

**REAL ESTATE REGULATORY AUTHORITY, BIHAR**

**Before the Bench of Mr. Naveen Verma, Chairman**

**Complaint Case Nos. CC/435/2021**

**Bimal Dalmia**

**.....Complainant**

**Vs**

**M/s Nissa Realtors Pvt. Ltd.**

**.....Respondent**

**Project: Ghar Apna**

**10/10/2022**

**ORDER**

The matter was last heard on 19-09-2022.

The fact of the complaint case is that after satisfying with the terms and conditions of the brochure the complainant being an allottee booked a flat in the project and paid Rs. 51,000/- through cheque dated 26.06.2010 which was acknowledged by the respondent. On the same day the complainant paid Rs. 5 lakh through cheque dated 26.06.2010 and in lieu of payment received the respondent issued a stamped and signed photo copy of the cheque. Subsequent to the said payment the complainant entered into a registered Agreement for Sale on 14.07.2010 for a 2-BHK flat having an area of 993 sq.ft. with one free car parking space and also undivided share in the land for a consideration of Rs.13,35,157/- with applicable taxes. Thereafter with malafide intention the respondent demanded an additional amount of Rs. 5 lakh from him before the possession and the complainant paid through cheque dated 05.06.2013 and the respondent acknowledged the same. In addition to the said payment the respondent with ulterior motive demanded remaining amount of Rs. 3,35,157/- and Rs. 2,09,300/- for the expenses incurred which the complainant paid in three installments in cash but no receipts were issued for the same. According to the complainant, he paid the entire consideration amount of Rs. 15.95 lakh. As per the agreement for sale, the flat was to be handed over in 2.5 years plus 6-months grace period but even after lapse of more than seven years the respondent has not handed over the flat or refunded the paid consideration. Hence, this complaint has been filed.

The complainant has prayed for possession of the flat and an interest @ 18% per annum for every month of delay till handing over the possession as per proviso to Section 18 of the RERA Act, 2016. He has made an alternative prayer that if the respondent is not able to complete the project within the time frame, then refund the total amount paid by him with interest @ 18% p.a. from the date of amount paid till the date of actual payment. He has also prayed for compensation.

The respondent has filed reply and apart from dispute between the Directors he has admitted that the complainant made agreement for Flat No.606 having an area of 993 sq.ft. on 14.07.2010 for a total consideration of Rs.13,35,157/-. According to the complainant, he claims to have paid Rs.10,51,000/- through cheque and the rest amount of Rs. 5.44 lakh in cash

which in total is more than the total consideration of the flat. He denied the payment through cash. It is further stated that second agreement for sale of two flats 605 and 606 including the flat of the complainant was executed with another person and out of total consideration amount of Rs. 49.90 lakh he paid Rs.41.50 lakh on 27.12.2016 to Ex. M.D. and the rest amount was also paid in between 2019 to 2021 and both the flats were registered in the name of Ashok Kumar Singh on 02.08.2021, so flat claimed by the complainant is not available. It is further stated that the complainant did not raise any grievance before the Ex. M.D.

Reply to the said counter affidavit has been filed by the complainant and he denied the averments made in the counter affidavit filed by the respondent. It is stated that the counter affidavit filed is wholly misconceived. The complainant reiterated the statement made in the complaint petition and the amount paid by him. He has also stated that the complainant is also eligible for compensation as prescribed u/s 18 of the RERA Act.

Second rejoinder has been filed on behalf of the complainant reiterating the same facts as in the first rejoinder affidavit and prayed to allow the complaint petition.

Learned counsel for the complainant submitted that the complainant booked a 2-BHK flat bearing Flat No. 606 in Block-B on sixth floor having an area 993 sq.ft. with one car parking in Ghar Apna and as per Schedule B of Agreement for Sale, the total consideration amount was Rs. 13,35,157/- and the complainant paid Rs.10.51 lakh through cheque and Rs. 5.44 lakh in cash totalling Rs.15.95 lakh, but no receipts were issued for Rs.5.44 lakh which was paid in cash. He further submitted that as per the agreement the possession was to be handed over within 2.5 years with 6-months grace period i.e., by 13.07.2013 but even after lapse of 11 years from the date of booking amount the respondent has not handed over possession of the flat to him or refunded the paid consideration. He has also submitted that the promoter has sold the flat to some other person. He has further submitted that the complainant has been facing financial hardships for the delay caused by the respondent for which he should be compensated.

Learned counsel for the respondent submitted that it is true that the complainant has paid Rs.10.51 through cheque in between 26.06.2010 to 05.03.2013 but the respondent denied the rest of the amount of Rs.5.44 lakh which was paid in cash. The complainant has not shown any receipt for payment of cash amount. He further submitted that even if both the amount is taken into consideration the total consideration claimed by the complainant is more than the consideration of the flat. He further submitted that the complainant did not raise any grievance before the Ex-M.D. before his death and he has filed the present complaint case after eight years in the year 2021.

From the submissions made by both the parties and the averments in the complaint petition and the counter affidavit/ reply, it is clear that it is not in dispute that the alleged flat was booked but, yes, as alleged and documents placed, it is not apparent that whether the complainant has paid Rs. 15.95 lakh

or Rs.10.51 lakh in lieu of consideration amount paid for booked flat. Considering that the booking of the alleged flat is already sold to other allottees and amount paid is in dispute, this Bench finds that the issue involved need proper adjudication of evidence which can be adjudicated before the competent Civil Court by adducing evidence or showing any document in respect of payment of Rs. 5.44 lakh in cash, therefore, the complainant is advised to approach competent civil court.

In so far as the compensation is concerned, the complainant is at liberty to file a separate case before the Adjudicating Officer.

With the aforementioned observations/ directions, this complaint case is disposed of.

**Sd/-**

**Naveen Verma  
Chairman**