

REAL ESTATE REGULATORY AUTHORITY, BIHAR
2 nd Floor, BSNL Telephone Exchange, North Patel Nagar, Road No. 10,
Patna -800023

Before Bench of Hon'ble Member, Mrs. Nupur Banerjee

Case No.:-RERA/CC/1385/2020

Mr. Ravi Kishore and Ors.....Complainants

Vs

M/s Sheba Welcon Builder Pvt. Ltd.....Respondent

Project: Rajeshwar Apartment

ORDER

19.07.2022

This matter was last heard on 15-06-2022.

The case of the complainants is that they booked flat no. 201, in Rajeshwar Apartment bearing plot no. 1007, Khata no. 776, Thana no. 21, Mauja- Shahjadpur, Danapur, Mohalla Danapur, Sainik Colony, Gola Road, P.S. Rupaspur, Patna. A development agreement bearing deed no. 26936 was registered on 03.11.2011 and an agreement for sale was entered between the complainant and the respondent. It was mentioned therein that lift, electric generator, parking space, water tanks etc would be provided. The consideration amount was Rs. 30,00,000/- against which Rs. 50,000/- was paid initially; further Rs. 14,50,000/- was paid by the complainant from 9th February 2019 and Rs. 3,40,000/- was paid in cash. A legal notice dated 21.02.2020 was sent to the builder, Md. Khalid Rashid when he was not ready to execute the deed for absolute sale. It was also observed that common area was not developed,

and water tank, electricity fittings were not provided. The complainant also came to know that the respondent Director was accused in Kotwali P.S. Case No. 540 of 2018 and has also been arrested and was granted bail by Hon'ble Patna High Court on 20.03.2020.

Hence, the complainant has filed the case seeking relief for directing the promoter to complete the construction of the building and the entire work as stated in the agreement to sale as well as the development agreement. The complainant further prays for allowing to make payment of Rs. 14,50,000/- and direct the respondent to execute the deed of registration of the property in favour of the complainant.

The complainant has placed on record copy of development agreement bearing deed no. 26936 dated 14.11.2011, copy of agreement for sale, copy of passbook statement and acceptance of money for Rs. 1,50,000/-, copy of legal notice dated 21.02.2020, copy of allotment letter dated 25.03.2019, copies of pass book of SBI (S.K.Puri Branch), Punjab National Bank (Kankarbagh Branch) and Madhya Bihar Gramin Bank (Kankarbagh Branch) and copy of bail application passed in criminal miscellaneous no. 1659/2020 dated 20.03.2020 passed by Hon'ble Patna High Court.

Perused the records. No rejoinder has been filed by the respondent.

On 09.02.2021, the Bench directed the counsel of the Authority Mr. Jainandra Kumar, to inspect the aforesaid project and submit the report. The inspection report dated 23.03.2021 submitted by Mr. Jainandra Kumar, Counsel of the

Authority stated that no fire fighting, generators were installed, parking and common area were incomplete, no electric panel was installed, no grill was provided in the ladder portion, only outer plaster of the project on 1st and 3rd floor were made and brick work of 2nd floor was incomplete for which the photographs have also been placed on records.

During the course of hearing, the Bench observed that the learned counsel for the respondent kept on lingering the matter by seeking time. He has not complied with any directions given by the Bench despite repeated directions. Consequently, an interim order was passed on 31.03.2021, directing to freeze all the bank accounts of the respondents and further directed the IG registration not to register any apartment/plots of the aforesaid project.

On 31.03.2021 the complainant counsel submitted that complainant Mr. Ravi Kishore approached the respondent for registering flat no.201 for which the builder had taken some amount and agreement of sale dated 05/03/2019 was executed. He further submitted that despite of entering into an agreement of sale, the complainant has received the cancellation amount in their account as well as through cash. He further prayed for refund of the money or the registration of the flat.

The Bench takes note of this submission that the respondent has cancelled the allotment and refunded the amount to the account of the complainant. It is for the complainant to clarify the circumstances of the cancellation and whether the entire amount has been refunded or not, and the specific relief they are seeking from the Authority.

On 23.08.2021, Bench had directed the respondent to apply for RERA registration within a week, i.e. by 31st August, 2021 otherwise penalty of Rs. 10,000/- per day for every day delay will be levied upon the respondent under section 63 of the Act. The Registration wing would apprise the status of application.

