

# **REAL ESTATE REGULATORY AUTHORITY, BIHAR**

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

**Complaint Case No.: CC/429/2021**

**Meena Devi.....Complainant**

**Vs.**

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

**Project: Ghar Apna**

## **ORDER**

04.08.2022            The matter was last heard on 08.06.2022.

The case of the complainant is that she purchased a Flat no. 605 block-B in Ghar Apna project of the respondent company. She entered into an agreement for sale on 18.06.2010 with the respondent company and she has paid Rs. 12,86,985/- i.e. the full consideration amount of the consideration of flat but, till now the possession has not been given to the Complainant. Hence , she has filed this case seeking relief for either the possession of flat or refund of paid consideration along with interest @18% p.a. on the total consideration amount from the date of payment ; compensation of Rs 10,00,000/- for mental and physical harassment and Rs. 1,00,000/- for the litigation cost.

The complainant has placed on record a copy of the agreement for sale dated 14.07.2010 executed between the parties, a copy of the payment receipt issued by the respondent company.

The respondent has filed its reply on 13.11 2021 stating therein the present case relates to the period of Prabhat Kumar Verma (since deceased), who was then, the Managing Director of the company and that , at the time of his death, the company had

negative balance of Rs.1,23,22,270/-. It has been further submitted that after his death, the audit report was prepared by the chartered accountant and it was found that Rs. 2,83,37,303/- has been transferred in three transactions in the personal account and two private firms of then M.D. Prabhat Kumar Verma. The respondent has refuted the claim of the complainant regarding payment of the entire consideration amount and denied the receipt of payment in cash . The complainant ought to have raised her grievances before Mr. Prabhat Kumar Verma who died on 01.05.2018 and filed the present case after 9 years.

The respondent has admitted that the then MD Prabhat Kumar Verma, much before his death on 01.05.2018, had made second registered agreement for sale of the same flat 605 and flat 606 of the complainant with Mr. Ashok Kumar Singh on 05.12.2016 for a total consideration amount of money of Rs. 49,90,000/- . They submit that Rs. 10,00,000/- paid on 07.07.2016, Rs. 31,56,000/- was paid on 27.12.2016 to Mr. Prabhat Kumar Verma, then MD and the remaining amount was paid between 2019 to August 2021 after which both the flats registered were registered to Mr. Ashok Kumar Singh on 02.08.2021 and the flat claimed by the complainant is not available.

The complainant has reiterated that without their consent, the respondent has the respondent have explicitly admitted the fact that the flat of the complainant has been sold to one Mr. Ashok Kumar. This is wrong and illegal without the cancelation of the registered agreement to the sale which was still valid. The registered agreement cannot be cancelled unilaterally especially when the total amount of the considerations has not been refunded by the respondent. The respondent has failed to honour its commitment of

delivery of the aforesaid property within a prescribed period of 3 years and a time period of more than eleven years has lapsed from the date of entering in agreement for sale. The complainant also cited various case laws of Hon'ble Supreme Court and High Court to support her claims decided in such similar cases.

The learned counsel of the respondent company reiterated the contents of the counter affidavit and reiterated his pleadings.

On the last date of hearing the learned counsel of the complainant submitted that she has paid Rs. 12,86,985/- through cheque and cash. He requested a refund of the amount with the interest. The learned counsel of the respondent admitted the payment accepted by the cheques and denied the payment made in cash.

The Authority takes note of the submissions made by both parties and observes that the company is a 'person' and that when the new Directors took over the company after the death of Shri Prabhat Kumar Verma, the then MD, it becomes their responsibility to fulfil all the obligations and liquidate all the liabilities. Their plea that the erstwhile management was responsible for diversion of funds and for not handing over the apartment is not tenable under the Real Estate (Regulation and Development) Act, 2016 as the present Directors are now responsible for both the assets and liabilities of the company. The booking for this project was started way back in 2010. The submission that the then MD had misappropriated the funds received from various allottees does not absolve the present Directors as they ought to have done due diligence before taking over the Company. The Bench further notes that the present Directors

have not given any evidence of steps taken by them to file criminal and civil cases to recover the funds diverted to the personal accounts of the then MD, since deceased from his family members or by sale of his properties. It is evident from the submissions of the complainant that the promoter has committed a breach of agreement to sale , which is an offence for which both the present and erstwhile Directors are liable under the Real Estate ( Regulation and Development) Act, 2016.

The Bench notes that as the flat have admittedly been sold to someone else, it cannot direct the respondent company to hand over the same apartments to the complainant within the provisions of RERA Act, 2016.

On the basis of the submissions and taking into consideration the documents filed by both the Parties, the Bench directs the respondent company to refund the entire principal amount along with interest on such amount at the rate of marginal cost of fund based lending rates ( MCLR ) of State Bank of India as applicable for three years plus eight percent from the date of taking the booking till repayment within sixty days of issue of this order.

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

With these directions and observations the matter is disposed of.

Sd/-  
**Naveen Verma**  
**Chairman**