

REAL ESTATE REGULATORY AUTHORITY, BIHAR

**Before the Bench of Mr R. B. Sinha & Mr S. K. Sinha, Members of the
Authority**

Case Nos.CC/120/2018

Shaila Agrawal.....Complainant

Vs

M/s Nissa Realtors Pvt Ltd.....Respondent

**Present: For the Complainant: Mr Punit Kumar, Advocate
For the Respondent: Mr S.K. Karna, Advocate**

20/12/2019

ORDER

1. Mrs Shaila Agrawal W/o Late Sanjay Kumar Agrawal, a resident of Flat No.16/C Kunj Apartment, Buddha Colony, Patna has filed a complaint petition against M/s Nissa Realtors Pvt Ltd and Mr Abhay Kumar Verma, MD, Mr Deepak Singh, Asstt Director, Mr Sudhir Singh, Asstt Director, Mr Devendra Kumar Verma, Director and Mr Awinash Kumar, Director on 6th November 2018 for handing over possession of the 3 BHK Flat No-K/1, Block A First Floor with a covered car parking at GharApna Part II Mahendrapuram Apartment situated at Kesharpura, Digha, Patna, booked by her husband in January 2011, with penalty and interest as per Registered agreement for sale due to delay in handing over the flat.

Case of the Complainant:

2. In her complaint petition, she has stated that her husband Late Sanjay Kumar Agrawal had entered into a registered agreement for sale with the respondent company M/s Nissa Realtors Pvt Ltd on

22/09/2012 for purchase of a 3 BHK 1361 sqft Flat No-K/1,Block A at First Floor with a covered car parking of GharApna Part II Mahendrapuram Apartment situated at Kesharpura, Digha, Patna. As per registered agreement of sale executed by the Promoter with the husband of the Complainant, the total consideration amount was fixed at Rs 24,51,161/- to be paid as per payment schedule attached with the agreement. As per registered agreement for sale, the possession of flat was to be given **within a period of two and half years from the date of application**. Further, if there would be any delay in handing over the possession of the flat after date of possession and a grace period of six months, the developer was required to pay penalty of Rs five per sqft per month to the allottee. As per registered agreement for sale, the husband of the complainant had paid Rs 3.51 lakh on booking/ registration of the flat on 25th January 2011, followed by Rs 4.00 lakhs on 4th April 2012. Thus the flat was to be handed over to the complainant by January 2014.

3. In her Petition, the Complainant has claimed that Rs 25,72,212/- including a sum of Rs 4,50,000/- in cash was paid to the respondent company against the flat. She has also given details of the payment made by her late husband including cheque numbers, dates etc along with the receipts. She has also stated that her husband had also taken a home loan from ICICI Bank to make payment to the developer. She has also produced a letter dated 22nd September 2015 from ICICI Bank addressed to her husband, which stated that “ Last tranche was disbursed on May 11, 2013. The stage of construction of building was 75 % on the said date. One more demand was received in December 2013 but the stage of construction was 75% on that date, hence further disbursement could not be made. As on date, the stage of construction is 95%. Further disbursement to be done only against registered sale deed of the funded property.”

4. She however claimed that the letter of possession of the flat was not given to her even now though the flat has since been completed. As the offer of possession was not handed over to husband of the complainant even after passage of long period of time, he wrote to the respondent enquiring for reasons for not handing over the possession of the flat in September, 2015 but no response was received from the respondent. The respondent company was again reminded on 18/09/2015 but he did not get any response from the respondent company. Finding himself in a precarious situation, husband of the complainant filed a petition before the Sr SP, Patna who directed the concerned SHO to take action and inform him in September, 2015. She claimed that finding himself in such a hopeless situation after investment of his life-long savings, husband of the complainant committed suicide in November, 2015.
5. The complainant in her petition has also mentioned that she was ready to pay the remaining amount, if any, payable to the respondent for taking possession of the said flat as per agreement. She also has pointed out that as per terms and conditions mentioned in para-10 of the registered agreement for sale, the respondent was required to pay a penalty of Rs 5/- per sqft per month for the period of delay since completion of three years from date of application, till the date of possession. She claimed that since her husband had already paid the entire amount under the agreement, she was entitled to get possession of the flat as she has been living in a rented house for years with her son and daughter.
6. She has also pointed out in her petition that in the bail application in Criminal Case No.17490/2016 brother of the vendor Awinash Kumar Verma in his affidavit made on 08/04/2016 has stated that out of total consideration amount, Rs 3,29,052 (Rupees three lakhs twenty nine thousand and fifty two only) was still outstanding from the vendee and he made repeated request to the husband of the complainant for payment of balance amount but he did not make

any payment. The complainant has, however, pointed out that not a single letter was annexed by the vendor with his bail application through which he could claim that he had made repeated request for payment of outstanding instalments. She has further stated that though the then MD of the company who had entered into agreement with her husband, has died, the present management should be made responsible and be ordered to hand over the possession of the apartment.

