

# **REAL ESTATE REGULATORY AUTHORITY, BIHAR, PATNA**

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

**Case No.CC/95/2018**

**Mahesh Bahroos.....Complainant**

**Vs**

**M/s Nesh India Infrastructure Pvt Ltd..... Respondent**

**Present: For Complainant : In person**

**For Respondent : Mr B K Sinha, Advocate**

**26/04/2021**

## **O R D E R**

1. Mr Mahesh Bahroos, a resident of 101, Bijoli Shyama Apptt, Boring Road, Patna has filed a complaint petition against M/s Nesh India Infrastructure Pvt Ltd under Section 31 of the Real Estate (Regulation and Development) Act 2016 in October 2018 with a request for allotment of flat in the Project Thiruvantapuram City Phase-I, Khagaul or refund of the booking amount deposited in November 2010 along with interest and compensation.

### **Case of the Complainants :**

2. The complainant in his complaint petition dated 03/10/2018 has submitted that he had booked a Flat No.D4/D11 in Phase-I Thiruvantapuram City, Khagaul being developed by M/s Nesh India Infrastructure Pvt Ltd on a consideration amount of Rs 19,45,800/- and paid the booking amount of Rs 6 lakhs in

- November, 2010 with the assurance that the project will be ready for possession in a year. The builder however changed the flat from D4/D11 to A4/A15 in November 2012 without his consent. He vehemently submitted that he had been following with the respondent company for the last six years. Recently, he has come to know that the builder has allotted the flat to a different party. He claimed that he has neither been given possession of the flat nor his deposited amount has been refunded with due interest.
3. He has submitted along with his application, the ledger account from M/s Nesh India Infrastructure Private Limited, allotment letter dated 17 November 2010 and change in flat allotment dated 6 November 2012. In March 2019 the complainant added the compensation on account of mental agony for last 10 years as one of the additional relief in the petition.
  4. Accordingly, the Authority issued a notice under the provisions of the Real Estate (Regulation & Development) Act 2016 and Rule 36 of the Real Estate (Regulation & Development) Rules 2017 to the respondent company M/s Nesh India Infrastructure Pvt Ltd to submit reply/response by 24/10/2018. Since the respondent company did not submit any reply, the case was fixed for hearing.

**Hearing :**

5. Hearings were held on 26/03/2019, 29/04/2019, 16/05/2019, 23/07/2019, 24/01/2020, 19/02/2020, 01/10/2020, 19/10/2020, 04/11/2020, 13/11/2020, 03/02/2021 and 05/03/2021. In course of hearing, the complainant was representing himself whereas the respondent was represented by Mr Binod Kumar Sinha, Advocate.

6. The Respondent Company was not represented on the days of first two hearing. As a result, a cost of Rs 20,000/- was imposed on the respondent company for non-appearance of the respondent or his representatives. Further, the Bench directed the respondent company to show cause as to why their project registration be not cancelled and their bank accounts to be not frozen.
7. On 16/05/2019, it was brought to the attention of the Bench that the complainant had filed a petition before the District Consumer Forum also. Accordingly, he was directed to withdraw his complaint petition either from the consumer forum or from the Authority. The complainant submitted that he will withdraw his case from the District Consumer Forum and pursue his case in this Authority. Finally, he informed on 13<sup>th</sup> December 2019 that he has withdrawn his complaint petition from the District Consumer Forum.
8. In course of hearing, the complainant submitted that there was no progress of work and no possession of the apartment has been given nor the booking amount has been refunded till date. Learned counsel of the respondent submitted that the respondent company tried to refund the principal amount one and half years back but the complainant did not turn up and that the said flat has been allotted to some other allottee.
9. In spite of repeated directions from the Bench, the respondent company didn't refund any money to the complainant though he

admitted the receipt of booking amount/funds from the complainant. The Bench imposed cost of Rs 20,000/- on the respondent company.

10. There is no dispute on the facts. The Respondent company admitted that the complainant has paid Rs 6 lakh to the respondent company way back in 2010 but the Promoter has neither allotted the flat to him nor has refunded the money to the complainant. Moreover, despite repeated directions of the Bench regarding refund of principal amount, the respondent has not complied with.

**Order :**

11. Since the respondent company has availed the economic benefits of the deposit amount for more than ten years and has continued to flout the repeated directions of the Bench, the Bench orders the respondent company to refund the principal amount deposited by the complainant along with interest at the rate of marginal cost of lending rate (MCLR) of State bank of India +2% from the date of deposit to the date of refund. The respondent company is also directed to deposit the cost of Rs 40,000 levied by the Bench in course of hearing. The Bench further directs that the respondent company to pay a compensation of Rs.1,00,000 to the complainants for selling of the flat which was booked by the complainant after making payment of more than 30% of the

consideration amount. All payments must be made within 60 (sixty) days of the issue of the order.

**Date : 26.04.2021**

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