

REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR

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

Case Nos. CC/165//2018

Amarjeet Kumar.....Complainant

Vs

M/s Agrani Homes Real Services Pvt Ltd Respondent

Present: For the Complainant:- In Person

For the Respondent:- Mr Alok Kumar, MD

04/07/2019

O R D E R

1. Mr Amarjeet Kumar, 2/D Dayanand Enclave, Ashok Kunj, Ashok Nagar, Ranchi has filed a complaint on 24th December 2018 under Section 3, 12 & 18 of the Real Estate (Regulation & Development) Act, 2016 against M/s Agrani Homes Real Service Pvt Ltd for refund of deposit made by him along with 20 percent interest per annum for purchasing a 3 BHK Apartment no- 204, Block D with 1105 square feet super built up area in their project "Agrani Residency", Usri, Danapur, Patna.

Case of the Complainant:

2. In his petition, Mr Amarjeet Kumar has stated that he had booked a flat in Block-D of the project "Agrani Residency" on 15/05/2015 for a total consideration of Rs 11,08,217/- including service tax. Against that he had paid Rs 8,75,000/-

including service tax from 11/05/2015 to 16/03/2016. Balance amount was required to be paid at the time of registration of the apartment. An MoU was signed by the promoter with the complainant on 27/02/2016. It provided that the developer would hand over the apartment within a period of 36 months with a relaxation period of six months after approval of map by the PMC. The complainant claimed that he visited the proposed site several times since March, 2016 by travelling from Ranchi to Patna to know the status of construction of the project as the staff of the company were not giving satisfactory answer on phone calls. Whenever he enquired, the officials of the company told that the plan has been submitted for approval and they were trying to get fire clearance etc. The Complainant claimed that he spent too much money and time in travelling from Ranchi to Patna. Since no construction work had been initiated in the project till September, 2018, he was very much frustrated and therefore, he decided to quit from the project. Accordingly, he submitted an application for cancellation of his booking on 06/09/2018.

3. A notice was issued to the respondent company on 29/01/2019 to give its response on the issues raised by the complainant within two weeks. The respondent company did not submit any response to the notice. Accordingly a date of hearing was fixed on 26/03/2019 and the complainant well as the respondent company was asked to be present.

Hearing:

4. On the very first day of hearing i.e. 26/03/2019, the respondent company was directed to pay the principal amount immediately as no work had been started in the last four years. The respondent company agreed to pay the principal amount and issued seven cheques amounting to Rs 8,75,000/-. It has been reported to the Bench that when seven cheques amounting to Rs 8,75,000/- were presented to the bank by the complainant, six cheques amounting to Rs 8,00,000/- unfortunately bounced. Only one cheque amounting to Rs 75,000/- was honored and cleared by the bank. He was however paid a sum of Rs 6,00,000/- through NEFT/RTGS by the promoter later on. Thus, he got a total payment of Rs 6,75,000. Rs 2,00,000/- of the principal amount remains to be refunded by the respondent company.

Issues for consideration :

5. There is no dispute on facts. Both Complainant and the Respondent Company have admitted that they had entered into MoU for sale of an apartment to the complainant in the Project "Agrani Residency" of the Developer at the total consideration of Rs 11,08,217 including service tax. The MoU enacted between the Developer and Complainant dated 27th February 2016 also confirmed that the Rs 8,75,000 (Rupees eight lakh and seventy five thousand only) including service tax was paid by the Complainant to the Respondent Company in between 11th May 2015 and 27th February 2016. The remaining amount (Rs2,33,217) including service tax was to

be paid at the time of handing over the possession of the apartment.

6. It is also a matter of fact that as per MoU, the Developer was required to hand over the Apartments within 36 months (plus a grace period of 6 months) after approval of the map by the competent authority. However, the Developer had not yet got the map of the project approved by the competent authority, let alone commencement of work until September 2018 i.e. even after three years of receiving the booking amount.
7. It is a matter of fact that the Developer had taken the booking amount for apartment in the Project in May 2015 without taking approval of the competent authority for the project like –fire clearance, Building Plan/Map approval etc. They also did not inform the complainant after cancellation of the project. Further even when the Complainant requested for refund in September 2018, the Respondent Company did not return/refund the deposited amount until December 2018. Moreover the Respondent Company did not give any response to the Authority on the notice issued to them on 29th January 2019.
8. The Petitioner was not required to wait indefinitely for completion of the project, particularly, when he had paid about 80 percent of the estimated cost at a very early stage itself, based on the commitment of the developer. Further, the Respondent Company has not given any cogent and justifiable reasons for inordinate delay in filing the map for approval by the competent

authority (May 2015-September 2018). Moreover, whenever complainant approached the developer, he was not given any correct information. Thus the complainant was forced to withdraw from the project as there was no other alternative left for him. Further the Developer did not do anything to accommodate her in any other project. Even after the complainant requested for refund of the deposit, the Respondent company did not refund the deposit amount to the complainants which leads to an impression that he had diverted the funds elsewhere. Therefore, the respondent company should be given deterrent punishment to prevent them from behaving in such irresponsible manner and exploiting the consumers in future. Such diversion of fund is also violation of section 4 of the Real Estate (Regulation and Development) Act 2016 and makes the promoter liable to a penalty, which may extend up to five percent of the estimated cost of the project under Section 60 of the Act.

Order :

9. We therefore order that the balance amount of Rs 2,00,000/- be refunded to the complainant by the promoter immediately without any further delay. Further, the promoter is required to pay an interest at the rate of 10.5 percent on deposits made by the complainant/allottee from the dates of deposits to the date of refund to the complainant within sixty days of the issue of this order.

Sd/-
(S.K. Sinha)
Member

Sd/-
(R.B. Sinha)
Member