

REAL ESTATE REGULATORY AUTHORITY, BIHAR

Telephone Bhavan, Patel Nagar, Patna-800023.

Before the Bench of Mrs. Nupur Banerjee, Member

Complaint Case No. RERA/CC/834/2019

Dhananjay Kumar PandeyComplainant

Vs.

M/s Sai Ram Real Estate Pvt. Ltd.....Respondent

Project: Sai Enclave

For Complainant: Mr. Puneet Siddarth, Advocate

For Respondent: Mr. Puneet Kumar, 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 Dhananjay Kumar Pandey seeking relief to restore the Agreement and handover the flat or return the money with interest.

The matter was last heard on 11-04-2022 and after hearing on length both the parties, the order was kept reserved.

The case of the complainant is that the complainant has enter into agreement for sale dated 31-05-2017 with M/s

Sai Ram Real Estate Pvt. Ltd through its director Mr. Surendra Kumar for the booking of flat bearing flat no. 304, measuring 740 sq.ft. in the project Sai Enclave. He further submitted in his complaint petition dated that M/s Sai Ram Real Estate Pvt. Ltd i.e. respondent has arbitrarily and in hasty manner has cancelled the Agreement of the booked flat and the same booked flat was further booked to other allottee. He further submitted that respondent has cancelled the agreement to peculate the paid amount.

On 26-12-2021, respondent has filed supplementary counter affidavit stating therein that no agreement was cancelled by the respondent and no money was kept rather the complainant only requested the developer to cancel his flat by the letter dated 12-09-2019. It is also submitted by the respondent that in cancellation form the reason was also stated that the complainant has cancelled the agreement due to nonpayment of the installment. It has been further submitted that the project has been developed with a extension of an year as well as there is not any single complaint except this one and after cancellation request, the respondent several times called the complainant to complete the procedure for cancellation but the complainant always delayed due to his ulterior motive with a dishonesty to implicate the respondent in a false case as the complainant wants to escape from the cancellation charges which is to be deducted by the developer and despite being that respondent has automatically refunded the respective amount which has been received by the bank. The respondent has also placed reliance on section 19(6) of the RERA Act, 2016.

On 03-03-2022, complainant has filed rejoinder stating therein that total amount paid by complainant is Rs.14, 10,000/- which is as follows:-

1. Rs.2,40,000/- is paid before the execution of Agreement.
2. Rs.11,00,000/- is transferred through loan account.
3. Rs.7,00,000/- was paid to respondent via cash.

The complainant has placed on record Agreement for sale dated 31-05-2017. No money receipts has been placed on record but a statement of Account of State Bank of India of High Court Campus was placed on record showing total amount transferred is Rs.11,00,000/- in two fraction i.e. Rs.8 lakh on 16-02-2019 & Rs.3 lakh on 22-02-2019 to respondent company. At page no. 3 of the Agreement for sale dated 31-05-2017 placed on record, it is mentioned that Rs.2.40 lakh was paid by complainant at the time of execution of Agreement for sale. No receipt or any supporting documents was placed on record for the amount of Rs.7 lakh paid by complainant to respondent in cash.

On the other hand, the respondent has placed on record Booking Cancellation Application dated 12-09-2019 & letter dated 23-09-2019. Further, respondent has also placed Cheques of total amount of Rs.10 lakh.

On 12-05-2022, complainant has filed an application under section 39 of the RERA Act, 2016 praying for rectification of last proceeding dated 11-04-2022 wherein in second para 8 lakh has been typically due to error mentioned instead of oral submissions of complainant of Rs.11 lakh transferred from the loan account to the respondent company.

Prayer of complainant allowed, the last proceeding dated 11-04-2022 is modified and read as Rs.11 lakh instead of Rs.8 lakh and accordingly the petition under section 39 is disposed off.

After going through the record of case and submissions made by both the parties, the Bench is of the view that if any cancellation is made by the allottee where the validity period for completion of project has not been expired then in that case, the promoter can deduct the amount as per agreement entered into between the parties.

Since, considering the facts and circumstances of the present case, the Bench observes that Agreement for sale was executed on 31-05-2017 and RERA registration of the project was granted on 15-02-2019 with a validity period between 15-02-2019 to 31-12-2020 and cancellation was made by complainant as brought on record by respondent was on 12-09-2019 and letter for acceptance was communicated to complainant on 23-09-2019 which shows that the cancellation was made prior to the time frame in which project was to be completed, hence, the respondent is entitled to deduct the amount.

So far the issue of refund of the amount paid is concerned, the Bench found that out of Rs.14.10 lakh claimed to be paid, complainant has placed on record the supporting documents of Rs.12.40 only, therefore, the Bench directs respondent and their directors to refund the amount of Rs.12.40 lakh to complainant immediately as no documents was placed by the respondent apart from cheques which shows account has been credited in the loan account.

So far the payment of interest is concerned, since the cancellation was made by complainant on 12-09-2019 and till date the respondent has not refunded the amount to complainant, hence, after deducting the period from the date of booking to the date of cancellation, the complainant is entitled to receive the interest on the amount of Rs.12.40 lakh from the date of cancellation to the date of refund 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 cancellation to the date of refund within sixty days of issue of this order.

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

Sd/-

Nupur Banerjee
Member