

REAL ESTATE REGULATORY AUTHORITY, BIHAR

Before the Bench of Mr. Naveen Verma, Chairman

Case No. CC/1058/2021

Kapildeo Narayan Keshri

.....Complainant

Vs

M/s Ishtalok Construction

.....Respondent

Project: Ankesh Complex

ORDER

05/08/2022

The case of the complaint in brief is that he entered into two agreements with the promoter dated 20.11.2016 for 3 BHK flat no.404 at 4th floor measuring 1355 sq.ft.s and a parking space for a consideration of Rs.40,21,000/-. The complainant has paid Rs.11,00,000/- on different dates vide different cheques, thereafter, the complainant applied for home loan from the Central Bank of India and the bank has disbursed loan through demand draft No. 083903 for Rs.19,75,000/- dated 31.01.2017 and Demand Draft No.105362 for Rs.5,00,000/- in favor of the respondent firm. The complainant has till date paid Rs. 35,75,000/- and all the payment were made to the respondent as per the payment schedule mentioned in the agreement. After expiry of the schedule time with a grace period of six months i.e. June, 2018 the complainant approached the respondent several times that Ankesh Apartment was not completed he was always given false assurance that the said flat no.404 of Ankesh complex is going to be completed very soon. However, Ankesh Complex is still incomplete although 90% of the

consideration amount has already been paid by the complainant as per the payment schedule.

It is stated that the complainant sent several letters through speed post to the respondent stating therein to hand over the possession of the flat. The complainant has prayed to handover the possession of the flat no. 404 with an interest of Rs. 5,70,000/- and compensation.

A counter affidavit was filed by the respondent denying the allegation and stated therein that the complainant entered into two agreements i.e. 1st tripartite agreement was executed between three parties i.e. the first party is respondent, second party is the complainant and the third party is Central Bank of India on 20.11.2016 and the second between the respondent and the complainant themselves for the purchase of a flat No. 404 in Ankesh Complex for a fixed consideration of Rs.28,21,000/- and Rs.40,21,000.- for the purchase of flat no.404 comprising 3BHK added with all specification appended with the agreement and made the part of the same. The complainant himself paid Rs.11,00,000/- and on his behalf the Bank paid Rs.19,75,000/- and again Rs.5,00,000/- through demand draft. The complainant has paid Rs.35,75,000/-. The respondent has further stated that a conjoint paper was signed by three persons, namely, the complainant Kapil Deo Narayan Keshari, Pawan Kumar and Vijay Kumar on 11.09.2021 for modification of the flat and the cost of the same flat was determined therein to the tune of Rs.51,11,000/- and the additional cost was to be paid within 30 days from the date of execution of the paper i.e. from 11.09 2021 to 10.10.2021 and accordingly a tentative date for registration was fixed on or before 31st March, 2022 . The respondent has also stated that the promoter has performed considerable part of his obligation but the complainant instead of paying Rs. 15,11,000/- has instituted this case.

Rejoinder was filed by the complainant denying the submissions made in the counter affidavit of the respondent.

The matter was heard on several dates i.e. 31.01.2022, 21.02.2022, 20.04.2022, 13.05.2022 and lastly on 10.06.2022 in detail and was fixed for orders.

After perusal of case records, submissions made and documents placed, the Bench observes that complainant has booked the flat and paid 90% of the consideration amount as mentioned in the agreement to sale.

On the last date of hearing the Bench directed the respondent to file on oath stating therein the details of modification work done by the respondent in the flat of the complainant which were not mentioned in the agreement for sale or brochure with the photograph and indicating the cost.

The Bench notes that the respondent has filed affidavit with the floor plan marking the modification work of the flat . However the promoter has not provided photograph and cost incurred in providing amenities which were not mentioned in the agreement for sale or brochure.

The consideration amount to be paid by the complainant would need to be settled first by the court of competent Civil jurisdiction as the Authority cannot go into the genuineness of a document which is being contested. Only thereafter the Authority can pass any order to execute the registered Conveyance Deed. Hence no directions can be issued at this stage.

With these observations the matter is disposed of.

Sd/-

Naveen Verma
Chairman