

REAL ESTATE REGULATORY AUTHORITY, BIHAR

Before the Bench of

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

RERA/CC/63/2024

Dr. Mrs. Aakanksha Complainant

Vs.

M/s Saakaar Construction Pvt. Ltd. Respondent

For the complainant: Mr. S.K. Mishra, Advocate

For the Respondent: Mr. Amit Singh, Advocate

Project:- SAAKAAR'S AQUA CITY, PHASE - 1

ORDER

01.07.2024 This case was last heard on 20.06.2024 and the order was reserved with the mutual consent of the parties. Mr. S.K. Mishra, Advocate, appeared and defended the case of the complainant whereas Mr. Amit Singh, Advocate, appeared and defended the case of the respondent. The complainant's counsel vide proceeding dated 20.06.2024 was granted two days' time, as requested, to file written not of arguments, which has been filed through mail dated 21 .06.2024. The order is being delivered today i.e.01.07.2024.

2. Learned counsel for the complainant submits that the complainant booked Flat no.3 DT 11A in the project "Saakaar's Aqua City, Phase -1" situated at Usari – Sarari, Makhdumpur Bandh, Patna, on consideration amount of Rs.56,33,363/- out of which she paid Rs.52,43,557/-. He further submits that the complainant became disappointed with the poor quality of materials being used in the project and she was totally unsatisfied with the work of the project, for which she made regular complaints to the respondent and the respondent – promoter vide Annexure -8 of the complainant had conveyed her that they are going to resolve those issues very soon and these things will never happen again but the respondent – promoter did not improve the quality of material being used in the project as per specification in the Agreement For Sale. Therefore, the complainant by filing this complaint on 28.02.2024 has requested

for refund of her total amount of Rs.52,43,557/- along with interest.

3. Learned counsel for the respondent submitted that the complainant herself has withdrawn from the Agreement For Sale through cancellation letter dated 9.1.2024, wherein, she has requested to cancel the M.O.U. signed by them for the flat with immediate effect and refund the total amount paid by her as per RERA within shortest span of time up to 30 January, 2024. The respondent – promoter is willing to refund the complainant's money after deduction as provided in the RERA Act, 2016 and as per clause 7(v) of the Agreement For Sale dated 06.03.2021. He further submitted that it was definitely assured by the respondent – promoter that he will look into her grievance and resolve the defects, if any, but no defect was ever found to be corrected. However, it was conveyed to the complainant that as you are asking to rectify the defect let me clear that these concerns which you have raised is not a defect, it is construction process and one should not worry about these things. It is like midway of any process and no one should question about the final stage seeing the process in midway. He also submitted that the respondent had voluntarily, ready and immediately agreed to her demand of cancellation with total refund without any deductions in September, 2021 with a clear clause that if she does so now, but she refused as she was not sure whether deal was of maximum profit or not. He also submitted that the complainant had offered to sell the flat through the respondents and when that was not materialized due to over the board demand, the complainant filed this complaint for total refund. He further submitted that the complainant repeatedly made delayed payments, for which late interest is provided in the Act & the Rules. Lastly, he submits that out of total 1100 allottees in the project only the complainant has complaint against the respondent – promoter.

4. Learned counsel for the complainant by filing written notes dated 21.06.2024 has stated that the respondent

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- promoter as per Agreement was to handover the project by March, 2024 but till date the project is incomplete because many amenities like sports and games auditorium, health fitness club, medical facilities, activity centre, parking, security green park area, temple and pooja place have not been provided. He reiterated that the material being used in construction works are not up to the mark for which she wrote to the respondent - promoter who assured to rectify but even after several complaints the respondent did not improve the quality of material and, therefore, she requested to cancel the Agreement and refund of her total amount. He has also stated that layout of the flat as negotiated by the complainant has also been changed specially the bed room and bath room.

5(i) Perused the record. The Authority notes that the complainant has raised mainly one point that the complainant wants refund of her full money of Rs.52,43,557/- because she is not satisfied with the material used in the apartment, for which she wrote to the respondent – promoter but he did not pay heed to her complaint.

(ii) The Authority further notes that the respondent denies the full payment on the ground that since the complainant herself has withdrawn from the Agreement, she is entitled to get refund after deduction from the total amount made as per clause 7(v) of the Agreement For Sale dated 06.03.2021 and the allegation of using poor quality of material in the project was looked into and was responded that the allegation has not been found to be correct.

6(i) The Authority would like to refer Section 18 of the RERA Act, 2016, which states that if the promoter fails to complete or is unable to give possession of an apartment in accordance with the terms of the agreement for sale “or” due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act, he shall

be liable on demand to the allottee to return the amount received by him in respect of that apartment. In this case the promoter has neither failed to complete the project nor is unable to give possession in accordance with the terms of the agreement for sale so as to return the money received by him.

(ii) Further, the Authority would like to refer to Section 14 (3) of the RERA Act, 2016, wherein, it is stated that in case of any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects. The said Section clearly provides that if the complainant has grievance regarding quality of material or the work she may write to the respondent – promoter to rectify such defects but the said section does not speak about refund of money.

7. The Authority observes that the respondent - promoter has a reasonable stand that he would refund the money of the complainant after deduction of booking amount from the total amount made as per clause 7(v) of the Agreement For Sale dated 06.03.2021, as the complainant herself has withdrawn prematurely from the Agreement and sent cancellation letter dated 9.1.2024 to the respondent with a request to refund her money and the said fact has not been denied by the complainant and further the complainant has not brought on the record that out of 1100 allottees how many other allottees have grievances regarding poor quality of material being used the project. However, it cannot be lost sight of the fact that the amount deposited by the complainant after taking loan from the Bank has been utilized by the respondent – promoter for development of the project. Hence, the justice demands that the complainant should get interest on the amount deposited by her to the respondent – promoter.

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8. Taking into consideration the aforesaid facts and the observations made above, the prayer for refund of entire amount made by the complainant is rejected. However, the respondent – promoter is directed to refund the amount to the complainant after deduction of booking amount as per clause 7(v) of the Agreement For Sale dated 06.03.2021 along with interest within sixty days of issue of this order. The rate of interest payable by the promoter shall be at two percent above the prevalent Prime Lending Rates of the State Bank of India on the date on which the amount was deposited till the date of payment.

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

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