

REAL ESTATE REGULATORY AUTHORITY, BIHAR

Telephone Bhavan, Patel Nagar, Patna-800023.

Before the Bench of Mrs. Nupur Banerjee, Member

Complaint Case Nos. CC/600/2019

Maruti Kumari**Complainant**
Vs
M/s Mangla Gouri Builders & Developers Pvt. Ltd.....Respondent

Project: Ganpati Residency

For Complainant: Mr. Binod Kumar Sinha, Advocate

For Respondent: Mr. A.K. Das, M.D.

Mr. Nilanjan Chatterjee, Advocate

5/08/2022

ORDER

This matter was last heard on 11-05-2022 and order was kept reserved but, due to pre-occupation, the order in the said case was not pronounced.

The complainant, Maruti Kumari, a resident of village Bhergawan, P.S. Gaurichak, District Patna has filed a complaint petition against the respondent firm M/s Maa Mangla Gauri Builders & Developers Pvt. Ltd., a promoter and developer company, for a direction to the respondent company to hand over the flat bearing Flat No 402 on 4th floor with compensation or to refund the money paid to the respondent with compound interest @ 18% per annum from the date of agreement for sale dated 09.11.2015 and to take suitable action as per law. She also prayed for an interim relief for restraining the respondent from carrying out the development work of the project until further order.

In short, the case of the complainant is that the complainant entered into an agreement for sale dated 09.11.2015 with the respondent company by paying Rs.51,000/- in cash as earnest money for purchase of a flat bearing No.402 on 4th floor and one car parking space. The complainant has already paid Rs.35,51,000/- to the respondent till 02.09.2016 out of total consideration amount of Rs.40,51,000/-. It is stated that as per para-17 of the agreement for sale the respondent failed to hand over the possession of the said flat to the complainant within 12 months with a grace period of six months. She visited several times and requested to hand over the flat but finding no response from their side she sent a legal notice to the respondent to obey the terms and

conditions of the agreement for sale and hand over the said flat within 15 days or to refund the whole amount with 15% interest per annum. It is further stated that even after lapse of more than 43 months they have not handed over the possession of the flat nor refunded the amount to her by the respondent. Hence, this complaint.

A notice dated 14.10.2019 was issued to the respondent company under Sections 03, 12, 18 and 19 of the RERA Act, 2016 and Rule 36 of the RERA Rules 2017 to appear and file their reply. In response to the said notice respondents have filed their reply stating therein that the complaint filed by the complainant is not maintainable as the same contains false and frivolous statements and the respondents denied all the statement made by her. It is stated that since the building in question contains only six flats and the area of the land is much less than 500 sq.mtr., therefore, the respondent is not liable to be registered under the RERA Act. It is stated that the M.D. had neither signed the agreement nor he was involved in any manner in negotiation and no money has come in the account of the company. It is further stated that the complainant and her relatives had entered into an agreement dated 21.03.2012 with respondent no.2 Munna Kumar for sale of a piece of land having an area of 54 decimal and he had received Rs.26,95,000/- out of the total price of land to be calculated @ 1,35,000/- per katha. Litigation was going on between the complainant and respondent no.2 and they had entered into a third agreement on 06.03.2017 and had agreed that till the litigations are over, the parties will not take any legal action. It is further stated that respondent no.3 is nowhere involved in this agreement. Therefore, the flat could not be sold due to pending litigation with the landlord and the complainant also could not sell the land. The legal notice dated 14.03.2019 sent by the complainant was replied by the respondent on 21.05.2019. Therefore, the instant notice is based on wrong facts and no proceeding be initiated against the respondent.

