

REAL ESTATE REGULATORY AUTHORITY, BIHAR
Before the Division Bench of
Mrs. Nupur Banerjee & Mr. S.D. Jha, Members, RERA, Bihar.

RERA/CC/418/2021

Mrs. Rekha Gupta.....Complainant

Vs.

M/s Nissa Realtors Pvt. Ltd.Respondent

ROJECT: GHAR APNA

For Complainant: Sri Ranjan Srivastava, Advocate

For Respondent: None

ORDER

11.01.2023 Hearing taken up. Sri Ranjan Srivastava, Advocate, appears for the complainant. The respondent - promoter is absent.

The case of the complainant is that she entered into an agreement to purchase a flat bearing no.501 in Block – B in Ghar Apna, located at Sagunamore, Danapur, District – Patna on 10.11.2014, which was to be handed over within a time frame of 2.5 years, but the respondent – promoter failed to hand over the possession even after more than 4 years. The consideration amount between the parties was agreed to Rs.26.37 lakhs, out of which the complainant paid Rs.20,02,000/- lakhs by cash and cheques and in support thereof the complainant has filed the money receipts with the complainant petition. The complainant reiterates for possession of the flat which she booked in the project

Learned counsel for the respondent submits that while the complainant entered into an agreement for the purchase of a flat in the project, Sri Prabhat Kumar Verma was the Managing Director of the Project (GHAR APNA), who died on 1.5.2018. After death of Sri Prabhat Kumar Verma, Deepak Singh and Sudhir Kumar Singh became the Directors of M/s Nissa Realtors Pvt. Ltd., and thereafter they found that late Prabhat Kumar Verma, the then

Managing Director of the Company, used to play fraud with the customers by transferring the amount of customers to his own account. He further submits that the complainant paid Rs.6,00,000/- through RTGS and rest amount of Rs.16,02,000/- in cash, which is denied by the respondent. He also submits that the flat claimed by the complainant has been allotted to other person and at present no flat is available with the company.

Learned counsel for the complainant submits that the then Director late Prabhat Kumar Verma was holding 99% share in the Company and 1% share was held by one Sri Devendra Kumar and after death of late Verma her wife handed over the entire management of the company to the present Directors in order to run the company and protect the interest of stakeholders but contrary to that the present Directors are trying to defraud the complainant, which is not permissible in the eye of law as when a company is taken over by another company, undisputedly, the liabilities and benefits both are to be shouldered by the Company, which takes over, and they cannot escape from the liabilities and are bound to protect the interest of the stakeholders of the company.

Learned counsel for the complainant further submits that out of total consideration amount of Rs.26,37,000/- the complainant paid Rs.20,02,200/- to the company which has been duly acknowledged by the said company and receipts thereof are contained in Annexure -4 of the complaint and the remaining amount was paid in cash on the insistence of the then Director so as to make payment to the labourers working with the project at the relevant time. He also submits that the story created by the respondent that her flat has been allotted to other person is totally false and is just to avoid the complainant.

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Perused the record. On 18.10.2022, when the case was taken up the complainant was present but the respondent company was absent. On the apprehension raised by the complainant that the respondent may sell his flat to some other person, the Authority stayed allotment/sale or execution of any agreement for sale or sale deed in respect of the flat, which still exists. The record also reveals that when this case was taken up on 22.12.2022 learned counsel for the respondent namely Mr. Bishwajit Ganguly, Advocate, was directed by the Authority to inform on the next date by which time possession will be handed over to the complainant after completing the remaining work and other formalities but on the next date 61.2023 the respondent remained absent

Having gone through the record and the submissions advanced by the parties, it is evident that the respondent – promoters is trying to not hand over possession of the flat to the complainant because of the fact that on most of the dates they remained absent and today their learned counsel has come with argument that the flat of the complainant has been allotted to other person, which, prima facie, appears to be breach of written agreement between the company and the complainant and thereby defrauding the complainant. If the present Directors have taken over the entire assets of a company of which the then Director left for heavenly abode, they cannot ignore the interest of the prevailing stakeholders of that company on one pretext or the other. They cannot have one's bread buttered on both sides.

The Authority also notes that in spite of direction to learned counsel for the respondent, he did not produce a copy of the current Board of Directors of the project.

The Authority observes that the complainant should not be allowed to suffer for a longer period and the respondent

can't be allowed to defraud her in spite of written argument for sale with the complainant, which is enclosed with the complaint petition. In this connection and to save the interest of the allottees, the Bombay High Court in Lavasa Corporation Ltd. Vs. Jitendra Jagdish Tulsiani & Ors., Second Appeal (Stamp) No.9717/2018 and its analogous cases with Civil Application no.683/2018 and its analogous cases, has observed that RERA is brought on statute Book to ensure greater accountability towards the consumers and significantly reduce frauds and delay, as also the current high transaction costs. It attempts to balance the interests of consumers and promoters by imposing certain responsibilities on both the respondent and the complainant.

Hence, the Authority directs the respondent – promoters to hand over the flat to the complainant after completing the remaining work and other formalities within three months of this order and at the same time the complainant is directed to deposit the remaining amount as per agreement for sale to the respondent within a week from the date of handing over the possession of the flat. If the respondent – promoters fail in handing over the flat within the time granted by the Authority the complainant shall be at liberty to move the competent authority of the RERA for execution.

The complainant is at liberty to press other claims, if any, which are in the nature of compensation before the Adjudicating Officer, RERA.

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

Sd/-

S.D.Jha
Member

Sd/-

Nupur Banerjee
Member