

REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR

Present: Ved Prakash, Adjudating Officer

Rera Complaint Case No.CC/33/2018

Adjudating Officer Case No.05/2018

Om Prakash Tiwary & Ors.....Complainant

Vs

**Pukhraj Developers Pvt Ltd through
Kuldeep Singh Bagga, Director.....Respondent**

**For the Complainant - In person
For the Respondent - Mr Dilip Kumar, Advocate**

19/11/2018

ORDER

This complaint petition is filed by the complainants Om Prakash Tiwary and his wife Smt Bibha Tiwary against the respondent Kuldeep Singh Bagga, Director of M/s Pukhraj Developers Pvt Ltd under Section 12, 18 and Section 19 read with Section 72 of the Real Estate (Regulation & Development) Act, 2016 (later on it will be named as Act 2016 for relief of payment of accrued interest on the advance money of Rs 6 lakhs paid towards the consideration money of agreement for sale and compensation of Rs 15 lakh from him.

2- In nutshell, the case of the complainant is that the agreement for sale of flat was executed on 17/10/2012 between the complainants and the respondent having area of 1300 sq ft including proportionate share in the common pool area and land of the building with one parking space on consideration of Rs 60,20,000/-. As per agreement, the complainant no.1 had



paid Rs 6,02,000/- as advance money towards consideration of the flat as he had to pay 10% of the said consideration amount. It is further case that in spite of advance money payment the respondent did not start work and gave false assurance to the complainants. Later on, the complainants gave email message on 13/04/2016 to the respondent for cancellation of agreement for sale executed between them. As per request of the complainants the respondent refunded the advance money Rs 6,02,000/- to the complainant no.1 in his bank account on 29/10/2016 but the complainants were not satisfied with such payment and demanded accrued interest on advance money as well as compensation from the respondent on account of their mental, physical and economic harassment. When the respondent failed to give response on demand of the complainants, they have filed this case with the above reliefs.

3- The respondent after appearance has filed written statement on the complaint petition of the complainants and therein he pleaded inter alia that the complaint petition is neither maintainable in the eye of law nor on facts. He has further pleaded that when the respondent had purchased Survey Plot No.253(Part) Khata No.152 in Mauza Lohanipur PS Kankarbagh Dist Patna, since then the complainant no.1 started pressurising him to allot him a flat, if he is going to construct an apartment on the said land and at the same time, he paid Rs 6 lakhs as advance money. Thereafter, the respondent has not taken any other booking of flats in such campus till today. It is further case that the complainants are prosperous in all respect and they are running transport business, so they have given Rs 6 lakh as advance money to the respondent in spite of the fact that the respondent was not willing to take advance money from them. Further case is that the respondent had also got



prepared a map for constructing an apartment on the said plot and had also got permission from the Fire Services and the Airport Authority. In the meantime, the Government of Bihar has made a law that no map will be passed in area of master plan, so the passing of map was stopped and no action on this point was taken by the Government for a long time which was beyond the capacity of the respondent to construct the apartment without permission of the Government. It is further case that since the complainants have purchased one office in Prabha Complex near the said apartment, so they pressurized to refund the advance money, hence as per their request he had refunded Rs 6 lakhs two years ago. The respondent had cancelled the sale agreement dated 17/10/2012 with consent of complainants and now they cannot claim any relief on the basis of the said agreement. It is further case that the complaint case is time barred and this Court has no jurisdiction to entertain such type of case. The respondent is not running real estate business rather he is constructing his own house on the said land, and so the Real Estate (Regulation & Development) Act, 2016 is not applicable on the said land. It is further case that the respondent belongs to the minority community of Sikh religion, so the complainants by making pressure on him, are trying to take illegal money from him. It is further case that there is no description of interest in the agreement for sale dated 17/10/2012, so the complainants cannot claim any interest and compensation on the basis of the said agreement. Respondent has further case that he is not running unfair trade practice. There is no substance in the complaint petition of the complainants, hence, it may be dismissed.

4- On the basis of the above fact of the parties, the following points are formulated for just decision of the case :-



- 1- Whether Real Estate (Regulation & Development) Act, 2016 and Bihar Real Estate (Regulation & Development) Rules, 2017 are applicable in the present case ?
- 2- Whether the master plan brought by the Government of Bihar was applicable in the matter of the parties ?
- 3- Whether this case is barred by Law of Limitations ?
- 4- Whether the respondent has timely refunded the advance money Rs 6.02 lakh to the complainants ?
- 5- Whether the complainants are entitled for interest accrued on the advance money of Rs 6.02 lakh paid to the respondent and compensation for mental, physical and economic harassment. If yes, what amount ?

