

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

Case Nos. RERA/CC/869/2021

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 case of the complainant is that she had booked a flat bearing no. 601 in block- A of the project H.B. Tower Residency measuring total 1590 sq. ft. @ 3000/- per sq. ft. The total consideration of the flat was Rs. 49,70,000/- i.e., Rs 47,70,000/- (Forty Seven Lakh and forty seven thousand) and additional Rs. 2 Lakhs for a covered parking. An agreement dated 05.04.2014 was entered into between the complainant and the respondent company. The flat was to be completed by August 2017 with 3 months grace period. It has been stated by the complainant that the complainant's father Iftekhar Ahmad has invested almost Rs. 20 lakhs in one of another property namely M/s Green Orchid (partnership firm) having Pan No. AAOFG9589 of the respondent company. The complainant has alleged that M/s Green Orchid was sold by the respondent company by assuring the respective allottees that higher profit share would be given to them and accordingly an agreement was signed regarding this profit sharing between the complainant and M.D of the respondent company dated 28.02.2017. The complainant has alleged that in the agreement dated 28.02.2017 it was clearly declared by the respondent company that the respondent company would give 25% of the profit made through the project M/s Green Orchid to the complainant and assured that in addition to complainant's investment in the project, additional sum of Rs. 25 lakhs would be given i.e. Rs. 45,00,000/- in total would be the share of the complainant. The complainant has placed on record the agreement for sale dated 05.04.2014.

The complainant has further mentioned that even though full amount had been paid by her, a demand notice was issued on 09.08.2021 demanding payment of full amount within 15 days. The complainant has alleged that the respondent company has cheated her by manipulating the facts to serve its ulterior motives.

In the reply filed by the respondent company it has been stated that a sum of Rs. 6,73,000/- only has been paid by the complainant and they ready to refund the amount paid with interest . The respondent has suggested that the complainant may resolve other issue through negotiation and mediation.

Rejoinder to reply has been filed by the complainant along with a copy of the agreement dated 05.04.2014.

During the last hearing, the learned counsel for the respondent company, while giving oral submissions, have raised a preliminary objection with respect to the payment schedule on page 9. The respondent company submitted that the payment schedule is hand written and not written by the promoter. The respondent company further informed the Bench that M/s Green Orchid was a different project which has been stopped as the same was falling within the rail metro area and commercial construction cannot take place in that area and that this may not be clubbed with this project.

The respondent company has prayed for dismissal of the case with cost and has sought liberty to file a criminal case against the complainant for fraud.

The complainant has refuted the oral submissions of the respondent company and submitted that signatures have been affixed by both the parties and the stamp paper on which the agreement was executed was purchased by the respondent company and therefore the claim of the respondent company that the document is forged is false.

The Bench observes that 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 Bench notes that the complainant has annexed only two pages i.e., page no. 2 and 9 of the fresh agreement dated 28.02.2017. The Bench observes that the complainant has made reference to an agreement dated 28.02.2017 wherein it has

been agreed that the profits would be adjusted towards the dues of the complainant in respect of the said flat. The Bench is of the view that this internal arrangement between the complainant and the respondent company cannot be a matter of adjudication before the Authority. Both the complainant and respondent are at liberty to approach the competent court for the issues pertaining to the agreement of 28.2.2017 and the Bench cannot interfere in this matter.

The Bench, therefore, cannot accept the terms of this agreement as evidence of payment of the dues if the promoter is not accepting it particularly when receipts issued by respondent company have not been submitted by the complainant till the matter is settled by the competent court.

The Bench notes the submission of the respondent company that it is ready to refund the money taken by the complainant along with interest and is ready for mediation/ negotiation. 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 may exercise the option of either making the balance payment of the consideration amount to the promoter or accepting the refund of her deposit towards the flat.

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

Sd/-
Naveen Verma
Chairman