

REAL ESTATE REGULATORY AUTHORITY, BIHAR
BSNL Telephone Exchange Bhawan, Patel Nagar, Patna-800014.

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

CC No.CC/1158/2020

Amjad Ali.....Complainant

Vs

M/s Grih Vatika Homes Pvt Ltd.....Respondent

Project: VIP Residency

Present: For Complainants: In Person
For Respondent : Mr Ranjit Kumar Jha, Dir
Mr Mohit Raj, Advocate

19/11/2021

O R D E R

1. Dr Amjad Ali, a resident of G-2, Jagdish Apartment, Indrapuri, Samanpura, Patna-800014 has filed a complaint petition on 26.02.2020 under section 31 of the Real Estate (Regulation and Development) Act 2016 against M/s Grih Vatika Homes Pvt Ltd through their MD Mr Ranjit Kumar Jha, for early possession of the flats he and his wife had booked in the Project VIP Residency of the promoter or refund of deposited amount along with interest and compensation.
2. He has submitted copies of the money receipts issued by the respondent company, bank statements etc along with his application.

Case of the Complainant:

3. In his complaint petition, the complainant has stated that he had booked three flats viz; one 3 BHK flat (Flat No-101) of 1485 sqft on 30/05/2015 at the consideration amount of Rs 42,12,500/- in classic block, one 2 BHK flat (Flat No-105) of 1090 sqft at the total cost of Rs 19,50,001 on 05/07/2015 in classic block and one 4 BHK flat of 2361 sqft (Flat No-102) on 30/07/2015 in the premium Block on a total consideration amount of Rs 48,63,750/- in the project "VIP Residency" being developed by the respondent company M/s Grih Vatika Homes Pvt Ltd at Near Aloo Anusadhan Kendra, Mahuabagh, Danapur and paid total booking amount of Rs 48,50,000/- till 28/07/2017. But due to inordinate delay in the start of construction of the project, the complainant requested for refund of deposited amount with interest on 15/09/2017, which the respondent did not return even after committing to return within 90 days. After 18 months' delay when the construction work started in the premium block where 4

BHK flat on the first floor was booked, the promoter sent an agreement format on 29/03/2019 for a 4th floor flat and demanded full payment of Rs 48,63,750/-. Since the promoter had already sold the other two booked flats of the complainants in the Classic Block in which construction work had not yet started, the complainant demanded refund of booking deposits of those two flats and final copy of the signing agreement for the 4 BHK flat after very reluctantly agreeing to shift his first floor flat to 4th floor but till date the respondent has not done the agreement for sale. The complainant therefore, demanded refund of the deposited amount for those two flats with interest and execution of agreement for sale for 4 BHK booked flat which is under construction. Alternatively, he demanded compensation including refund of the principal amount with interest, at today's market rate.

4. The Authority issued a notice dated 26/06/2020 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 file its reply by 14/07/2020.

Response of the Respondent Company:

5. The respondent company did not file its reply and therefore, the case was fixed for hearing.

Hearing:

6. Hearings were held in the case on 17/02/2021, 18/03/2021, 24/03/2021, 02/06/2021, 09/07/2021 and 10/08/2021.
7. On 17/02/2021 the complainant submitted that the respondent has committed fraud with him with regard to KYC (Know Your Customer) form by inserting the term "after 100% payment, agreement will be executed" whereas in his copy of KYC, there was no such mention of 100% payment. He further stated that the respondent have by now refunded Rs 2,50,000/- The Bench while expressing its displeasure on the conduct of the respondent company, particularly in view of the fact that VIP Residency is a RERA Registered project and section 13 of the RERA Act prohibited the promoters from receiving more than 10 percent of the cost of the flat without executing an agreement for sale, directed them to refund the remaining principal amount to the complainant at the earliest.
8. As only meager payments were made until 24/03/2021, the Bench keeping In view, the casual approach and delaying tactics of the respondent, issued an interim order under Section 36 read with Section 34 (f) and Section 37 of the Real Estate (Regulation & Development) Act 2016 to stop all sales of flats/apartments in any project of the respondent company

M/s Grih Vatika Homes Pvt Ltd, Mr Ranjit Kumar Jha, MD and Ms Anita Kumari, Director with immediate effect and IG Registration was requested to issue necessary directions to all DSRs/Sub-Registrar including Patna/Phulwarisharif/Danapur/Bihta not to register any flats/ apartments /plots of land in their projects “VIP Residency”, “Pushp Vatika”, “Kamal Complex”, “Urmila Vatika and any other project of M/s Grih Vatika Homes Pvt Ltd.

