

REAL ESTATE REGULATORY AUTHORITY, BIHAR

2nd Floor, BSNL Exchange Building, Patel Nagar, Patna-800023.

Before the Single Bench of Mr. Naveen Verma, Chairman

Case No. RERA/CC/655/2021

Shailendra Kumar Sinha.....Complainant

Vs

M/s Mittal Infraspaces Pvt. Ltd.....Respondent

Project:Gobind Gopal Apartments

Present: For Complainant :Mr. Mohit Raj, Advocate

For Respondent :Mr. Jai Ram Singh, Advocate

ORDER

08-10-2021

This matter was last heard on 14-09-2021.

The case of the complainant is that he had booked one 3BHK flat bearing Flat no. 103 in Gobind Gopal Apartments, rate being Rs. 4500 per sq. ft., by paying a booking amount of Rs. 51,000/- (Fifty One Thousand) vide cheque no.213633 of State Bank of India.The complainant submitted that the respondent company returned the cheque bearing no. 213633 and asked for another cheque bearing no. 364513 amounting to Rs. 10 Lakhs and executed a registered agreement on 11.03.2021. On perusal of the agreement and the allotment cum consent letter dated 11.03.2021, the complainant found that the rate per sq. ft has not been mentioned in the agreement and incorrectly mentioned in the allotment cum consent letter.

Learned Counsel of the complainant submitted that letter dated 20.05.2021 was received from the respondent company demanding payment of second installment to which a reply dated 29.05.2021 was sent asking the respondent company to clarify the actual super built up area. Another letter dated 03.06.2021 and 16.06.2021 was sent to the complainant demanding money and threatening the complainant that if payment is not made by 25.06.2021, agreement will be cancelled and booking amount shall stand forfeited. The complainant further submitted that the booking amount was paid in February 2020, development agreement with the landowner was executed in December 2020 and the agreement for sale with the complainant was registered on 11.03.2021 and the area of the apartment is different in the development agreement, receipt given to the complainant and that submitted in application for registration. Quarterly reports are also not being certified by the chartered accountants.

The complainant has placed on record cheque dated 09.02.2020, letter dated 09.02.2020 issued by the respondent company, receipts dated 11.03.2021 amounting to Rs. 10 lakhs, allotment cum consent letter dated 11.03.2021, agreement for sale dated 11.03.2021, letter dated 20.05.2021 by respondent company, reply dated 29.05.2021 by complainant, letter dated 03.06.2021 by respondent company, reply dated 12.06.2021 by complainant, letter dated 16.06.2021 by respondent company and booking application form.

Learned Counsel of the respondent company, upon query by the Bench as to why allotment was cancelled within 3 months of the agreement of sale, filed a supplementary petition dated 22.09.2021 stating that the complainant has cooked false story just to evade making payments to the respondent company towards booking of the flat. The complainant paid only Rs.10 lakhs on 11.03.2021 and assured to make timely payments but failed to do so even after sending of reminder letters to him. The respondent company submitted that complainant is a retired police officer and hence well educated and cannot claim that he signed the papers without understanding and cross checking the information. The respondent company requested the complainant to make timely payments so that work in the project could complete but the complainant unheeded the same and therefore booking was cancelled on 26.06.2021 and amount paid refunded after deducting 5% GST i.e.; Rs. 9,50,000/- (Nine Lakhs Fifty Thousand) vide cheque. The Learned counsel of the respondent company submitted that the cheque of Rs. 9,50,000/- (Nine Lakhs Fifty Thousand) has not been encashed till now.

Learned counsel of the respondent company submitted that no booking was done on 09.02.2020 and only a temporary agreement was handed over to the complainant. The respondent company never advertised the project and the same has been admitted by the complainant in his complaint. The respondent company raised a question as to why any developer would agree to book Rs. 60 lakhs plus flat against a cheque of Rs.51,000/- (Fifty Thousand) and that the note handed over to the complainant did not contain any flat no., parking, GST etc and therefore cannot be called allotment letter. It was submitted that since the complainant had not complied with section 19(6) of the Act, respondent company had no option but to cancel the allotment.

Perused the records of the case. After going through the response of the respondent company and the materials brought on record by the complainant, the Bench notes that the respondent company has violated section 3 of the Act by issuing receipt to the complainant and accepting Rs.51,000/- (fifty thousand) prior to registration of the project.

The respondent company was given ample opportunity to be heard and show cause as to why receipt was issued and payment accepted before registration however the respondent company has failed to satisfy the Authority and therefore a token penalty of Rs. 1,00,000/- (One Lakh only) is imposed upon the respondent company for violation of section 3 of the Act to be paid within 60 days from the date of issue of the order.

The Bench further notes that the contents of agreement for sale executed between the parties pertaining to the area of the flat and the rate per square feet is ambiguous. The respondent company is further directed to amend the original

agreement for sale and specify the carpet area as provided in the Bihar Real Estate (Regulation and Development) Rules, 2017 and remove other ambiguities if any within one month from the date of this order.

The Bench further observes that the complainant has not acted in accordance with section 19(6) of the Act and not paid the instalments according to the schedule of the construction linked plan as mentioned in the agreement to sale. The Bench, however, gives another opportunity to the complainant, taking into consideration the reason of pandemic given by the complainant, to pay the remaining due amount to the respondent company, if the particular apartment has not been allotted to any other buyer.

With these observations, the matter stands disposed of.

Sd/-
Naveen Verma
Chairman