

**Real Estate Regulatory Authority (RERA), Bihar, Patna**

**Before Mr R. B. Sinha & Mr S. K. Sinha, Members of the Authority**

**Case Nos.CC/18/2018**

**Mr Satish Kumar Verma.....Complainant**

**Vs**

**M/s Prasambi Design & Construction Pvt Ltd .....Respondent**

**Present: For the Complainant: In person**

**For the Respondent: Mr Pankaj Maijorwar, Adv**

**11/07/2019**

**O R D E R**

1. Mr Satish Kumar Verma, a resident of 43, Vidya Apartment, B N Verma Lane, Jakkanpur, Patna-800001 has filed a complaint petition under Section 31 of the Real Estate (Regulation & Development) Act, 2016 against M/s Prasambi Design & Construction Pvt Ltd for either handing over possession of the apartment booked by him in 2014 or refund of the amount paid by him along with interest.

**Case of the Complainant:**

2. In his complaint the complainant has stated that he had booked a apartment no.-506 of 1950 sq ft in the project “Prasambi Saryug Vihar Apartment” located at Gosaintola, Patliputra, Patna promoted by M/s Prasambi Design & Construction Pvt Ltd at a total consideration amount of Rs 36 lakhs. As directed by the Director of the promoting company Mr Prabhas Kumar, he had been making payments through cheques and cash to the authorized representative of the company Mr Dilip Narayan from time to time. He had also been meeting Mr Dilip Narayan requesting him for executing

“Agreement for Sale” of the apartment. However, he was informed that the agreement for sale would be executed only when he had paid at least half of the consideration amount i.e. Rs 18 lakhs. The complainant claimed that he was a simple man and believed him. Thus, he had been raising resources after taking loan from different sources like PPF, gold loan, loan from friends and relatives, loan against property etc to pay the consideration amount. He has also attached all the money receipts which he had taken from the company against apartment no.506 from the Director of “Prasambi Saryug Vihar Apartment” along with his complaint. He claimed that over a period of time it became extremely difficult to meet even Mr Dilip Narayan and he could not even been contacted on mobile phone. All these hardships/sufferings and the mental agony he went led to severe heart attack in July, 2015 and he was admitted in IGIC, PMCH, Patna. The respondent company and its Directors and other officials have not either given the apartment to me or refunded the amount till now.

3. It is gathered that the Directors of the company along with other officials have absconded. The complainant has requested for handing over possession of the apartment no.-506 in the project and the garage on payment of balance amount or refund of the principal amount paid by him along with interest.

**Response of the Respondent Company:**

4. In pursuance of receipt of the complaint petition, the Authority issued a notice to the respondent company to submit its response within thirty days of receipt of the notice. However, the respondent company did not submit its reply. As no reply was received till the end of September, 2018, the respondent company was called for hearing.

## **Hearing:**

5. Hearings were held on 23/11/2018, 21/12/2018, 22/02/2019 and 28/02/2019. On the first day of hearing i.e. 23/11/2018 though the complainant attended the hearing, nobody turned up on behalf of the respondent company. The complainant requested to make the Chairman-cum-Secretary of the Society a party in the case as the present status of the Project would be known to him. In spite of notice to the Chairman-cum-Secretary of the Society, he did not turn up on the date of hearing. However, Mr Praveer Yadav, learned counsel of Mr Dilip Narayan, the authorized representative of the Respondent Company appeared and prayed for time to file response. Time was allowed to submit his reply by 21/12/2018.
6. The administrative side of the Authority was also directed to issue show cause notice to the respondent company for violation of the provision of Section 3 of the Real Estate (Regulation & Development) Act, 2016 as the project had not been registered with the Authority. The Bench also directed to issue another notice to the Chairman-cum-Secretary of the Society of the project to be personally present on the next date of hearing.
7. The respondent company submitted its written statement on behalf of respondent nos.1 and 2 on 27/12/2018 stating therein that the complainant had not stated the correct fact and that he had booked an apartment of 1960 sq ft for a total consideration of Rs 65 lakhs. The respondent company further claimed that the complainant never approached the builder after January, 2015 nor addressed the calls of the answering respondents regarding further transactions. It was only after three years, the complainant surprisingly approached the Authority seeking possession of the apartment or refund of the booking amount along with interest.
8. The Respondent company stated that the complainant approached the answering respondents to book an apartment in “Prasambi Saryug

Vihar Apartment” on 10/04/2014. Accordingly, an apartment of 1960 sq ft was booked for a total consideration amount of Rs 65 lakhs against which a sum of Rs 18,10,001/- only has been paid by the complainant by way of cheques and cash in instalments. They further claimed that they tried to approach the complainant to sign the agreement but in vain. They stated that the complainant never approached the respondent either for making the balance payment or signing the agreement. They further denied that it was due to their action, the complainant was affected mentally leading to the heart attack. They reiterated that the respondent company had been trying to approach the complainant for further transactions but in vain. All other statements of the complainant were denied and refuted. The Chairman-cum-Secretary of the Society of the project also sent a letter stating that he had since handed over the charge to others and that he was no longer looking after the society’s work. He requested to be excused from the legal case.

9. In course of hearing on 22/02/2019, the complainant agreed for refund of the deposit made by him along with interest. The Bench therefore directed the learned counsel of the Respondent Company to seek direction from their clients in this respect. On the next date of hearing i.e. on 28/02/2019 the learned counsel of the respondent company agreed for refund the principal amount paid by the complainant along with the due interest.

**Issues for Consideration:**

10. There is a dispute between the complainant and the Authorised representative of the Respondent Company on the total consideration amount of the apartment, through both parties agreed that the complainant had booked a 1960 sqft apartment No-506 in the project Prasambi Saryug Vihar Apartment in April 2014 and had paid Rs 18,10,001 (Rupees Eighteen lakhs, ten thousands and one only) by cheques or in cash. While Complainant had claimed the total consideration of the Apartment as 36 lakhs, the Respondent claimed

the total consideration of the Apartment to be Rs 65 lakhs. Neither parties have however produced any document in favour of their claim. The Agreement for sale was not executed by the Respondent Company with the Complainant. In course of hearing, the Respondent could not produce any documentary evidence to support his claim that that the complainant was informed on various occasions to pay the remaining amount. They were also directed to bring up any documentary evidence in support of their statement regarding cost of the flat but they failed. Similarly complainant was also directed show any documentary evidence in support of his claim with the regard to the cost of the flat but he also failed to produce any documents. It is also a fact that many flats are occupied by the allottees/consumers. However, in course of hearing, the complainant agreed to take the refund of the principal amount paid by him along with interest. So the dispute about the total consideration amount became redundant.

**Order :**

11.The Bench therefore orders the Respondent company to refund the principal amount of Rs 18.10 lakhs to the complainant along with 7 percent interest from the date of deposits to the date of refund within sixty days of the issue of this order.

Sd/-

**(R.B. Sinha)**  
**Member**

Sd/-

**(S.K. Sinha)**  
**Member**