

Real Estate Regulatory Authority (RERA), Bihar

Before Dr. S.K. Sinha, Member of the Authority

Case No.: CC/814/2019

Prashant Chandra Sinha----- Complainant

Vs

M/S Ashwani Enterprises Pvt. Ltd.----- Respondents

Present for the complainant: Mr. Suman Kumar Verma, Advocate

Present for the respondent: Mr. Jagannath Singh, Advocate

Case No.: CC/607/2018

Mr. Ashok Kumar Singh -----Complainant

Vs

M/S Ashwani Enterprises Pvt. Ltd. ----- Respondents

28-12-2020

O R D E R

Prashant Chandra Sinha, s/o Shri Krishna Chandra Sinha, a resident of 45 Aadarsh Colony, Kidwaipuri, Patna, pin: 800001, has filed a complaint petition against M/S Ashwani Enterprises Pvt. Ltd through its managing director Mr. Ashwani Kumar Singh, s/o Shri. Hari Dayal Singh, address Ashwani Group of Companies, Patna, G-1 Ashwani Enclave II, beside AIMS, NH98, Phulwarisharif, Patna, Bihar, Pin: 801505, has prayed for refund of money with interest and thereon by prevailing market rate for his purchased registered land plot but disputed possession.

Case of the complainant:

Complainant, Prashant Chandra Sinha, in his petition has claimed that he has paid full consideration money of Rs. 10,42,000 to developer, for a piece of land measuring 2800 square feet (6.4290 decimal) at Mauza Corzi, Plot Number 28, District Patna. Registry of the land was executed on 7th June, 2011, vide registration deed number 1604, in book number 1, Volume Number 278, through their managing

director Mr. Ashwani Kumar Singh.

Similarly, Mr. Ashok Kumar Singh has booked a plot on 13th April, 2010, for consideration amount of Rs. 5,75,000 from Ashwani Enterprises, having land details: Thana Number 4041, Khata Number 19, Khesra Number 1038, registry was executed in both the cases by Mr. Ashwani Kumar, managing director, as a power of attorney holder. No compound wall was constructed, and no possession has been given to any of the complainants.

Respondent stated that due to unavoidable reasons, he is not in position to deliver possession of the land and asked the complainant to take refund. For the refund, he gave to complainant, on 9th Aug, 2014, a refund program signed by the respondent in the form of a letter, but he initiated the refund in parts of marginal amount only. Amount of registry cost and interest was not mentioned on the chart; therefore, complainant filed this petition before R.E.R.A. as respondent refunded, till that date, only Rs. 1,50,000 to Prashant Chandra Sinha.

Response on the Respondent Company:

In this response, to the notice issued by the authority, the respondent company agreed with respect to receiving the amount, registry done and agreed to refund as per the program given, with nominal interest for which part performance was done by respondent prior to filing of the case by the complainant. Respondent admitted that mutation of the land was done in the case of Prashant Chandra Sinha, whereas in case of Ashok Kumar Singh, mutation could not be done as he is unable to give possession and build compound wall as per agreement.

Hearing:

Hearing were held on 16th Sept, 2020; 28th Sept, 2020; 20th Oct, 2020; 5th Nov, 2020; 13th Nov, 2020; 25th Nov, 2020; 10th Dec, 2020; 23rd Dec, 2020.

Learned counsel of the complainant (Prashant Chandra Sinha) stated that with power of attorney, respondent (developer) has sold and registered the said piece of land but couldn't provide possession even after mutation. Even in case of the complainant (Ashok Kumar Singh), mutation was denied.

Respondent stopped making payment and not agreed for interest or pay at market rate value.

Issue of Consideration:

- (1) Whether the land registered by the respondent was in his possession or he has registered a plot of adverse possession or he sold the same land repeatedly on higher market value.
- (2) Have they agreed their inability to give possession.
- (3) Whether respondent started to refund the amount, accepting inability to give possession due to unavoidable reason.

- (4) Whether interest or refund at market cost may be considered.
- (5) Return registry can be done in the name of respondent or not.

Pleading:

Learned counsel of the complainant prayed respondent for refund of principal amount to the complainant and pleaded for payment of interest on higher rate at 18% and also payment with respect to present market cost. Learned counsel of the complainant indicated that in last para of registry deed of land in which it is clearly written (agreed by respondent) that in case of any title dispute and due to any reason if possession could not be given then complainant can claim compensation, interest cost with principal and there will be no objection from the respondent. Learned counsel of the respondent pleaded that in one case mutation has been done in the name of complainant, therefore complainant should execute return registration in the name of respondent. Learned counsel of the complainant pleaded that respondent has executed registration as a power of attorney holder and the name of the owner of the land was different. Therefore, respondent may take consent of the original landowner as mentioned in the document. Respondent counsel agreed to refund in two or three installments the total interest value.

Conclusively, respondent accepted his inability of providing possession of the land, due to which only, the respondent initiated the refund, and prior to filing this case by complainant. Respondent action of giving program of refund is itself a proof of disputed title of the land. Respondent stated his inability to give market value but requested for return registry in their name.

Order:

Respondent company has utilized the economic benefit of the amount deposited by the complainant and refunded the principal amount. Market value of the land in this duration of 9 and 10 years has raised multiple times. Bench orders that interest at the rate of MCLR plus 2% (~10%) per annum at simple interest from the payment dated 2010 and 2011 respectively, on the amount of deposited plus registry charge will be refunded by the respondent within 30 days of issue of this order in two installments. As principal has been refunded recently, bench leniently waives the penalty to be imposed for sell of disputed land. The complainant is directed to execute return registration to respondent with mutual consent of registered deed draft within 30 days of refund of full interest amount. For claim of market rate value and compensation, complainant may pursue to the competent authority of R.E.R.A.

Sd/-
(S.K.SINHA)
Member
RERA, Bihar