

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

Case Nos. RERA/CC/850/2021

Arvind Kumar.....Complainant

v.

Agrani Infra Developers Pvt. Ltd.....Respondent

Project: - Agrani Woods

ORDER

21-1-2022 The matter was last heard on 11-01-2022.

The present case has been filed by the complainant to direct the respondent company to provide the physical possession of plot area measuring 13610 sq. ft. vide company Plot No. PD – 14., Mauza – Akhtiyarpur, Thana No – 20, under Sub – Registry Office –Bikram, under Registry Office – Patna under the Project named “Agrani Woods”. The complainant has submitted that an agreement for sale dated 15.11.2012 was executed in favour of complainant against area 13610 sq. ft. with total consideration amount of Rs. 42,00,000/-. The complainant has stated that the complainant has deposited Rs. 21,70,000/- out of the total consideration amount. That it has also been stated that the respondent company gave assurances to provide well planned society with the facilities of road, good drainage system, electricity, etc. but the respondent company has failed to do so. The complainant approached the respondent company to inquire about the latest development regarding his plot in question but no satisfactory response was received. That the complainant gave several reminders to the respondent company but no step was taken by the respondent company for redressal of his grievance. Therefore, the complainant has filed the complaint praying for physical possession of the land with demarcated boundary according to survey number, provision of all the amenities as per the agreement, to execute absolute sale deed in favour

of the complainant, compensation as interest@10% on the total value of the land on account of delay in handing over of the possession, Rs. 25,000/- as compensation for inconvenience, mental torture and harassment and Rs. 25,000/- as litigation cost.

The complainant has placed on record the agreement for sale and money receipts dated 05.07.2018 for Rs. 2,50,000/- and Rs. 4,50,000/-.

Reply has been filed by the respondent company wherein the respondent company while admitting few averments of the complainant has denied the payment of Rs. 21,70,000/- by the complainant. In paragraph 6 of the reply, the respondent company has stated that the complainant has paid only Rs. 14,70,000/- and no further payment has been made by the complainant and on the contrary, the respondent company has mentioned in paragraph 11 and 18, that the complainant has paid only Rs. 18,70,000/- which the company is ready to refund in 10 installments starting from April 2022. The respondent company has also made reference to several clauses of the agreement and has alleged that the complainant has failed to pay the amount as per the agreement.

The complainant has filed a rejoinder to the reply. In his rejoinder, the complainant has reiterated his earlier submissions and stated that he has paid Rs. 21,70,000/- in total to the respondent company. The complainant has also stated that the respondent company has violated section 11 of the Act as it has failed to update about the construction progress to the complainant from time to time.

The respondent company, while delivering oral submissions, has objected to the contention of the complainant with respect to the payment of Rs.21,70,000/- and has stated that the complainant has paid only Rs. 14,70,000/- and the receipts attached to the complaint pertain to a different plot. However, this fact has been denied by the complainant who has stated that plot no. P.D-14 and plot no. 25 are same. The respondent company has further stated that the complainant should have approached the appropriate court for specific performance

of the contract in the year 2015 but the complainant has cooked up a false cause of action and filed the case before the Bench in the year 2021 which is not maintainable.

The Bench had observed that the instant case is maintainable as the Act aims to basically protect the interest of home buyers and has a retroactive effect as recently settled by the Hon'ble Supreme Court.

During the course of hearing, the MD of the respondent company submitted that the payment was supposed to be made within 30 months of agreement but the complainant failed to make the payment and after several reminders, the complainant made some payment in 2018 through cheques. It has been submitted that the cheques issued got bounced. The respondent company further informed that they will not be able to give the possession of the flat and would instead refund the paid amount.

The Bench notes that the matter was posted for orders on 30-12-2021. An Interim Order was passed as the Bench observed that there was a dispute with respect to the payment of amount by the complainant and the amount received by the respondent company and ambiguity on whether plots P.D.-14 and Plot 25 are same or not. The respondent company was also directed to clarify whether the allotment was cancelled and if so, submit a copy of the cancellation letter. Therefore, in the interim order opportunity was given to the parties to clarify the aforementioned points.

On the last date of hearing, time for filing of rejoinder to counter was sought by the complainant and accordingly 3 days time was granted. However, no rejoinder has been filed within the stipulated time frame. The complainant further prayed for verification of the map for plot PD 14 checking of the validity of map and registration of the project. On the other hand, the respondent company clarified three points raised in the interim order. The Bench notes that no separate cancellation letter was sent to the complainant rather the allotment was cancelled vide a general resolution passed by the company in 2019.

The Bench has taken note of the submissions of both the parties. The issue of whether Rs 21.70 lakhs was paid as alleged by the complainant or Rs 14.70 lakhs was paid as alleged by the respondent can be settled only on the basis of documentary evidence. The complainant has not submitted receipts for the amount stated by him. The Bench takes into account the submission of the respondent that they are willing to refund Rs 14.70 lakhs taken against this project, albeit in instalments.

The Bench also notes that the complainant has admittedly not paid the entire consideration amount for the agreement executed in 2012 and is now ready to make the payments of the dues amount, but however the respondent company is ready to give the refund.

The purpose of the Act is to protect the interest of homebuyers and promote the growth of the real estate sector and the obligations of both the promoter and allottees have been clearly spelt out. The respondent ought to have written to the allottee of the instalments due to be paid by the allottee before cancelling his allotment. The allottee ought to have made the entire payment as mentioned in the agreement to sale.

The Bench can certainly give directions to the respondent to refund the principal amount paid by the complainant and interest thereon. However, since the prayer is for possession of the plot, and the model agreement to sale annexed with the Bihar RERA Rules 2017, provide for the promoter to charge interest from the allottee for delayed payment, it urges the respondent company to accept payment of the remaining dues from the complainant with interest if the particular plot has not been allotted to another buyer. The Bench further directs that if it is unable to handover the plot in question, the respondent company would refund the principal amount received by it along with interest calculated at the rate of marginal cost of fund based lending rates (MCLR) of State Bank of India as applicable for three years or more

plus four per cent, from the date of taking the booking within sixty days of issue of this order.

So far as the claim for compensation is concerned, the complainant is at liberty to approach the court of Adjudicating Officer.

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

Sd/-
Naveen Verma
Chairman