

REAL ESTATE REGULATORY AUTHORITY, BIHAR
Before the Double Bench of Mr. Naveen Verma, Chairman
& Mrs. Nupur Banerjee, Members
Complaint Case No.: CC/101/2021

Project: Mannat Enclave

Garima Kumari.....Complainant
Vs
M/s Anshul Homes Pvt Ltd.....Respondent

8/10/2021

ORDER

This matter was last heard on 10/09/2021.

The complainant, in her complaint petition filed on 04/02/2021 has submitted that she entered into an agreement (M.O.U.) dated 26/09/2014 with the Respondent for the Flat no. 202, admeasuring 1050Sqft on 2nd floor in Block – A of the building named "Mannat Enclave" and one parking on the basement for a consideration of Rs 20,61,800 out of which complainant paid Rs 12,00,000. The Respondent was supposed to hand over the flat in March 2017(including a grace period of six months). The Respondent has neither provided the physical possession of the flat nor got the deed registered in the complainant's name. The complainant tried to contact the Respondent on various occasions, but no communication was made with Respondent and that suddenly, in the year2020, when the complainant was able to communicate with the Respondent she learnt that the booking stands canceled as the complainant has not paid the full consideration.

The respondent company, in his reply filed on 25/02/2021, stated that the complainant has invested in the project to get speculative gains on her investment, not to buy a residential property. Respondent further submitted that the completion of the project got delayed because of the non-availability of building materials, non-clearance of the map, and registration with RERA. Respondent further submits that the complainant wilfully failed to make payments in time or in accordance with the terms of M.O.U. The Respondent stated that the sales team of the Respondent tried contacting the complainant, but all their efforts went in vain as the complainant never wanted to make any further payment. Hence, she always kept herself away from contacting them, and she never visited the worksite of the project where she booked her flat, nor did she visit the respondents' office until the year 2020. The Respondent further submits that the Respondent offered the complainant another flat in another project.

On 12/08/2021, the complainant filed a rejoinder to the counter affidavit filed by Respondent stating therein that the complainant is an allottee according to section 2(D) of the RERA act. The complainant further stated that the Respondent submitted the application for Map approval before P.M.C. on 21/01/2017, and it got approved by P.M.C. on 01/06/2017, so the delay was intentional. The complainant stated that the complainant strictly adhered to the terms and conditions of the M.O.U., hence made the payment of Rs 12,00,000 as part payment of total consideration and the entire amount of consideration to be paid as per the third schedule of the M.O.U., whereby no schedule is framed for making rest payment. The complainant further stated that the

Respondent never communicated or sent notice for cancellation of booked flat or for payment of the rest of the consideration amount. The complainant further submitted that as per the Annexure R/3 of respondent reply the flat no. 202 on the 2nd floor falls under the landowner's share, but the Respondent enters in an agreement for the same.

During hearing the learned counsel for the respondent submitted that a meeting was arranged, but the complainant did not appear, due to which the flat has been allotted to some other buyer. The respondent submitted that the respondent offered an alternative flat or refund, but the complainant refused and did not reply or refund.

The learned counsel of the complainant stated that the promoter has admitted the delay in filling the documents for approval of the map. Hence, they cannot penalize the allottee for not paying the remaining amount. The complainant further submitted that without any communication, the booking of the complainant's flat has been canceled. The learned counsel for the complainant insisted on an apartment in Mannat Enclave for personal reasons.

The Learned Counsel for the respondent stated that after payment of the booking amount, the complainant was required to pay the balance amount on their own as per the registered agreement. He further submitted that the respondent company is willing to offer an apartment in another complex Seven Planet.

The Bench observed that the respondent company had not shown any evidence that the booking was canceled after due notice to the allottee. The Bench directed the respondent to provide any alternative flat, preferably in the current project or in the Seven Planet project, within the same price, and the complainant was requested to consider such an offer. The Bench further directed the promoter to confirm whether the apartment in question has been transferred by registered deed or not. Both the parties are directed to complete their pleadings after due service of same with each other.

The Bench takes note of the submission of the learned counsel for the respondent that the particular apartment went into the share of the landowner after the sale agreement was signed and all efforts were made at that time to contact the complainant and that no other apartment is available in Mannat Enclave.

The Bench also takes note of the submission of the learned counsel for the complainant submitted that they want an apartment only in Mannat Enclave and are not interested in an alternate flat offered by the respondent; if that is not possible, the amount may be refunded with interest.

The Bench directs the respondent company and their Directors to refund the principal amount of Rs.4 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 payment within sixty days of issue of this order. The complainant is at liberty to press for compensation before the Adjudicating Officer.

Sd/-
Nupur Banerjee
Member

Sd/-
Naveen Verma
Chairman