

REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR
Before the Single Bench of Mrs. Nupur Banerjee, Member

Case No: RERA/CC/49/2022

Sunil Kumar Ray

...Complainant

Vs.

M/s Grih Vatika Homes Pvt. Ltd.

...Respondent

Project: Urmila Vatika

28/05/2024

ORDER

The matter was last heard on 09.02.2024 and was fixed for orders on 25.04.2024. However, due to pre-occupation of the Bench in other matter, order could not be pronounced on the date fixed. On that date, Ms. Riffat Fatima, Advocate appeared on behalf of the complainant and Mr. Shantanu Kumar, Advocate appeared on behalf of the respondent

In this case, the complainant has prayed for a direction to the respondent to complete the construction work and provide the possession of the flat to the complainant and also to direct the respondent to pay interest @ 12% on the sums retained by the respondent.

In short, the case of the complainant is that on the advertisement made by the respondent, the complainant had approached the respondent for the purpose of purchasing a flat in the said project. Thereafter an Agreement for Sale dated 03.09.2014 was entered into between the complainant and the respondent wherein the respondent had agreed for construction and sale of a 1.5 BHK flat bearing Flat No.309 having an area of 685 sq.ft. on 3rd floor in the said project. It is stated that out of total consideration of Rs.15.00 lakh the complainant had made payment of Rs.4,63,905/- an advance before entering into agreement for sale and also made payment of Rs.15,000/- for agreement for sale and Rs.23,000/- towards registry charges. It is also stated that in furtherance to the said payment, the respondent who had to deliver the flat by the year 2016, only managed to complete the plinth work in 2016 and accordingly issued a demand letter dated 16.11.2016 and on receipt of the said letter, the complainant paid Rs.3.00 lakh to the respondent through online transfer. In furtherance to the said payment, the respondent only managed to complete the 1st floor in 2017 and accordingly issued a demand letter dated 15.05.2017 and on receipt of the same, the complainant paid Rs.2.25 lakh to the respondent through online transfer. In this way, the complainant has made total payment of Rs.10,26,905/- against the total consideration of the said flat. It is also stated that the complainant has visited the office of the respondent to know about the progress of the said project but he did not get any information when the possession of the said flat will be handed over to him. Thereafter on enquiry made by the complainant it was found that the construction work has not been completed till date. According to Clause 16 of the agreement, the respondent had agreed to complete the construction work and handover the possession of the flat in December, 2016 but the developer has failed to complete the same Hence, this complaint.

The complainant has placed on record the copy of the agreement for sale dated 03.09.2014, demand letter and the money receipts.

Perused the record. After issuance of notice, the respondent has appeared through his learned counsel Mr. Shantanu Kumar. A reply has been filed on behalf of the respondent stating therein that the averments made in the complaint petition are misleading, confusing and contrary to the true facts. The complainant visited the place of the project for enquiry of the flat and booked 1.5 BHK Flat bearing Flat No.309 on 3rd floor having super built-up area of 685 sq.ft. in the said project in 2016 and out of total consideration of Rs.15.00 lakh he has paid only Rs.10,26,905/- till today which includes GST as per his convenience and the last amount was received in the year 2017 which shows that the complainant was aware of the situation of the flat. It is stated that according to terms and conditions of the agreement for sale, the complainant had not made the payment. Thereafter the respondent has sent a demand letter dated 15.05.2017 but he has not made the payment against the construction, so the complainant is the payment defaulter for which the respondent is not liable to pay any rent or compensation. It is further stated that as per Section 19(6) of the Act, the allottees are bound to make timely payment so that the work can be carried out smoothly, though the complainant has withdrawn from the project and is seeking refund, the complainant has also defaulted in making payment to the respondent. It is also stated that the entire occurrence had been occurred before enactment of the RERA, as such this Court is not the correct forum to adjudicate the present case, hence this case is fit to be dismissed.

A rejoinder has been filed on behalf of the complainant reiterating the more or less the same facts as stated in the complaint petition. Apart from the said fact it is stated that the project of the respondent is ongoing project and the same was not completed before 01.05.2017, thus RERA has jurisdiction to adjudicate the present case. It is also stated that non-delivery of possession of the flat and illegal act of doing business of the respondent has caused mental harassment and financial constraint to the complainant.

On 10.07.2023 an interim order was passed by the Authority observing that the respondent had admitted before the Conciliation Forum on 29.06.2022 that an amount of Rs.10,26,905/- has been paid. During hearing before the Authority, learned counsel for the complainant submitted that he is willing to pay the remaining amount. On that date, the respondent was requested to indicate the present status of the project and explain the time framed by which he would complete the project so that a date for handing over of possession can be decided after accepting the remaining consideration amount. On 31.07.2023 learned counsel for the respondent stated that due to non-payment of further installments, possession has not been given and the project is registered. On the last two dates i.e. on 11.12.2013 and 09.02.2024 the complainant has reiterated his submissions as made in the complaint petition and made a prayer for possession of the flat. Learned counsel for the respondent submitted that the complainant is defaulter in making payment as per agreement for sale and the respondent is ready to refund the amount in installments.

Considering the submissions made by both the parties and the documents available on record, it is clear that the respondent has not disputed booking of the flat in question and the amount paid by the complainant and since the complainant is willing to pay the remaining consideration amount, the Authority directs the respondent to complete the construction work and handover the possession of the flat in question to the complainant with all amenities as mentioned in the agreement for sale after payment of the remaining consideration amount by the complainant within sixty days of issue of the order.

As regards claim for compensation is concerned, the complainant is at liberty to press the same before the A.O. as per the provisions of the Act.

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

Sd/-

Nupur Banerjee
Member