

REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR

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

Case Nos. CC/454/2019

Mrs Reeta Kumari Nayak.....Complainant

Vs

M/s Budha DevelopersRespondent

Present

For the Complainant.....Mr K P Narayan, Advocate

For the Respondent Mr Jai Ram Singh, Advocate

28/02/2020

O R D E R

1. Mrs Reeta Kumari Nayak w/o Mr Jai Kumar Gupta, resident of Karpuri Thakur Sadan, Ashiana-Digha Road, Patna-800025 has filed a petition under Section 31 of the Real Estate (Regulation & Development) Act, 2016 against M/s Budha Developers, a partnership firm, through Mr Sanjeev Kumar, partner for allotment of a 3 BHK flat (E/1) on the first floor in Block-C (Sundaram) in the project “Madhuri Enclave” located on Ashiana-Digha Road, Patna-800025 booked by her in February 2019. She has also enclosed a copy of (undated) provisional allotment letter of 3 BHK flat (E/1) on the first floor in Block-C (Sundaram) in the project “Madhuri Enclave” at the cost of Rs 35,00,000 (Rupees thirty five lakh only) issued by the Respondent Firm, M/s Budha Developers.
2. In her complaint petition, she has stated that after meeting and discussion with the Developer on 10/02/2019, she took a 3 BHK flat (E/1) on the first floor in Block-C (Sundaram) in the project

“Madhuri Enclave” after making payment of Rs 51,000/- through Cheque No.014432 drawn on Union Bank of India. She has claimed that as per negotiation, the Builder asked her to deposit 10% of the total amount of flat by 30/06/2019, as approval from RERA was pending. She claimed that she visited the office of the respondent firm/Builder with a cheque of 10% of the total cost of the flat on 04/05/2019 and again on 12/05/2019. She was however told that the Promoter was not in the town and cheque would be accepted only after taking the permission from builder. She again visited on 30/05/2019 and gave a cheque for Rs 3,50,000/- to the accountant of the firm. However, she claimed that the accountant refused to accept it and asked her to come on 5th June 2019 to meet the Builder. She again visited the firm’s office on 5.6.2019 and met the Builder. But he refused to accept the cheque and said that the flat has been given to some other person as she has delayed in depositing the booking amount. She claimed that no notice was given to her to make payment of the booking amount. Further, she claimed that cancellation of her allotment without giving any opportunity to her was against the law of natural justice.

3. She has sought relief in the form of a direction to the respondent for allotment and handing over possession of the allotted 3 BHK flat (E/1) Block-C (Sundaram) in Madhuri Enclave after execution of deed of registration in favour of the complainant. She has also claimed compensation against mental tension and harassment. She has asked for payment of litigation cost. As an interim relief, she has requested for direction to the respondent firm to keep this flat vacant and no allotment should be made to any one till the finalization of the case.

Response of the Respondent Company :

4. In response to the notice issued by the Authority on 02/09/2019, the respondent firm through their partner stated on 16/09/2019 that the complaint filed by the complainant does not depict the correct and

true details of the events that had happened between the complainant and the firm. The respondent firm claimed that the complainant has suppressed the material facts in her complaint. The firm stated that the complainant came to their office in the month of December, 2018 to book a 3 BHK flat in Block-C (Sundaram) but at that time the firm did not have RERA Certificate, so they refused to book the flat. However, her husband kept on visiting regularly to enquire about the registration of the project with RERA. The respondent claimed that after numerous and continuous pressure from the complainant, they agreed to put on hold a flat for the complainant in February, 2019 and after negotiation the total consideration amount was finalized at Rs 35,00,000/- (Rupees thirty five lakh only). Accordingly, the complainant was required to pay 10% of the estimated cost as booking amount but she deposited a token amount of Rs 51,000/- as holding amount and assured the firm that she would give the remaining amount within a week. The Respondent firm claimed that they had clearly informed the husband of the complainant that after getting RERA approval, they would immediately proceed to process agreement, transfer and registration of flat. However, the complainant did not come to the office of the respondent till April, 2019. As the respondent did not have the RERA Certificate, they did not encash the cheque submitted by the complainant till April, 2019.

5. The Respondent Firm got the registration certificate of the project from the RERA on 15.04.2019 and thereafter they telephonically informed the complainant to proceed and pay the remaining amount. The respondent claimed that they called the complainant many times but the complainant only visited them on 04/05/2019 to say that she was not able to make any further payment and sought additional time. The respondent firm claimed that they refused to give her any more time as she was already late and the project work was nearly 80% complete but on her repeated requests, the respondent gave her time of one week to deposit the amount. Thereafter, the complainant again visited them on 12/05/2019 to inform that the amount could

not be arranged due to her personal problems. She said that her husband would take loan from his Deptt and pay the booking amount. The respondent claimed that they even arranged meetings of complainant with the representatives from LIC Housing Finance Ltd and the HDFC Loan Deptt but the complainant did not agree to seek loan from these agencies. It was only thereafter, they claimed that they cancelled the provisional allotment and refunded the booking amount through NEFT to the complainant under intimation to her.

