

87% of the cost of the land in three instalments (Rs 100,000 on 7.3.2017, Rs 100,000 on 2.5.2017 and Rs 150,000 on 22.5.2017) within three months of issue of the allotment letter, she has not been handed over the possession of the plot of land and registry of the land has not been done.

3. Along with her complaint, the petitioner has attached the copy of the allotment letter dated 5th March 2017 issued by the Developer, M/s Goal Infratech Pvt Ltd, copies of statement of his State Bank of India (SBI, Sainik School, Tilaiya) saving bank account no 11429761162, copies of his legal notices and replies received etc.

She has requested the Authority to direct the promoter to register the allotted land to her.

Response of the Developer

4. In his response dated 7th August 2018, the promoter has stated that the time was of essence in the contract. The allottee was given the option of two payment plans in the allotment letter dated 5th March 2017. As per the payment Plan A, the allottee was to make down payment of the cost of the plot of land i.e. Rs 4,00,800 whereas under Payment Plan B, the allottee had the option to make payment of Rs 4,36,800 in six instalments within a period of six months. The promoter stated that the allottee did not make payment of full cost of the plot of land within a period of six months, inspite of several telephonic reminders. Hence, the Respondent Company had no option but to cancel the allotment letter. Accordingly, the Developer had cancelled the allotment and informed the complainant to collect the remaining due amount from his office.

Hearing

5. In course of hearing while the complainant was defended by her husband Mr Laxman Pandey, the Respondent Company was represented Mr Amresh Kumar Jha, Advocate and Mr Ajit Kumar Sinha, MD. On the date of hearing (09.10.2018), the Complainant reiterated his statement that though he had paid 87 % of the cost of the land, the registry of the land was not done by the Developer. He alleged that the Respondent Company has not issued any communication/reminder for making payment and that the allotment letter was unfair, one-sided and protected the interest of the developer only while fate of the allottee was left to the mercy of the developer. He stated that though the provisions of the Real Estate (Regulation and Development) Act 2016 had come into operation with effect from 1st May 2017, the Respondent Company had not registered its on-going project and were harassing the customers on account of one-sided agreement signed earlier.

6. The respondent Company refuted the claim of the complainant and stated that since the complainant didn't make full payment within six months of the issue of allotment letter inspite of several telephonic reminders, they didn't have any option but to cancel the allotment. They also stated since the complainant didn't make the payment timely, their contract with the land-owners also got lapsed and cancelled. They stated that they were prepared to pay the interest of 24%, as prescribed in the allotment letter, to the complainant from the date of receipt of the dates of deposits to the date of refund. On the next date of hearing (2nd November 2018), the Respondent Company submitted a petition, a copy of which was served on complainant the same day, leading the complainant to seek time. The Complainant also gave a rejoinder to the petition of the Respondent Company. Both Parties were also requested to see whether a compromise/reconciliation could be reached between them. The Respondent Company was also directed to produce a copy of the agreement they had entered into with the land-owners in respect of the stated plot of land under dispute. On 12th December 2018, the learned counsel of the Respondent Company showed the copies of the documents to the Bench.

Issues for consideration

7. There is no dispute between Complainant and Respondent Company on following issues:
- The Respondent company issued an allotment letter on 5th March 2017 for allotment of a plot of land measuring 1200 sqft (Plot No-11) in Block T of the Project Goal City of the promoter, M/s Goal Infratech Pvt Ltd at the basic cost of Rs 4,00,800(Rupees four lakh and eight hundred only).
 - In pursuance thereto, the Complainant paid by cheques Rs 3,50,000 in three instalments (Rs100,000 on 7.3.2017, Rs100,000 on 2.5.2017 and Rs150,000 on 22.5.2017) within three months of issue of the allotment letter, which were accepted by the Respondent Company and receipts were given to the complainant.
 - The Respondent Company has not issued any show cause notice or written communication to the Complainant, prior to cancellation of the allotment.
 - The Respondent Company didn't issue any cancellation letter to the complainant.
 - The Respondent company themselves claimed that they had not acquired the land even after receiving the payment of 87 per cent of the basic cost of the plot.
 - The Respondent company had further responsibilities of developing the land for which, as per the terms and conditions of the allotment

letter, Rs 36000 (Rs30 sqft for 1200 sqft plot) was included in the basic cost of the plot.

