

REAL ESTATE REGULATORY AUTHORITY, BIHAR

Before the Bench of Mr. Naveen Verma, Chairman

Complaint Case Nos. CC/259/2021

Anil Kumar GuptaComplainant

Vs

M/s Nesh India Infrastructure Pvt. Ltd.Respondents

Project: Tiruvantpuram City

29/08/2022

27/09/2022

ORDER

The fact of the case is that the complainant had booked a 3-BHK flat in the project 'Tiruvantpuram City' at Vidyut Nagar, Danapur-Khagaul Road, Patna for a total consideration of Rs.35.70 lakh. He had paid a sum of Rs. 14 lakh till 12.07.2013 and a registered Agreement for Sale was executed between the parties on 18.12.2013. As per Clause-12 of the Agreement for Sale, the project was to be completed till December, 2016 with a maximum grace period of six months. It is further stated that the next installment of 25% was to be paid at the time of plinth work. After the RERA Act came into force, the project was registered with RERA and with certain modifications a new brochure was issued by the respondent. It has been alleged that even after a delay of more than four years, the plinth work of the block has not been completed. The respondent has not fulfilled the commitments to complete the work as stipulated in the agreement to sale.

It has been further alleged by the complainant that a loan of Rs. 25 lakh was sanctioned by LIC Housing and Finance Company (LICHFC) in collusion with the respondent on 12.11.2020 against which Rs 17 lakh has been disbursed to them without his knowledge and approval. It has been submitted that the complainant sent a legal notice dated 04.01.2021 to the respondent

company as well as the LICHFC stating therein that since the plinth work has not been completed, no further installment was due to be paid. It was stated in the notice that the loan account may be initiated for Rs. 8.50 lakh and the remaining Rs. 8.50 lakh may be returned to him. In response to the legal notice, a reply dated 13.01.2022 was sent by the respondent company in which the respondent has raised an allegedly illegal demand of Rs. 18,69,514/-. It has been stated that the respondent have raised claim of delayed payment of installments although no intimation was sent nor was any installment due to be paid. The complainant has submitted that this deserves to be set aside and since the respondent was threatening to cancel the agreement, although they has delayed possession, the instant complaint case has been filed.

The respondent has filed their reply denying all the averments made in the complaint petition. The contention regarding the stage of construction has been denied as work as per schedule in the agreement has already been carried out and the work pertaining to plinth had been completed long back. It has been submitted that the complainant was under an obligation to pay 65% of the total consideration amount which comes to Rs. 23,20,500/- but he had paid only Rs.14 lakh till 12.07.2013 and no further payment was made. The respondent has submitted that the entire submissions are misrepresentation of fact and therefore, the complaint petition is fit to be dismissed.

During the hearing held on 27.10.2021 learned counsel for the complainant submitted that an excess payment of Rs.18 lakhs was made for which he had sent a legal notice and the respondent had never sent him a demand notice. A supplementary counter affidavit was also filed by the complainant stating that the rejoinder was already filed on 13.11.2021 itself and a supplementary affidavit was also filed on the same day but this has not been mentioned in the order sheet of 8 June 2022. The complainant had annexed photographs showing that the construction of plinth level had not been completed till that date.

The Authority notes the submission made in the second supplementary affidavit filed by the complainant and observes that the earlier affidavit was inadvertently not linked with the record of the case. In view of this submission, the proceedings of that date are amended to that extent.

The learned counsel for the respondent submitted that as per the agreement to sale the allottee had to pay Rs. 9 lakh before the plinth level but he has not paid the said amount. It is stipulated in clause 4 and 5 of the agreement that if the buyer does not make timely payment the builder was entitled to get the interest @20% per annum compounded every month on all amount which would become due. Therefore, the builder was entitled to receive payment of Rs.26,49,514/- in lieu of remaining payment to be made by the complainant. It has been further stated that the payment of Rs.17 lakhs is a matter between the LIC Housing Finance and the complainant. Further, even that after disbursement of the housing loan of Rs. 17 lakh, an amount of Rs.18,69,514/- is still required to be paid in favor of the builder from the complainant as against 65% of the consideration amount along with interest.

