

REAL ESTATE REGULATORY AUTHORITY, BIHAR

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

Complaint Case No.: CC/227/2019

Smt Shruti Katyayan & Sanat Kumar Pathak.....Complainants

Vs.

M/s Geetanjali Vatika Pvt. Ltd.....Respondent

Present: For Complainant: Mr. Sunil Kumar Singh, Advocate

For Respondent: Mr. Ankit Kumar, Advocate

19.04.2021

O R D E R

1. The complainants- Mrs. Shruti Katyayan, W/o Mr. Sanat Kumar Pathak and Mr. Sanat Kumar Pathak residents of village Harpur, Ailoth, Ward No. 05, P.O+P.S. Mushrigharari, District- Samastipur have filed a complaint petition on 23rd^t January 2019 against M/s Geetanjali Vatika Pvt. Ltd. through its Director Mr. Rohit Verma, 207, Faizal Imam Complex, Dak Bunglow Chauraha, Patna-800001 under Section 31 of the Real Estate (Regulation and Development) Act, 2016 for Breach of Agreement and refund of the deposited amount due to cancellation of their booking of flat in Block- B of the Project Geetanjali Vatika Green City along with interest.
2. The complainants, Mrs. Shruti Katyayan and Mr. Sanat Kumar Pathak, have submitted copies of the Agreement for sale and Legal Notice issued by them to the respondent, along with their complaint petition.

FACTS OF THE CASE

3. The complainants stated that they entered into an agreement with the respondent on 30/01/2018 for purchasing Flat no. 304 in Block-B of Geetanjali Vatika Green City situated at Mauza Elahibagh, P.S. Gopalpur, District Patna admeasuring super built up area of 1345 Sq.ft (approx) along with one car parking space in basement with other facilities. The total consideration amount for the said flat was Rs. 40,66,000/- only. At the time of execution of agreement the complainants paid Rs. 4,00,000 (Rupees four lakhs only). They paid additional sum of Rs. 12,19,800/- on different dates up to November 2018. In all, Rs. 16,19,800/- (Rupees sixteen lakhs, nineteen thousands and eight hundreds only) was paid by the complainants to the respondent company. Besides the terms and conditions mentioned in the agreement, the respondent company assured that the work would start within a month and extra facilities like Internal Road, Children's Play Area, Swimming Pool, Rain Water Harvesting, Sewage Treatment, Landscape Garden, Club House, Gymnasium and boundary wall will be provided in the ongoing project. They claimed that even after giving sufficient time the respondent failed to do so in one year. The respondent also assured orally that township will be developed in the locality of the site in question with fencing wall and security arrangements will also be done but failed to comply with the same. The complainants had brought this fact in the notice of the respondent and engineer, that building material including bricks and concretes that were being used in the construction was of low quality, but the respondent didn't bother at all about the same. The respondent had also not yet registered Block- B of M/s Geetanjali Vatika Pvt. Ltd with RERA and was still selling flats and advertising about the

real estate project which was against the provisions mentioned in the Real Estate (Regulation and Development) Act, 2016. After observing the respondent's conduct and intention, the complainants sent a legal notice to the respondent company through their lawyer Sri Amar Nath Singh on 06/12/2018, stating about the deficiencies in service of the respondent and negligence on the part of the respondent company.

4. Mrs. Shruti Katyayan and Mr. Sanat Kumar Pathak, prays for refund of money i.e. Rs. 17,12,620/- (Rs. 4,00,000/- at the time of agreement + Rs. 12,19,800/- paid on different dates + Rs. 81,300/- registry cost + 1500/- Application fee + Rs. 10,000/- Advocate's fee) and compensation of Rs. 2,00,000/- for mental agony as well as litigation cost with interest at the rate of 18% per annum compounded every month since the date of payment.
5. In pursuance to the receipt of Complaint petition, a notice was issued to the respondent company to furnish their reply.

RESPONSE OF THE RESPONDENT

6. The respondent company submitted their reply on 28/02/2019, to the notice dated 15/02/2019 issued to them by RERA on the basis of the complaint petitions filed by the complainants. The respondent company admitted the receipt of funds from the complainants in their reply but stated that the complainants were satisfied with the registered agreement for sale at the time of the agreement and if they were unsatisfied, then they shouldn't have entered into an agreement. However, the respondent company was ready to refund the deposited amount to the complainants.

HEARING

7. Hearings were held on 15/05/2019; 21/08/2019; 19/10/2019; 18/12/2019; 20/01/2020; 31/01/2020; 02/03/2020; 05/03/2020; 12/01/2021. In the course of hearing, Mr. Sunil Kumar Singh, represented the complainants and Mr. Mohit Raj and Mr. Ankit Kumar represented the respondent company. On 21/08/2019, the respondent submitted a cheque for Rs. 3,00,000/- to the complainant (Cheque No.- 606099). On 19/10/2019, cost of Rs 10,000/- levied on the respondent for not appearing before the Hon'ble Bench. On 18/12/2019, the respondent submitted cheque dated 24/10/2019 for Rs. 5,00,000/- to the complainant (Cheque No.- 109417) and the Bench directed the respondent to refund the remaining amount in 4 instalments. Finally after repeated directions, on 05/03/2020, the respondent company submitted a cheque dated 20/03/2020 for Rs. 7,19,800/- to the complainant. On 12/01/2021, the complainant counsel submitted that Rs.15,19,800/- has been refunded and a sum of Rs. 2,00,000/- was still due and the respondent has not yet paid the cost which was levied by the Hon'ble Bench on 19/10/2019.

ISSUES OF CONSIDERATION

8. There is no dispute on the facts of the case. Both parties have entered into an agreement for sale on 30/01/2018 for purchasing Flat no. 304 in Block- B of Geetanjali Vatika Green City along with one car parking space in basement with other facilities. The total consideration amount for the said flat was Rs. 40,66,000/- only. At the time of agreement the complainant paid Rs. 4,00,000/- and Rs. 12,19,800/- was paid on different dates up to November 2018. In sum, Rs. 16,19,800/- was paid by the complainants to the

respondent company. The Respondent company has refunded only Rs 15,19,800 during the course of hearing on different dates up to March 2020.

It is therefore evident that the complainant had paid 40 percent of the consideration amount of the apartment within ten months of execution of the agreement for sale. Further though the respondent cancelled the booking of the apartment, they didn't refund the deposited amount on their own and availed the economic benefits of the significant deposit made by the complainant for nearly two years. It was only after repeated directions of the Bench, the respondent refunded substantial sum of the deposited amount in several installments.

9. The Complainant has also asked for compensation/damages of Rs. 2,00,000/- (Rupees two lakhs only) for mental agony they have undergone due to uncertainties created by the promoter due to non-fulfillment of the promises made by them. Since the Respondent didn't give any cogent response to the complainants for their apprehensions and complaints, the complainants were compelled to withdraw from the project.

ORDER

10. The Bench therefore orders the respondent company to refund balance amount of Rs one lakh of the deposited amount to the complainant and pay an interest at the marginal cost of lending rate (MCLR) of the State Bank of India (SBI) plus Two percent on the deposited amount from the date of deposit to the date of refund, to be paid within sixty days of issue of this order, failing which the Respondent company will have to pay 8 percent interest

per annum on the payable amount from 21st March 2020 i.e. the date next to the date of refund of last instalment, until the date of actual payment.

As regards compensation, the complainant may approach, if he so desires, the Adjudicating officer of the Authority under section 71 of the Real Estate (Regulation and Development) Act 2016.

Date: 19.04.2021

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