REAL ESTATE REGULATORY AUTHORITY, BIHAR

2nd Floor, BSNL Telephone Exchange, North Patel Nagar, Road No. 10,

Patna -800023

Before the Double Bench of Mr. Naveen Verma, Chairman

& Mrs. Nupur Banerjee, Members

Complaint Case No.: CC/945/2020

Rachana Kishorepuria…..…….....Complainant

Vs.

M/s Nissa Realtors Pvt. Ltd.....Respondent

Project: Ghar Apna Phase- II

O R D E R

23-11-2021

26.11.2021 The matter was last heard before the double bench on 27.10.2021.

The case of the complainant is that she had entered into an agreement for sale on 14.05.2012 with the respondent company for purchasing of Flat bearing Flat No.401, in block - C, measuring 946 sq.ft. along with parking space in Ghar Apna project and paid Rs.23,00,000/- out of the total consideration amount of Rs.25,00,000/- but, till now the possession has not been given to the Complainant.

The complainant has placed on record a customer ledger for the period between 1-04-2012 to 31-03-2013, issued by the respondent company against the payments made.

The respondent company has filed its reply on 12-04-2021, stating therein that, the present case relates to the period of Prabhat Kumar Verma, who was then, the Managing Director of the company and at the time of his death, the company had negative balance of Rs.1,23,22,270/-. It

has been further submitted that after his death, the audit report was prepared by the chartered accountant and it was found that Rs. 2,83,37,303/- has been transferred in three transactions in the personal account and two private firm of M.D. Prabhat Kumar Verma. The respondent company further submitted in para-4 of the counter affidavit that the complainant was later not interested in the flat and requested for refund. The respondent while referring to Annexure- A of the counter affidavit, submitted that, the respondent had returned to complainant Rs.13,22,720/- in three instalments i.e. in the year 2012-13 i.e. Rs. 1,54,400/-, in the year 2013-14 Rs. 7,11,200/- and in the year 2014-15 Rs.2,13,800/-, thus, only Rs.12,17,280/- remains to be paid by the complainant. It also further submitted by the respondent that, the new management is trying to arrange money for its payment and requested 18 months' time to refund the same. It has also been submitted by the complainant in para-7 of the complainant petition that the then MD had made agreement with Bijay Kumar Mishra on 12.09.2010 and absolute sale was made in his favour on 26-03-2013 vide deed no.3735 and at present there is no flat available in this project.

The complainant filed reply to show cause filed by the respondent on 05-11-2021, denying all the averments made by respondent in counter affidavit. It is further submitted by the complainant that, the entire amount mentioned in sale agreement had paid by the complainant by taking loan from the bank and no any amount was returned. It has been also submitted by the complainant that the shown amount by respondent is only paid the EMI in bank, thus, the respondent is responsible for giving the flat and also denied the contentions of the respondent made in para-6 of counter affidavit regarding unpaid amount of only Rs.12,17,280 left to be returned and submitted that due amount before respondent is Rs.23,00,000/-.

The complainant had further submitted in para-5 of the reply to show cause filed by the respondent on 05-11-2021,that the respondent has mutually agree to deliver the flat in other place and she is ready to take it.

During the last hearing on 27-10-2021, the learned counsel for the complainant vehemently denied the contention in para 4 of the reply filed by the respondent company that the complainant was not interested in taking the flat. The complainant reiterates that without consent, the respondent has allotted flats to some other person which is illegal. The learned counsel of the complainant also reiterated as to how without cancelling the registered agreement to sale which was still valid, the flat had been sold out to some other person. Further, the learned counsel of the complainant raised objections to the submission of refund made by the respondent company and submitted that no application has been made by the complainant to cancel the agreement, refund the amounts and allot the flats to some other buyers. The complainant also submitted that the amount which the respondent company is claiming to have refunded is the EMI amount which was payable on the loans availed by the complainant for purchasing the flat.

The learned counsel of the respondent submits that the respondent has filed detailed and separate counter affidavit.

The Authority takes note of the submissions made by both parties and observes that when the new directors took over the company after the death of Shri Prabhat Kumar Verma, the then MD, they should have taken care of all the liabilities of the company as well as its assets. Their plea that the erstwhile management was responsible for diversion of funds and for not handing over the apartment is not tenable under the Real Estate (Regulation and Development) Act, 2016 as they both own the assets and liabilities of the company. These cases are for the project which

was started way back in 2010. The Bench further notes that the present Directors have not given any evidence of steps taken by them to file criminal and civil cases to recover the funds diverted to the personal accounts of the then MD(since deceased) from his family members or by sale of his properties. In so far as the issue of breach of agreement to sale is concerned, the parties are free to file cases in respect to that before the appropriate forum.

The Bench notes that the complainant in para-5 of the reply to show cause filed by the respondent on 05-11-2021, sates that the respondent has mutually agreed to deliver the flat in other place and she is ready to take it.

In view of the above submissions, the Bench observes that no specific order may be necessary at this stage. With these observations the present case is disposed of. The complainant is at liberty to approach the Authority if any grievances remain outstanding.

Sd/-	Sd/-
Nupur Banerjee	Naveen Verma
Member	Chairman