

**REAL ESTATE REGULATORY AUTHORITY, BIHAR**

**2<sup>nd</sup> Floor, BSNL Exchange Building, Patel Nagar, Patna-800023.**

**Before the Double Bench of Mr. Naveen Verma, Chairman  
& Mrs. Nupur Banerjee, Member**

**Case No. RERA/CC/1729/2020**

Anuradha Jha.....Complainant

Vs

M/s Kanishkha Buildcon Pvt Ltd. through its CMD  
Praveen Kumar.....Respondent

**Project: Vidyanand Maheshwari Complex Block- E**

**Present:For Complainant : Mr. Rakesh Ranjan, Advocate  
For Respondent : Mr. Puneet Siddharth, Advocate**

**ORDER**

**01-10-2021**

The case of the complainant Ms. Anuradha Jha is that she had entered into an agreement with the respondent on a non-judicial stamp paper for sale on 07.09.2017 against Flat No. 105, Block E on 1<sup>st</sup> Floor and a car parking space in the subject project. The total consideration amount was Rs. 50,38,500/- (Fifty lakhs Thirty Eight Thousand Five Hundred) out of which Complainant has paid Rs. 13,00,000/- (Thirteen lakhs) at the time of execution of the agreement and remaining amount of Rs. 37,38,500/- (Thirty Seven lakhs Thirty Eight Thousand Five Hundred) was to be paid at the time of possession and execution of sale deed.

The complainant submitted that in total, she has paid Rs. 18 Lakhs and even after receiving the amount, the respondent company has neither executed the sale deed in favor of the complainant nor has completed the construction of the flat and has given false assurances that possession will be given within 2 years with all amenities/facilities and finishing. Several reminders including a legal notice was served upon the respondent company to which a reply was received denying the allegations of the complainant and stating false and incorrect facts.

The respondent company in its reply dated 23/08/2021 while admitting that the said agreement for sale was executed drew attention to clause 3 of the agreement for sale according to which the complainant had to make timely payments whether demanded or not failing which interest @12% will have to be paid by the complainant calculated quarterly on the amounts which become due and payable. The respondent company further submitted that as per the payment schedule, the complainant was required to pay 15% at the time of booking and 30%

after booking within 15 days i.e., the complainant had to pay 45% - Rs. 22,67,325/- (Twenty lakhs Sixty Seven Thousand Three Hundred and Twenty Five) of the total consideration amount. However the complainant had committed breach of the agreement and paid only Rs. 13 Lakhs which is 25.8% only. Despite reminders, payment was not made by the complainant and thereafter the respondent company issued a cancellation letter dated 10/03/2018 to the complainant and allotted the flat to another buyer. The respondent company denied that it had demanded any amount after the cancellation of the flat and the same has been transferred by the complainant just to create cause of action.

The Bench observed that the respondent company had submitted on 07.09.2021 that they were willing to settle the matter. The Bench noted on the last date of hearing that the respondent company had admitted in its reply to the legal notice that they had received Rs 15 lakhs while the complainant is stated to have paid Rs.18 Lakhs. However, on perusal of the records it is found that the complainant has submitted receipts showing that payment of Rs 18 lakhs have indeed been made to the respondent company.

The complainant further submitted that she has not received cancellation letter from the respondent company and that seeing no progress in the project, she stopped making payment.

Learned Counsel of the respondent company submitted that since the complainant did not turn up after sending the cancellation letter, the flat was allotted to another buyer.

The matter was last heard on 07.9.2021. The complainant has not filed any affidavit regarding non-receipt of the letter of cancellation nor has any rejoinder been filed to the reply submitted by the respondent company. The respondent has also not filed any additional written submissions.

The Bench notes that from the payment schedule mentioned in the agreement to sale, the complainant had to pay 40% in 15 days within 2017 but the receipts indicate that the payment has been made in 2018 and 2019. The respondent has filed copy of the letter dated 10.3.2018 and the cancellation of agreement to sale which has not been denied on oath by the complainant despite having been given an opportunity to do so.

After hearing both the parties and perusing the record, the Bench observes that the complainant has made only part payment of Rs.18 Lakhs (Eighteen lakhs) against the total consideration of Rs.50,38,500.00. The respondent has cancelled the allotment but has not refunded the amount received from the complainant and further has not ensured that further payments are received after cancellation.

The respondent company has also not filed any evidence regarding service of cancellation letter to the complainant. Since the apartment in question has already been sold, the prayer of the complainant for execution of the sale deed can be acceded only if the respondent company has any other alternative apartment to offer.

In case the respondent company have no alternative apartment to offer, the respondent company is directed to refund the entire principal amount of Rs.18 lakhs along with the along with interest on Rs.18.00 lakhs at the rate of marginal cost of fund based lending rates ( MCLR ) of State Bank of India as applicable for three years from the date of receiving the payment within sixty days of issue of this order. The complainant is at liberty to approach the Adjudicating Officer for compensation.

With these directions the matter is disposed of.

Sd/-  
**Nupur Banerjee**  
Member

Sd/-  
**Naveen Verma**  
Chairman