

**REAL ESTATE REGULATORY AUTHORITY, BIHAR**  
2<sup>nd</sup> Floor, BSNL Exchange Building, Patel Nagar, Patna-800014

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

**Case Nos. CC/505/2019**

**Manoj Kumar Roy .....Complainants**

**Vs**

**M/s Ghar Lakshmi Buildcon Pvt Ltd.....Respondent**

**Present: For Complainants: Mr Ranjeet Ranjan, Advocate**  
**For Respondent: Mr Ishteyaque Hussain, Advocate**

**18/10/2021**

**O R D E R**

1. Mr Manoj Kumar Roy, a resident of Kautilya Nagar, PO- BV Nagar PS- Airport, Patna has filed complaint petition on 05/08/2019 against M/s Ghar Lakshmi Buildcon Pvt Ltd through their director Mr Rahul Kumar under section 31 of the Real Estate (Regulation and Development) Act 2016 for allotment of a flat of similar specifications at the same cost in the ongoing project of the promoter at Danapur or refund of his booking deposits in the project **Ghar Lakshmi Residency Phase I** proposed to be located at Danapur, Patna along with interest.
2. The Complainant has submitted copies of agreement for sale, money receipts etc along with his application.

**Case of the Complainant:**

3. In his complaint petition, the complainant, Mr Manoj Kumar Roy has submitted that he had booked a 3 BHK flat of 1392 sq ft in A Block of the project Ghar Lakshmi Residency Phase I situated at Danapur, Patna in February 2014 at the total consideration amount of Rs 15 lakh and paid Rs 5.01 lakh in four installments by 21/12/2014. He further stated that the developer had executed an agreement for sale with him on 09/05/2015. As per the agreement for sale, the flat was to be handed over to him within a period of thirtysix (36) months including grace period of six months. The complainant claimed that the respondent company has dishonestly as well as

fraudulently shifted the entire project near Danapur Railway Station without intimating the complainant.

4. He has sought relief of allotment of a flat forthwith of the same specification in the ongoing project of the promoter at Danapur or to refund the deposited amount along with interest at the rate of 18 percent per annum and compensation.
5. The Authority issued a notice on 19.9.2019 under section 31 of the Real Estate (Regulation & Development) Act 2016 and Rule 36 of the Bihar Real Estate (Regulation & Development) Rules 2017 to the respondent company to submit reply by 04.10.2019.

### **Response of the Respondent Company**

6. The respondent company in its reply dated 30/10/2019 admitted that the complainant had booked a 3 BHK flat on 16.2.2014 at the total consideration amount of Rs 15.00 lakh and paid Rs 5.01 lakh. They further submitted that as the total area of land was 3.75 kathas only, so according to new master plan and bye-laws of Patna, no plan can be sanctioned over an area of land less than 6.5 kathas of land and therefore, the complainant was offered to take back his deposited money or take a flat in another project namely Ghar Lakshmi Milestone at Bihta Road on increased rate of the flats but the complainant did not reply and instead sent a legal notice which was suitably replied.
7. The respondent company further offered to refund the initial payment of Rs 5,01,000/- but stated that no interest can be paid as there was default on the part of the complainant. He however didn't refund the deposit amount to the complainant until he filed the petition before the Authority.

### **Hearings:**

8. Hearings were held on 05/10/2020, 05/11/2020, 08/02/2021, 08/03/2021, 26/03/2021, 08/06/2021, 22/06/2021 and 06/08/2021.
9. In course of hearing, learned counsel of the complainant submitted that there was no progress in the work on the plot of land mentioned in the agreement for sale and the respondent has not refunded the amount of deposits though more than five years have elapsed. Learned counsel of the respondent company informed that the project was not taken up as the building Map/Plan of the Project was not approved. He agreed to refund the deposit amount of

the complainant. The Bench directed the respondent to pay the principal amount within a week otherwise heavy penalty will be imposed.

10. On 08/02/2021, learned counsel of the complainant submitted that the respondent has refunded only Rs one lakh and the remaining amount was still due with them. Learned counsel of the respondent company submitted that the remaining amount will be refunded in 2-3 weeks. The Bench while directing the respondent to comply with the order, summoned Mr Rahul Kumar, Director of the respondent company on the next date of hearing. The Bench directed the respondent to refund the money to the complainant as soon as possible because there were sufficient grounds like booking flats without sanctioned plan etc to impose penalty on them. The Bench further directed the respondent to submit the details of money collected and the list of customers who are required to get refund of money due to cancellation of the project on affidavit.
11. On 26/03/2021 learned counsel of the respondent submitted that the list as required has been deposited and that Rs 70 lakh was collected for the project. He further submitted that approximately Rs 13-14 lakhs have been refunded to the allottees and that two cheques amounting to Rs 1.5 lakh each have been submitted to the complainant.
12. Learned counsel of the respondent company informed the Bench on 06/08/2021 that the entire principal amount of deposit has been refunded to the complainant.

### **Issue for Consideration**

13. There is no dispute on the facts of the case. The Respondent company has admitted the receipts of the booking deposits, which was 33 percent of the total consideration amount, from the complainant in 2014. The Respondent further informed that due to changes in the Building Byelaws and Master Plan, the Plan of the Project was not approved and as such, the project was abandoned.
14. Though the Respondent company claimed in their written response that they had contacted the complainant and offered him a flat in another project or refund of the principal amount, the complainant claimed that the promoter did never inform him about abandonment of the project. Further, the learned counsel of the respondent company did not produce any evidence in support

of his claim that he offered to return the deposits of the complainant. Further, it is an accepted fact that the booking of the flat was made in February 2014 while the Patna Master Plan was approved by the Government of Bihar in October 2016. Moreover, there is no clause in the Patna Master Plan and then existing Bihar Building Byelaws that prohibited construction of multi-storied building on 3.75 kathas of land. Thus the reasons cited by the respondent company for abandoning the project were not convincing.

15. However, on the direction of the Bench, the Respondent Company refunded the principal amount of Rs 5.01 lakh to the complainant during February to August 2021 after 7 years. Therefore, it is established that the promoter has availed the economic benefits of deposit of the complainant for nearly seven years and is liable to pay interest to the consumer.

16. The Respondent company is a promoter of several RERA registered projects. However, their conduct in the instant case appears to be much below par. They collected huge funds from unsuspecting consumers by booking flats in an unapproved project, promising them flats and thereafter they quietly abandoned the project without refunding the deposits to consumers even after six years on their own. The promoter has himself admitted that 80 percent fund collected by them for the Project in 2014-15 was still with them and only 20 % funds have been refunded back to the consumers.

**Order:**

17. As the Promoter has availed the economic benefits of the deposits of the complainant for nearly seven years, the Bench orders 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 plus two percent from the date of deposit to the date of refund within sixty days of the issue of the order.

18. In so far the claim for compensation for physical and mental harassment is concerned, the Complainant if he so wishes, may approach the Adjudicating officer under the section 31/71 of the Real Estate (Regulation and Development) Act 2016.

19. As regards resolution of fraudulent activities of the respondent company is concerned, the complainant may file a criminal case/FIR under relevant sections of IPC and approach competent civil court.

20. The Registration cell of the Authority may not register any new project of the Promoter unless they refund the entire funds collected from unsuspecting consumers for the project Ghar Lakshmi Residency Phase I.

Sd/-

**R.B. Sinha**  
**Member**