

REAL ESTATE REGULATORY AUTHORITY, BIHAR

Telephone Bhavan, Patel Nagar, Patna-800023.

Before the Bench of Mr. Naveen Verma, Chairman

Complaint Case Nos. CC/1022/2021

Rajeev Kumar & ors.Complainants

Vs

M/s Grih Vatika Homes Pvt. Ltd. &orsRespondents

Project: VIP Residency

Present: For Complainants: Ms. Kirti Suman, Advocate

For Respondent: Mr. Mohit Raj, Advocate

04/07/2022

INTERIM ORDER

The complainants, namely, 1. Rajeev Kumar, 2. Sanjeev Kumar and 3. Mukesh Kumar Sinha have filed a complaint petition against the respondent firm M/s GrihVatika Homes Pvt. Ltd., a promoter for direction to the respondent to adhere to the terms and conditions of the agreement dated 15.10.2014 and handover the possession of the flat in question along with its registration in favor of the complainants and pay compensation with interest for the wrongful loss to them as mentioned in Clause 9 of the said agreement

The complainants are siblings. The complainants entered into an agreement with the respondent in which it is stated that the flat was to be handed over for a consideration of Rs.20,62,800/- inclusive of service tax wherein the schedule of payment was also given. It is further stated that the complainant has paid an advance of Rs.51,000/- on 18.08.2014 for which a receipt was issued and the complainants jointly booked the said flat. Subsequently, they paid Rs.2 lakhs on 01.09.2014 by cash, Rs.6.50 lakhs by cheque dated 26.08.2014, Rs.4 lakhs by cheque dated 12/09/2014 and Rs.61,800/- by cash against the total consideration of Rs.20,62,000/- to the respondent for which they have issued receipts. Thereafter the complainant paid Rs. 7 lakhs to the respondent by cheque dated 08.09.2014 for which a money receipt was issued. In this way the complainant has stated that he has already paid the total amount of Rs.20,62,800/- inclusive of service tax. It is further stated that the respondent with mala fide intention has not provided the flat in question and acting in breach of the agreement. The project was to be completed by December, 2016 as per the agreement and the possession of the flat was to be handed over to the complainants within 15 days from the date of completion of the project but after a lapse of almost five years there is no progress in the project. It is also stated that as per clause 9 of the agreement if the builder shall not handover the possession of the flat in question within the stipulated period and the buyer wants to get his money back, then they shall return the money alongwith 18% interest per annum. The delay in handing over the possession of the flat to the complainants caused agony and

harassment to them. It is further stated that whenever requests were made to provide the flat in question, they have refused to give any heed to the request. Hence, this complaint has filed the complaint petition.

A reply on behalf of the respondent has been filed on 22.02.2022 along with the KYC form pertaining to flat no. 506 and also letters dated 27.11.2014 and 13.12.2014 regarding reminder for agreement for second flat. In its reply, the respondent company has stated that the averments made in the complaint petition are misleading and contrary to the true facts of the case. The complainant booked 2 BHK Flat No. 306 on the 3rd floor and 506 on the 5th floor measuring super built up area 1090 sq.ft. in the said project in the year 2014 and the total consideration amount is Rs.20 lakh for each unit through one-time payment scheme. It is further stated that out of total consideration money they received only Rs.16,01,000/- from complainant no.1 for flat no.306 and also received Rs.4,61,800/- from complainant no.2 for flat no.506. The respondent agreed to give two flats to them in one-time payment scheme but they never paid the total consideration amount for each flat. It is further stated that the complainant given an assurance to pay Rs.40 lakh within ten days and make an unregistered agreement for sale. After one month from the execution of unregistered agreement for sale dated 27.11.2014 the respondent sent a reminder letter for dues of Rs.20 lakh to both the buyers but the complainants did not approach to them for dues amount. After lapse of 15 days they sent a second letter for the dues amount stating that if the amount is not paid the respondent will cancel both the flats and return the principal amount after deduction as per terms and conditions of the company. It is further stated that the flats were booked in the year 2014 and the entire occurrence took place before enactment of the RERA, hence this court is not the correct forum to adjudicate the case. Hence, this case is fit to be dismissed.

