

REAL ESTATE REGULATORY AUTHORITY, BIHAR

**Before the Full Bench of Hon'ble Chairman, Mr. Vivek Kumar Singh &
Hon'ble Members Mrs. Nupur Banerjee & Mr. S.D. Jha, RERA Bihar,
RERA/CC/180/2023**

Anil Kumar Gupta..... Complainant

Vs.

M/s Nesh India Infrastructure Pvt. Ltd..... Respondent

For the complainant: Mr. Shivendra Roy, Advocate

For the Respondent: Mr. Sahil Kumar, Advocate

Project:–TIRUVANTPURAM CITY

ORDER

29.05.2024

The matter was last heard on 24-04-2024 and the same was reserved for order 29-05-2024. However, due to preoccupation of the Authority, order couldn't be pronounced on 29-05-2024 and is being pronounced today.

1. The case of the case of the complainant is that complainant purchased a 3BHK Flat bearing Flat no.202 on 2nd floor having super built up area of 1560 sq. ft. in the project "Tiruvantpuram City" situated at Vidhyut Nagar, Danapur Khagaul Road, Patna, for a consideration amount of Rs.35,70,000/- and he initially made payment of Rs.14,00,000/- after execution of an Agreement For Sale dated 18.12.2013 between him and the respondent. Thereafter, the respondent – promoter got Rs.17,00,000/- sanctioned from the LIC in the name of the complainant without his consent and got that money credited to his account and, thus, out of the total consideration amount, the respondent - promoter has paid total Rs.31,00,000/- against the flat booked.

2. It has been further submitted that when the complainant moved an application for compensation before the

Adjudicating Officer, RERA, for delay in delivering the possession of flat, the respondent vide letter dated 25.1.2023 cancelled the allotment of flat of in contravention of the of Section 11(5) of the RERA Act, 2016. He also submitted that the complainant has filed this complainant against cancellation of booking because the cancellation made by the respondent is unilateral in nature and having no sufficient cause.

It has been further submitted by the complainant that an order dated 29/08/2022/27/09/2022 has been passed in Complaint Case no. CC/259/2021 (Anil Kumar Gupta Vs. M/s Nesh India Infrastructure Pvt. Ltd.), where the Authority has observed that since the respondent delayed in handing over possession of flat, they are liable to pay interest from the period of December, 2016 till the date of handing over possession @ 2% above PLR/MCLR of State Bank of India prevailing in December, 2016.

2. The respondent has filed its counter reply on 9.1.2024 and final argument on 07.05.2024 stating therein that as per stipulations in the Agreement dated 18.12.2013, the complainant was under obligation to complete payment of 65% of total consideration amount till 12.7.2013, which comes to Rs.23,20,500/-, but the complainant had paid only Rs.14,00,000/-. It has been further stated that in the event of delay in making payment, the promoter is entitled to get interest @ 20% per annum. It has been further submitted that if dues are not cleared within thirty days from the date, the amount became payable then builder is entitled to cancel and terminate the Agreement. It has also been stated that as per terms of the Agreement after sanction of loan by the LIC Housing Finance Ltd., a legitimate demand was raised by the respondent – builder to make payment of part of total dues and, accordingly, Rs.17,00,000/- had been transferred to the account of the builder and the remaining amount of Rs.9,49,514/- was to be paid by the complainant at the time of plinth in addition to other

payments and in this manner an amount of Rs.18,69,514/- is still require to be paid. When the said amount was not paid the respondent – builder by way of notice dated 13.01.2021 claimed for payment but payment was not made and the complainant filed RERA/CC/259/2021 before the Authority which was disposed of by the Authority on 7.9.2022 by observing that at this stage no order can be passed and thereafter the respondent vide letter dated 25.1.2023 cancelled the booking of flat. It has also been stated that the time frame that had been indicated in the agreement for completion of project was sought to be strictly adhered to but on account of reasons beyond control the construction work could not be completed within the time frame and, therefore, the claim for award of compensation or interest in favor of the complainant in the present case is completely misconceived and devoid of any merit.

