

REAL ESTATE REGULATORY AUTHORITY, BIHAR

Telephone Bhavan, Patel Nagar, Patna-800023.

Before the Bench of Mrs. Nupur Banerjee, Member

Complaint Case Nos. CC/569/2021

Abha SharmaComplainant

Vs

M/s Grih Vatika Homes Pvt. Ltd.Respondent

Project: Ram MahavirVatika

Present: For Complainants: In person
For Respondent: Mr. Mohit Raj, Advocate

30/06/2022

ORDER

The complainant Abha Sharma, wife of Pinku Kumar, a resident of Mohalla Indira Nagar, Road No.7, Navratanpur, Kankarbagh, Phulwari, Patna has filed a complaint petition against the respondent firm M/s GrihVatika Homes Pvt. Ltd. for refund of the money with interest accrued thereon.

In short, the case of the complainant is that the complainant had booked a flat and made payment six years ago but they have not handed over the flat.

A notice dated 29.06.2021 was issued to the respondent company under Section 31 of the RERA Act, 2016 and Rule 36 of the RERA Rules 2017 to file their reply.

The complainant has placed on record Agreement for Sale dated 24-02-2016. Complainant has not placed any money receipts on record. However, in the Agreement for Sale dated 24-02-2016 at page 4 it is mentioned that the complainant has paid Rs.5,01,000/- as advance to respondent which the respondent has also admitted in their reply filed on 28-02-2022 in para-6.

On 22.11.2021 hearing was taken up and the complainant was present but none appeared on behalf of the respondent company. Fresh notice was directed to be issued to the respondent with a direction that if the respondent failed to appear on the next date of hearing, the case would be heard ex-parte on the basis of materials available on record. On 06.12.2021 none appeared on behalf of the complainant but Mr. Mohit Raj, Advocate appeared on behalf of the respondent company and prayed for time to file reply. On 20.12.2021 both the parties were present and again the respondent prayed for time to file their reply, which is allowed. On 04.05.2022 the complainant was present and none appeared on behalf of the respondent company. On hearing the complainant, the matter was reserved for orders.

In compliance of the order of the Bench the respondent company has filed their reply stating that the averments made by the complainant in his complaint petition are misleading and contrary to the facts and circumstances

of the case. He referred to Section 18 of the RERA Act, 2016. It is further stated that the complainant had booked Flat No. 208 on the 2nd floor, Block A super built up area admeasuring 487 sq.ft. in the year 2015 and out of total consideration money of Rs.7.24.715/- she paid Rs.5,01,000/- only. It is further stated in the reply that the respondent is ready to refund the amount after deducting the cancellation charge. The respondent informed the complainant to refund the booking amount but she has not sent any letter for cancellation of the flat. It is further stated that all these have happened in the year 2015 i.e. before enactment of the RERA Act, so this is not the correct forum to adjudicate this case. Hence, the complaint petition is fit to be dismissed.

Learned counsel for the complainant during the course of hearing on 20-12-2021 has submitted that she booked a flat but no work has been made till now. He further submitted that though the respondent company has made refund to 3-4 other allottees but have not yet refunded her deposited money. She wants to refund the money with interest accrued thereon.

Learned counsel for the respondent submitted that this case is not maintainable before the Bench as the project is not registered and the agreement was signed before the enactment of the RERA Act, 2016.

During the last hearing on 04-05-2022, complainant was present and reiterated his prayer for refund.

No one appears on the behalf of respondent company during the last hearing.

The Bench observes that the Project was ongoing at the time of enforcement of the Act on 01.05.2017 and as such, the concerned project should have been registered with the Authority as per 1st Proviso of Section 3(1) of the Act. The Hon'ble Supreme Court recently in M/s Newtech Promoters & Developers Pvt. Ltd. Vs State of U.P & Ors. [2022] (1) RCR (Civil) 357 has observed that the Act is not retrospective in nature, rather it is retroactive because it affects the existing rights of the persons mentioned in the Act like promoter, allottee etc. The intent of legislature was to include all ongoing projects which commenced prior to the enforcement of the Act. Hence, the present Complaint Case is maintainable against the Respondents.

The Bench also observes that from the averments made in the reply filed by the respondent company it is an admitted fact that that the complainant booked a flat in the year 2015 and paid money and the work in the project is not in progress, hence, considering the same and documents placed and submissions made by both the parties, the Bench hereby directs the respondent company and its directors to refund the principal amount of Rs.5,01,000/- to the complainant along with interest at the rate of marginal cost of fund based lending rate (MCLR) of State Bank of India as applicable for three years plus three percent from the date of taking the booking till the date of refund within sixty days of issue of this order.

The respondent is also directed to get registered the project with the Authority as the project is ongoing. If the application for registration is not filed immediately then suo-moto proceeding shall be initiated against respondent company under section 3 of the Act.

With the above observations/ directions, this complaint petition is disposed of.

Sd/-

Nupur Banerjee
Member