

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

**Case No. RERA/CC/613/2021**

Manita Kumari.....Complainant

v.

M/s Venus Star Construction Pvt. Ltd.....Respondent

**Project: - Venus Paradise**

**ORDER**

**1-12-2021**

The matter was last heard on 1-11-2021.

**6-12-2021**

The case of the complainant is that she had booked a 3BHK flat in the project in Tower 2, 10<sup>th</sup> Floor, Flat No. 1001 measuring carpet area of 1015 sq. ft. and 138sq. ft balcony. The complainant and the respondent company had entered into Agreement for Sale-Flat on 05.08.2019 for the purchase of the flat in a construction linked plan and paid Rs. 19,51,000/- against booking out of total consideration amount of Rs. 71,22,256/-. It has further been alleged that the flat was to be handed over by June 2021, however the construction of the project has not been completed and no quarterly progress report has been submitted with RERA. The complainant submitted that as the earlier agreement was jointly in her and her husband's name, she had requested the respondent company to sign a fresh agreement in her name only so that home loan could be disbursed. It has further been stated that a legal notice dated 02.03.2021 was sent by complainant asking the respondent company to get the sale deed registered in her favour of the complainant and deliver the actual physical possession of the flat.

The complainant has placed on record aadhar card, pan card, letter dated 29.11.2017 regarding booking of the flat, Demand letter for payment dated 10.06.2020, Invoice/Demand Note of Rs. 42,83,527/-, Invoice/demand note of Rs. 28,15,066/-, Letter dated 04.03.2020 regarding cancellation issued by respondent company, legal notice dated 02.03.2021, agreement for sale-flat dated 05.07.2019, registration certificate issued by the Authority.

Perused the records of the case. A supplementary reply was filed by the promoter in compliance to the order dated 31.08.2021 passed by the Bench. The respondent company submitted that the complainant paid only Rs. 19,51,000/- till 08.07.2019 out of the total consideration amount of Rs. 71,22,256/- and that the company would execute the fresh agreement as requested by the complainant only

when she pays the remaining dues amount. It has also been stated that the company had issued a letter dated 24.09.2021 to the allottee through hard copy and email, showing willingness to execute the fresh agreement with the complainant if the husband of the complainant had no objection to execute the agreement in the name of the complainant and full payment is made. The respondent company further mentioned in the supplementary reply that the complainant sent a mail on 23.09.2021 stating that HDFC Bank was willing to approve the housing loan of Rs. 48 lacs.

The Bench observes that its directions to the complainant as well as the respondent company during the previous hearings dated 31.08.2021 and 14.09.2021 have been duly complied with by both the parties. Furthermore, from the oral submissions made by the parties, it is clear and presumed that the complainant is willing to make the payment for the flat provided fresh agreement is executed in her name only and the respondent company is ready to execute fresh agreement provided the dues amount is paid by the complainant.

After giving opportunities to parties of being heard, the matter was posted for orders on 22-11-2021. However the same could not be passed as a written final argument was filed on 19-11-2021 by the learned counsel for the respondent company placing on record letter dated 24.09.2021, invoice/demand note of Rs. 62,95,565/ and judgement dated 02.04.2019 passed by Maharashtra Real Estate Appellate Tribunal in Appeal No. AT00600000010798. Since the filing of above final arguments had come to our knowledge, an opportunity was given to the complainant vide an interim order dated 22-11-2021 to file her written arguments, if necessary, but no written arguments have been received.

The Bench notes that in their written arguments, apart from reiterating their earlier submissions and statements, the respondent company has stated that a number of invoice/demand notice was issued to the complainant to make the payment but no heed was paid to such demand. The respondent company has further stated that a cancellation letter was issued which was only a warning letter for the complainant to make the payment of the dues amount.

The Bench while going through the entire records of the case observes that the relief sought by the complainant is not clear from her complaint. It is also not clear as to under which section of the Act, the case has been filed.

The Bench observes that the respondent company sent demand notices even after issuance of cancellation letter by them which implies that the stand of the respondent company is itself not clear.

The main objective of the Real Estate (Regulation & Development) Act, 2016 is to ensure that the real estate sector flourish for which the parties i.e., the allottees and the promoter have to act in consonance to the provisions enumerated in the Act. The allottee is required to make payment in time and the promoter is responsible for construction as per the specifications and schedule mentioned in their prospectus and agreement to sale.

The Bench observes that in the instant case, the allottee is willing to make the full payment and the promoter is willing to execute a fresh agreement to enable the complainant to obtain a loan from the bank. The only issue here is that the promoter wants the full payment to be made before they execute a fresh agreement to sale while the allottee wants the agreement to sale first after which the bank would disburse the sanctioned amount of loan of Rs 48 lakhs.

The Bench notes that the loan amount cannot be disbursed unless fresh agreement is executed. In terms of paragraph 27 of the agreement to sale as prescribed in Rule 8 of Bihar RERA Rules, 2017, it is incumbent on both the parties to execute, acknowledge and deliver to each other such instruments and take actions as may be required to effectuate the provisions of the Act and also of the agreement entered into between them.

It is evident from the facts and the documents that the complainant had failed to adhere to the terms of the agreement by not making the payment on time and as per the agreement thereby violating section 19 of the Act. However, the agreement to sale as prescribed in Rule 8 of Bihar RERA Rules, 2017 provides in paragraph 24 that the promoter may, at its discretion waive the breach by the allottee in not making payments as per the payment plan. It is for the promoter and the allottee to settle this issue among themselves.

Without going into the merits of the case, the Bench observes that the promoter could execute a fresh agreement in favor of the complainant if the total due amount over and above the home loan of Rs. 48 lacs is paid by her. This revised agreement to sale would enable loan to be disbursed to the complainant for the purpose of the flat. The respondent company may mention in the fresh agreement that if the remaining amount is not paid by the complainant within a specified period, the fresh agreement shall stand cancelled.

With these observations, the matter stands disposed of.

**Sd/-**  
**Naveen Verma**  
**Chairman**