Discussion on Points:

5- **Point Nos. 1 and 3 :**

Learned lawyer for the respondent and respondent himself submitted that this case has been brought by the complainants on the basis of wrong facts. The respondent has already returned the advance money to the complainants and agreement for sale was executed on 17/10/2012 and more than three years have passed. Hence, this case is barred by Law of Limitation and since the respondent is not continuing the business of promoter/developer on the said land rather he is constructing his own house on the same site so Real Estate (Regulation & Development) Act, 2016 and Bihar Real Estate (Regulation & Development) Rules are not applicable in this case and this Court has no power to entertain this case. On the other hand, the complainant no. 1 submitted that the apartment for which he had executed agreement for sale with the complainants and had taken advance money was not given to them and in spite of repeated requests neither he constructed the apartment



nor returned the advance money with interest. Therefore, the respondent should pay interest on the advance money along with compensation as he has failed to pay even after enforcement of Act and Rules. He further submitted that he has filed this case within three years of cancellation of agreement for sale, so the case is within the time and this court has jurisdiction to entertain their complaint petition.

6- Admittedly, agreement for sale was executed between the parties on 17/10/12 and at the same time, the complainants have paid Rs 6.02 lakh to the respondent and on repeated requests the respondent has refunded only the above advance money and refused to pay the interest accrued thereon and compensation applicable in the matter. Though it is clear that the Act, 2016 has come into force on 01/05/17, and prior to enforcement of the Act and Rules, the respondent has executed agreement for sale with the complainants, but he has neither delivered the possession of the flat nor refunded the advance money along with accrued interest thereon and compensation to the complainants while he has cancelled the agreement for sale on 27/06/2016. The respondent has claimed that he had got prepared map for constructing the apartment and has also got permission of the Fire Services and Airport Authority of India and during this period master plan was issued by the Government of Bihar, hence there became delay and he could not construct the apartment as per agreement of the parties. In this view of the matter, it is also pertinent to note that as per Section-3 Sub-Clause (2) of the Act some properties have been exempted from registration under the Act, but they are

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not exempted from checking by the RERA, if there is some deficiency/differences between the consumer and the developer. In this way, RERA Act/Rules are applicable in the matter in hand and there is no substance in the argument of the learned lawyer of the respondent. It is also notable that as per Act 51 and 55 of the Limitation Act, 1963 any suit/case can be filed within three years, when contract is broken or profit received. In the instant case the agreement was cancelled on 27/6/2016 and this case is filed by the complainants on 12/7/2018, so naturally this case is within the time limit. Thus it is clear from the above discussion that this case is not only within the limitation, but also this court has the jurisdiction to entertain the complaint of the complainants and RERA Act and Rules are applicable in the matter in hand. Accordingly Point No.1 is decided in positive and Point No.3 is decided in negative and against the respondent and in favour of complainants.

7- **Point Nos. 2, 4 and 5 :**

Learned lawyer of the respondent submitted that complainants themselves have cancelled the agreement for sale and have taken the refunded capital amount of Rs 6.02 lakh from the respondent and there was no discussion of interest payment in the agreement, so now the complainants cannot claim the interest accrued on the advance money as they are themselves estopped by taking the earnest money from the respondent. The respondent himself submitted that since he has left to construct the apartment and he is making apartment for himself on the site, so there is no point of claiming interest and damages on the advance money. Further there became delay due to Master Plan Scheme proposed by Govt of Bihar as no map was approved by the competent authority during this period. On the other hand the



complainant no.1 submitted that he has thought to get a flat of 1300 sq ft on the consideration amount of Rs 60,20,000/- and had also timely paid the advance money to the respondent and in spite of repeated requests the respondent having ill will in his mind, previously did not answer, but subsequently being bound refunded only the advance money as stated above. He further submitted that now the market price has gone very high, so it is not possible for them to purchase another flat on such a price, which was available in 2012 and now he has learnt that the flats are being sold @ Rs 12000/- per sq ft, while they had executed agreement @ Rs 4400/- per sq ft. The respondent after leaving the business of constructing the apartment, is making a commercial complex on the site to run a better business than the previous one. The respondent has also mentally, physically and economically harassed to them, hence the respondent may be directed to pay reasonable compensation of Rs 15 lakhs along with accrued interest prevailing in the market at the rate of about 18% on advance money.

8- The complainants have paid Rs 6.02 lakh on 17/10/12 to the respondent as advance money and as discussed the respondent has got prepared map and sought permission from the Fire Services and the Airport Authority of India but he failed to construct the flat within time. It is apparent that the respondent has sought excuse on the ground of master plan issued by the Government of Bihar. On query by the court the respondent could not reply as to why he has not returned the advance money to the complainants, while he thought that he will leave the business of constructing the apartment and would run his business after constructing the commercial complex on the same site.



9- The respondent has also not filed any circular of master plan which may show that as and when the master plan was issued by the Government of Bihar and whether it was applicable on the land in question. The respondent has further tried to plea that the complainants have purchased an office in one Prabha Complex by the side of the apartment and pressurized to return the advance money to them, whereupon the complainant no.1 argued that he has hired on rent a room near the apartment site and he has not purchased any office as pleaded by the respondent. On the other hand, the respondent could not file the copy of the sale deed, which may show that the complainants have purchased any office for showing the reasonability pleaded by the respondent. In this way it appears that the respondent has used well the advance money in his construction business and when complainants started demanding delivery of possession of flat, he turned to say that he is going to construct the complex for his commercial business and has left to construct the residential apartment and he is not in a position to deliver the flat to the complainants.

