

REAL ESTATE REGULATORY AUTHORITY, BIHAR

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

Case No.CC/66/2018 & CC/67/2018

Shashi Nandan Prasad/Chandra Shekhar.....Complainants

Vs

M/s Bhootesh Construction Pvt Ltd.....Respondent

Present: For Complainant: In person

For Respondent :Mr Sharad Shekhar, Adv

29/04/2021

ORDER

1. Shashi Nandan Prasad, a resident of Yusufpur PO Hajipur Dist Vaishali and Chandra Shekhar Kumar, a resident of Chauhatta, Near RN College, Hajipur Dist Vaishali have filed separate complaint petitionson 28th August 2018 against M/s Bhootesh Construction Pvt Ltd through Mr Arvind Kumar Singh, MD, for refund of the booking amount of Rs 23 lakh and Rs 30 lakh respectively made for a flat each in a proposed project of the respondent company to be located at Kankarbagh, Patna along with due interest, besides compensation. The complainants have submitted, along with their application, copies of the money receipts, commitment letter issued by the Respondent company, bounced cheques etc

Case of the Complainant:

2. Both complainants in their respective petitions have submitted that they had booked a 3 BHK/2 BHK flat + 1 shop in the project proposed to be located at Kankarbagh, Patna and paid Rs 23 lakh and Rs 30 lakh through cheques in 2014 but even after lapse of 4 years, construction was not started by the promoter/builder due to which they cancelled their bookings. At the time of cancellation, the Directors- Mr Rajiv Nayan and Mr Arvind Kumar Singh of

the respondent company handed them a written commitment on the letter head of the company gave assurance to the complainants to refund Rs 43 lakh and Rs 65 lakh respectively on cancellation of the booking due to inordinate delay in the project.

The Complainants stated that cheques submitted by the Respondent company as refund of their deposits have all bounced.

3. In pursuance to the receipt of the complaint petitions thereto, the Authority issued a notice on 10/09/2018 under the provisions of the Real Estate (Regulation & Development) Act 2016 and Rules of the Real Estate (Regulation & Development) Rules 2017 to Mr Arvind Kumar Singh, MD of the respondent company to submit their reply within 15 days. Since no reply was received from the respondent company, the matter was fixed for hearing.

Hearings:

4. Hearings were held on 01/03/2019, 12/03/2019, 28/03/2019, 05/04/2019, 15/05/2019, 28/09/2019, 15/10/2019, 23/10/2019, 31/10/2019, 13/12/2019, 27/12/2019, 15/01/2020, 04/02/2020, 19/02/2020, 05/03/2020, 10/09/2020, 12/10/2020, 06/11/2020 and 25/01/2021. In the course of hearing, it was found that the respondent company had not applied for registration of their project with the Authority. They were directed to submit details of amount received from consumers along with balance sheet and audited accounts of the project/company for the last three years and get their project registered with RERA immediately.

5. In course of hearing, learned counsel of the respondent company and the MD of the Company admitted the receipt of the booking amount from the complainants and assured that the principal amount will be refunded to the complainants soon. However they didn't refund the amount to the complainants.

6. In course of hearing, it was learnt that both directors of the company have had differences and separated. It was claimed that Mr Rajiv Nayan Director had since left the company. However, as he was one of the directors of the company as on the date of these bookings, the Bench directed the Authority to issue notice to the previous Director Mr Rajiv Nayan.

7. On 15/05/2019 during the course of hearing, a total of 8 cheques were given to both the complainants but each of them bounced. On 28/09/2019 the respondent Director committed that he would refund Rs 5 lakh each to both the petitioners by 09/09/2019. However, the commitment was not fulfilled.

8. In course of hearing, the Bench directed the Directors of the respondent company to get their project registered with RERA and to refund the principal/remaining amount to the allottees but the Director of the respondent company did not comply with on one pretext or the other.

9. Again on 10/09/2020 learned counsel of the respondent company again submitted that the MD has committed to refund the entire amount of deposits along with interest to the complainants within two months out of the sale proceeds of his ancestor plot of land. On 12/10/2020 the complainants submitted that they have filed an FIR against the Director of the respondent company for cheque bounce in the Court of the CJM, Hajipur.

10. The Bench observed that since one of the Directors Mr Arvind Kumar Singh was in jail for the last 4-5 months, the other Director Mr Rajeev Nayan cannot escape from his liability and ordered that a fresh notice be issued to Mr Rajeev Nayan for personal appearance.

11. On 25/01/2021 both the complainants submitted that the principal amount has been refunded but since there is a breach of contract, the complainants further prayed for interest.

Issues for Consideration :

12. Both complainants deposited a sum of Rs 53 lakhs for their flats in a prospective project as one time full payment with the respondent company way back in 2014 but the builder did not start the project and misappropriated/diverted the project funds. The Respondent admitted several times in course of the hearing that the project was abandoned and he would refund the booking amount to the complainants but failed to do so. The Promoter also submitted cheques but they bounced. It was only in January, 2021 i.e. after more than six years that the complainants reported that they got refund of their principal amount. The interest accrued thereon till date is yet to be paid. Moreover, the mental agony, physical harassment the complainants

have suffered during all these years also deserved compensation as demanded/requested by them.

Order :

The Bench orders that

13. as the proposed project at Kankarbagh was abandoned by the promoters without any notice and refund to the allottees, after taking one time full payment from both complainants, a penalty of Rs 5 lakh is levied on the then two directors MrArvind Kumar Singh and Mr Rajiv Nayan for cheating the consumers and misappropriating the project funds, to be payable to the Authority within sixty days of the issue of this order.

14. As the respondent company and its Director MrArvind Kumar Singh hasavailed the economic benefits of the deposits of the complainants for more than six years, the Bench orders the director of the Respondent Company to pay interest at the rate of Marginal cost of lending rate (MCLR) of the State Bank of India (SBI) plus two percent from the date of deposit to the date of refund, within sixty days of the issue of this order.

14. As regards the compensation, the Complainants if they so wish, may approach the Adjudicating officer appointed under section 71 of the Real Estate (Regulation and Development) Act 2016.

29.04.2021

**Sd/-
R.B. Sinha
Member**