

REAL ESTATE REGULATORY AUTHORITY, BIHAR

Telephone Bhavan, Patel Nagar, Patna-800023.

Before the Bench of Mrs. Nupur Banerjee, Member

Complaint Case Nos. CC/850/2019

Shambhunath Jha.....Complainant

Vs

M/s SWO India LtdRespondent

Project: Kargil Apartment

Present: For Complainant: Mr. Sumit Kumar, Advocate

For Respondent: Mr Jairam Singh, Advocate

30/06/2022

ORDER

The complainant Shambhunath Jha, a resident of Vill.- Alpura P.O.- Tajpur, Dist.- Madhubani has filed complaint petition against the respondent company M/s SWO India Ltd. for refund of the deposited amount with interest.

Case of the Complainant:

The complainants in his petitions dated 27/12/2019 has stated that he purchased a plot of land bearing plot no.132 in the project Kargil Veer Niwas situated in Bihta and being developed by M/s SWO India Ltd in 2013. He further submitted that 9 years has already been passed but till date the respondent cooperative society has not yet developed the land, hence, filed present case for the refund of the deposited amount with interest.

A notice dated 04/03/2020 was sent to the respondent (Mr Arjun Kumar Singh) under Section 31of the RERA Act and Rule 36 of the RERA Rules 2017 to file their reply by 23/03/2020. However, the respondent did not file their reply. The matter was, therefore, fixed for hearing on 24/11/2020.

Persuaded the records, no reply has been filed by the respondent, however, learned counsel for respondent remains present during the course of hearings.

Hearing:

Hearings were held on 18/01/2021, 08/02/2021, 16/03/2021, 08/04/2021, 23/12/2021, 21/02/2022 and 07-06-2022.

On 18/01/2021, complainant has submitted that respondent director has not yet refunded the amount. It has been further submitted that complainant has visited the plot but had not found any development.

On 08/02/2021 Mr Ganesh Jha, son of the complainant submitted that there is no progress in the work and the land is not traceable.

On 16/03/2022, complainant again submitted that despite the direction of the Hon'ble court, the respondent has not completed the work.

On 08/04/2021 Mr. Ganesh Jha, son of the complainant submitted that there is no progress in the work and the Director of the respondent company has not yet refunded the amount.

Learned counsel of the respondent cooperative society submitted that there is no question of refund of the money since the plot has already been registered in the name of the complainant and mutation has also been done. It has also been submitted by the respondent during the course of hearing that will file reply.

On 23/12/2021 learned counsel of the respondent cooperative society submitted that due to some unavoidable circumstances, the project could not be completed as the proprietor of the land was in jail for the last five years. He further stated that the present case is not maintainable before this Authority. He also submitted that the respondent is a cooperative society which has allotted the land to the soldiers for their welfare and the plot in question has since been registered in the name of the complainant in 2016 and mutation has also been done and also stated that the land is situated in an undeveloped Panchayat area.

During the hearing on 21-02-2022, the complainant has submitted that he booked the plot in 2013 but the respondent company did not hand over the possession of land till date and there is no development in the project. Now, he wants refund of the money deposited with interest.

Learned counsel of the respondent company during the course of hearing on 21-02-2022 has submitted that project is ready to move within one month and the possession of the same will be handed over soon. He further submitted that as complainant now wants the refund, they are ready to make refund to the complainant.

The complainant has placed on record letter dated 01-04-2013, in which it was mentioned that total amount received by respondent is Rs.6,38,023/-. Further, the complainant has also placed on record Sale Deed dated 19-07-2013.

On 25-05-2022 an interim order was passed seeking clarification from the complainant that whether he want possession or refund as in complainant petition he seeks for refund but on 24-05-2022, complainant has filed an rejoinder application praying for the possession of the plot and requested to direct the respondent to pay Rs.14,00,000/- per month as rent since 2014 to till date and accordingly the matter was again put up for hearing on 7-06-2022 to seek clarification from complainant regarding his prayer.

During the last hearing on 07-06-2022, learned counsel for complainant has submitted that in this case interim order was passed on 25-05-2022 as the complainant has prayed for refund in complainant petition but now he want possession of the plot as Sale Deed is already executed and mutation is also done but physical possession of flat with demarcation has not handed over to complainant till date.

Learned counsel for respondent submitted that respondent is ready to hand over the possession with demarcation within the time frame fixed by the Hon'ble Bench.

The Bench on the last hearing has directed the complainant to file petition amending their prayer from refund to possession.

Complainant in compliance to last direction of the Authority has filed its amendment petition on 16-06-2022 amending his prayer for possession of land (Plot No. 138) instead of refund. It has also been submitted by the complainant in 2016 before the RERA Act, came into existence and besides this land is situated in Gram Panchayat Area is false. But as a matter of fact , the Project Location falls within the Planning Area of PMAA and Section 1 of the Bihar Building Bye Laws is also applicable in that area. Further, till today, respondent has not provided the physical possession of the Plot along with other amenities as promised by the Respondent to the Complainant. It is also submitted that the project in question is an Ongoing Project as on 1st May, 2017 and required to be registered with RERA in light of Section 3 of the Act, 2016.

After the perusal of documents placed on record, it appears that sale deed is already executed in favor of complainant on 19-07-2013 and only grievances for which present case has been filed by the complainant is for the development of project and giving physical possession with demarcation which has not yet been done by the respondent, upon this issue, the Bench observes that respondent is duty bound to develop the project as agreed at the time of booking. Bench also further observes that providing basic facilities to the allottees are the part and parcel of the project, mere executing the Sale Deed does not

complete the project and escape the liability of the promoter from doing the development of the project.

In the light of above observation, the Bench directs respondent to give physical possession of the allotted plot with demarcation to complainant within 60 days. Further, the Bench directs respondent to develop the project as agreed at the time of booking and as per the brochure and Absolute Sale Deed and provide all the amenities and facilities as mentioned therein the brochure and Absolute Sale Deed within 3 months.

The respondent is also directed to get registered the project with the Authority as the project is ongoing. If the application for registration is not filed immediately then suo-moto proceeding shall be initiated against respondent company under section 3 of the Act.

With the above observations/ directions, this complaint petition is disposed of.

Sd/-

Nupur Banerjee
Member