

REAL ESTATE REGULATORY AUTHORITY, BIHAR

**2nd Floor, BSNL Telephone Exchange, North Patel Nagar, Road No. 10,
Patna -800023**

Before the Double Bench of Mr. Naveen Verma, Chairman
& Mrs. Nupur Banerjee, Members

Complaint Case No.: CC/1314/2020

Kishore Kumar Modi and Another.Complainant

Vs.

M/s Nissa Realtors Pvt. Ltd.....Respondent

Project: Ghar Apna Phase- II

ORDER

23-11-2021

24.11.2021

The matter was last heard before the double bench on 27.10.2021.

The case of the complainants is that they had entered into an agreement for sale on 22.09.2012 & 23.04.12 respectively with the respondent company for purchasing two Flats bearing Flat No.Q-5, in block - D, measuring 1361sq.ft. and Flat bearing Flat No.R-5, in block - D, measuring 1331sq.ft. along with parking space and un divided share in land in Ghar Apna Phase- II project for the total consideration amount of Rs.24,51,161 & Rs.19,65,000/- respectively and accordingly, they had paid Rs.57,88,454 for both flats including the extra charges to respondent company. They had further stated that it was assured by the respondent that the possession of both the flats will be handed over by 21-09-2014 and 22-04-2015, respectively, but till date, even after lapse of more than 8 years, the respondent have not handed over the possession of both flats. The complainants have requested to direct the respondent to immediately hand over the possession of both flat.

The complainant has placed money receipts on record dt.17-04-2011 for Rs.1,02,034/- & for Rs.3,00,000/-, dt.06-08-2012 for Rs.3,00,000, dt.31-10-2012 for Rs.2,89,000/-, dt.27-01-2013 for Rs.2,45,116/-, dt.17-04-2011 for Rs.1,02,034/- & Rs.3,00,000/-, dt.06-08-2012 for Rs.3,00,000/-, dt.01-11-2012 for Rs.4,20,367/-, for Rs.2,15,868/- & for Rs.3,00,000/- totaling to Rs.28,75,319/- and paid in cash total amount Rs.18,96,868/- on different dates as mentioned in complaint petition in respect to payments made to the respondent company. The complainant has also placed repayment schedule dt.02-12-2015, issued by Axis Bank, of sanctioned loan amount of Rs.9,74,973/-. The complainant had placed a receiving dt.11-06-2012 marked as Annexure -1 in reply to counter affidavit filed by complainant in which it is mention that, the complainant had paid Rs.6,00,000/-.

The respondent company has filed its reply on 12-04-2021, stating therein that, the present case relates to the period of Prabhat Kumar Verma, who was then, the Managing Director of the company . Subsequently the MD had expired and at the time of his death, the company had negative balance of Rs.1,23,22,270/- . It has been further submitted that after his death, the audit report was prepared by the Chartered Accountant and it was found that Rs. 2,83,37,303/-has been transferred in three transactions in the personal account and two private firms of M.D.then Prabhat Kumar Verma.

The respondent company further submitted that the present case is filed for the refund of total amount of Rs.57,88,454/- paid between 17-04-2011 to 03-01-2015 and denied the payment of Rs.18,96,868 paid by complainant in cash. It also further submitted by the respondent that, the present management is facing great financial hardship and trying to revive the financial position of company and ready to refund the amount of the complainant and requested 24 months' time to refund the entire principal amount.

The complainants had filed reply to counter affidavit on 04-08-2021, denying all the averments made by respondent in counter affidavit. It is further submitted by the complainants that entire consideration amount was paid and respondent has failed to honour its commitment of delivery of the flats within the stipulated time. It is further submitted by the complainants that the issue of transfer of money by the then M.D. cannot be a ground for setting off its liabilities to its consumers. The complainants has also put reliance on the order passed by the Hon'ble Punjab and Haryana High Court in case of Col. Kuldip Singh Dhillon Vs. Paragaon Utility Financiers Pvt. Ltd., (1988) Comp. Cas.19 (Punj. & Har. where Hon'ble High Court has held that where the directors take no action to recover the amounts embezzled amounts to act of mismanagement. Relying on that, complainants further submits that in the present case also, the respondent have till date taken no action to recover the amounts embezzled by the erstwhile Director and merely trying to shift the blame to set off its liability and requested for the refund of amount with interest.

During the last hearing on 27-10-2021, the learned counsel for the complainants vehemently denied the contention in para 4 of the reply filed by the respondent company that the complainants were not interested in taking the flat. He reiterates that without their consent, the respondent has allotted flats to some other person which is illegal. The learned counsel of the complainant also reiterated as to how without cancelling the registered agreement to sale which was still valid, the flat had been sold out to some other person.

The learned counsel of the respondent company reiterated the contents of the counter affidavit and reiterated his pleadings that the company would refund the amount paid by the complainant available in their records in instalments.

The Authority takes note of the submissions made by both parties and observe that when the new Directors took over the company after

the death of Shri Prabhat Kumar Verma, the then MD, they should have taken care of all the liabilities of the company as well as its assets. Their plea that the erstwhile management was responsible for diversion of funds and for not handing over the apartment is not tenable under the Real Estate (Regulation and Development) Act, 2016 as they both own the assets and liabilities of the company. These cases are for the project which was started way back in 2010. The Bench further notes that the present Directors have not given any evidence of steps taken by them to file criminal and civil cases to recover the funds diverted to the personal accounts of the then MD, since deceased from his family members or by sale of his properties. In so far as the issue of breach of agreement to sale is concerned, the parties are free to file cases in respect to that before the appropriate forum.

The Bench notes that the apartments have admittedly been sold to someone else . The Authority can not direct the respondent company to handover the same apartments to the complainants within the provisions of RERA Act, 2016.

On the basis of the submissions and taking into consideration the documents filed by both the Parties, the Bench directs the respondent company to refund the entire principal amount along with interest on such amount at the rate of marginal cost of fund based lending rates (MCLR) of State Bank of India as applicable for three years plus four percent from the date of taking the booking till repayment within sixty days of issue of this order

The complainants are at liberty to press their claim for compensation before the Adjudicating Officer.

Sd/-

Nupur Banerjee
Member

Sd/-

Naveen Verma
Chairman