A rejoinder on behalf of the complainant to the reply filed by the respondent has been filed on 20.04.2022 denying all the averments of the reply. The complainant reiterates that he booked one 2 BHK flat no.306 on the 3rd floor admeasuring 1090 sq.ft. for consideration amount of Rs.20 lakh. He denied to book the other flat no. 506. It is further stated that as per agreement for sale dated 15.10.2014 the respondent had to complete the building by 2016 and handover the same but till date the respondent has not completed the work. The complainant has paid total consideration amount of the flat. It is further stated that even after the direction of the Bench on 21.02.2022 the respondent has not updated the quarterly progress report. The complainant received reply from the RERA Legal Cell, hence a penalty be imposed for not complying the order. The complainant reiterates that they booked only one flat No. 306 in the said project and paid total consideration of Rs.20 lakh and accordingly, agreement was signed by all the three brothers of the complainant and by the respondent through its Managing Director. It is further stated that the complainant had paid the amount in August and September, 2014 itself and the money receipts were also issued, hence para 10 of the reply is fabricated only to harass the complainant. It is further stated that initially the flat was booked, the consideration amount of the flat was shared by all the

three brothers and accordingly, the agreement for sale was signed by all the three brothers and the M.D. of the respondent company. Therefore, the plea that they were not aware is wrong and they have misled the court. As per agreement for sale they complainant had paid the entire consideration amount, therefore, the statement that the complainant had not abide by the terms and conditions of the company is wrong and misleading as they have not complied the terms and conditions and not completed the project by 2021. It is further stated that as per the development agreement the respondent had to complete the project by 2016 but they have not completed it and further they applied for RERA registration on 10.03.2018 and subsequently the Authority had given registration on 09.07.2018 with a validity period from 09.07.2018 to 29.10.2021. Hence, it is clear that the project is registered one and the RERA has all the jurisdiction to entertain the complaint.

On 07.02.2022 hearing was taken up and learned counsel for the parties were present. Learned counsel for the complainants submitted that the agreement was signed on 15.10.2014 and he paid the full consideration money of Rs.20.62 lakh alongwith service tax to the respondent but the flat has not been handed over. Learned counsel for the respondents submitted that there is dispute between the complainant but an effort of amicable settlement is underway. On 21.2.2022 learned counsel for the complainant submitted that as per the direction he filed the amended petition. He submitted that the respondent was directed to upload quarterly progress report. On 20.04.2022 learned counsel for the complainant submitted that the respondents have not complied the order of the Bench. He further submitted that the statement that the complainant booked two flats is completely misleading. Only Flat No. 306 was booked by the three brothers and paid the consideration money. He prayed for possession of the flat with compensation. The Bench imposed a penalty of Rs.5,000/- on the respondent for not uploading the QPR on RERA website. On 27.04.2022 learned counsel for the respondent submitted that the complainants have booked two flats and have clubbed the consideration amount paid by them and requested for one flat. He submitted that agreement was executed between three brothers under one-time payment scheme for flat no.506 also but the complainant had filed only one KYC. They have allegedly paid Rs.16.01 lakh for one flat and Rs.4.61 lakh for the other. Since the complainants did not take cognizance of the reminders for making onetime payment, they have cancelled the booking in 2015. Learned counsel for the complainant refuted the submissions. On 27.05.2022 the complainants alleged that as plan was approved for 4 floors, there appeared to be illegal construction of 5th floor. This was refuted by the respondent and had stated that the construction is as per approval.

Learned counsel for the parties have filed detailed submissions. Learned counsel for the complainants reiterates his submissions as stated in the complaint petition and the rejoinder. Learned counsel for the respondent also reiterates his submissions as stated in the reply.

After hearing learned counsel for the parties, the Bench is of the view that the main dispute here is with respect to the second flat i.e., 506. Although

the respondent company has produced the copy of KYC form pertaining to flat 506 duly signed by the Complainant no.2, the complainant has denied the issuance of KYC form and has alleged that the said document is forged. In such a situation, the Bench deems fit to direct both the parties to file their submissions regarding booking of flat no. 506 on affidavit along with supporting documents to substantiate their stand. The respondent is also directed to submit documents regarding allotment letter and agreement to sale executed in respect of the other flat.

The parties are further directed to exchange the copies of their respective affidavits along with respective documents with each other within three (3) weeks.

Put up for further hearing on 29.08.2022. Inform both the parties accordingly.

Sd/-

**Naveen Verma
Chairman**