She has enclosed a copy of the registered agreement for sale along with all the receipts issued by the respondent company.

Response of the Respondent Company:

7. In response to the notice issued by the Authority, calling for their comments on the petition filed by the Complainant, the respondent company did not furnish any response till 3rd Dec 2018. Accordingly both the parties were called for hearing on 28th Feb 2019.
8. On the date of first hearing the complainant was represented by Mr. Punit kumar, Advocate. The respondent company was represented by Mr. Deepak Kumar Singh, Director. In course of hearing the learned counsel of the respondent company was given another opportunity to give their response and was directed to submit their response by 14th March 2019. Accordingly respondent company through their director submitted their response on 16th March 2019. In their response, the respondent company stated that that the company was dealing in real estate sector and developing multi storied buildings in the name and style of GHAR APNA APARTMENT at different places within the country. They further informed that there have been changes in the board of directors of the company as the managing director Prabhat Kumar Verma died in May 2018. Other directors have also quit the company in between. Presently Mr. Sudhir kumar Singh and Mr. Deepak Kumar Singh were the directors/owners of the company.

9. The respondent company further confirmed that the husband of the petitioner had entered into agreement with the respondent company on 22nd September 2012 for purchase of the 3 BHK Flat No-K1, in Block A at 1st floor, in Ghar Apna Phase-II MahendraPuram Apartment, Digha Patna for the total consideration of Rs. 24,51,161/- Lakhs. It was agreed between the parties that after making payment of total consideration amount, possession certificate would be issued by the company and the flat would be registered by company within two months. They claimed that the husband of the petitioner made payment of Rs 21,22,212/- only through Cheques/RTGS etc. Thus he failed to make payment of total consideration amount within prescribed time. They claimed that husband of the complainant was himself responsible for non-issue of possession certificate by the company as he did not make payment of full consideration amount.
10. They stated that the company was ready to refund the amount deposited by the husband of the complainant after deduction of earnest money as per clause 16 of the agreement. They further refused to admit that the company had received 4,50,000/- in cash on 30th Dec 2012. They claimed that no such entry was found in the ledger book. They also refuted that husband of the petitioner had died due to reasons attributable to the actions of the company.
11. In the supplementary counter affidavit filed on 15th May 2019, the respondent company reiterated that as per their record, against the total consideration money of 24,51,161, the husband of the component had paid only Rs 21,22,212. They further stated that the respondent company regularly used to send demand notices to the allottee for the payment of the due amount and had sent following notices against which no payment was received.
- i. Notice dated 23.04.2013 for Rs. 2,15,271.00/- with service tax.
 - ii. Notice dated 27.08.2013 for Rs. 3,20,387.00/- with service tax.
 - iii. Notice dated 26.12.2013 for Rs. 3,29,961.18/- with service tax.

12. The respondent company also stated that due to share distribution of flats on 11th May 2015 between developer and land-owners, Flat No K1 of Block A has gone in favour of landlord and hence they were in no position to hand over the said flat. It has happened because the allottee did not give full payment of the flat.

Hearing:

13. Hearings were held on 28th Feb 2019, 25th March 2019, 29th April 2019, 16th May 2019, 23rd July 2019, 9th August 2019 & 16th Sept. 2019. In course of hearing the bench directed the respondent company to hand over the apartment to the allottee after taking the payment of balance amount. However the respondent company expressed its inability to do so on the plea that they have already entered into share agreement with landlord in May 2015 under which the concerned flat had already gone in the quota of landlord. They were however unable to explain as to how the flat which was allotted to the complainant in 2010-11 and for which the payments were being taken since January 2011 as mentioned in the agreement for sale executed in September 2012 and against which more than 86 percent payment had admittedly been taken by the Company till May 2013 were allotted to the landlord in May 2015. They did not also clarify as to how they could allocate exact flat number to the complainant in the agreement for sale in 2012 when they had not entered into flats share distribution agreement with the land-owners as envisaged/contemplated in the development agreement executed between developer and land-owners.

Issues for Consideration :

14. There is no dispute on the fact that the Respondent company had booked on 15th January 2011 for sale of a 3 BHK specific Flat No-K/1 Block A First Floor at Ghar Apna Part II Mahendrapuram Apartment situated at Kesharpura, Digha, Patna with a covered car

parking based on a plan approved by PMC vide Plan case no-PMC-BK-Digha-(05)-011KB (ii) Coa No-84/8525.Enrolment No-15/09-10.Serial No-011-18-04-2011and executed a registered agreement for sale with the husband of the complainant on 22/09/2012.

