

REAL ESTATE REGULATORY AUTHORITY, BIHAR

Before the Bench of

Hon'ble Member Mr. S.D. Jha, RERA, Bihar,

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RERA/CC/123/2023

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Mr. Mani Bhushan Lal..... Complainant

Vs.

M/s R.R. Builders and Developers Pvt. Ltd..... Respondent

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For the complainant: Mr. Rahul Srivastava, Advocate

For the Respondent: Mr. Kumar Saurav, Advocate

Project:—SANCHAR NIGAM, PHASE – 1

ORDER

13.05.2024 This case was last heard on 10.05.2023 and the order was reserved. Mr. Rahul Srivastava, Advocate, appeared and defended the case of the complainant. Mr. Kumar Saurav, Advocate, appeared and defended the case of the respondent through virtual mode. The order is being delivered today i.e.13.05.2024.

2(i) Learned counsel for the complainant submitted that an Agreement For Sale between the complainant and the respondent was executed on 16.8.2019 to purchase Flat no.503 on 5th floor in Block-2 of 831 sq. ft. in the project "Sanchar Nagar" along with car parking on consideration amount of Rs.26,45,750/- which was paid before and after Agreement except the last installment and GST of Rs.72,080/-. As per Agreement the flat was to be handed over by July, 2021 but till date possession of the flat has not been handed over. The complainant wants possession of the flat and is willing to get the remaining amount disbursed through the Bank, which sanctioned loan.

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(ii) He further submitted by referring to notes of argument filed on 10.05.2024 that the pre-possession letter dated 27.12.2022 demanding compound interest on the due amount of Rs.72,080/- is clearly a violation of clause 9.3 of the Agreement for Sale, which does not have such provision. He also submitted by referring to clause 7.2 of the Agreement that it is clearly mentioned therein that the remaining dues would be disbursed to the respondent after producing the Completion Certificate and the Occupancy Certificate. Since the respondent has not provided the said certificates, the Bank is not releasing the last installment. As soon as the said certificates are provided to the Bank the remaining amount of Rs.72,080/- would be released in favour of the respondent. He also submitted by referring to clause 7.6 of the Agreement that if the developer fails to complete or handover possession within the specified time, he shall be liable to pay interest at the rate prescribed in the Rules for every month delay till handing over of possession of the flat. Hence, he requests that the respondent – builder may be directed to pay compensation at the rate prescribed in the Rule for every month delay till handing over of possession of the flat.

3. Learned counsel for the respondent by filing counter reply dated 5.3.2024 submitted that as per the terms of the Agreement, the complainant was to pay consideration amount of Rs.26,45,750/- besides GST and other taxes between the year 2016 to 2022 to purchase Flat no.503 on 5th floor in Block -2 of the project situated at Noshah, Phulwari Sharif, Patna. He further submitted that Section 5 of the Agreement clearly states if the buyer does not make timely payment of all amounts he shall be obliged to pay to the Developer interest at the rate of 18% per annum compounded every month on the entire amount. He also submitted that Clause 5 of the Agreement is in consonance with Section 19(6) and 19(7) RERA Act, 2016. Section 19(6) says that

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every allottee who enters into an Agreement for Sale to purchase flat, plot or building shall be responsible to make necessary payments in the manner and within the time as specified in the Agreement and Section 19(7) says that allottee shall be liable to pay interest at such rate as may be prescribed for any delay. He also stated that the complainant defaulted on adhering to the payment schedule. He also stated that the complainant's claim that he paid full amount without any default is false as he was sent a few reminders for making delays in payment of installments. He further stated that the complainant's claim that he was served demand letter dated 27.12.2022 suddenly is quite false.

4 (i). Perused the record. The Authority notes that an Agreement For Sale between the complainant and the respondent was executed on 16.8.2019 to purchase Flat no.503 on 5th floor in Block-2 of 831 sq. ft. in the project "Sanchar Nagar" along with car parking on consideration amount of Rs.26,45,750/-. The said amount excluding final remittance by Bank of Rs.72,080/- including GST was paid to the builder by the complainant upto 13.4.2022.

(ii) The Authority further notes that the respondent – promoter issued seven demand letters from 29.7.2019 to 15.12.2020 and one prepossession letter dated 17.04.2023 to the complainant to make payment but in those letters he did not claim for compound interest. Thereafter, in another prepossession letter dated 27.12.2022 the respondent claimed for compound interest on delayed payment, for which there is no provision in the Agreement. Hence, the demand made for compound interest by the respondent stands rejected. The Authority observes that if the amount was not paid as per Schedule – C of the Agreement, the complainant is liable to pay

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interest to the Developer on the unpaid amount at the rate prescribed in the Rules, which is also provided in the Agreement.

(ii) The Authority further notes that there is a clause in the Agreement that if the developer fails to complete or handover possession within the specified time, he shall be liable to pay interest at the rate prescribed in the Rules for every month of delay till handing over of possession of the flat. In this case, the flat was to be delivered in July, 2021 but till date the same has not been delivered. The Authority observes that the builder is liable to pay compensation at the rate prescribed in the Rule for every month of delay till handing over of possession of the flat.

5. Taking into consideration the aforesaid facts and the observations, the Authority directs the respondent – Developer Mr. Rajesh Kumar to hand over possession of Flat no.503 on 5th floor in Block-2 of 831 sq. ft. to the complainant and execute Conveyance Deed after completing all legal formalities within two months. The complainant is directed to make payment of remaining amount along with interest on the amount not paid as per Schedule –C of the Agreement, if any, at the rate prescribed in the Rules before execution of Conveyance Deed. The complainant is also at liberty to move the Adjudicating Officer, RERA, for compensation for delay in delivery of possession of the flat.

With the aforesaid observations and direction, this case is disposed of.

**Sd/-
S.D.Jha
Member**