

REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR

Bench of R B Sinha and Dr S K Sinha, Members of RERA, Bihar

Complaint Case No. RERA/136/2018

Mrs. Anju Agarwal.....Complainant

Vs

M/s Agrani Homes Pvt Ltd.....Respondent

Present:

For the Complainants:- In person

For the Respondent :- Ms Manisha Singh, Advocate

04/07/2019

O R D E R

1. Mrs Anju Agarwal, a resident of G/87, Sidhi Vinayak, Khetan Super Market, Birla Mandir Road, Patna-800003 has filed a complaint under Section 31 of the Real Estate (Regulation & Development) Act, 2016 on 28/11/2018 against M/s Agrani Homes Pvt Ltd through their Director Mr Alok Kumar for refund of the balance amount of deposits made by her for booking an apartment in the project Agrani Sampatchak Project, Patna along with due interest and penalty. In pursuance to the complaints received, a notice was issued to the respondent company to submit their response by 18/12/2018. The Respondent Company through their learned counsel Ms Manisha Singh, submitted the response to the Authority on 7th January 2019. Thereafter, hearings were held on 14/02/2019 and 20/02/2019.

Complaint of the Petitioner

3. In her petition, the Petitioner has stated that she had booked a 3BHK flat with 1222 sqft Super Built up area on 4th floor in “Agrani at Sampatchak” project on 13th August, 2013 for a total consideration of Rs 8,24,720 (Rupees Eight lakhs twenty four thousand seven hundred and twenty only) which included service tax of Rs 24,720/.

4. In the Memorandum of Undertaking (MoU) executed by the developer and the complainant on 13th August 2013, the developer had committed to complete the construction of the said building within an estimated period of 36 months with a relaxation period of six months after approval of the map by PMC.

5. The Petitioner has also stated that she had paid Rs 8,24,900 lakhs including service tax of Rs 24,900 to the Respondent Company on 1st August 2013. In the third schedule attached to the MoU, the Developer had accepted the receipt of full amount of Rs 8,24,720.00 including service tax of Rs 24,720/-lakhs at the time of booking the apartment. The Petitioner has also submitted the copies of the cheques issued by him and receipts issued by the respondent company.

6. The complainant has stated that she came to know in mid 2017 that the project “Agrani at Sampatchak” was shelved by the Respondent Company. Thereafter, when she contacted the company, she was directed to submit a written letter for cancellation of the booking and was told that the refund would be made in four months. Accordingly, she submitted her request for cancellation on 31st October 2017. After lots of follow up, the Respondent company refunded part of the deposits in installments from March to August 2018. She has requested the Authority to direct the respondent company to refund the balance amount

of deposits along with interest. She has stated that even after repeated request, she has not been given her hard earned money fully in the last ten months.

Response of the Respondent Company:

7. In response to the notice, learned counsel of the Respondent Company, Ms Manisha Singh stated on 7th January 2018 that the project Agrani at Sampatchak was conceived in pre-RERA days and accordingly plots of land were purchased from the land-owners and for that an MoU was also signed. She stated that total area of land was 100 kathas and so. Even the plan for construction of towers was completed. However, the project had to be abandoned by the promoter as the entire area fell within Green forest area under the new master plan of Patna, published in October 2016. Hence, the Respondent Company could not proceed with the project.

8. She further committed that the Respondent company would refund the entire principal amount by 31st January 2019.

Hearing

9. On the first date of hearing on 14/02/2019, the complainant represented herself while the Respondent Company was not represented by anyone. The Bench therefore levied a cost on the Respondent and directed the Managing Director of the Respondent Company to be present personally on the next date of hearing.

10. On the next date of hearing on 20/02/2019, the Respondent Company was represented by Ms Manisha Singh Advocate while the complainant herself defended her case. The Respondent Company agreed to refund

the balance principal amount of deposit immediately and accordingly gave the cheque to the complainant in the Court.

Issues for consideration

11. 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 “Agraniat Sampatchak” of the Developer at the total consideration of Rs 8,24,720. The MoU signed between the Developer and Complainant also confirmed that the Rs 8,24,900 lakhs including service tax of Rs 24,900 was paid by the Complainant to the Respondent Company on 1st August 2013.

12. 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 submitted the map to the competent authority for approval. The contention of the learned counsel that the New Master Plan 2011-31 of Patna forced the company to shelve the project did not appear to be fully correct. The New Master plan for Patna was under consideration of the Government for several years and was approved by the State Cabinet in October 2016 but the developer had not yet got the map of the Project approved, let alone commencement of work until October 2016 i.e. even after three years of receiving the full amount.

13. It is a matter of fact that the Developer made the booking for apartments in the Project in August 2013 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 due to approval of the new master plan for Patna in October 2016, when it had already become evident that project would not be able to proceed. Further even when the Complainant requested for refund in October 2017, the Respondent Company did not return/refund the deposited amount entirely until December 2018. Moreover the Respondent Company did not keep its commitment given to the Authority in its response to the notice that entire amount would be paid by 31st January 2019.

14. The Petitioner was not required to wait indefinitely for completion of the project, particularly, when they have paid 100 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 (August 2013-October 2016). Moreover, whenever complainants approached the developer, they were not given any correct information. Thus the complainant was forced to withdraw from the project, when he came to know that the project at the proposed site would not come up, as no other alternative was left to 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 immediately 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

15. We therefore order the Respondent Company to pay interest on the entire deposit at the rate of 10.5 percent from the date of deposit to the date of refund. The payment of interest should be made to the complainant within sixty days of issue of this order.

Sd
(R. B. Sinha)
Member

Sd
(Dr S. K. Sinha)
Member