

REAL ESTATE REGULATORY AUTHORITY, BIHAR

Before the Bench of Mr. Naveen Verma, Chairman

Complaint Case No. CC/1371/2020

Praneeta Triyar & Sanjay Kumar Triyar Complainants

Vs

M/s Adharshila Housing Buildcon Pvt. Ltd. Respondents

Project: Central City Aaron

26/09/2022

27.09.2022

ORDER

The facts of the case are that the complainants booked a 2-BHK bungalow under the project Central City, Samastipur in September, 2013. An Assignment Agreement for Rs. 11.99 lakh was finalized by both the parties according to which the respondent agreed to construct the bungalow within 18-24 months. The date of handing over the bungalow was 21.03.2016. The complainant paid Rs. 5,49,600/- in three instalments through cheque. In 2016 the complainant visited the site but found there was no progress in the construction. They have stated that the Administrative Officer of the company advised them to transfer the booked unit to Muzaffarpur or Darbhanga and since they refused to refund the money, they signed on the transfer booking form on 04.09.2016 for the site located at Muzaffarpur. Since no work was undertaken, on 24.01.2019 the complainants gave a letter to the respondent company for resale of the booked unit and refund the amount within three months. On 18.03.2020 the complainant sent a legal notice but till date no reply has been received.

The complainants have filed this complaint petition against the respondent firm M/s Adharshila Housing Buildcon Pvt. Ltd., a promoter and Developer company for a direction to the respondent to deliver possession of a bungalow with all facilities and accumulated 18% interest per year on the payment received till the date of execution of the said bungalow to the complainant. They

have made an alternative prayer that if the respondent is not able to complete the project within the time frame, refund the paid consideration with interest.

The respondent has filed reply admitting the booking of bungalow by the complainant and the amount paid by them . It is stated that the agreement was done between the parties on 13.02.2014. Thereafter due to dispute between the Directors of the company, the respondent ha to cldose the project including Samastipur so that the money which was taken by the buyers may be returned. They have stated that on the basis of a scheme launched by the respondent ,the complainant filed an application on 04.09.2016 to shift the booking of the bungalow to Muzaffarpur project. It was also stated that if the complainants pay the remaining amount, they would hand over possession of the bungalow. They contacted the complainants to pay the due amount. Thereafter on 24.01.2019 they gave a letter to the company to resale the booked unit and return the money. On the basis of the said letter, they started the process of resale so that the money can be refunded. They denied the averments made in the complaint petition. It is said that they have returned the principal amount to the complainant and her family. So, this complaint petition is fit to be dismissed,

A supplementary affidavit has been filed on behalf of the complainant stating therein that on 21.06.2020 the respondent approached Rakesh Kumar Triyar and submitted a postdated cheque of Rs. 18,55,415/- on 31.12.2020 i.e., the principal amount of the three complainants which was taken by the respondent in 2013. On presentation of the cheque, it was found that the cheque has been bounced. Thereafter a rejoinder affidavit has been filed by the complainant in which it is stated that the complaint petition was filed on 21.08.2020. It is stated that the respondent handed over a demand draft of Rs. 5,64,420/- to the complainant on 13.04.2021 i.e., the principal amount during the hearing of this matter. However,as per agreement the respondent has to pay 15% per month interest which comes to Rs.7,63,343/-.

The respondent has filed reply stating therein that the complainant is not eligible to claim interest and compensation as the initial booking of the complainant was at Samastipur project.

Thereafter the complainant herself requested to transfer the booking from Samastipur to Muzaffarpur Phase 1 project. Since after booking the complainant did not pay her instalment for construction of bungalow in time, she further requested to refund the amount after reselling her purchased land. The brother of the complainant had sent two letters, one is with respect to resale of the aforesaid land on 21.01.2019 and the other is with respect to cancellation of the booking on 21.08.2020 and thereafter on receiving the letter they had refunded the entire consideration amount to her. It is further stated that the Authority has no jurisdiction to award compensation and interest because both the projects are not registered with RERA due to want of sanctioned map. It has been submitted that the subject matter of dispute falls under the jurisdiction of Consumer Forum and for compensation, the matter has to be filed before the Adjudicating Officer and not before the Authority, hence the present complaint case is fit to be dismissed.

Learned counsel for the complainant submits that the respondent has refunded the paid consideration amount after a delay of seven years but the interest amount is due to be paid. He further submits that the respondent has failed to discharge his obligation within the stipulated period, so they are liable to pay compensation to the complainant.

Learned counsel for the respondent submitted that the complainant has already received her paid consideration and now she is claiming for interest and compensation for which the Authority has no jurisdiction to award the same because the project is not registered with the RERA due to want of sanctioned map and there is no existence in terms of Section 3 of the RERA Act. They have referred to various orders of the Appellate Tribunal and submitted that the present subject matter of dispute falls under the jurisdiction of Consumer Forum or the Adjudicating Officer, RERA.

The Bench is of the opinion that different orders of the Appellate Tribunal on the question of maintainability of the matter may be put up before the Authority for guidance because these directions have a much wider implication.

In so far as the present matter is concerned, the respondents had admittedly taken booking in the year 2016 and refunded the

principal amount in 2021. The claim of the complainant for interest during these period is justified, because the respondent company was not able to complete the construction of the Bungalow and hand over the possession within the stipulated period. They will have to pay interest as provided in the Real Estate (Regulation & Development) Act, 2016.

Section 3 of the Act mandates that all the on-going projects on the date of commencement of the Act have to be registered with the Authority. The promoter is directed to submit a fresh application for registration of the project and suo motu notices may be issued to them under section 59 of the Act asking them to explain if they have advertised or taken any booking in contravention of the section 3 of the Act.

The Hon'ble Supreme Court in a recent judgment has observed that provision of the Act are retroactive in nature, and that the Statute primarily aims to protect the right of the home buyers.

The objective of the statute would be defeated if the promoter chooses not to register the project or fulfil the mandatory requirements for registration and then take the plea that they will not pay the due interest to the allottee simply on the ground that the project is not registered with the Authority.

After considering the documents filed and submission made the Authority hereby directs the respondent company and its Director to pay interest on the total paid consideration by the complainant at the rate of marginal cost of fund-based lending rates (MCLR) of State Bank of India as applicable for three years plus 5% percent from the date of taking the booking till the date of refund within sixty days of issue of this order.

In so far as the compensation is concerned, the complainant is at liberty to approach the Adjudicating Officer.

Sd/-

**Naveen Verma
Chairman**