

REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR
Before the Single Bench of Mr. Naveen Verma, Chairman

Case Nos. RERA/CC/846/2021

Iftekhhar AhmadComplainant

v.

Hawk Buildtech Pvt. Ltd.....Respondent

Project: - H.B. Tower

Present: For Complainant: Mr. Rakesh Roshan, Advocate

For Respondent: Mr. Sharad Shekhar, Advocate

ORDER

17-1-2022

The matter was last heard on 11-1-2022.

The relevant facts of the case are that the complainant had booked a shop no. B-3 in H.B. Tower Residency at the basement level measuring super built up area of 540 sq. ft. for a total amount of Rs. 22,14,000/- @ Rs. 4,100/- per sq. ft. The complainant has alleged that he has paid almost 50% of the payment i.e. 11,00,000/- out of total consideration amount of Rs. 22,14,000/- at the time of booking i.e. by 03.08.2013. The complainant has stated that as per agreement for sale dated 11.08.2013 the respondent company had to complete the project within 45 months with three months grace period i.e., within 3 year and 9 months. It has been alleged that the respondent company sold the part portion of the land upon which the shop was to be constructed to another buyer without the consent of the complainant and other allottees. That the complainant has further stated that when objections were raised with respect to such fraudulent act, the respondent builder started pacifying various allottees or stake holders by offering to pay double-triple of the respective investment of the allottees. The complainant further stated

that the complainant tried contacting the respondent company, but no satisfactory response was received from the company. Therefore, the complainant has filed the complaint praying for refund of Rs. 33 lakhs as his invested and reimbursed amount.

The complainant has placed on record the agreement for sale dated 11.08.2013.

Reply was not filed by the respondent company till the last date of hearing. However the same was filed after the matter was posted for orders. In the reply, the respondent company has admitted the receipt of Rs. 11 lacs from the complainant. The respondent company has stated that the commercial map could not be passed as the land upon which the project was to be constructed came under the jurisdiction of the PMAA. It has further been stated that the respondent company has not done any allotment or booking after the formation of the PMAA and they are ready and willing to either handover the possession upon receipt of entire dues from the complainant or refund the amount paid by the complainant with interest.

Rejoinder to reply has been filed by the complainant along with a copy of the agreement dated 28.02.2017.

The Bench passed an interim order on 30-12-2021 seeking clarification from the complainant whether he wanted refund with interest or whether he was willing to make the balance payment of the consideration amount to the promoter who would then execute the deed of absolute conveyance of the flat and hand over possession to him. A petition in the light of this interim order has been filed by the complainant wherein he has stated that he wants refund of the paid amount.

The Bench notes that on the last date of hearing, the respondent company has admitted the receipt of the amount of Rs.11 lacs from

the complainant and is ready to refund the amount to the complainant.

Have heard the submissions of both the parties. The Bench has also gone through the entire records of the case. The Bench observes that the reference made by the complainant to an agreement dated 28.02.2017 regarding adjustment of profits of some other project towards the dues of the complainant in respect of the said flat is an internal matter between him and the respondent company. This matter has to be adjudicated in a court of competent jurisdiction and the Bench cannot accept this as payment of the dues if the promoter is not accepting it.

The Bench notes that the respondent company, while giving oral submissions and also in its reply, has agreed to refund the amount of Rs. 11 lacs to the complainant. The complainant has also orally agreed to accept the receipt of the amount of Rs.11 lacs.

Therefore, under these circumstances, the respondent company is directed to refund the amount of Rs.11 lacs to the complainant along with interest thereon at the rate of marginal cost of fund based lending rates (MCLR) of State Bank of India as applicable for three years plus four percent from the date of taking the booking till the date of refund within sixty days of issue of this order.

So far as the claim for compensation is concerned, the complainant is at liberty to approach the court of Adjudicating Officer.

Sd/-
Naveen Verma
Chairman