

REAL ESTATE REGULATORY AUTHORITY, BIHAR**Before the Single Bench of Mrs. Nupur Banerjee, Member****Case No. RERA /CC/274/2023****Naw Nath Mishra****.....Complainant****Vs****M/s Geetraj Construction Pvt. Ltd.****.....Respondent****Project: Sashwat Mansion****02/07/2024****O R D E R**

The matter was last heard on 26.04.2024 when the complainant's Advocate Mr. Punit Kumar was present and the respondent was absent. The matter was fixed for orders, however, due to preoccupation of the Bench in other matters, order could not be pronounced on the date fixed.

2. The complainant intended to buy a flat in the name of his wife namely Mrs. Kusum Mishra, who is no more, made an advance payment dated 06.09.2018 with the respondent company, against which the complainant, out of total consideration of Rs. 20.00 lakh, paid Rs. 18.00 lakh in the respective year 2018-19, to purchase two-bedroom flat in Block-G-1 having an area of 400 sq. ft., with one covered car parking in the said project of Saswat Mansion, in ground floor, which is situated in I.A.S. colony Bailey Road, near Gola Road, District Patna, including facilities and amenities, and the aforesaid flat was to be delivered in a year, from the date of booking. The complainant made payment on 05.09.2018 through cheque no. 906960 Rs. 51,000/-, on 10.09.2018 cash of Rs. 6,00,000/-, on 13.09.2018 through cheque no. 906961 Rs.4,49,000/-, on 16.02.2019 through cheque no. 906962 Rs. 6,00,000/- and on 18.02.2019 through cheque no. 906964 Rs. 1,00,000/-. It is stated that due to the over age of the complainant's wife, and all of sudden she suffered from the cancer and after long fighting, she is no more, due to which the complainant mentally and physically became depressed, as the said flat was the dream roof of his wife. Thereafter, the developer took the advantage of the situation of the complainant and his over age. Seeing no remedy, the complainant requested the developer to refund his entire money. It is submitted that out of Rs. 18,00,000/- the promoter has refunded Rs. 3 lakhs by cheque bearing cheque no. 000038 dated 27.02.2023 and also given a post-dated cheque of Rs. 8,00,000/- and Rs. 7,13,000/- with an assurance that the said cheque will be encashed within a month but till date it could not be done. Against which the developer made an agreement dated 04.03.2022 that he will refund the amount of Rs. 18,00,000/- by 13.08.2022. A copy of the agreement dated 04.03.2022 is being submitted. It is also submitted that after the failure of the said agreement the respondent promoter again made an agreement dated 13.08.2022 that either he will refund the principal amount along with applicable interest by 26.10.2022 and in case of the failure of the said promise he will give possession of the flat to the complainant and execute the sale deed, he will do the registry of the said flat with own expense as compensation, but till date the respondent after taking entire payment, has neither refunded the total principal amount along with interest nor offered for the registered agreement and handed over the possession of the flat. The photocopy of the agreement dated 13.08.2022 is being submitted. The complainant approached several times to the respondent office and requested for the same but the respondent sat tight over the matter and gave assurance and taken plea that due to Covid 19 it could not be refunded. The building is already completed. He submits that the last agreement that was made was also breached. At that point of

time his wife was seriously ill and, therefore, he requested for refund of the principal amount. Now, since his wife is no more, he is requesting possession of the flat. He submits that after passing more than five years the respondent neither offered for registry nor for the possession. The complainant has been mentally harassed from the date of application till today. When seeing no any alternative remedy, the complainant sent legal notice dated 02.05.2023, against which the respondent refused to take the notice, then complainant approached before this Court. The photocopy of the legal notice dated 02.05.2023 with refusal envelope is being submitted. The relief sought for by the complainant is the possession. It is stated that considering the delaying behaviour of the company, the said flat may be delivered to the complainant within a limited time as the complainant is bearing irreparable loss due to the respondents. The relief sought by the complainant is to give possession of the unit with all amenities as well as compensation for mental harassment and to pay the penalty, compensation, interest as well as irreparable loss and litigation cost of Rs. 35,000/- due to delay in handing over possession of the flat with reasonable cost etc. The complainant also prays to hand over any other flat, on the said land property.

3. The respondent is Mr. Birendra Singh who is the Managing Director of the respondent company i.e., M/s Geetraj Construction Pvt. Ltd., assured that the project is delayed, so the registered agreement will be done after getting statutory approval from the concerned Authorities, whereas the completion of the project was three years six months from the approval of the map.

