

REAL ESTATE REGULATORY AUTHORITY, BIHAR

Before the Bench of

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

RERA/CC/84/2022

Raju Kumar Complainant

Vs.

Neelkanth Solution Pvt. Ltd. Respondent

For the complainant: Mr. Mukesh Kumar, Advocate

For the Respondent: Mr. Sanjeev Kumar, Advocate

Project:- NEELKANTHA DINESH RESIDENCY

ORDER

01.07.2024 This case was last heard on 21.06.2024 and the order was reserved with mutual consent of the parties. Mr. Mukesh Kumar, Advocate, appeared and defended the case of the complainant. Mr. Sanjeev Kumar, Advocate, assisted by Ms. Shreya Jha, Advocate appeared and defended the case of the respondent. The complainant vide proceeding dated 21.06.2024 was directed to file a petition on affidavit, which has been filed on 28.06.2024 and that would be dealt with at the appropriate place here-in-below. The order is being delivered today i.e. i.e. 01.07.2024.

2. Learned counsel for the complainant submitted that an Agreement For Sale was executed between the complainant and the respondent on 28.1.2014 to purchase Flat no.102 in the project on consideration amount of Rs.33,68,000/- out of which the complainant paid Rs.24,50,000/- in such manner i.e. Rs.2,68,000/- on 28.01.2014, Rs. 9,64,000/- (Home Loan) on 15.02.2014, Rs.5,00,000/- (Home Loan) on 11.03.2014 and Rs.7,18,000/- on 11.03.2014. He also submitted that as per the Agreement, the project was to be completed within three years with grace period of six months from the date of the Agreement dated 28.01.2014. The flat was not handed over within the time granted, rather the respondent cancelled his allotment without

serving any prior notice violating the provision of Section 11(5) of the RERA Act, 2016. He also submitted that after payment of Rs.24,50,000/- the respondent - promoter sent a demand notice dated 31.05.2016 to the complainant, which was replied by him with a request to the respondent to provide work progress report to the Bank of India in order to get payment of remaining installments from his Loan Account, but the respondent did not provide work progress report to the Bank, which resulted in non-payment of the installment. The complainant requested several times to the respondent – promoter to hand over possession of the flat and execute the Sale Deed but he turned down his request on one pretext or the other. Hence the complainant filed this complaint for setting aside of cancellation letter and handing over possession of flat along with car parking as well as execution of Absolute Sale Deed.

3 (i) Learned counsel for the respondent submitted that one Miscellaneous Application case before Hon'ble the High Court and a Title Suit in the Civil Court relating to the flat in question have been pending. He also submitted that Rs.24.50,000/-, which was paid by the complainant to purchase flat, has already been refunded. He also submitted that why the complainant filed this case after eight years of cancellation of booking and refund of his money amounting to Rs.24,50,000/- in the year 2014, which find mention at page -7 of his petition dated 18.03.2024/01.04.2024. He also stated that the complainant has not only taken money from the respondent in his account but also in the accounts of his relatives, staff and partners of M/s Sai RBA. He also submitted that since the complainant did not make payment of consideration amount as per payment schedule, the respondent was entitled to cancel the allotment of the complainant. He also submitted that the said project got completed in the financial year, 2019 -2020 and the completion certificate has been issued by the Authority on 30.09.2019.

(ii) Learned counsel for the respondent by filing reply petition dated 19.06.2024 has further stated that it is admitted fact that in view of the partnership agreement dated 12.12.2012 for the said project, the complainant was the partner of the respondent and further in view of construction work agreement dated 09.03.2014 the complainant was the contractor of the respondent for construction of the project. The complainant is also the purchaser of a flat in the project of the respondent. Therefore, cause of action is not separable with each other and, therefore, the Authority cannot decide the matters which are not covered under the RERA Act, 2016. He has further stated that the complainant in his reply to rejoinder dated 19.01.2023 filed in M.A. no.684/2021 before Hon'ble the High Court has admitted the receipt of amount of Rs.24,50,000/-, to which the Authority compared that fact with the details made available on the record by the respondent but not found correct. Lastly, he submitted that since the respondent had already returned his entire money in the year, 2014 itself, there was no cause of action for sending any notice to the respondent.