The learned counsel for the complainant has refuted the submission of the respondent regarding violation of Clause-4 and 5 of the agreement and payment of Rs.14 lakh only. He submitted that that out of total consideration amount of Rs.35.70 lakh the complainant has paid Rs. 31 lakh. It is stated that as per agreement for sale, the respondent was required to hand over the possession of the flat in the year 2016 itself but they have not completed the construction of the flat as yet. He stated that he is willing to pay Rs.4.70 lakh if an alternate flat is allotted, otherwise the amount paid by him may be refunded with interest @ 20% as per agreement for sale.

However, the learned counsel for the respondent submitted that as there has been a violation of clause 7 of the Agreement to Sale, they are not interested in offering an alternative flat and the promoter is willing to refund Rs.14 lakh to the complainant and Rs.17 lakh to the financial institution.

Both parties were directed to file affidavit along with the photograph of the concerned block to substantiate their stand with respect to the stage of construction. The complainant had filed a detailed rejoinder to rebut the facts stated by the respondent in their reply and has also annexed the photographs of the concerned block regarding stage of construction.

Perused the records. The consideration amount of the flat No.202 booked by the complainant was Rs.35.70 lakh against which Rs.14 lakh was paid at the time of executing the Agreement to Sale and the remaining was to be paid at different stages as mentioned in Schedule 'C' of the agreement. It is mentioned in clause 12 of the Agreement executed on 18.12.2013 that the building shall be completed by December, 2016 with a grace period of six months and that in the event of incomplete for possession the buyer shall be entitled to receive entire money along with simple interest @20% per annum. Clause 4 and 5 spells out that if the buyer does not make timely payment, he shall pay to the builder interest @ 20% per annum compounded every month and that if the default continues the agreement will be void and the builder would be entitled to transfer the said unit to any other person.

The Authority is of the opinion that the conditions mentioned in the Agreement to Sale, although executed before the Act came in force, have to be read in light of the terms of the provisions of the Model Agreement for Sale as prescribed in Rule 8 of the Bihar Real Estate (Regulation and Development) Rules, 2017. Any provision of the earlier agreement which is not in accordance with the Model Agreement as per the RERA Act, 2016 and Bihar RERA Rules, 2017 are deemed to be non est and not enforceable.

Clause 1.4 of this Model Agreement to Sale as given in the annexure to the Rules makes it obligatory to the allottee to make payment as per the Payment Plan set out in the schedule. Clause 5 of the agreement mentions that the promoter shall abide by the time schedule for completing the project. Clause 7.6 mentions that the promoter shall pay the allottee interest at the rate as prescribed in

the agreement for every month for delay till the handing over possession of the apartment. Clause 1.11 of this agreement provides that if the allottee delays in payment which is payable, he shall be liable to pay interest at the rate prescribed in the Rules.

In this matter the respondent company has alleged that the allottee did not make payment in time and has charged interest at the rate mentioned in the Agreement to Sale. The Authority observes that it is for the respondent to establish the date on which the amount became due as the complainant has filed evidence that plinth was not completed till the time of filing the application on 02.08.2021 and even till the affidavit filed on 13.11.2021. The liability of the to make payment in installments to pay interest 2% above the PLR/MCLR of the State Bank of India prevailing the rate on which the amount becomes due as stated in Rule 17 would arise if the promoter is able to establish that the construction up to plinth level had been done till that date.

Admittedly, the respondent has delayed in handing over the possession, they are also liable to pay interest from the period December, 2016 till the date of handing over the possession @ 2% above PLR/MCLR of State Bank of India prevailing in December, 2016.

The Authority can be approached after a specific cause of action has arisen, particularly if the allotment was cancelled and the allottee was aggrieved as provided in Section 11(5) of the Act, 2016. This complaint has been filed apprehending cancellation of booking and therefore it was rather premature to approach the Authority to intervene.

The Authority notes that the allottee is willing to take possession of any other completed apartment. The matter of exchange of an apartment in lieu of the apartment of which booking is made has to be settled between the promoter and the allottee for which no specific direction can be given.

The Authority further notes that the offer of the promoter to refund the principal amount paid by the allottee along with interest thereon. The relief sought in this complaint case is for possession of flat. If the complainant changes his mind he is at liberty to seek

refund from the respondent and approach the Authority if refund is not given by the respondent.

The respondent would ensure that the quarterly status is regularly uploaded as prescribed, failing which a penalty of Rs 1 lakh would be imposed.

With these observations and direction, the matter is disposed of.

Sd/-

Naveen Verma
Chairman