9. On 05/04/2021 the respondent company through director Mr Ranjeet Kumar Jha filed its written submission in which it claimed that the complainant had booked three flats for total consideration amount of Rs 1,14,00,000/- in the year 2015-16 and paid a total amount of Rs 41.00 lakhs only in three years. The respondent company has already refunded a total amount of Rs 16.10 lakh and the rest amount will be paid within two months as per payment schedule given by them.
10. In course of hearing, the complainant was refunded the principal amount of Rs 46.50 lakhs in several installments during February – September 2021 against his claim of Rs 48.50 lakhs. The respondent initially claimed to have received Rs 41 lakhs only in April 2021 but later on, refunded Rs 46.50 lakh to the complainant. The Bench expressed its disgust on dispute on the amount of deposited amount by the complainant and directed both the parties to submit their bank details to each other so as to reconcile the figures.
11. In his final statement, the complainant claimed in August 2021 that the respondent MD has admitted to refund the total amount of RS 48.50 lakhs to the complainant and produced an audio recording of conversation he had with him, in which MD was purported to have agreed to pay Rs 47.50 lakhs and was ready to discuss the payment of additional one lakh so as to make total payment of Rs 48.50 lakhs, However, Learned counsel of the respondent in his final brief has stated in September 2021 that the respondent had received Rs 46.50 lakhs only and have refunded the full amount to the complainant.

Issue for Consideration:

12. VIP Residency is a RERA Registered project of the promoter. The Project was registered as an ongoing project in July 2018, as having commenced on 03.10.2017. The registration certificate of the project was valid up to 29.10.2021.
13. There is a dispute between the allottee and the promoter over the amount deposited by the allottee with the developer. While the allottee claimed that he had deposited Rs 48.50 lakhs (inclusive of Rs 2 lakh as cash payment) to the promoter, the Developer finally admitted to have received

only Rs 46.50 lakhs from the customer, though they had claimed in their written submission in April 2021 that they had received Rs 41 lakhs only. The Bench directed both parties to submit the evidence in support of their claims.

14. However, after hearing both parties and examining all evidences, it was not conclusively proved that the complainant had given Rs 48.50 lakhs to the promoter. This is not the forum to judge the authenticity of the audio recordings submitted by the complainant in which the MD was admitting the receipt of Rs 47.50 lakh and requesting him to come cover to discuss for resolution of the remaining one lakh. Therefore the Bench is unable to verify the actual amount paid by the complainant based on documents /records produced before it. However, the Respondent company has admitted the receipt of Rs 46.50 lakh from Dr Ali and his wife and refunded the principal amount by September 2021.
15. Incidentally, it may be noted that the respondent had in its initial response dated April 2021 had admitted the receipt of Rs 41 lakhs only from the complainants, which was later on increased to Rs 46.50 lakhs after the complainants produced all money receipts. This indicates ulterior motives on the part of the respondent company and bad book-keeping to say the least.
16. Section 13 of the Real Estate (Regulation and Development) Act 2016 also prohibits the promoters from receiving more than 10 percent of the cost of the flat without executing an agreement for sale with the allottees. It is therefore evident that the promoter had collected more than 40 percent of the cost of three flats booked by the allottee without executing any agreement for sale with the allottee. The Respondent company has thus contravened the provisions of section 13 of the Act and therefore liable to pay penalty up to five percent of the estimated cost the project VIP Residency under section 61 of the Act.

Order :

17. As the Promoter has availed the economic benefits of the deposits of the complainant for several 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 failing which a penalty at the rate of Rs 1000 per day will be payable by the respondent company under section 63 of the Real Estate (Regulation and Development) Act 2016.

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 including claim of remaining deposit of Rs 2 lakh is concerned, the complainant may file a criminal case/FIR under relevant sections of IPC and approach competent civil court.
20. The Bench also directs that the Authority may consider initiating the proceedings under Section 61 of the Real Estate (Regulation and Development) Act 2016 against the Respondent company for contravention of the Section 13 (1) of the Act because they did not execute agreement for sale for any flat even after taking more than ten percent of the estimated cost of three flats in the project VIP Residency.

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