On 18.09.2020 hearing was taken up and learned counsel for the both the parties were present. On that day the Bench directed the respondent to submit all the documents on record and also to the complainant to file her reply. On 30.09.2020 and 13.10.2020 same direction was given to the respondent. On 5.11.2020 on the submission of both the parties that the mediation is in process, the Bench directed to settle the dispute amicably. On 24.11.2020 and 04.12.2020 same direction was given to the parties to settle the dispute. On 10.12.2020 the complainant submitted that out of consideration money of Rs.35 lakh Director Muskesh Kumar is ready to refund Rs.12 lakh but the respondent company is not ready to refund Rs.23 lakh saying that the said amount has already been refunded. On 18.12.2020 and 28.12.2020

on the submission made by the respondent the Bench directed both the parties to negotiate the matter and come to the conclusion on settlement of the matter. On 29.12.2020 the respondent submitted that they are ready to settle the matter if the complainant is ready to pay Rs.12 lakh. The complainant has not accepted the proposal because she has already paid Rs.35 lakh to the builder. The respondent further submitted that this case is not maintainable before the Authority because there was private transaction between the complainant and an authorized Director of the company. On 10.03.2021 the complainant submitted that an agreement was done by paying Rs. 35,51,000/- in 2009 but even after completion of the flat the respondent has not handed over the possession of the flat. The respondent submitted that there are only six flats and the area is less than 500 sq.mtr., hence this case is not maintainable. He further submitted that she has come into an agreement with the Director and the amount was paid in his personal capacity. On the submission made by the respondent the Bench directed them to refund Rs.12 lakh to the complainant with interest. On 09.12.201 the complainant submitted that she had not received any amount as per earlier direction. On 11.05.2022 the M.D. of the respondent company submitted that the complainant has paid money to the Director in his personal capacity. She has not paid money to the company.

Learned counsel for the complainant reiterated the submissions as stated in the complaint petition.

Learned counsel for the respondent submitted that no consideration amount has been received by the company from the complainant in connection with the alleged agreement. The complainant has not produced any proof of payment to the company. It is also submitted that the complainant had entered into an agreement with the Director Munna Kumar in his personal capacity, thus, the company or the Managing Director are not at all liable to pay compensation since the agreement was not with the company nor any consideration amount was paid to the company. He further submitted that an agreement is executable only if the consideration amount is paid. The complainant filed a complaint case before the ACJM, Patna with respect to the same cause of action which was dismissed vide order dated 20.09.2019. He further submitted that the proposed project has only eight flats and the area is 3200 sq. ft., hence there is no requirement for registration in terms of Section 3(2) of the RERA Act.

Having heard the learned counsel for the parties and considering the materials available on record, the Bench observes that complainant has filed this complaint stating therein that complainant has entered into Agreement for Sale in 2015 for the booking of flat on the total

consideration amount of Rs.40,51,000/- and out of which he paid Rs.33,51,000/-. On the other hand respondent company has submitted that there is no Agreement for Sale executed between complainant and respondent company. It is also submitted that there is no consideration amount received by the respondent company and an agreement was executed between Director Munna Kumar and complainant in the personal capacity and the project has only eight flats and the area is 3200 sq. ft., hence there is no requirement for registration in terms of Section 3(2) of the RERA Act. It has also been submitted that on the same cause of action a complaint was filed before the court of ACJM also.

In the light of above discussions and facts and circumstances stated, the Bench observes that no documents like Agreement for Sale executed between the complainant and respondent in lieu of booking of flat , money receipts issued by the respondent company or any documents showing money paid to respondent company in lieu of flat booked or any other documents has been brought on record by complainant which substantiate the averments of complainant that he booked flat with the respondent company and paid money in lieu of booking of flat.

The Bench also observes that from the Development Agreement dated 20-07-2014 placed on record by the respondent company, it appears that total area upon which development was executed was 3266.4 Sq. ft. which is less than 500 square meters as prescribed under section 3(2) (a) of the RERA Act, 2016, hence, no requirement of Registration with Authority needed.

In the view of above observations, the Bench finds no merits in this case to entertain upon and in view that the matter pertains to civil nature, hence, the complainant may approach the competent civil court.

With the above observations/ directions, this complaint petition is disposed of.

Sd/-

Nupur Banerjee
Member