

# **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**

**CC No.CC/867/2020**

**Janki Kumari.....Complainants**

**Vs**

**M/s Bricks Estate Pvt Ltd.....Respondent**

**Present: For Complainant : In person  
For Respondent : Mr Pramod Kumar, Director**

**18/10/2021**

**O R D E R**

1. Mrs Janki Kumari w/o Sri Bhupendra Singh, a resident of Flat No.301, Block B, IAS Colony, Ramjaipal Road, Patna-801503 has filed a complainant petition on 3<sup>rd</sup> January 2020 under section 31 of the Real Estate (Regulation and Development) Act 2016 against M/s Bricks Estate Pvt Ltd through their director Mr Pramod Kumar for refund of her booking deposits of a flat in the project Sai Motilal Enclave along with interest.
2. The complainant has submitted copies of the KYC document, money receipts, cheques etc along with the application.

### **Case of the Complainant:**

3. In her complaint petition, the complainant has submitted that she booked a 2 BHK flat (Flat no-402) on 4<sup>th</sup> Floor in the project Sai Motilal Enclave of M/s Bricks Estate Pvt Ltd in April 2018 and paid a sum of Rs 3,18,000 ( Rupees three lakhs eighteen thousand only) in April 2018. When she came to know that the project was not registered with RERA, she asked for refund of the deposited money. She claimed that the promoter gave her a cheque for Rs 3.18 lakh in November 2019 but the cheque got bounced on presentation in the bank. The promoter has not yet refunded any amount to her despite repeated requests.
4. The Authority issued a notice under various sections of the Real Estate (Regulation & Development) Act 2016 and Rule 36 of the Bihar Real Estate (Regulation & Development) Rules 2017 on 06/03/2020 to the respondent company through its Director Mr Pramod Kumar to submit his reply by 27/03/2020. However as no reply was received for long period, both parties were called for hearing on 27.1.2021..

**Response of the Respondent Company:**

5. MD of the respondent company filed his reply on 11/02/2021 claiming that due to wrong address, the notice was not served on them. He admitted the receipt the deposit and submitted that he was ready to refund the deposited money to the complainant after first week of March, 2021.

**Hearing:**

6. The matter was fixed for hearing on 27/01/2021, 23/02/2021 and 17/03/2021.
7. On 27/01/2021 the complainant stated that she paid Rs 3.18 lakh in March/April, 2018 but the work in the project did not proceed. The MD of the respondent company prayed for time to refund the deposited money. The Bench allowed the time and directed him to make refund to the complainant.
8. On 23/02/2021 the Bench observed that the respondent company has not complied with the earlier order and has not refunded the money to the complainant. The Bench once again directed the MD of the respondent company to refund and to remain present on the next date of hearing failing which strict action will be taken against him.
9. On 17/03/2021 the MD of the respondent company did not turn up for hearing and it was felt that the respondent is deliberately not appearing before the Bench and lingering the matter. Therefore, an interim order under Section 36 read with Section 34(f) and Section 37 of the Real Estate (Regulation & Development) Act, 2016 was issued freezing all the bank accounts of the Director/Directors with immediate effect and IG (Registration) was requested to issue necessary directions to all the DSRs/Sub-Registrars not to register any apartment/plot of the project "Sai Motilal Enclave" or any other project of the respondent company till further order. The plot on which the partially constructed structure exists was also brought under the lien of RERA with immediate effect and the promoter and the land owner were restrained from making any transaction.

**Issue for Consideration:**

10. There is no dispute on the facts of the case. The MD of the respondent company has admitted the booking made by the complainant in the Project Sai Motilal Enclave and receipts of deposits of Rs 3.18 lakhs made by her. The MD had also committed to refund the booking deposit by March 2021 but didn't do so.

11. In the suo moto case (Suo motu Case No. SM/279/201), the Division Bench of the Authority had conclusively proved that the promoter had been booking the flats in the Project and constructing the project without getting the building Map/Plan approved/sanctioned by the competent Authority and registration of the project with the Authority. MD of the respondent company did not cooperate in the proceedings and deliberately avoided to personally appear after first appearance in spite of repeated directions, notices and interim orders.
12. The Complainant was justified in cancelling her booking when she came to know that the project was not registered with the RERA. Further, the cheque issued by the promoter for refunding the deposit had also bounced. As the promoter has availed the economic benefits of the deposits for more than three years, they are liable to pay interest to the complainant.

**Order:**

13. The Bench therefore directs the MD of the respondent company to refund the booking deposits of the complainant (Rs 3.18 lakhs) along with interest at the Marginal cost of lending rate (MCLR) of State Bank of India (SBI) as applicable for three years plus two percent within sixty days of issue of this order, failing which the promoter will be required to pay a penalty of Rs 100 per day for everyday delay under the section 63 of Real Estate (Regulation and Development) Act 2016..
14. The Bench also directs the respondent company to get the project registered with the Real estate regulatory Authority without any further delay. The Authority has already levied a penalty of Rs 18.30 lakhs for contravention of section 3 of the Act on 9<sup>th</sup> May 2019 (Suo motu Case No. SM/279/2018). The Authority may initiate the proceedings under section 40 & 59 (2) of the Act for recovery of the penalty and for not compliance with the orders given under section 59 (1) of the Act respectively.

**Sd/-**

**R.B. Sinha  
Member**