4. Learned counsel for the complainant has contradicted the aforesaid submissions and submitted that the instant case is totally different than the matter pending before Hon'ble the Patna High court and the Civil Court, Danapur. He further submitted that the complainant had paid Rs.24,50,000/- to the complainant to purchase a flat and that amount has not been refunded. The description of amounts given, which are claimed to have been refunded by the respondent and shown at page -7 of the counter reply dated 18.03.2024/01.04.2024, is virtually misleading submission. The complainant received only two cheques bearing cheque no.361822 dated 01.03.2014 of Rs.5,00,000/- and cheque no.361846 dated 05.05.2014 of Rs.3,50,000/- which were paid for construction work of

partnership firm and that amount has nothing to do with the consideration money of the flat. He also submitted that as per the refund payment schedules mentioned at page -7 of the respondent's petition dated 18.03.2024/01.04.2024, the respondent refunded the amounts on 17.02.2014, 19.02.2014, 20.02.2014, 01.01.2014, 11.03.2014.....13.05.2014, whereas in connection with the flat the complainant paid installments of Rs.7,18,000/- & Rs.2,00,000/- to the respondent on 11.03.2014, which shows the respondent refunded prior to the payment made by the complainant to purchase the flat. He has also stated that the term of completion of the project from the date of Agreement dated 28.01.2014 was three years with grace period of six months. Hence, no cause of action arose before 27.07.2017 to file complaint and no notice about cancellation was received by the complainant. In July, 2017 when the complainant visited the site he found the work in progress and the completion certificate was issued on 30.09.2019. Thereafter, the complainant requested several times to hand over possession and execution of absolute sale deed but the respondent turned down his requests and in March, 2020 Covid -19 pandemic started which compelled the complainant not to take action and, therefore, the complainant filed the instant complaint in 2022, which the Authority accepted.

5. Learned counsel for the complainant has filed petition on affidavit dated 28.06.2024, to the effect, that the case pending before the High Court does not relate to the present case and the amount of Rs.24,50,000/- excluding Rs.5,00,000/- through cheque no.361822 dated 01.03.2014 and Rs.3,50,000/- cheque no.361822 dated 01.03.2014 has not been received by the complainant. Both the cheques bearing nos. 361822 & 261846 dated 01.03.2014 & 13.05.2014 of Rs.5,00,000/- and Rs.3,50,000/- were issued by the respondent for construction work and has nothing to do with the consideration amount of the flat. The

contention of the respondent to return the amount of Rs.24,50,000/- to the complainant in 2014 is misleading and false.

6. Perused the record.

(A) The Authority notes that the complainant has raised following points during course of arguments in support of the reliefs sought for in the complaint:

(i) The complainant and the respondent both were in partnership of the said project vide Agreement dated 12.12.2012 and the complainant was also allottee by virtue of the Agreement For Sale dated 28.2014.

(ii) The complainant in connection with the flat paid total amount of Rs.24,50,000/- to the respondent in such manner i.e. Rs.2,68,000/- on 28.01.2014, Rs. 9,64000/- (Home Loan) on 15.02.2014, Rs.5,00,000/- (Home Loan) on 11.03.2014 and Rs.7,18,000/- on 11.03.2014, out of the total consideration amount of Rs.33,68,000/-.

(iii) The respondent sent a demand notice dated 31.05.2016 to the complainant which was responded and the complainant requested the respondent to provide requisite work progress report to the Bank of India in order to withdraw the remaining installments from his Loan Account but the respondent did not provide work progress report to the Bank. Hence the complainant is not defaulter in making payment of installment and, therefore, cancellation of allotment and that too without any prior notice is in violation of the provision of Section 11(5) of the RERA Act, 2016.