15. There is however a dispute on the amount of payment made by the husband of the complainant. As per agreement, the total consideration amount was fixed at Rs 24,51,161/- to be paid as per payment schedule attached with the agreement. The complainant claimed that Rs 25,72,212/- including a sum of Rs 4,50,000/- in cash was paid to the respondent company whereas the Respondent company claimed that the husband of the complainant paid Rs 21,22,212/- only to them. The Complainant has however not produced any evidence in respect of the cash payment made by her husband. Hence, her claim of cash payment of Rs 4.50 lakh can not be accepted. However, there is no dispute on payment of Rs 21,22,212/- by the husband of the complainant against the total consideration of Rs 24,51,161/-. It is therefore an admitted fact that the Respondent Company had received Rs 21,22,212/- (86.58 %) through Cheques/ RTGS during January 2011- May 2013.

16. The third and most crucial issue is whether the Flat No-K/1, Block A with a covered car parking at Ghar Apna Part II Mahendrapuram Apartment was allotted to the husband of the complainant. In this connection, the payment receipt dated 10.04.2012 issued by the Respondent Company, which was submitted by both parties – complainant as well as respondent party- indicates that the husband of the Complainant had paid Rs 3.51 lakhs vide cheque no 799807 dated 25.01.2011 as booking amount of flat no- A/K1 in the Project Ghar Apna Phase II on Digha Road, Patna. The Registered agreement for sale executed between the husband of the complainant and the Respondent Company on 22/09/2012 also clearly stipulated that Flat No-K/1, Block A in Ghar Apna Part II Mahendrapuram Apartment was allotted to Late Sanjay Kumar

Agrawal, husband of the complainant. Further, the respondent company had received payments of several installments for the aforesaid apartment after execution of the registered sale of agreement. The Developer has admitted the receipt of more than 86 percent of the total consideration amount of said flat. The Registered agreement for sale also stipulated that the possession of the flat would be handed over within two and half years from the date of application. The balance amount was to be paid at the time of finishing/handing over possession of the flat.

17. The Respondent company had claimed that they had issued three demand letters for payment dated 23.4.2013, 27.8.2013 and 26.12.2013 but the required amount was not paid by the complainant. However, the learned counsel of the complainant placed on record a letter from ICICI Bank, from whom the husband of the complainant had taken a home loan for the said flat, which stated that the flat was not yet ready in December 2013 and the stage of construction was 75 % only on that date and hence further disbursement could not be made. Thus the demand letter issued by the Respondent company was premature and there was no obligation on the part of the complainant to make the payment of any further amount till December 2013.

18. Further, the Respondent company had not issued any demand notice thereafter to the complainant. As the flat was to be handed over in July 2013 and had not been handed over to the complainant till September 2015, the Bank stated that further disbursement would be done only against registered sale of the funded property. Further, the Complainant has stated that penalty @ Rs 5 per sqft was to accrue to the Complainant since February 2014 on completion of three years (inclusive of grace period of six months) from the date of application as per the provisions of the Registered Agreement for sale. Thus there was no right for developer to allocate the flat no K1 in Block A to the Land owners in May 2015.

Order

19. The Bench therefore holds the share distribution agreement between developer and land Owners on 11th May 2015 in respect of flat no K-1, Block A in Ghar Apna Phase II, MahendraPuram Apartment as arbitrary, discriminatory and illegal. Accordingly, the Bench declares share distribution agreement dated 11th May 2015 between developer and land Owners in respect of allocation of allocation of flat no K-1, Block A in Ghar Apna Phase II, MahendraPuram Apartment as null and void and orders the Developers/Land-owners to hand over the possession of the flat to the Complainant within sixty of issue of this order.
20. The developer shall adjust the balance payable amount by the complainant against the penalty leviable @ Rs 5 per sqft per month to the Complainant since February 2014 until the date of handing over the possession of the flat under the registered agreement for sale and pay the remaining amount to the Complainant within sixty days of tissue of this order.
21. The Bench also orders that a penalty of Rs 1 lakh (Rupees one lakh only) be levied on the respondent Company for first making allotment of a specific flat to a consumer without entering into any share distribution agreement with the land-owner and then entering into a share distribution agreement with the land-owner to allocate the same flat to the land-owner, though they had taken 86 percent of the cost of the flat from the consumer. The amount of penalty would be payable to the Complainant within sixty days of issue of the order.

Sd

(R.B. Sinha)
Member

Sd

(S.K. Sinha)
Member