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10- As per Section 72 of the Act, the respondent has to compensate for disproportionate gain or loss caused to the complainants due to result of default of the respondent. In absence of any documentary evidence the respondent cannot be given the benefit of force majeure for delay on ground of issuance of master plan by Government of Bihar for Patna. It was the duty of the respondent to timely deliver the possession of the flat to the complainants, and if it was not possible for him to complete, he should have refunded the entire advance money along with accrued interest, but instead of doing reasonable activity, the respondent is taking the undesirable/unreasonable/irresponsible tactics to avoid payment, which leads to show that he was running unfair trade practice.



11- Hon'ble Supreme Court in Ghaziabad Development Authority Vs Balbir Singh has held on 17/03/2004 that "However the power to and duty to award compensation does not mean that irrespective of facts of this case, compensation can be awarded in all matters at uniform rate of @ 18% per annum. As seen above what is being awarded is compensation i.e. recompense for the loss or injury. It therefore necessarily has to be based on a finding of loss or injury and has to correlate with the amount of loss or injury. Thus a Forum or the Commission must determine that there has been deficiency in the service and/or misfeasance in public office, which has resulted in loss or injury. No hard and fast rule can be laid down, however few examples would be where allotment is made, price is received/ paid, but possession is not given within the period set out in the brochure. The Commission/Forum would then need to determine loss. Loss could be determined on basis of rent which could have earned if possession was given and premises let out or if the consumer has had to stay in rented premises then on basis of rent actually paid by him. Along with recompensing the loss the Commission/Forum may also compensate for harassment/injury both mental/physical. Similarly, compensation can be given if after allotment is made there has been cancellation of scheme without any justifiable cause."

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12- In the instant case as discussed above the respondent has used the advance money of the complainant in his business and on the other hand the complainants could not get the flat within a reasonable time, and if they are willing to purchase new one, the market value of the flat has gone from Rs 4400/- per sq ft to Rs 12000/- per sq ft in the area. The respondent could not bring any documentary support that the rate of flats below Rs 12000/- per sq ft.



13- The advance money has already been refunded to the complainants but reasonable interest accrued on the said amount has not been paid. The home loan is being given to the home buyers at the rate of about 8.5%. The rate of interest on fixed deposit is about 8.5%. The personal loan rate is about 12.5% or above. The MCLR base rate is about 9% in SBI. Business loan interest is about 11.20% to 16.30%. Hence, the respondent should have paid at least 9% basic MCLR rate of interest along with 2%. But he has done nothing on point of payment towards interest within a reasonable time.

In the same way, the respondent has agreed to sell the flat on consideration of Rs 60,20,000/- at the rate of Rs 4400/- per sq ft. Now this rate of flat has gone about three times higher i.e. Rs 12000/- per sq ft. The complainant no.1 has submitted that now he is not in a position to pay such a price in the area. Therefore, the respondent should have compensated him not only for the loss to complainant but also for gain for himself. In this manner, about Rs 7600/- per sq ft loss has been caused to the complainant. A reasonable rate of interest and compensation should be allowed so that equity may be done to both the sides. It is clear that there was no effect on delivery of possession due to issuance of master plan proposed by the Government of Bihar as respondent could not produce any evidence in support of his argument. Therefore, from all the corners it appears that since the complainant has paid only Rs 6.02 lakh out of Rs 60,20,000/- consideration money, so they may be paid at least basic MCLR rate of 9% plus 1% on advance money Rs 6.02 lakh retained between 17/10/2012 to 29/10/2016 along with compensation.

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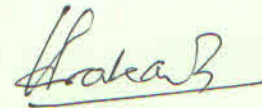
The respondent could not prove that the complainants are musclemans in area as no FIR or any huge amount deposit produced to show his allegation. On the other hand, respondent is a businessman and running business of building commercial complex for himself. The rate of compensation is discussed earlier, has been also allowed by Hon'ble Court 18% per annum where the full consideration money was paid, but here only Rs 6.02 lakh has been paid as advance money, so a reasonable amount of about Rs one lakh may justify the end for compensation. Accordingly, point nos.2 and 4 are decided in negative and against the respondent, while point no.5 is decided in positive against the respondent and in favour of complainants.

14- Apparently, as detailed above the complainants have successfully proved their complaints against the respondent. Hence, taking equity for both parties, the complainants may be allowed 10% interest along with Rs one lakh as compensation against the respondent.

Therefore, case of complainant is allowed on contest against the respondent along with litigation cost of Rs 10,000/-. The respondent is directed to pay 10% interest rate per annum on advance money of Rs 6.02 lakh retained by the respondent between the period 17/10/2012 to 29/10/2016 along with compensation of Rs one lakh to the complainant within 60 days failing which the complainants are entitled to get enforce the order through process of court.

Patna,

Dated 19th November, 2018.



(Ved Prakash)
Adjudicating Officer
Real Estate Regulatory Authority (RERA), Bihar

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