

REAL ESTATE REGULATORY AUTHORITY, BIHAR
2nd Floor, BSNL Telephone Exchange Bldg, Patel Nagar, Patna-800023

Before the Bench of Mr R.B. Sinha, Member

CC/1317/2020

Tarique Jamil.....Complainants

Vs

M/s Grih Vatika Homes Pvt Ltd.....Respondent

Present: For Complainants: In Person
For Respondent : Mr Mohit Raj, Advocate

10/08/2021

ORDER

1. Tarique Jamil, S/o Late Md Muslim a resident of New AG Colony, Mahalekhakar Bhawan Complex, R Block, Patna-800001, has filed a complaint petition in April, 2020 under section 31 of the Real Estate (Regulation and Development) Act 2016 against the respondent company M/s Grih Vatika Homes Pvt Ltd for refund of his booking amount for a flat in the Project Kamal Complex, Saguna More, Patna of the promoter along with due interest thereon and compensation.
2. He has submitted the copies of the money receipts, cheques return memos of the State Bank of India, legal notice dated 12.11.2019, complaint case no 1599 of 2019 filed before CJM, Patna etc along with his complaint petition.

Case of the Petitioner

3. In his petition dated 25/04/2020, the complainant has submitted that he had booked the Flat No.101 in the project Kamal Complex in February 2016 being constructed by the respondent company M/s Grih Vatika Homes Pvt Ltd and paid a total sum of Rs 5.00 lakh to the respondent company in February 2016. He claimed that

the promoter informed him on 23rd March 2016 that the project has been cancelled due to unavoidable circumstances. However, the promoter didn't refund his deposits. After a lot of pursuance and reminders, the promoter gave him three cheques for Rs 5 lakhs but all of them bounced on presentation to the bank. Thereafter, he sent a legal notice to the promoter. The promoter again gave him a cheque in February 2019, which again bounced on presentation to the bank. He claimed that the promoter has committed fraud and breach of trust with him. Accordingly, he had also filed a criminal case against the promoter before CJM, Patna in April 2019.

4. He has requested for refund of the principal amount of Rs 5.00 lakh with interest @ 18% per anum and Rs one lakh as compensation for harassment and mental tension caused to him.
5. In pursuance to the receipt of Complaint petition, a notice was issued by the Authority in July 2020 to the respondent company to furnish their reply. However no reply was received from the Respondent company.

Hearing

6. The case was put to hearing and hearings were held on 17/02/2021, 18/03/2021, 24/03/2021 and 02/06/2021. In course of hearing, the Complainant represented himself before the Bench while the Respondent Company was represented by Mr Mohit Raj, Advocate and Mr Ranjit Kumar Jha, Director of the company.
7. On 17/02/2021 the complainant submitted that various cheques issued by the respondent company got bounced and only Rs 50,000/- has been paid on 11/02/2021. The respondent company submitted that due to land dispute, the project was cancelled and prayed for 20 days' time to make refund of the principal amount.
8. In course of hearing, the respondent company submitted their response to the complaint petition in March 2021. In the response,

the respondent company submitted that they have already paid Rs 50,000/- to the complainant who has filed a criminal case No. 1599/2019 dated 23/04/2019 also against the respondent for the same occurrence which is barred in the eye of law. Again one more criminal case against the respondent was filed on 29/04/2019. The respondent further submitted that the present case is barred by the Double Jeopardy.

9. The respondent company further submitted that this is not the proper forum to adjudicate this matter and also the entire occurrence has occurred before the enactment of the RERA, therefore, this case be dismissed. The respondent however didn't contest on the merit of the case and admitted the receipt of the booking amount. Learned counsel of the respondent company also didn't make any claim of refund of the amount to the allottee except Rs50,000 which was paid on 11.02.2021, a week before the first date of hearing.
10. The Bench while expressing displeasure on the conduct of the promoter/respondent company, directed to refund the principal amount within two weeks.
11. On 18/03/2020 the complainant submitted that on 17/03/2021 he has received Rs one lakh from the respondent company. The Bench directed the respondent company to make full refund by 23/03/2021. The respondent company in its subsequent petition dated 05/04/2021 submitted that Rs 5.00 lakh has been refunded to the complainant and there were no outstanding dues now. On 02/06/2021 the complainant submitted that he has received his principal amount and prayed for interest.

Order

12. The Bench expressed its displeasure and dismay over the unethical and unprofessional conduct of the promoter and noted that they

have availed the economic benefits of the deposits for more than five years, without refunding the deposit to the allottee.

13. Accordingly, the Bench directs the respondent company to pay interest at the rate of Marginal Cost of Lending Rate (MCLR) of the State Bank of India as applicable for three years or more plus two percent from the date of deposit to the date of refund within 60 (sixty) days of the issue of this order failing which the promoters will be required to pay penal interest @ 9 percent per annum for delay of every day on the amount of interest payable from the date of this order until the date of payment of the interest under section 63 of the Real Estate (Regulation and Development) act 2016.

14. In so far as the claim of compensation is concerned, the complainant, if he so desires, may approach the Adjudicating officer under section 71 of the Real Estate (Regulation and Development) Act 2016.

Sd/-

**R B Sinha
Member**