(iv) The refund of money of Rs.24,50,000/- as mentioned in the petition/reply dated 18.03.2024/01.04.2024 of the respondent is totally misleading statement as that refund, except Rs.5,00,000/- and Rs.3,50,000/- dated 01.03.2014 & 05.05.2014, has been made to strangers and not the complainant. The two cheques of Rs.5,00,000/- and Rs.3,50,000/- dated

01.03.2014 & 05.05.2014 was sent to the complainant for construction work and not for refund of consideration money. Further, the Bank statement annexed by the respondent as Annexure -1 to the written statement clearly shows that Rs.7,18,000/- & Rs.2,00,000/- was paid by the complainant on 11.03.2014 whereas refund to the complainant is stated to be from 17.02.2014 to 13.05.2014, that is prior to the payment of consideration money by the complainant.

(B) The Authority notes that the respondent has raised following points while opposing the relief sought for by the complainant:

(i) The instant complaint is barred by limitation as the same has been filed after eight years of the refund and cancellation of allotment.

(ii) The instant case is not maintainable because for the same cause of action Title Suit no.21/2020 and M.A.No.684/2021 are pending before the Civil Court, Danapur, and Hon'ble the Patna High court.

(iii) The respondent had already refunded the entire consideration money of Rs.24,50,000/- paid by the complainant in the year, 2014 and, therefore, there is no question of allotment of the flat to the complainant.

(iv) Since the complainant was defaulter in making payment and his money was refunded in the year, 2014 itself, there was no need to send any notice before cancellation.

7. The Authority has considered all the aforesaid points raised by the complainant as well as the respondent and observes as follows:

(i) There is no provision in the RERA Act, 2016, which prescribes period of time for filing a complaint. Hence, the point raised at 6 (B) (i) regarding limitation stands rejected.

(ii) The complainant has specifically stated on Affidavit dated 28.06.2024 that both the cases i.e. Title Suit before the Civil Court and Miscellaneous Appeal before the High Court do not relate to the present case. Further, the respondent could not establish by bringing material on the record that the issue involved in this complaint for rejection of cancellation and handing over possession of the flat as well as execution of Conveyance Deed is the same issue involved in the Title Suit pending before the Civil Court and the Miscellaneous Application before the High Court. Hence, the said point at 6 (B) (ii) stands rejected.

(iii) The payment schedules mentioned in the petition dated 18.03.2024/01.04.2024 (at pages 7 to 9) show that all the amounts, except Rs.5,00,000/- and Rs.3,50,000/-, was sent to the account of other than the complainant. The amount of Rs.5,00,000/- and Rs.3,50,000/- sent through cheques dated 01.03.2014 & 05.05.2014 by the respondent was for construction work and that was nothing to do with the refund of consideration money and to that effect the complainant has made statement on affidavit dated 28.06.2024. On more fact goes against the respondent that when the complainant made payment of installments of Rs.7,18,000/- & Rs.2,00,000/- of consideration money of the flat on 11.03.2014 then how the respondent refunded his money prior to his payment. The respondent has also not proved by supporting document that both the aforesaid amounts were sent in connection with refund of consideration money. Hence, the point at 6 (B) (iii) stands rejected.

(iv) The respondent has not provided by filing supporting document that before cancellation of allotment prior notice was issued to the complainant, which itself shows that the cancellation of allotment is unilateral in nature and without having

sufficient cause which is in violation of the provision of Section 11(5) of the RERA Act, 2016, and, therefore, the cancellation of allotment stands rejected and, accordingly, the point at 6 (B)(iv) stands rejected.

8. Having gone through the aforesaid facts and the observations made above, the Authority directs the respondent - company and its Managing Director Mr. Ashok Kumar to handover possession of Flat no.201 along with car parking to the complainant and execute Conveyance Deed in his favour after completing all legal formalities within two months from the date of issue of this order. The complainant is directed to deposit the remaining amount as per Agreement before execution of the Conveyance Deed.

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

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