8. However, there were disputes thereafter as the complainant waited for further communication regarding registration of the land before making further payment whereas the Respondent company cancelled the allotment in their records as full payment was not made by the complainant within six months. Though the Respondent Company claimed that they informed the complainant that the balance deposit amount after deduction of Rs15000 as cancellation charges may be collected from the office of the company, the Complainant refuted the claim and stated that they were not informed of the cancellation either before or after the cancellation. He stated that he came to know about it only when he sent a legal notice for the registration of the plot of land in November 2017. He stated that no opportunity or show cause notice was given to him before cancellation, even when he had deposited more than 87 % of the cost of the plot of land.
9. The Respondent Company claimed that they were following the terms and conditions of the allotment letter dated 5th March 2017 while the Complainant alleged that the said terms and conditions were not fair and tilted/one-sided in favour of the developer and did not provide any protection to the interests of the consumers. The Complainant alleged that if she would have made full payment, she would not have any leverage with the promoter and she would have been at the total mercy of the promoter as the registration was to be done after development of the land and for which the promoter had provided for additional period up to another six months after receipt of the cost of the land.
10. A careful examination of the allotment letter dated 5.3. 2017 indicated that
 - though the basic cost of the plot was stated to be Rs 400,800 in the first paragraph, it appeared to be the cost of the plot under Plan A. However, Plan A of the Payment Plan did not indicate payment schedule –amounts and/or dates of payment of instalments after the booking of the plot;
 - the cost of land under Plan A was lower i.e. after discount and down payment was to be made if a purchaser wishes to opt for it. If down payment is not made, the cost would automatically get converted into Plan B where cost of the plot would go up to Rs 4,36,800, which would be payable in six instalments within 180 days;
 - The basic Cost of the plot was inclusive of development charges @ Rs 30 per square feet i.e. Rs 36000 for this plot of 1200 sqft.
 - Date of handing over possession was not specifically mentioned in the allotment letter, though it was stated that the project would be

completed soon. At another place, it was stated that the project development was likely to be completed by December 2017 with a grace period of one year.

- No part of the cost of the plot was kept pending till the date of possession/Registry to protect the interests of the consumers.
- No protection was provided in the terms and conditions to the consumers if the developer did not fulfil its commitment of development of the plots i.e. providing 30/20 feet roads, electricity etc.

11. It is also a fact that the Respondent Company did not make objection at the time of receipt of the 2nd and 3rd instalment of payment from the complainant when it was delayed. It was also clear that the Complainant had made the payment of Rs 3.50 lakhs (more than 80% of the cost under Plan B) within 75 days, whereas under Payment Plan B, 75 % of the cost was required to be paid within 90 days.

12. It was evident from the above that the terms and conditions were not fair and reasonable to both parties. The promoter had made the terms and conditions of the allotment totally in their favour, without protecting the interests of the consumers. Under normal circumstances, the payment schedule under both types of payment (Down payment or Construction /Development linked plan) make a provision for payment of 5 or 10 percent of the cost at the time of possession but it was not done by the promoter in this project. The allegation of the complainant that the promoter changed his mind to sell the plot to him due to rise in the prices of the land, appears to have merit.

13. It was apparent from the facts of the case that the Project Goal City was an ongoing real estate project as on 1st May 2017 and required to be registered with the Real Estate Regulatory Authority, Bihar within three months from the date of the commencement of the Real Estate (Regulation and Development) Act 2016 i.e. by 31st July 2017, which the Promoter did not do. Apparently it was due to the fact that after registration with the Authority, provisions of standard agreement of sale prescribed under the Rule 8 of the Bihar Real Estate (Regulation and Development) Rules 2017 would have become applicable and superseded the terms and conditions prescribed by the promoter in this project. It would have made the allottee on par with the promoter.

14. Therefore, we are of the view that the terms and conditions prescribed by the promoter in the allotment letter dated 5.3. 2017 violated the provisions of the Act 2016 regarding powers and duties of the promoters and allottees and were inconsistent with the terms and conditions of the Standard agreement for sale prescribed under the Rule 8 of the Bihar Real Estate

(Regulation and Development) Rules 2017 and needed to be declared null and void.

15. We are therefore of the view that the Complainant ought to have been given the opportunity to acquire same plot of land (T 11) as per the allotment, albeit on payment of reasonable fine/penalty. However the Respondent Company has informed that the said agreement with the land-owners has since lapsed. We have therefore no option to get the plot of land back to the complainant as the promoter had not acquired the plot even after receipt of 87 percent of the cost of the land.

Order

16. We therefore order the Respondent Company to refund the deposit of the complainant along with interest at MCLR of the SBI plus two percent to the complainant. Additionally, we also order the Respondent Company to pay a compensation of 100 % of the deposit i.e. Rs 3.50 lakh to the complainant for cancellation of the allotment letter without giving any notice/opportunity to the complainant. All payments should be made within 60 days of issue of this order.

Sd
R B Sinha
Member

Sd
Dr S K Sinha
Member