6. Therefore, the respondent firm claimed that it was apparent that they gave nearly 45 days to the complainant after registration of the Project with RERA, to make payment of the booking amount but she failed. They also claimed that they informed her several times telephonically that her flat would be cancelled but she ignored and did not pay the 10% booking amount. The respondent firm therefore claimed that they did not have any other recourse but to cancel the provisional allotment and return the token amount of Rs 51,000/- through NEFT to the complainant. They claimed that they sent cancellation letter also to the complainant.

Hearings :

7. Hearings were held on 14.11.2019, 12.12.2019 and 26.12.2019. In course of the hearing, the complainant was represented by the Learned counsel Mr K A Narayan whereas Learned Counsel Mr Jai Ram Singh represented the respondent firm. The learned counsel of the complainant reiterated the claim of the Petitioner that their allotment was cancelled unilaterally by the promoter without giving any notice to her whereas the respondent firm claimed that the complainant did not pay the requisite booking amount required for execution of the agreement for sale, inspite of repeated reminders and calls. The Complainant also could not produce any document to support their claim that the respondent firm had given her time up to 30th June 2019 to deposit 10 percent booking amount of the flat.

Even Respondent firm did not produce any document to support their claim of giving reminders to the complainant. There was no terms and conditions prescribed in the undated provisional allotment letter issued on 10th February 2019 by the Respondent firm. Therefore both parties made only verbal claims and did not produce any documentary evidences or witnesses in support of their statement.

Issues for consideration :

8. There are two issues for consideration before the Bench. Firstly whether the project was registered with the Authority and the provisions of the Real Estate (Regulation and Development) 2016 are applicable to the promoter; Secondly whether the complainant would come under the definition of the allottee and whether provisions of the Real Estate (Regulation and Development)2016 are applicable to her as an allottee.
9. As regards the first issue, it is an established fact that the respondent firm had applied for registration of their ongoing project Madhuri Enclave with the Authority in May 2018 and the project was registered with the Authority on 15th April 2019. Hence there is no doubt that the provisions of the Real Estate (Regulation and Development) 2016 would be applicable to the promoter i.e. respondent firm.
10. So far as 2nd issue is related, the term Allottee is defined in the section 2 (d) of the Act as follows: “Allottee in relation to a real estate project, means any person to whom a plot or apartment or building as the case may be, has been allotted, sold (whether freehold or leasehold) or otherwise transferred by the promoter and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent.”

11. The Complainant has produced an undated provisional allotment letter before us. Its existence has not been denied by the Respondent company. However, the complainant not been allotted the flat in regular way as the necessary payment required for booking the flat was not paid by the her. She had made only token payment of Rs 51000 (1.5 % of the estimated cost) and therefore the Respondent firm had issued a provisional allotment letter, which was required to be confirmed after receipt of full booking amount. The Complainant has claimed that she had taken the cheque of the balance amount to the firm in May /June but it was not received by them whereas the respondent alleges that inspite of repeated reminders, the complainant was not able to pay the booking amount till first week of June 2019.

12. Neither side has produced any documentary evidence or witnesses in support of their claims. Further, no terms and conditions were stipulated in the provisional allotment letter. The claim of the Complainant that she was given time upto 30th June 2019 to deposit balance booking amount was verbal only and there was nothing on record to substantiate it. The very fact that she had started visiting the office of the builder from early May to deposit the cheque of balance booking amount, it appears that there was no such condition prescribed at the time of issue of provisional allotment letter.

13. As the Complainant has not paid the full booking amount of the flat, not obtained the regular allotment letter and/or also not entered into any agreement for sale, she can not be treated as an allottee under the Real Estate (Regulation and Development) Act 2016.

Order :

14. It is held that the Complainant does not qualify to be an allottee, as defined under Section 2 (d) of the Real Estate (Regulation and Development) Act 2016. Hence her complaint is not maintainable

under Section 31 of the Act under which she has filed her petition before the Authority. However, as the respondent firm has availed the economic benefits of the token advance/money deposited by the complainant, they are directed to pay an interest of eight percent per annum from the date of deposit to the date of refund, within sixty days of issue of this order.

The Complainant may, if she wishes, approach the competent Civil Court for necessary relief under relevant law.

Sd

(R.B. Sinha)
Member