

REAL ESTATE REGULATORY AUTHORITY, BIHAR

**Before the Double Bench of Mr Naveen Verma, Chairman,
& Mrs Nupur Banjerjee, Member**

Case No. RERA/CC/727/2019

Shailendra Kumar SinhaComplainant

Vs

M/s SD Construction & Developers Pvt. Ltd.Respondent

Project: Sri Ganesh Township Duplex Bungalow

ORDER

30-06-2022 The matter was heard at length before the Double Bench on 01-02-2022 and posted for order on 10-03-2022. However due to pre-occupation of Bench in other matters, the order could not be passed on that date. Subsequently, the matter was listed again before the Double Bench on 23-06-2022 and posted for order on this day.

The case of the complainant is that he booked a Duplex Bungalow No. 17 in the project. Subsequently, a Memorandum of Understanding (MoU) was executed between the complainant and the respondent company on 07.02.2016 against a total consideration of Rs 20 lakhs out of which the complainant paid a sum of Rs. 5 lakhs through different cheques on different dates. The first payment was made by the complainant on 6.11.2014. As per the MoU, the project was to be completed within 1 year with 6 months grace period. The complainant has alleged that even after a lapse of so many years, no development work has taken place; and no response was received from the promoter regarding the work in the project. Therefore being aggrieved by the act of the respondent, the complainant has filed this complaint praying for refund of the deposited amount with 18% interest.

The complainant has placed on record a copy of the MoU dated 07.02.2016 and money receipts issued by the respondent company for payment of Rs 3 lakhs and Rs 75,000/-.

Written reply has been filed by the respondent company in which they have stated that their intention was bona fide but the landowner with whom they had entered into a development agreement after making a payment of Rs 1,31,00,000/- (Rupees One Crore Thirty One lakhs) refused to hand over the land for the development of the project. The respondent submits that therefore a suit has been filed against the landowner before the civil court. It has also been stated that the respondent company would refund the entire payment to the complainant in instalments.

Another rejoinder petition has been filed by the respondent company wherein they have stated that the landowner has played fraud upon the respondent company and have cheated them. Therefore, two criminal cases bearing complaint case no. 4614/2017 and complaint case no. 5479/2018 were filed before the learned court of Chief Judicial Magistrate, Patna against the landowner. It has been reiterated that the respondent company would refund the amount to the complainant once the criminal cases are disposed of and the “non” amount is returned by the land owner to them.

During the course of hearing, the respondent was directed to give 25% of the principal amount to the complainant, however the direction was not complied and therefore direction for issuance of warrant was given on 10.08.2021.

The Authority notes that the respondent company has admitted the receipt of the principal amount from the complainant. It observes that although the respondent company has stated that a civil suit has also been filed against the landowner and the matter is sub-judice, no order for stay passed by the court has been produced before the Authority.

While observing that the promoter has been cheated by the land owner, Real Estate (Regulation & Development) Act, 2016 casts certain duties, rights and obligations upon the promoters towards their allottees to be abided by them in letter and spirit. Notwithstanding the

fact that cases have been filed before the civil court, as per section 18, the respondent company is liable to return the amount to the complainant with interest as they have not been able to complete the project.

The Authority notes that it is the responsibility of the Directors of the respondent company to arrange the necessary resources to enable refund to the complainant and other aggrieved allottees.

After considering the documents filed and submissions made, the Bench hereby directs the respondent company and their Directors to refund the remaining principal amount of Rs. 5 lakhs to the complainant along with interest at the rate of marginal cost of fund based lending rates (MCLR) of State Bank of India as applicable for three years plus two percent from the date of taking the booking within sixty days of issue of this order.

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

Sd/-

Nupur Banerjee
(Member)

Sd/-

Naveen Verma
(Chairman)