

**REAL ESTATE REGULATORY AUTHORITY, BIHAR**

**Before the Bench of Mr. Naveen Verma, Chairman**

**Complaint Case Nos. CC/1143/2021**

**Rajesh Kumar Raju .....Complainant**

**Vs**

**M/s Sunit Housing Pvt. Ltd. ....Respondent**

**Project: Sunit Ambrosia**

**28/06/2022**

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**30.06.2022**

**ORDER**

The matter was last heard on 25.05.2022.

The case of the complainant is that he booked a flat bearing No.301 Tower-T1A, Area 1950 sq.f.t. in the project Sunit Ambrosia on 09.02.2020 and paid Rs.1 lakh as booking amount, and further paid of Rs.9,50,000/- making a total of Rs.10,50,000/- against the total consideration money of Rs.71,50,000/-. As the respondent was not executing the agreement for sale and asking for other miscellaneous charges which were not decided at the time of booking, the complainant filed the present case seeking relief for refund of principal amount along with interest, Rs.5 lakhs for not complying with the Rules and for their wrong and misconduct and Rs.25,000/- litigation cost.

The complainant has placed on record a copy of payment receipts against payment of Rs.1,00,000/- only and booking form.

Perused the record. During the course of hearing, the complainant submitted that initially he paid Rs.1 lakh as a token money and then Rs.10.50 lakhs out of the consideration money of Rs.71.50 lakhs to the respondent company. He further submitted that they are now

demanding Rs.5.60 lakhs for car parking and Rs.3 lakhs for maintenance..

The complainant has further submitted that he did not make any further payment on demand letter as the respondent had failed to execute agreement for sale. On non payment of installments the respondent threatened the complainant to cancel the booking of the said flat as well as forfeiture of the earnest money. Thereafter, on 18.10.2021, the respondent sent a draft copy of the agreement for sale and on perusal of the same the complainant came to know that the carpet area was 985 sq.ft. instead of 1560 sq.ft. . In the said agreement no rate was specified as per carpet area, no parking area was specified and the total consideration amount was more than the agreed price. Thereafter the complainant decided not to continue with his booking and asked for refund.

On 01.04.2022 the respondent filed reply stating that M/s Sunit Housing Pvt. Ltd. launched a residential project namely 'Sunit Ambrosia' on a piece of land situated at Khagaul Road after obtaining all the requisite approval and registration from the RERA. The complainant came to the office for booking of the flat and after satisfying himself with all the documents booked a flat bearing 301 in the project. The complainant was provided a copy of the draft agreement with a request to fix a date to get it executed and registered but due to ulterior motive he was avoiding on one pretext or other. It is further stated that as the construction was going on at a very fast speed they needed fund for completing the project.

It is further stated that this case is not maintainable before the RERA as the complainant is neither a promoter, nor allottee.

He further submitted that an application cum registration form for booking of the said flat has been executed in which the terms and conditions for allotment have been mentioned. It is further stated that several demand letters have been sent to him for payment of dues amount and on 18.10.2021 a draft of agreement for sale was sent to the complainant for execution of the same but the

complainant neither paid the dues amount nor was ready to execute the agreement for sale. On 13.09.2021 information was given to the complainant that failure to make payment against the demand letter may lead to cancellation of booking of the flat and forfeiture of earnest money to the extent of 15% of the sale price but he has not taken any heed to the request. They requested him to make payment immediately, failing which they shall have no option but to cancel the booking and forfeit the earnest money. It is further stated that they are ready to give the flat in question if the complainant pays the outstanding dues with interest mentioned in the allotment letter. If the complainant does not pay the outstanding dues with interest, the respondent submits that they are willing to refund the amount after forfeiture of the booking amount.

On 08.04.2022 learned counsel for the complainant submitted that the complainant prays for refund of the full amount. However the respondent submitted that they are ready to refund the amount after deducting 15% from the consideration paid by him.

On the last date of hearing, Learned Counsel for the complainant reiterated her prayer and further submitted that the respondent refused to give the money receipt of payment. She further submitted that the respondent delayed the execution of the Agreement for sale and sent the agreement for sale on 09/10/2021 through whatsapp. She also submitted that the clauses of agreement for sale was arbitrary and the carpet area of the flat was different in the agreement for sale as from what was agreed upon. She submitted that the respondent has not mentioned the rate of carpet area in the agreement for sale, the amenities/facilities in the apartment and car parking space.

The learned counsel for the respondent submitted that the respondent is ready to hand over the possession of the flat.

The learned counsel for the complainant requested for refund with interest and compensation.

The Bench observes that as per section 2(d) of the Bihar Real Estate Regulatory Authority "allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent and hence the matter is maintainable.

The Authority notes that as per RERA Act, 2016 the booking amount before executing the agreement to sale cannot be more 10% of the consideration , which does not seem to have been followed in this case. The model agreement for sale mentions that the deduction in cancellation cannot exceed the booking amount. Thus the contention of the respondent to refund the principal amount in installments after deducting 15% is not tenable.

The Authority observes that the promoter is willing to hand over the possession if the allottee makes the payment of the balance amount of consideration. The complaint of the allottee regarding change in the carpet area and other charges should have been first taken up with the respondent.

The complainant ought to have first approached the promoter for cancellation of the booking and should have approached the Authority only if their grievance was redressed.

The documents filed and submissions made do not indicate that such an application was sent to the respondent seeking refund. The amount of refund would be guided by the terms of the model agreement to sale as prescribed in the Bihar RERA Rules, 2017.

The Authority holds that as the promoter has erred in taking more than 10% without executing the agreement to sale , they cannot deduct any amount for cancellation. The allottee has not taken adequate steps for cancellation of booking with cogent reasons thereof, and hence the Authority holds that no interest on the principal amount is

admissible as the entire deposit without any deduction is being refunded. The Authority hence directs the respondent company and its Directors to refund the principal amount of Rs.10,50,000/- to the complainant within sixty days of issue of this order.

The complainant is at liberty to press his claim for compensation before the Adjudicating Officer.

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

Sd/-

**Naveen Verma**

**(Chairman)**