

REAL ESTATE REGULATORY AUTHORITY, BIHAR

Telephone Bhavan, Patel Nagar, Patna-800023.

Before the Bench of Mrs. Nupur Banerjee, Member

Complaint Case No. RERA/CC/546/2019

Ajay Narayan Sharma.....Complainant

Vs

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

Project: Shakti Villa

For Complainant: Mr. Ajay Narayan Sharma, Advocate

For Respondent : Mr. Sharad Shekhar, Advocate

27/07/2022

ORDER

The matter was last heard on 13-06-2022.

The complainant Ajay Narayan Sharma, a resident of Chaudhry Tola, Patna-800006 has filed complaint petition on 03-09-2019 against M/s Shakti Construction & Developers Pvt Ltd for the refund of the principal amount deposited with interest and compensation for litigation and harassment.

Case of the Complainant:

The complainants in his petitions dated 03/09/2019 has stated that the respondent company M/s Shakti Construction & Developers Pvt. Ltd. has not handed over the booked flat to him and since he required money to buy a flat for his daughter and prayed for refund of the deposited money with interest accrued on it and litigation and harassment charges of Rs 2 lakh from the builder.

A notice dated 23/09/2019 was sent to the respondent company under Section 03, 12, 18 & 19 of the RERA Act and Rule 36 of the RERA Rules 2017 to file their reply by 04/10/2019. Since the respondent company did not file its reply, the matter was fixed for hearing.

On 05/03/2020 the respondent company filed its reply wherein it has been stated that the complaint case is not maintainable and is liable to be dismissed. While referring to Section 2 of the RERA Act, they submitted that the complainant is neither an allottee nor a consumer. They further submitted that the complainant expressed his willingness to associate himself with the project, it was decided that he would invest Rs 20-30 lakh but he invested Rs 12 lakh in the project and assured to pay the remaining amount later on. But later on, he requested to divert the said amount towards a flat. The complainant cannot be called nor even be deemed to be an allottee/consumer within the meaning of the said RERA Act. They further stated that they are

ready to make refund to the complainant and requested for dismissal of the complaint as having no substance.

On 12/11/2020 in view of the continued absence and deliberately delaying of the proceedings by the respondent company, the Authority deemed it proper to issue interim order under Section 36 to be read with Section 34(f) and Section 37 of the Real Estate (Regulation & Development) Act, 2016 whereby it was directed that until further orders, all bank accounts of the respondent company shall be frozen with immediate effect and IG Registration was requested to issue directions to all DSRs/Sub-Registrars, Patna/Phulwari Sharif/Danapur not to register any apartment/plot of the project "Shakti Villa" and any other project of the respondent company and the Sr SP, Patna was also requested under Section 35(2) of the RERA Act for ensuring physical presence of the Directors of the respondent company. The complainant was also advised to take recourse of criminal proceedings either from local police or from criminal court against the respondent as it is a fit case of breach of trust and fraud. The interim order was served on the complainant and the respondent company as well vides Authority's letter no.143 dated 28/01/2021.

On 03-02-2021, respondent has filed petition under section 39 of the RERA Act, 2016 seeking relief for making amendment/modification/recall of the interim order passed by Hon'ble bench dated 12-11-2020.

On 18-03-2021, respondent has filed counter affidavit stating therein in para 23 of the counter affidavit that respondent has remitted back the token money for allotment i.e., a sum of Rs.2 lakh out of 4.51 lakh and prayed for vacating of interim order dated 11-02-2020.

On 20-09-2021, supplementary affidavit has been filed by the respondent stating therein that respondent is ready to pay 1st cheque of Rs.2,50,000/-as the rest of token amount which had been received by the respondent company dated 05-08-2014 subject to the interim order dated 12-11-2020 be vacated.

On 11-02-2022, 2nd Supplementary affidavit has been filed by the respondent stating therein that as per the direction of the Hon'ble Court the respondent has deposited Rs.2 lakh in the account of the complainant and had filed the receipt of the same and further submitted that the amount of Rs. 10 lakh had been deposited to the respondent company for investment purpose that would be finalized in 5 installments within a period of 5 months or earlier if the project would have received registration as soon as possible.

On 04-04-2022, the complainant has filed a petition stating that total amount paid to respondent is Rs.16.51 lakh and out of which only amount of Rs.2.50 lakh has been refunded by the respondent in compliance to the interim order dated 12-11-2020 & 07-09-2021. It has also been submitted by the complainant that respondent has not registered the project with RERA and has violated the section 3 of the Act and liable for penalty.

A rejoinder is filed by the complainant in response to the 2nd counter affidavit of the respondent stating therein that the respondent tried to confuse

the court in respect to payment received for the booking of flat by making vague and baseless submissions regarding the acceptance of amount of Rs.16.51 lakh paid and claimed compensation for such act done by the respondent.

During the last hearing on 13-06-2022, learned counsel for the complainant has submitted that the complainant wants refund of the money with interest accrued thereon. He further submitted that the complainant paid total 16,51,000/- rupees on different dates but the respondents have refunded only 2 lakhs.

Learned counsel for respondent has submitted that respondent is ready to refund the amount of complainant further prayed for defreezing of the Bank account for which he already had filed 2nd counter affidavit and forwarded it again on 22-06-2022.

On 13-06-2022, complainant has filed an affidavit along with money receipts, issued by the respondent company and Statement of Account of Canara Bank showing money paid to respondent company.

After the perusal of documents placed and submissions made, the Bench observes that respondent has admitted that total amount paid by complainant is Rs.16.51 lakh and only the issue respondent has raised that Rs.4.51 lakh was paid against the booking of flat and rest amount was paid as investment in project for which complainant would get profit. Upon this issue complainant has submitted that respondent has confused the court and submits that whole amount was paid in consideration of flat only.

The Bench upon this above issue discussed, find that no documents has been brought on record by respondent which substantiate the submissions of respondent that rest amount has been paid by the complainant as investment in the project. Hence, the Bench finds that amount alleged has been paid in lieu of booking of flat.

In the light of above observations, findings and considering the prayer of complainant for refund, the Bench hereby directs the respondent company and their Directors to refund the remaining amount of Rs.14.51 lakh 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 two years plus three percent from the date of taking the booking within sixty days of issue of this order.

As regards registration of project with the Authority is concerned, the Bench takes the notes of submissions of respondent made in 2nd counter affidavit that revised map is under consideration for approval before the P.M.C. and directs the respondent to register the project immediately after the approval of map, failing which appropriate action will be taken as per the provisions of the Act.

In regards to prayer of respondent regarding defreezing of the Account is concerned, the Bench notes that respondent has not complied the last hearing direction and filed the details sought. However, considering the interest of allottees and growth of real estate project, the Bench directs office to write a letter to concern Bank about defreezing the Bank Account of respondent company and Bench further directs respondent to ensure that first the account will be used to refund the amount of allottees who had opted for cancellation or to the allottees against whom the order for refund has been passed by this Authority.

The complainant is at liberty to press the claim for compensation before the court of A.O.

With these directions and observations, this complaint petition is disposed of.

Sd/-

Nupur Banerjee
Member