

REAL ESTATE REGULATORY AUTHORITY, BIHAR

2nd Floor, BSNL Telephone Exchange Bldg, Patel Nagar, Patna-800023

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

Case No.CC/385/2019 & CC/386/2019

Kiran Kumari & Rinki Kumari.....Complainants

Vs

M/s Patligram Builders Pvt Ltd.....Respondent

Present: For Complainants: In person

For Respondent : Mr SP Parashar, Advocate

Mr Prabhat Kumar Ranjan, Director

28/07/2021

O R D E R

1. Smt Kiran Kumari, a resident of Flat No. - 101, Gunilal Kaushalya Complex, Nitibagh, Rukanpura, Patna and Smt Rinki Kumari, resident of Flat No 201 Prem Lata Niwas, Siddhartha Nagar, Jagdeo Path, Patna have each filed a complaint petition in May 2019 under section 31 of the Real Estate (Regulation and Development) Act 2016 against M/s Patligram Builders Pvt Ltd for refund of their booking deposits in the project Patligram Kingdom Phase I of the promoter along with due interest and compensation.
2. The Petitioners have submitted the copies of the pre-launch agreements, money receipts, letters from the banks regarding bouncing of cheques given by the respondent etc, along with their complaints.

Case of the Complainants :

3. The complainants Smt Kiran Kumari and Smt Rinki Kumari, in their respective complaint petitions have submitted that they booked a flat R1V1 (Duplex) and R5V1-01 (Duplex) respectively in March-April 2017 in the Project Patligram Kingdom Phase I situated at Lakhni Bigha, Sarari, Usri, Patna on a consideration amount of Rs 38 lakhs and paid a

total sum of Rs 12,31,200/- each through different cheques/dates to the promoter during March 2017- August 2018. The promoter/builder however did not execute the agreement for sale with them inspite of repeated requests and pursuance. As they didn't get any favourable response, they cancelled their bookings in September 2018 and asked the promoter to refund their booking deposits. After a lot of request and pursuance, the promoter gave two cheques to both complainants but the cheques issued by the promoter bounced on presentation to the payee bank. The complainants have requested for refund of their deposited money with due interest and compensation for their mental harassment and financial losses.

4. In pursuance to the receipt of complaint petitions, the Authority issued notices to the respondent company M/s Patligram Builders Pvt Ltd through their Director Mr Prabhat Kumar Ranjan to submit reply/response by 31/07/2019. However, the respondent company did not submit any reply. Accordingly, the Authority called the parties for personal hearing.

Hearing :

5. Hearings were held on 24/10/2019, 14/11/2019, 18/12/2019, 07/01/2020, 09/01/2020, 21/01/2020, 03/02/2020, 25/02/2020, 05/03/2020, 06/10/2020, 14/10/2020, 04/11/2020, 09/11/2020 and 10/02/2021.
6. In course of hearing, the complainants represented themselves while the respondent company was represented by Mr SP Parashar, Advocate and Director Mr Prabhat Kumar Ranjan. The Bench directed the Respondent company once again to register the project with the Authority as the respondent company had already been penalized by the Authority under section 59 (1) of the Real Estate (Regulation and Development) Act 2016 for contravening the provisions of Section 3 of the Act.
7. The Respondent Company submitted its reply/written statement in course of hearing and stated that the case was not maintainable as this Authority has no jurisdiction over it. The respondent admitted that the complainants booked their respective flats in March/April 2017 and paid Rs 12,31,000/- each during March 2017 to August 2018. Since the complainants requested to cancel the booking on 11/09/2018 with an

- application supported by an affidavit, the respondent gave them two cheques for refund. However, the bank did not pay the amount as the bank account of the promoter was frozen by order of RERA under section 36 of the Act due to contravention of the Section 3 of the Act by the Respondent Company. The respondent company further submitted that they have applied for registration of the project with RERA but it is pending for want of some documents.
8. On the other hand, the complainants in their reply to the written statement submitted that the respondent company is flouting the rules/regulations of the Government and that the respondent must be directed to immediately refund the deposited amount with interest and no further time be granted.
 9. In February 2020, two post dated cheques for Rs 1,25,000/- each in the name of both the complainants were handed over to the complainants in course of hearing by the Respondent company. On 25/02/2020 learned counsel of the respondent company submitted that he has been advised by his client that repayment will be made in three installments in alternate months which were not considered reasonable as the respondent company had taken the fund in 2017-2018 and the Bench felt that the refund should be made expeditiously.
 10. In November, 2020 the complainants were given cheques for Rs one lakh each by the respondent company but it was reported that the cheque issued to Pinki Kumari got bounced on submission to the payee bank while the cheque issued to Rinki Kumari was encashed. The Bench directed that the remaining amount must be paid to the complainants and also imposed cost of Rs 25,000/- to be paid to each complainant for not complying with the earlier order of the Bench.
 11. In course of hearing the Bench observed that the respondent was deliberately trying to abstain from the hearing and delay the proceedings. As more than two years had passed since the complaints were lodged and in spite of repeated directions to refund the booking amount had failed, the Bench directed the complainants to lodge FIR against the respondent company for breach of trust and reserved the case for order.

Issue for Consideration :

12. The Respondent company has already applied for registration of the ongoing Project with Authority. It is therefore established that the project is covered under the provisions of the Real Estate (Regulation and Development) Act 2016. The Respondent company has however admitted that they have not submitted the requisite documents as required till date.
13. Further, it is an admitted fact that the complainants booked flat(s) and paid Rs 12,31,000/- each (30 percent of the estimated cost of the flats) during March 2017- August 2018. As per section 13 of the RERA Act, the promoters are prohibited from accepting more than ten percent of the cost of flats/plots from the consumers/allottees as an advance payment or application fee without executing a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force. However, even after payment of 30 percent of the estimated cost of the flats, the respondent company didn't execute an agreement for sale with the complainants. Therefore the Complainants were justified in getting the booking cancelled.
14. The respondent company further issued two cheques to each complainants in 2018 which bounced on presentation. Even a cheque given in the court to Mrs Pinki Devi in November 2020 got bounced. The respondent company was repeatedly directed to refund the booking deposits but they didn't refund the full amount and kept delaying on one pretext or the other.
15. The Respondent Company and its directors are therefore liable to pay penal rate of interest to the allottees.

Order :

16. The Bench, therefore, orders the respondent company to repay the balance amount of booking deposits (Rs 11.06 lakhs to Pinki Kumari and Rs 10.06 lakh to Rinki Kumari) along with 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 to the two complainants within sixty days of issue of this order, failing which the respondent company will continue to pay interest at the rate of 9 percent

per annum for delay of everyday from the date of issue of this order until the date of refund under section 63 of the Real Estate (Regulation and Development) Act 2016.

17.The Bench also directs the Authority to issue a show-cause notice to respondent company and its directors under section 61 of the Real Estate (Regulation and Development) Act 2016 for contravening the provision of Section 13 (1) of the Act by accepting more than ten percent of the cost of flat/plot from the consumers/allottees as an advance payment without executing a written agreement for sale with both complainants and register the said agreement for sale.

Sd/-
R.B. Sinha
Member