

REAL ESTATE REGULATORY AUTHORITY, BIHAR

Telephone Bhavan, Patel Nagar, Patna-800023.

Before the Bench of Mrs. Nupur Banerjee, Member

Complaint Case Nos. CC/820/2021

Syed Shahab Ashraf.....Complainant

Vs

M/s Sabeen Construction Pvt. Ltd.....Respondent

Project: Saeban Residency

For Complainant: Ms. Ayesha Shahab (Daughter)

For Respondent: Ms.Vagisha, Advocate

23/05/2022

ORDER

The present complainant had been filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 by the complainant Sri Sayed Shahab Ashraf seeking relief for the refund of Rs.40 lakh with interest and compensation or register of some other flat in same project.

The matter was last heard on 04-04-2022 and after hearing on length both the parties, the order was kept reserved.

The complainant in his complaint petitions dated 01-08-2021 has stated that he booked a flat bearing flat no. 202 situated at Nosha Phulwari sharif in 2018 in Sabeen Residency project and paid total Rs.40,0000/-. He further stated that from beginning, respondent was not

active in completing the flat and kept delaying construction work on the pretext of not having sufficient funds. However, the complainant has decided though the work is still not fully completed, still door and grill has not been fixed up by the respondent, complainant will shift and fixed all from their pocket and asked the respondent to register the same as complainant was living on rented house and incurring rent cost of Rs.12,000 excluding electricity bill. It has been further stated that before registration complainant came to know that flat he booked is litigated one when he try to know about the same from promoter, promoter said there is criminal case and asked to proceed for the registration of flat. It has been also further submitted that later complainant came to know that RERA has passed the order in favor of previous buyer with whom the above sated flat was booked. He further stated that after knowing that complainant asked for the refund of the amount paid for which the respondent asked complainant to give a cancellation letter stating therein that they are not interested in flat for which complainant asked respondent to enter into mutual agreement but respondent was not ready for it. He further submitted that as respondent has cheated him and compelled him to cancel the flat as he has no other option left. Hence, filed present case seeking relief for the refund of deposited amount along with interest and compensation or register of some other flat in same project.

Accordingly, a notice dated 04-08-2021 was sent to the respondent company through under Section 31of the RERA Act and Rule 36 of the RERA Rules 2017 to appear and file their reply.

Later on 13-12-2021 the complainant has filed rejoinder denying the contents of reply filed by the respondent.

The respondent company, in its reply dated 22-11-2021 has submitted that an agreement was signed on 27-10-2018 between the complainant and respondent for the sale of flat no. 202 in the building named Saeban Residency for total consideration amount of Rs.45,50,000/- and out of which the complainant has paid Rs.40,00000/-. It has been further submitted that complainant sent a legal notice to the respondent on 18.02.2021 wherein and where under the Complainant demanded for the compliance/execution of contract on the part of the respondent but surprisingly, such legal notice is totally misconceived as the Agreement for sale of flat has already been executed on 27-10-2018 and the Respondent has given reply to the legal notice dated 18.02.2021 of the complainant vide his reply of the notice dated 06-03-2021 stating therein about the Agreement for Sale dated 27.10.2018 and also stated about a complaint made by a person (Shabbir Ahmad) whose Agreement for Sale had been cancelled in August, 2018 and thereafter, the said matter was discussed with complainant and only thereafter, the Agreement for Sale of flat dated 27.10.2018 was entered between the parties. It is also stated that when the Agreement for sale of Flat in question dated 27.10.2018 was executed between the parties, no case was pending before the Authority. It has also been submitted that the complainant has never demanded the refund of amount paid from respondent rather they were interested in pending the matter till the final adjudication of dispute between the respondent and one Shabbir Ahmed whose Agreement for Sale has been cancelled. It has been further submitted that the matter

of dispute over Flat in question was well known to the complainant as the same was discussed with complainant and after fully understanding the existing fact on the date of the execution of Agreement for Sale of Flat dated 27.10.2018, the agreement was executed and the payment of part of the agreed consideration amount was paid in piece meal manner. It is also submitted that the respondent always requested the complainant to make payment of the remaining amount of Rs. 5.50,000/- to take the possession of the Flat No. 202 and obtained duly executed registered sale deed but for the reasons best known to the complainant who always postponed the matter waiting for final decision of the litigation between Shabbir Ahmad and the respondent. It has been submitted further that the respondent had never denied to refund the amount paid by the complainant as per the terms and conditions of agreement for sale dated 27.10.2018 duly executed between the parties after fully understanding all the facts.

