

REAL ESTATE REGULATORY AUTHORITY, BIHAR
2nd Floor, BSNL Exchange Bldg, Patel Nagar, Patna-800 023

Before the Bench of Mr R.B. Sinha, Hon'ble Member

Case No.CC/274/2019

Murli Prasad Mandal.....Complainant

Vs

M/s Sheba Welcon Builders Pvt Ltd.....Respondent

Present: For Complainant: In Person

Mr Mohit Raj, Advocate

For Respondent : Mr Vijay Kumar Sinha, Advocate

Mr AgreyaPratap, Advocate

31/08/2021

O R D E R

1. Murali Prasad Mandal, S/o Mr Shyam Sundar Mandal, a resident of Bhawanipur, Jagdishpur, Bhagalpur, has filed a complaint petition on 21.02.2019 under Section 31 of the Real Estate (Regulation and Development) Act 2016 against M/s Sheba Welcon Builders Pvt Ltd through its Managing Director Md Khalid Rashid for refund of his booking deposits along with penal interest due to illegal sale of his allotted flat no -302 in project Sahdeo enclave, located at Khanjarpur, PS- Barari, near S M College, Bhagapur by the promoter in August 2016.

2. Along with his petition, the complainant has submitted copies of the agreement for sale with the promoter, money receipts, legal notice served on the respondent etc.

Case of the Complainant

3. In his Petition, the Complainant has stated that he had booked a flat no - 302 in the Project Sahdeo Enclave of the Respondent Company/promoter in May 2015 at the total consideration amount of Rs 27.16 lakh under

the construction-linked plan (CLP). As per the agreement for sale executed on 11th May 2015, out of total consideration amount of Rs 27.16 lakh, the consideration amount of the flat was Rs 22.66 lakhs and cost of lift, generator, electricity and parking space was Rs 4.50 lakhs. He claimed that he had paid Rs 20.04 lakhs between 11th May 2015 and December 2015 to the Respondent Company. The Complainant claimed that since he had also signed a MoU with the Developer in May 2015 stating that if he makes full payment under one time payment (OTP) scheme within a month, the price of the flat would be Rs 18.54 lakh only. However, due to various reasons, he couldn't make payments in a month under the OTP and hence, he was required to make payments as per CLP scheme. He claimed that since the promoter was in urgent need of funds on account of personal reasons (wife's illness), he made early payment and paid nearly 90 percent of the cost of the flat within seven months of signing the agreement for sale, though the construction of the project was pretty slow and less in comparison to the payment made. He claimed that even half of the building was not constructed when he had made payment of Rs 20.04 lakh.

4. The Complainant claimed that in spite of making payment of about 90 percent of the cost of the flat, the promoter sold the flat to another person in August 2016, without cancelling his agreement for sale of the flat and without giving any intimation to him. When he learnt about the sale, he tried to contact the promoter but it was impossible to reach him either through mobile/email. Then he filed a complaint with the Kotwali Police Station, Patna in May 2018. On direction of the Kotwali Police incharge, the promoter signed an agreement with the complainant in July 2018 and gave him four post-dated cheques of Rs 5 lakh each. However, only one cheque was encashed and remaining three cheques bounced on presentation in the bank.

5. The Complainant claimed that he has thereafter filed an FIR against the promoter in December 2018 but till date of filling the complaint, the promoter has not paid the remaining Rs 15.04 lakhs along with penal interest on the deposits since May 2015.

In pursuance to the receipt of the complaint petition, the Authority issued a notice under Sections 03, 12, 18, & 19 of the Real Estate (Regulation & Development) Act 2016 and Rule 36 of the Real Estate (Regulation & Development) Rules 2017 to the respondent company M/s Sheba Welcon Builders Pvt Ltd through its MD Md Khalid Rashid to submit reply/response within a fortnight. However, no reply was received from the promoter. Accordingly, the Bench decided to call parties for hearing.

Hearing

6. Hearings were held on 2.9.2019, 18.10.2019, 11.12.2019, 29.01.2020, 15.09.2020, 7.10.2020, 14.10.2020 09.11.2020 and 09.02.2021. In course of hearing, the complaint was represented by Mr Mohit Raj, Advocate and the respondent company was represented by My Agreya Pratap Advocate and Mr Vijay Kumar Sinha, Advocate.

