

**REAL ESTATE REGULATORY AUTHORITY
(RERA), BIHAR
6th Floor Bihar, State Construction Corporation Building, Shastri Nagar, Patna**

Bench of Dr. S.K. Sinha, Member of RERA, Bihar

RERA Case No- CC/394/2019

Smt. SubhraJyotiComplainant

Vs

M/s Sri Loknath Baba Homes Pvt. Ltd.....Respondent

Counsel of Complainant: Mr.Rabindra Kumar Tiwari, Adv

Counsel of Respondent: Mr.Virendra Kumar, Adv

01.01.2021

ORDER

Mrs Shubhra Jyoti, D/o Yogendra Pd Singh, 6MF3/75 Bhoothnath Road, Bahadurpur Housing Colony, Patna-26 has filed complaint petition on 04/06/2019 against M/s Shri LoknathBaba Homes Pvt. Ltd., Yashodanand Apartment(Royal Villa, Thakur Pd Communication Hall, Kidwaipuri Patna, Bihar, through its Director Shri Rohit Kumar. Mrs Shubra Jyoti has booked a Flat No 708 in project “Sarvayoni City” located at LahaniBigha, Danapur Patna on 20.08.2017 and total cost was Rs 18,00,000 out of which Rs 15,50,000/ was deposited by Complainant in 4 instalments. Even after repeated request, respondent did not executed Agreement for Sale and not provided the possession of flats.

COMPLAINT OF PETITIONER

Complainant Mrs Shubra Jyoti have submitted Receipts of 4 dated total amount Rs. 15,50,000. Remaining 2.5 lakh was amenity charge which was to be paid at the time of possession & registry. Respondent did not execute Agreement of sale. On 20.05.2019 respondent informed through letter regarding cancellation

of booking, and refunded some amount deducting GST. Company has refunded Rs 6,50,000/- in the Bank Account of Complainant's Father Shri Yogendra Prasad Singh without any note of acceptance assertive document.

Complainant submitted that after receiving full amount of consideration respondent company has cancelled the booking.

RESPONSE OF RESPONDENT COMPANY:-

Respondent Counsel submitted in rejoinder, that Flat was booked in one time Scheme (OTP) i.e. total amount of the flat with amenity charges shall be paid to company within 6 months time as no agreement of sale was executed with progress link program of payment. It was booked under OTP scheme. Partial payment was done when project was under process of sanctioning of plan and no construction work was started. Last payment was done on 06.06.2018 and money receipt issuing date was 20.08.2018. Flat was booked without agreement of sale in OTP scheme in which entire payment was to be done in a fixed time as agreed with all other allottees too. Complainant submitted that after receiving full amount of consideration respondent company has cancelled the booking. Flat was booked without agreement of sale in OTP Scheme in which onetime payment is done in a fixed time, as agreed with all other allottees. Due to fault of complainant, payment was not done in a limited time (as OTP) or not in onetime, hence booking was cancelled and refund has been made to complainant. Complainant has filed a case before RERA but company is ready to refund to complainant with 15% interest.

HEARING

Hearing was held on 14.11.2019, 9.12.2019, 07.01.2020, 12.02.2020, 03.03.2020, 18.09.2020, 28.09.2020, 13.10.2020, 06.11.2020, 24.11.2020, 30.12.2020.

During the hearing Learned Counsel of complainant Shri Rabindra Kr Tiwary argued that payment was done to the Respondent in more than 6 month time, hence it is not OTP scheme and nowhere it was written in KYC, like other allottees (as in their case it was mentioned). Complainant has received only Rs 13,83,000 deducting GST. Cancellation was wrong and complainant is ready to

take flat in whatever time it is completed as cancellation was done without prior notice. Amount was refunded in the account of Shri Yogendra Prasad Singh father of complainant who used to be present in hearing. During hearing Respondent learned counsel argued that in OTP (One Time Payment) scheme, advance payment of full consideration amount is done within maximum six month time or in one time. As project could not be started due to delay in RERA Registration for $1\frac{1}{2}$ Year, and due to financial crunch, company cancelled all OTP scheme of the allottees who were not paid entire money in advance. In this case also consideration amount was Rs 18 Lakh, whereas payment was done only 15.5 Lakh and not full amount. As map was in sanctioning state, and in such lessor rate (being OTP but not paid OTP) company expressed inability of construction and refunded paid amount deducting GST Charge. Respondent Company also tried to settle dispute and was even ready to refund on higher rate of interest on 15% filed with affidavit for loss of complainant.

ISSUE OF CONSIDERATION

1. Main issue of consideration is whether the booking done by complainant is in one time booking programme and complainant paid entire consideration money in advance as per OTP Scheme similar to other allottees?
2. Whether work was in progress and payment was done as per progress link programme?
3. Whether work was delayed due to RERA Registration due to pending of case and OTP scheme fails as even map was in sanctioned stage?
4. Whether cancellation of Booking was wrong?

With respect to first issue, payment was not related to progress link and complainant paid lesser amount as well as the construction work was not started. It proves that booking was done in One Time Payment Plan because there was no sale of agreement for progress link payment programme. Due to reason stated by respondent, in delay of registration or other causes that stopped the work as well as the respondent expressed

his inability to construct the building under OTP scheme price level. As full payment was not done within time frame or in one time, booking got cancelled; in that case OTP is not wrong.

However Respondent is given in undertaking that he is ready to refund with interest of 15% i.e. more than MCLR 2% generally imposed by RERA.

ORDER

Considering the situation of OTP scheme and payment by the complainant was not done for the project, it is further observed that it was not a progress link payment, therefore cancellation of booking cannot be declared wrong. Whereas, company has enjoyed Economic benefit of the fund received by the complainant, Bench directs Respondent to refund entire money including GST with interest of 15% agreed by the Respondent Company from the date of payment to the date of refund.

**Sd/-
S. K. Sinha
Member
01.01.2021**