

REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR
Before the Single Bench of Mr. Naveen Verma, Chairman
Case No. RERA/CC/907/2021

Sudha Saha.....Complainant

v.

M/s GrihVatika Homes Pvt. Ltd.....Respondent

Project: - AMBIKA VATIKA

ORDER

24-1-2022 The matter was last heard on 11-01-2022.

The case of the complainant is that her husband (now deceased) had booked a 2 BHK flat in the project having area of 920 sq ft for which an agreement for sale was executed. Against the total consideration amount of Rs. 13 Lakhs, the complainant paid a sum of Rs. 6.11 lakhs as booking amount vide Demand Draft bearing DD no. 409002 dated 19.04.2016. As per the agreement, the flat was to be handed over by December 2017 however the respondent company failed to do so. The respondent company informed the complainant's husband Late Mr. Ashok Kumar Saha that the approval of map of the project was pending before the competent authority and upon receipt of approval, the project would be completed. Upon learning that no approval was received till 18.08.2017, the complainant's husband became apprehensive and therefore demanded the refund of the amount paid with 20% compound interest.

The complainant has placed on record KYC form, death certificate of deceased husband Ashok Kumar Saha, letter to respondent company requesting for refund of the booking amount, hand written details of payment made and amount received from the respondent company, agreement for sale dated 19.05.2016, Letter dated 23.08.2017 issued by the complainant's husband to the respondent company, money receipt no 1059 for Rs. 6 lakhs and 1056 for Rs 11,000/- and DD of Rs 6 lakhs.

A reply has been filed by the respondent where it has admitted that the complainant has paid only Rs. 6,11,000/-; and that the project could not be undertaken as the map was not approved and therefore Rs. 2.60 lakhs was refunded to the complainant.

The respondent has also referred to section 18 of the Act and has stated that no payment was made by the complainant after 2016. It has also been submitted by them that the Authority has no jurisdiction to entertain the instant case as the payment was made by the complainant in the year 2016.

The Bench observes that since the map was not approved by the competent authority, it was the duty of the promoter to immediately refund the money. Instead it took money from some other buyer as was alleged by the complainant during hearing. The question of making the remaining payment as mandated in Real Estate (Regulation & Development) Act, 2016, would have arisen only after the map was passed and construction work undertaken by the promoter. In this light, the plea of the respondent that they would refund the remaining amount after deduction of service and other charges is not tenable and hence rejected.

In so far as the maintainability of the matter and jurisdiction of the Authority is concerned, the Bench observes that this matter has recently been settled by the Hon'ble Supreme Court, which has held that the Real Estate (Regulation & Development) Act, 2016, aimed basically to protect the interest of homebuyers has retroactive effect. Therefore, the instant case is maintainable before the Authority.

The Bench observed that a direction was issued on 28-12-2021 to the respondent to pay Rs. 1 lakh to the complainant given her dire need for funds before the matter gets next listed but the direction has not been complied. During the last hearing, the learned counsel for the respondent admitted the non payment of Rs. 1 lakh citing the reason of pandemic and expressed their willingness to refund the remaining amount through

cheques. However, the complainant submitted that the payments may be transferred on line through NEFT/ RTGS as the cheques issued by the respondent company usually get dishonoured.

The Bench notes that the respondent is ready to transfer the amount to the account of the complainant and has assured that the remaining payments will be made in 3-5 instalments.

The respondent company is directed to refund the remaining principal amount to the complainant along with interest thereon 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 taking the booking till the date of refund. The above payment has to be made in 3 instalments within sixty days of issue of this order.

Sd/-
Naveen Verma
Chairman