

REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR

Before the Single Bench of Mr. Naveen Verma, Chairman

Case Nos. RERA/CC/901/2021

Sunita Abraham & Anr.....Complainants

v.

Real Green Homes Pvt Ltd.....Respondent

Project: R.N. City

Present: For Complainant: In person
Mr. Neeraj Gopal Sharan
For Respondent: Mr. Surya, Advocate

ORDER

30-12-2021 The matter was last heard on 29-11-2021.

The relevant fact of the case is that the complainants booked a flat bearing no. 501 in the project for which an agreement was executed on 26.12.2020. The complainants submit that they have paid Rs. 5, 31,000/- towards the booking of the flat which also included 2 (two) percent of the registration amount i.e. Rs. 1,31,000/-. The total consideration of the flat was Rs. 59,00,000/- The complainants have further submitted that the respondent company gave 3 months time to the complainants to pay the remaining amount. Thereafter, the complainants approached the Bank to avail the loan facility however the Bank refused to grant loan on the ground that the application for extension of registration of the project is pending with the Authority. The complainants submitted that for the purpose of availing loan from the Bank, sent the extension application to the respondent company and requested for the no objection certificate so that the loan could be sanctioned by the Bank. The respondent company approached Bank of Baroda and State Bank of India for the grant of loan to the complainant, but the Banks refused to do so. The complainants submitted that thereafter, the respondent company sent a notice to the complainants informing them that the flat has been sold to another purchaser and the allotment to the complainants was cancelled. The respondent company thereafter offered refund of the amount paid by the complainants but the complainants requested for another flat in the project. The complainants were informed that the respondent company did not have any other flat and asked the complainants to accept the refund of Rs. 4 lacs. Therefore the complaint has been filed praying for handing over flat no. F-501 or any flat of R.N City, Real Green Homes Pvt Ltd. in compliance of agreement registered in Deed No. 13301.

The complainant has placed on record agreement for sale dated 26.12.2020, KYC form with terms and conditions, E-challan, money receipt for Rs. 3 lacs and Rs.1 lakh, 1st notice by respondent company dated 27.04.2021, 2nd notice by respondent company dated 13.06.2021 along with other documents.

Reply has been filed by the respondent company along with 1st notice dated 27.04.2021 and 3rd and cancellation notice dated 28.08.2021. In the reply, the respondent company while admitting few averments of the complainant have denied the payment of Rs. 5,31,000/- to the company. The respondent company submitted that the complainants have paid only Rs. 4 lacs to the company and no further payment has been made after that. The respondent company also sent 3 legal notices demanding payments from the complainant however neither any payment was done nor was any response received from the complainant. The respondent company in its reply has also stated that they are ready to refund Rs. 4 lacs to the complainant but the complainant is seeking refund of the registration charges of Rs.1,31,000/- as well which the respondent company is not willing to pay as the registration charges has not been paid to the company but to the government.

The respondent company in its reply has also alleged that the complainants have violated section 19(6) and 19(7) of the Act. Therefore the respondent company has prayed for directing the complainant to pay the entire consideration amount with interest as per section 19(7) of the Act or the respondent company be permitted to cancel the booking and refund the amount of Rs 4 lacs to the complainant after adjusting interest on delayed payments.

During the hearings, the Bench was informed by the learned counsel for the complainant that the first notice was received by the complainant one month late as the notice was sent on wrong address. The Bench was also informed that the complainants reside in Block C and the notice was addressed to Block B. This fact has been refuted by the respondent company who have stated that the three notices were sent to the address mentioned in clause 28 of the agreement and therefore the allegation of the complainant that notices were sent on wrong address is false. He further referred to clause 9.3 of the agreement which talks about the conditions under which the promoter can cancel the allotment. The complainant has submitted that upon receipt of the notices, they immediately contacted the office of the respondent company bearing no response and thereafter on 28.08.2021, an email was sent to the respondent company as a reply to these notices.

On a query by the Bench, the respondent company informed that no other flat is available in the project for sale and the possession has been handed over to

all the allottees and it has not been handed over to the complainant since no further payment was made by her and therefore the allotment was cancelled. The complainant while making oral submissions has also raised objection with respect to the time period of 7 days mentioned in the notices and stated that 15 days time period should have been given to the complainant.

The Bench also notes that a supplementary counter has also been file by the respondent company wherein the respondent company have stated that the complainants had themselves requested for cancellation and that the registration charges were to be borne by the complainant as per the agreement.

Having heard and considered the submissions of both the parties, the Bench is of the opinion that this complaint originated because the loan could not be sanctioned by the bank as the project was not registered by RERA till that time. The draft agreement to sale annexed with the Bihar RERA Rules, 2017 mentions in clause 27 that it is obligatory on both the promoter and allottee to deliver such instruments and actions as may be required to effectuate the agreement to sale. The respondent should have taken this into consideration that the allottee is not able to avail a loan from the bank in the absence of adequate documents which they could have assisted in providing and instead they cancelled the allotment. Since there are no flats available in the project to be sold to the allottee and since the respondent is willing to refund Rs 4 lakhs, the dispute is only with respect to the expenditure incurred on registration i.e. Rs. 1,31,000/-. It would be in the fairness of things if both the complainant and respondent were to share this expenditure, but a direction in this regard can be given only against a relief for compensation that might be sought before the Adjudicating Officer.

The Bench directs the respondent company directed to refund the amount of Rs 4 lakhs with interest at the rate of marginal cost of fund based lending rates (MCLR) of State Bank of India as applicable for two years from the date of deposit to the date of refund within sixty days of issue of this order.

Sd/-
Naveen Verma
Chairman