

REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR
Before the Single Bench of Mr. Naveen Verma, Chairman

Case Nos. RERA/CC/845/2021

Manha IftekharComplainant

v.

Hawk Buildtech Pvt. Ltd.....Respondent

Project: - H.B. Tower

Present: For Complainant: Mr. Rakesh Roshan, Advocate
For Respondent: Mr. Sharad Shekhar, Advocate

ORDER

29-12-2021 The matter was last heard on 30-11-2021.

The relevant facts of the case are that the complainant had booked a flat bearing no. 202 in Block- B of the project H.B. Tower Residency measuring total 1110 sq. ft. for a total amount of 17, 65,000/- (Rs. 16,65,000/-+ 1,00,000/-). The complainant has stated that the agreement signed on 02.02.2013 and she had paid almost 80% of the payment i.e. 12,50,000/- out of 16,65,000/- (consideration amount) at the time of booking i.e. on 06.02.2013 as per agreement for sale. It has further been stated that the respondent company had agreed to complete the project within 36 months with additional six months grace period. The complainant has alleged that however till date neither the flat has been completed nor possession has been handed over and when she approached the respondent company with her grievance but no positive response was received. The complainant apprehends that the respondent company might sell the flat to a third party and hence has filed the case praying for handing over of the possession of the flat, Rs. 15 lacs as compensation along with litigation cost.

The complainant has placed on record the agreement for sale dated 02.02.2013.

A reply has been filed by the respondent company stating that the complainant has failed to make payments as per the construction linked plan. The respondent company has further stated that they are willing to hand over the possession to the complainant provided the dues amount is paid by her.

The complainant has filed a rejoinder to reply stating that another agreement for sale was signed on 28.02.2017. During hearing the learned counsel referred to paragraph 4 of the rejoinder and stated that on page 5 and 9 of the agreement dated 28.02.2017 under 2nd property description, it has been mentioned that payment of Rs.2,35,000/- is due and the same was later adjusted with the complainant's share i.e., 20% of the cost of project- Green Orchid. It was also agreed that the excess amount after adjustment would be refunded to the complainant.

The learned counsel for the respondent company has rebutted the submissions of the complainant. On the previous date he had submitted that Green Orchid was a different project which had been stopped as it was falling within the rail metro area and commercial construction could not be undertaken in that area and requested not to club both the projects. He reiterated that the company is ready to hand over the possession provided the payment is made by the complainant.

Another rejoinder has been filed by the complainant on 25.12.2021 wherein the learned counsel for the complainant, reiterating his earlier submissions, has stated that the respondent company cannot deny the truth of and the existence of the agreement in the light of sections 92 and 115 of the Indian Evidence Act. The complainant has also mentioned in paragraph 2 that entire amount of Rs. 14,85,000/- has been paid by the complainant.

The Bench has gone through the entire records of the case. The Bench observes that the reference made by the complainant to an agreement dated 28.02.2017 regarding adjustment of profits of some other project towards the dues of the complainant in respect of the said flat is an internal matter between her and the respondent company. This matter has to be adjudicated in a court of competent jurisdiction and the Bench cannot accept this as payment of the dues if the promoter is not accepting it.

The Bench notes that the respondent company has agreed to hand over possession if the remaining amount is paid by the allottee. The obligations of the allottee and the promoter have been clearly spelt out in the Real Estate (Regulation and Development) Act, 2016 and it is expected that both parties would abide by it and with the terms of the agreement to sale. The allottee would make the balance payment of the consideration amount to the promoter who would then execute the deed of absolute conveyance the flat and hand over possession to her.

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

Sd/-
Naveen Verma
Chairman