The complainant has placed on record money receipts dated 11-10-2018 for Rs.2.75 lakh, dated 15-11-2018 for Rs.10 lakh, dated 27-10-2018 for Rs.7 lakh, dated 08-12-2018 for Rs.2 lakh, dated 16-11-2018 for Rs.2 lakh, dated 22-01-2019 for Rs.2 lakh, dated 22-02-2019 for Rs.2 lakh, dated 25-04-2019 for Rs.2 lakh, dated 27-03-2019 for Rs.2 lakh, dated 16-05-2019 for Rs.2 lakh, dated 22-06-2019 for Rs.2lakh, dated 26-10-2019 for Rs. 2lakh, dated 24-09-2020 for Rs.2 lakh, totaling to Rs.39.75 lakh., in respect to payments made to respondent company. Further the complainant states and mentioned in Agreement for Sale dated 27-10-2018 that Rs.25,000/- has been paid by cheque. The

complainant has also placed on record Agreement for Sale dated 27-10-2018 and legal notice dated 18-02-2021 and reply to notice dated 06-03-2021.

The respondent has placed on record legal notice dated 18-02-2021 and reply to notice dated 06-03-2021.

Several hearing has taken place in the present matter. During the last hearing on 04-04-2022, the daughter of the complainant representing her father has submitted that her father, herein the complainant has booked a flat and at that time the complainant was not informed about any type of litigation over the flat in question. The complainant refers to the previous directions and submitted that the respondent company has not complied with the order given on the last date. The complainant has reiterated his prayer for refund of the money with interest.

The learned counsel for the respondent company during the course of last hearing submitted that the complaint has been filed on two grounds which are frivolous. The learned counsel for the respondent company further submitted that they have annexed the documents in his legal notice in which her father has not demanded money but has demanded possession of the flat. The learned counsel further submitted that the respondent company is ready to give possession of the flat and alternatively they are also ready to refund the money as per terms and conditions of the agreement between the parties. The learned counsel further submitted that the agreement for the flat was executed in October 2018 and the information regarding litigation in the flat was brought to the knowledge of the complainant in November 2018. The learned counsel averred that

despite knowing this fact, the complainant went ahead with the booking and paid the amount. The counsel also refers to para-5 of the legal notice in which the complainant has requested for handing over possession of the flat, which the respondent is ready to handover. The learned counsel for the respondent company also submitted that the company is ready to refund the amount but is not ready to pay the interest as the company has been making efforts to refund the amount since inception but the complainant has deliberately not received the money.

After going through the record of case and submissions made by both the parties, the Bench in view that earlier, the same flat was booked to Mr. Shabbir Ahmed which was later on cancelled by the respondent and after filing of complaint by Mr. Shabbir Ahmed, the Double Bench of then Members in RERA/CC/128/2018 has hold the cancellation as hasty, arbitrary and illegal and directed respondent to hand over the possession of flat within 60 days.

In the present case as averred by the complainant that respondent has enter into the agreement for sale of flat of litigated one and upon asking about the same, the respondent has replied that there is criminal case, upon this issue, the Bench is in view that it is admitted fact that earlier, the flat was booked to Mr. Shabbir Ahmed and during the pendency of matter before the Double Bench of then Members, the Agreement for sale dated 27-10-2018 was executed between the complainant and respondent which shows that when the matter was subjudice for consideration before the Authority, the Agreement for sale was executed by the respondent to complainant.

As issue of delay and latches on the part of payment by complainant as raised by respondent is concerned, the bench observes that respondent has not brought or place on record any documents showing that they had ever demanded any remaining amount from the complainant. As money receipts placed on record by the complainant, it appears that complainant has paid total amount of Rs.40 lakh out of total consideration amount of Rs.45,50,000/- which is near about 90% payment in consideration to the total amount of flat and last payment which made by the complainant was on 24-09-2020 which clearly shows that complainant was regular payment makers but even after receiving the near about 90% of the consideration amount of flat, the respondent has not acted in giving the possession of flat by demanding the rest amount.

Since, the order was passed by the Double Bench of then Members in RERA/CC/128/2018 directing the respondent to hand over the possession of flat to Mr. Shabbir Ahmed (Complainant in RERA/CC/128/2018) and same flat was sold to complainant in present case which is for consideration before this bench and considering the prayer of complainant for the refund, the Bench hereby directs the respondent Company and their Directors to refund the amount of Rs.40 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 three years from the date of deposit to the date of refund within sixty days of issue of this order.

So far the issue of compensation is concerned, the complainant is at liberty to press the same before the court of A.O.

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

Sd/-

Nupur Banerjee
Member