreement for sale was executed on 16-1-2013 for a total consideration of Rs. 40 lakhs. The complainant paid Rs. 10 lakhs as he was assured that construction has reached up to brick work. It is further stated that as per assurance and terms indicated in agreement, Bank of India released loan amount of Rs. 10 lakhs on 12-01-2013, Rs. 20 lakhs on 12-02-2013 and lastly Rs.

6,79,600/- on 27-07-2013 vide cheque was given to respondent company. However, the project has not been completed as yet and hence the complaint has been filed for refund of the money taken with interest. It has also been stated that the project is an ongoing project and it has not been registered with the Authority.

The complainant has placed on record agreement for sale dated 16-01-2013, letter issued by Bank of India regarding sanctioning of loan of Rs. 30 lakhs, letter dated 18-1-2013 regarding permission of mortgage issued by the respondent company, demand letter dated 18-01-2013 issued by the respondent company, money receipt dated 12-01-2013 for Rs. 10 lakhs issued by the respondent company.

No reply has been filed by the respondent company. However, the Director of the respondent company along with the learned counsel was present during all the hearings and has admitted that the company has taken the amount from the complainant.

A supplementary affidavit was filed by the complainant along with copies of agreement dated 14-06-2020 stating that a compromise was arrived at between them wherein the respondent company agreed to pay Rs 51,00,000/- to the complainant. However, the respondent company has refunded only Rs. 25 lakhs and Rs. 26 lakhs is yet to be refunded to the complainant.

The complainant has also alleged that the respondent is diverting funds for construction of A&M Mall taken up by them in Nawada and

that they should be prohibited from undertaking fresh work till all the liabilities of this project are met. Copies of the map/ plan of that project has been filed before the Bench.

An opportunity was given to the respondent to submit their response to the allegations levelled against them. Since they have not filed any reply after the Interim Order it is presumed that the contention of the complainant that the promoter is diverting funds to construct A&M Mall in Nawada is correct. Hence the respondent is directed not to undertake this new project unless the liabilities of the complainant are cleared. A copy of this order may be sent to the Registration Wing also.

During the course of hearing and on perusal of the supplementary affidavit filed, the Bench noted that a compromise was arrived at between the complainant and the respondent company wherein the respondent company agreed to pay Rs 51,00,000/- to the complainant. It is evident from the records that the complainant had paid 36,79,600/- to the respondent in three instalments in 2013. Admittedly the respondent company has refunded only Rs. 25 lakhs and the complainant has pressed for directions that the remaining Rs. 26 lakhs as per the compromise agreement may be refunded to him. On the contrary, the respondent company denying the contentions of the complainant stated that they would first complete the project.

The Bench notes that the Authority is not the right forum to enforce various issues mentioned in a compromise agreement for which the complainant ought to approach a court of competent civil jurisdiction.

Under the Real Estate (Regulation and Development) Act and the Bihar RERA Rules, 2017 framed thereunder the Authority can give directions to refund the principal along with interest at the rates prescribed. The Bench further notes that in other cases filed before it, some allottees have prayed for delivery of possession for which directions have been given.

So far as this case is concerned, the Bench reiterates its observation that the respondent company has to make the refund to the complainant who wants refund as the priority to complete the project would not give relief to him.

The Bench directs the respondent company and its Directors to refund the remaining principal amount of Rs. 11,79,600/- along with interest for the entire principal amount of Rs. 36,79,600/- calculated 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 4 percent from the date of taking the payment to the date of actual payment, within 60 days of the issue of the order.

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

Sd/-
Naveen Verma
Chairman