An interim order was passed on 25-01-2022, giving One last opportunity to the respondent to explain why it should not be presumed that they have violated Section 3 of RERA Act, 2016 as they were continuously advertising, marketing, booking, selling apartments/plots without registering the real estate project with RERA and as to why action under Section 59 of the Real Estate (Regulation and Development) Act, 2016 not be taken against him. Also summons was issued to the Directors of the Respondent Company to explain the circumstances of cancellation and to give a firm date for completion of the project at the earliest with the amenities as mentioned in the agreement.

During the course of hearing on 15-02-2022, learned counsel of the complainant has submitted that the complainant paid in two installment of Rs 14 lakh and Rs 2 lakh and ready to pay the rest amount since he wants possession of flat. He further stated that the flat has not been registered in the complainant's name nor any demand was ever made by the respondent company. He submitted that the proceedings of 31/03/2021 that he got refund of Rs 10 lakh from the respondent company was incorrectly recorded. He submitted that neither he

has cancelled the booking nor got any refund and prays for possession/registration of flat in his name.

Learned counsel of the respondent company has submitted that by an agreement on 09/02/2019, two flats were booked by the complainant and his sister on a consideration amount of Rs 52 lakh in total. Since the sister has made full payment, she has been given possession of flat and the flat has been registered. As regards the complainant (CC/1385/2020) he submitted that the complainant has not made full payment and Rs 10.67 lakh plus interest is still due with him. The home loan applied by the complainant has not been sanctioned by ICICI Bank. He further states that they will file counter reply. The respondent company further submitted that they have refunded Rs 10 lakh to the complainant which the complainant should confirm or file their reply in writing that he has not got the refund from the respondent company.

The Bench has directed on 15-02-2022, the respondent to file their reply in respect of this matter with copy to the complainant. The Bench observes that respondent has not complied the direction and no reply has been filed. The Bench has also directed the complainant and respondent to give their written submissions on the issues raised in the Interim order passed on 25/01/2022..

The Bench observes that neither the complainant nor the respondent has complied the direction and no written submissions have been filed.

On the hearing on 26-04-2022, last opportunity has been given to both the complainant and the respondent to file supplementary affidavit, failing which the matter will be decided on the basis of submissions made and the documents on record.

The Bench observes that direction was not complied and no supplementary affidavit has been filed.

During the hearing on 19-5-2022, both the parties were absent. On the hearing on 26-05-2022, the complainant was present but respondent was absent, so Bench directs to issue summons which was issued on 13-06-2022 but respondent despite issuing of summons on 15-06-2022 not appeared, the ex-parte order is being passed as on the basis of documents placed on record and submissions made by the parties as observed by the Bench during the last hearing on 15-06-2022.

During the last hearing on 15-06-2022, the complainant present in person has submitted that he booked a flat and out of total consideration money of Rs.25 lakhs, he has paid Rs.17 lakhs and he is ready to pay the rest balance sale consideration before the execution of sale deed of the flat. He wants possession of the flat. The flat is ready.

After the perusal of the record of the case, the Bench observes that despite the directions of the Authority during the course of hearings as observed above, both the parties has not complied the direction of the Authority and filed their petition as directed. The Bench also observes that even the direction of the Authority, the respondent has not applied for the Registration of the project, hence, Bench directs respondent to deposit the

penalty amount in the light of Interim Order passed on 25-01-2022 within 30 days, failing which coercive action will be taken as per O.21, R.30 of Civil Code Procedure, 1908 read with Section 40 of the Real Estate (Regulation and Development) Act, 2016.

So far the issue raised by the respondent counsel Mr. Roushan Sinha regarding refund of Rs.10 lakh during the course of hearing on 15-02-2022, is concerned, the Bench observes that no documents placed on record by the respondent which substantiate the contentions of the respondent.

In the light of above observations and perusal of documents placed, the Bench hereby directs respondent to hand over the possession of flat within 30 days to complainant and complete all the remaining work and provide all the facilities and amenities in the building as per the Agreement for Sale and promised at the time of booking as these facilities and amenities are the part and parcel of the project within 3 months. If the respondent fails to complete the works in 3 months, then a cost of Rs.2,000/- for each day of delay would be imposed.

The Bench further directs complainant to pay the remaining amount due after taking possession of the flat and further directs the respondent to execute the sale deed in favour of complainant after the receiving the balance sale consideration amount as per the Agreement for Sale on the next date or same date when remaining consideration amount paid by the complainant.

As no explanation has been filed by respondent in respect to Interim Order dated 25-01-2022, regarding violation of section 3 and why action under section 59 of the Act not taken against them, the Bench further directs to initiate Suo-Moto proceeding against the respondent company for the same.

With these directions and observations, the matter is disposed off.

**Sd/-
Nupur Banerjee
(Member)**