

REAL ESTATE REGULATORY AUTHORITY, BIHAR

Before the Single Bench of Mr. Naveen Verma, Chairman

Complaint Case No.: CC/61/2021

Archana Agrawal.....Complainant

Vs.

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

Project: Ghar Apna

ORDER

04.08.2022 The matter was last heard on 08.06.2022.

The case of the complainant is that she booked a flat bearing no. 505, in block – B with parking space in Ghar Apna project. She entered into an agreement for sale on 14.07. 2010 with the respondent company and she has paid Rs. 11,10,922/- i.e. 85% approx of the total consideration amount of Rs. 12,66,985/- of the consideration of flat but, till now the possession has not been given to the complainant. The complainant had enquired about the construction of the project and handing over the possession but the respondent made excuses. Therefore, she has filed this case seeking relief for the possession of her flat or refund of total paid consideration along with interest @18% every month of the delay till handing over the possession of the flat; compensation of Rs 10,00,000/- for mental and physical harassment and Rs. 1,00,000/- for the litigation cost.

The complainant has placed on record a copy of agreement for sale executed between the parties, a copy of payment receipt issued by the respondent company against the payments made and copy of bank statement showing the amount credited to the respondent company.

The respondent has filed its reply on 13.11 2021 stating therein the present case relates to the period of Prabhat Kumar Verma (since deceased), who was then, the Managing Director of

the company and that , 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 firms of then M.D. Prabhat Kumar Verma. The respondent has refuted the claim of the complainant that the total consideration money of Rs. 12,66,985/- was paid but accept payment of Rs. 10,30,719/- . The payment of Rs. 8,203/- in cash is denied.

The respondent has admitted that the then MD Prabhat Kumar Verma, much before his death on 01.05.2018, had made second registered agreement for sale of the same flat of complainant with Nitin Gautam on 30.05.2012 against total consideration amount of money of rupees 30,00,000/-. Mr Nitin Gautam has taken bank loan from IDBI bank in year 2012 and had paid till 17 .09.2016 to Mr. Prabhat Kumar Verma, MD of the company. He paid additional amount of Rs. 8,00,5 92/- with the additional cost on 23.06.2021 and the flat was registered to him on 2.07 2021.

The complainant filed reply to show cause filed by the respondent on 12.11.2021, denying all the averments made by respondent in counter affidavit. It is further submitted by the complainant that she had paid an amount of Rs.11,10,992/- (inclusive of service tax) towards the purchase of the aforesaid flat and details of the payment enclosed with the complaint petition (para 13). In her reply it is submitted that respondent have admittedly sold her flat to one Mr. Nitin Gautam, and that the act of the respondent in cancelling the agreement unilaterally with the complainant and further selling the flat to someone else is wrong and illegal. The registered agreement cannot be cancelled unilaterally especially when the total amount of the considerations has not been refunded by the respondent (para14). Respondent has failed to honour its commitment of delivery of the aforesaid property within a prescribed period of 3 years and a time period of more than eleven years has lapsed from the date of entering in agreement for sale. The complainant also cited various case laws of

Hon'ble Supreme Court and High Court to support her claims decided in such similar cases.

The Authority takes note of the submissions made by both parties and observes that the company is a 'person' and that when the new Directors took over the company after the death of Shri Prabhat Kumar Verma, the then MD, it becomes their responsibility to fulfil all the obligations and liquidate all the liabilities. 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 the present Directors are now responsible for both the assets and liabilities of the company. The booking for this project was started way back in 2010. The submission that the then MD had misappropriated the funds received from various allottees does not absolve the present Directors as they ought to have done due diligence before taking over the Company. 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. It is evident from the submissions of the complainant that the promoter has committed a breach of agreement to sale, which is an offence for which both the present and erstwhile Directors are liable under the Real Estate (Regulation and Development) Act, 2016.

The Bench notes that as the flat have admittedly been sold to someone else, it cannot direct the respondent company to hand over the same apartments to the complainant within the provisions of RERA Act, 2016.

On the basis of the submissions and taking into consideration the documents filed by both the Parties, the Bench directs the respondent company to refund the entire principal amount along with interest on such amount at the rate of marginal cost of fund based lending rates (MCLR) of State Bank of India as applicable for three years plus eight percent from the date of taking the booking till repayment within sixty days of issue of this order.

The complainant is at liberty to press her claim for compensation before the Adjudicating Officer.

With these directions and observations the matter is disposed of.

Sd/-

Naveen Verma
Chairman