7. In course of hearing, the complainant and his counsel reiterated the statement made in his complaint petition and stated that the respondent had fraudulently cancelled his booking of flat no 302 in Sahdeo Enclave without intimating him and sold the flat to another person in August 2016 even when he had made payment of about 90 percent of estimated cost of the flat within seven months of execution of the agreement for sale in May 2015. He claimed that the promoter did not even inform him about cancellation of his booking. He further claimed that the project was not yet complete till date. He claimed that when he came to know about the registration of his flat to some other person, he desperately tried to contact the promoter in March 2017. During his meeting in March 2017, the promoter expressed his regret and assured that he would give him another flat in his Patna Project but that promise was also not kept.

8. In his response, Learned counsel of the respondent company submitted that the complainant has already filed a FIR against the respondent company and a criminal case is already pending/sub –judice before CJM, Patna. He stated that the allottee has already been paid additional amount of Rs 7.5 lakhs under directions of Hon'ble Patna High Court. The Complainant admitted that he has received the amount of Rs 12.5 lakhs and requested for refund of the remaining Rs 7.54 lakhs along with interest since the date of the

deposit. He also requested for damages for illegally cancelling the booking of his flat without any rhyme or reason and surreptitiously registering the flat to someone else in August 2016.

Issues for consideration

9. There are following issues for consideration before the Bench

1. Firstly whether the Project Sahdeo Enclave was an ongoing project as on 1 May 2017, the date on which the Real Estate (Regulation and Development) Act 2016 came into operation in the State of Bihar;
2. Secondly whether the promoter was justified in cancellation of the booking of the allottee and registering the conveyance deeds of the Flat no-302 in the project Sahdeo Enclave in favour of another person without informing the allottee and refunding the deposits of the allottees along with interest.

10. In so far as the first issue is concerned, the complainant claimed that the project was still incomplete and the promoter has not been able to produce any completion/occupancy certificate of the project from the competent authority. It is therefore established that the project Sahdeo Enclave was an ongoing project as on 1st May 2017, the date on which the Real Estate (Regulation and Development) Act 2016 came into operation in the State of Bihar.

11. So far as 2nd issue is concerned, the complainant claimed that he had executed the agreement for sale on 11th May 2015, and had already paid Rs 20.04 lakhs between 11th May 2015 and 1st December 2015 to the Respondent Company against the consideration amount of the flat of Rs 22.66 lakhs and cost of lift, generator, electricity and parking space of Rs 4.50 lakhs. Thus the complainant has already paid nearly 90 percent of the cost of the flat within few months of execution of the agreement for sale. As the promoter had not issued any further demand letter to the complainant for construction linked payment, there appears to be no justification for the promoter to cancel the booking of the allottee without

giving any intimation to the allottee. Thus the cancellation of the booking of the flat and sell of the flat to another person was arbitrary and illegal.

Order

12. The Bench orders MdKhalid Rashid, the MD of the respondent company to register their project Sahdeo Enclave which was an ongoing project as on 1st May 2017, with the Real Estate Regulatory Authority, Bihar within thirty days of issue of this order, failing which the Authority may initiate proceedings under section 59 (i) of the Act 2016 for contravention of the section 3 of the Real Estate (Regulation and Development) Act 2016.

13. The Bench also orders Md Khalid Rashid and MrsAmina Rashid, the Directors of the respondent Company to refund the balance amount of the deposits amounting to Rs 7.54 Lakhs along with interest at the rate of Marginal cost of Lending Rate (MCLR) of the State Bank of India (SBI) as applicable for three years or more, plus Two percent from the date of deposit to the date of refund within sixty days of issue of this order.

14. The Bench also orders the Md Khalid Rashid and MrsAmina Rashid, the Directors of the respondent Company to pay a damages of Rs 3 lakhs for illegally cancelling the booking of the allottee and surreptitiously registering the flat to someone else in August 2016.

Sd/-

R B SINHA
Member