3. A rejoinder dated 3.1.2024 filed in response to counter reply filed by respondent stating therein that reply by respondent is totally vague, incorrect and misleading. It has been further submitted that the consideration amount of flat was Rs.35,70,000/- out of which Rs.31,20,000/- was the price of flat and Rs.4,50,000/- was for generator, one-time maintenance and other amenities. At the booking, the complainant paid Rs.14,00,000/- in the year, 2013 and flat was to be completed till December, 2016 but even 2024 the project has not been completed and its registration has expired. The respondent has not applied for further extension of registration. The respondent had taken a sum of Rs. 17,00,000/- out the sanctioned loan of Rs.25,00,000/- from the LIC Housing Finance in the year, 2020 without informing the complainant and, thus, Rs.31,20,000/-, which was price of flat, was taken by the respondent and only Rs.4,50,000/- under the heading of maintenance and other amenities was to be paid. He further submitted that no further installments after booking amount was due to be paid in

December, 2020 as even the plinth work was not completed till that time but the respondent illegally taken Rs.17,00,000/- from the loan account in collusion with LIC Housing Finance Ltd. Thereafter, the complainant sent a legal notice to the respondent to make necessary course corrections but the respondent in response sent reply legal notice raising unjust demands for the alleged defaults in payment, against which the complainant filed RERA/CC/259/2021 before the Authority in which the Authority passed an order dated 27.9.2022 (annexed as Annexure 8 to the complaint) and recorded in the order that the complainant has filed evidence that plinth work was not complete till the time of filing of application and even till the date of filing of supplementary affidavit on 13.11.2021. It has also been recorded in the order that the respondent has failed to deliver the possession of flat which was due to be delivered in December, 2016 and, therefore, the complainant can make application for a direction to make payment of delay compensation. It was also observed in the order that the respondent has not proved default in payment on the part of the complainant and the complainant has produced evidence that even till the year 2021 the plinth work was not completed. Hence, there is no question of invocation of the default clause as mentioned in Clause 4 & 5 of the Agreement for Sale. He also stated that since the construction work of the said Block never kicked off the respondent neither raised any demand after initial payment of Rs.14,00,000/- nor the same was due to be paid and, therefore, the cancellation of allotment by alleging default in payment is without any basis. It has been further submitted that in the light of the order dated 27.9.2022, the complainant has filed the complaint (RERA/AO/77/2022) before the Adjudicating Officer on 20.12.2022 for direction to make payment of arrears of delay compensation from January, 2017 till December, 2022 and further for monthly delay compensation for the current period from January, 2023 onwards, which is pending

for consideration. Thereafter the respondent cancelled the allotment vide letter dated 25.1.2023 in order to create a defense, against which this complaint has been filed for setting aside the unilateral and illegal cancellation of allotment.

4. The respondent further filed final arguments on 8.5.2024 stating therein that a considerable construction work in accordance with the schedule as appended to the Agreement for Sale dated 18.12.2013 had already been made and plinth work was completed in accordance with schedule –c of the Agreement. At the relevant time the complainant was under obligation to make payment of 65% of the total consideration money but he paid only Rs.14,00,000/- till 12.7.2013 and no further payment was made as per stipulations contained in the Agreement and reiterated his earlier submissions.

5. Perused the record. The Authority observes that it is established from the counter reply of the respondent that project is not completed as per the time line stipulated in the registered Agreement for Sale dated 18-12-2013. Further, the Authority also observes that cancellation letter dated 25-01-2013, issued by the respondent is after litigation initiated by complainant. It is also admitted fact that out of total consideration of Rs.35,70,000/- (Rs.31,20,000/- for flat and Rs.4,50,000/- for maintenance and other amenities), the complainant had paid Rs.14,00,000/- at the time of executing the Agreement and Rs.17,00,000/- was disbursed to the respondent's account on 12.11.2020. Hence, total amount paid to respondent is Rs.31,00,000 which is almost more than 95%. As mentioned in Schedule – C of the Agreement dated 18-12-2013, 5% will be paid to respondent at the time of possession but the situation that as on date project is incomplete. Therefore, Authority holds that respondent cancellation letter dated 25.1.2023 issued to complainant is not in accordance to the Section 11(5) of the RERA Act, 2016 as well as with the Agreement dated 18-12-2013. Hence,

treating the cancellation letter dated 25.1.2023 issued by respondent as arbitrary and in violation of Section 11(5) of the RERA Act, 2016, the same is set aside.

With the aforesaid observations, this case is disposed of.

Sd/-
S.D. Jha
Member

Sd/-
Nupur Banerjee
Member

Sd/-
Vivek Kumar Singh
Chairman