The learned counsel for the respondent submits that the respondent is ready to refund the principal amount to the complainant, as the concerned flat allotted to the complainant has already been sold to new allottee whereon the learned counsel for the complainant submits that the complainant will not take refund as the respondent has violated the terms and conditions agreed upon between the parties.

4. The Bench takes notes of submissions of both the parties and peruses the record. The Authority observes that the complainant intended to buy a flat in the name of his wife namely Mrs. Kusum Mishra, who is no more, made an advance payment dated 06.09.2018 with the respondent company, and out of total consideration of Rs. 20.00 lakh, paid Rs. 18.00 lakh in the respective year 2018-19, to purchase two-bedroom flat in Block-G-1 having an area of 400 sq. ft., with one covered car parking in the said project of Saswat Mansion, in ground floor, which is situated in I.A.S. colony Bailey Road, near Gola Road, District Patna, including facilities and amenities, and the aforesaid flat was to be delivered in a year, from the date of booking. The complainant made payments on different dates through cheques. The relief sought for by the complainant is the possession. Due to the over age of the complainant's wife, and all of sudden she suffered from the cancer. Thereafter, the developer took the advantage of the situation of the complainant and his over age. Seeing no remedy, the complainant requested the developer to refund his entire money. Out of Rs. 18,00,000/- the promoter has refunded Rs. 3 lakhs by cheque bearing cheque no. 000038 dated 27.02.2023 and also given a post-dated cheque of Rs. 8,00,000/- and Rs. 7,13,000/- with an assurance that the said cheque will be encashed within a month but till date it could not be done. Against which the developer made an agreement dated 04.03.2022 that he will refund the amount of Rs. 18,00,000/- by 13.08.2022. After the failure of the said agreement the respondent promoter again made an agreement dated 13.08.2022 that either he will refund the principal amount along with applicable interest by 26.10.2022 and in case of the failure of the said promise he will give possession of the flat to the complainant and execute the sale deed, he will do the registry of the said flat with own expense as compensation, but till date the respondent after taking entire payment, has neither refunded the total

principal amount along with interest nor offered for the registered agreement and handed over the possession of the flat. The building is already completed. At that point of time his wife was seriously ill and, therefore, he requested for refund of the principal amount. Now, since his wife is no more, he is requesting possession of the flat. The complainant sent legal notice dated 02.05.2023. The complainant also prays to hand over any other flat, on the said land property. The respondent is ready to refund the principal amount to the complainant, as the concerned flat allotted to the complainant has already been sold to new allottee. The complainant has placed on record the copy of the money receipts, agreements and legal notice.

5. The Bench also observes that the complainant should not be allowed to suffer for a longer period and the respondent cannot be allowed to defraud him. In this connection and to save the interest of the allottees, the Hon'ble Bombay High Court in Lavasa Corporation Ltd. vs. Jitendra Jagdish Tulsyani and others, Second Appeal Case No. 9717/2018 and its analogous case with Civil Application No. 683/2018 and its analogous cases, has observed that RERA is brought on statute book to ensure greater accountability towards the consumers and significantly reduce frauds and delays and also the current high transaction costs. It attempts to balance the interest of consumers and promoters by imposing certain responsibilities on both the respondent and the complainant.

6. In the light of the above observation and also taking into consideration, the submission made on behalf of the parties and on, going through the materials available on records, as well as discussion made above, the Bench hereby directs Mr. Birendra Singh who is the Managing Director of the respondent company i.e., M/s Geetraj Construction Pvt. Ltd, to handover the possession of flat to complainant, in accordance to the agreements made dated 04.03.2022 and dated 13.08.2022, and as per promise made in the agreements, by completing the project of Saswat Mansion, in all respects, and as adhered to the sanctioned map and complete the registry work and necessary legal formalities for the said flat, by executing Absolute Sale Deed in his favour within sixty days of issue of the Order.

7. The complainant is also directed to pay the due remaining amount, if any, to the respondent as soon as possession of the flat is handed over to him or before execution of Absolute Sale Deed.

8. The complainant is at liberty to press other claims which are in the nature of compensation before the Adjudicating Officer as per the provisions of RERA Act, 2016.

9. With the aforesaid observations and directions, this case is disposed of.

Sd/-
(Nupur Banerjee)
Member