

**REAL ESTATE REGULATORY AUTHORITY, BIHAR**  
**Before the Full Bench of Mr. Naveen Verma, Chairman,**  
**Mrs. Nupur Banerjee & Mr. S.D. Jha, Members, RERA, Bihar.**

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RERA/CC/26/2022

Mrs. Nutan Kumari .....Complainant

Vs.

M/s A & A Engicon Pvt. Ltd. ....Respondent

**PROJECT: SAFROON GARDEN**

For Complainant: Sri Jairam Singh, Advocate

For Respondent: Sri Shahid Imam, Advocate

**ORDER**

23.12.2022

This matter was heard at length on 20.12.2022. Sri Jairam Singh, Advocate, appeared for the complainant and Sri Shahid Imam, Advocate, appeared for the respondent.

Learned counsel for the complainant submitted that he had entered into an agreement with one Asif Ghafoor, who is a Director of the respondent company, for allotment of flat no.309 in the project. It was mutually verbally agreed between them to allot flat no.301 instead of flat no.309. Accordingly, an amount of Rs.25,74000/- out of total consideration money of Rs.27,45,000/- was paid to the respondent in lieu of above stated booked flat no.301. He had requested to complete the work before handing over the possession, but the respondent - promoter neither completed it nor handed over the possession. He reiterated the prayer for handing over the possession of the flat.

Learned counsel for the respondent submitted that it is evident from the copy of the agreement submitted before the Bench, that it was in the individual capacity of Mr. Asif Ghafoor and not in the capacity of the Director of the company. He further submitted that the flat sold to the complainant was from the share of the landowner with whom he had an agreement to sell four flats. He submitted that due to some dispute over title the landowner has cancelled the agreement and hence he is unable to give possession of the flat. Learned counsel for the respondent questioned the maintainability of this case before the Authority as the transaction was not made with the respondent company. In order to substantiate the claim of non-maintainability, learned counsel for the respondent further stated that a title suit is already pending before the Civil Court, Danapur regarding adjudication of the title of the landowner of the project.

The learned counsel for the complainant rebutted this by stating that though the agreement was in the individual name of Mr. Asif Ghafoor, who is also one of the Directors of the Company, but money was received in the account of the company, hence the present case should be decided by the Authority. In support of this contention, the complainant referred to the copy of one receipt of Rs.2 lakh issued by the respondent Company (M/s A & A Engicon Pvt. Ltd.) attached with the complaint petition.

Learned counsel for the respondent, , however, submitted that cheques of all other payments for the flat were made in the name of Mr. Asif Ghafoor except the Rs 2.00 lakhs paid in cash during his absence .

The learned counsel for the respondent further expressed his willingness to refund the amount paid by the complainant along with interest till today i.e. 20.12.2022 , as he would not be able to give possession till the decision of the Civil Court in the title suit.

The learned counsel for the complainant submitted that he would wait for possession of the flat till the decision of the Civil Court in the title suit, but in the meanwhile the respondent would not sell flat no.301.

Learned counsel for the respondent agreed with this and further stated that if, in the meantime, the complainant wants to get the amount refunded along with interest at such rate as may be prescribed from the date of agreement till today i.e. 23.12.2022, the same would be refunded.

Considering the nature of issues involved in this case, going through the material on the record and hearing the parties, the Authority observes that the ownership of the flat in question is under dispute and a title suit has been filed which is pending before the Civil Court, Danapur. In a matter where there is a land dispute and is pending for adjudication before the Civil Court, the Authority would not be able to direct the respondent to hand over the possession of the flat.

The Authority notes that despite the option of taking refund along with interest, the complainant is ready to wait for possession till the final decision in the title suit.

The Authority, therefore, directs Mr. Asif Ghafoor, Director of the respondent company to ensure that the flat number 301 in the project is not sold to any one else as the complainant has submitted that she

is willing to wait for possession till the outcome of the title suit. The complainant has the liberty to seek refund of the amount paid by her along with interest calculated at the marginal cost of fund based lending rates of SBI as applicable for three years plus three percent from the date of making payment till today i.e.23.12.2022.

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

**Sd/-**  
**S.D.Jha**  
**Member**

**Sd/-**  
**Nupur Banerjee**  
**Member**

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