



REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR

Complaint Case No. RERA/59/2018

Mr Manoranjan Prasad..... Complainant

Vs

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

Present: For the Complainant- Mr Sanjeev Ranjan Prasad
For the Respondent- Ms Manisha Singh, Advocate

For the Authority - Mr Sumit Kumar, Advocate
Ms Shivi, Advocate

30/01/2019

ORDER

1. Mr Manoranjan Prasad, a resident of VBS Nagar, North of Shivpuram, Rukanpura, Patna-14 has filed a complaint petition on 20th August 2018 under Section-31 of the Real Estate (Regulation & Development) Act, 2016 against M/s Agrani Homes Pvt Ltd for refund of the principal amount paid by him along with the applicable interest, reimbursement of cost/other expenses and compensation for mental and physical harassment. Accordingly, a notice was issued to M/s Agrani Homes Pvt Ltd on 10/09/2018 for giving their response in respect of the issues raised in the complaint within 15 days of receipt of the notice. Ms Manisha Singh, learned counsel of the Respondent Company has filed response to the show cause notice issued to the respondent in October, 2018. The hearing was held on 19/12/2018 in which the complainant was represented by his brother Mr Sanjeev



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Ranjan Prasad while Ms Manisha Singh appeared on behalf of the respondent company.

Complaint of the Complainant:

2. In his complaint, the Petitioner has stated that he had invested Rs 16 lakh for a 3 BHK apartment in Agrani IOB Nagar, Phase-3 Project, Sarari, Danapur, Patna and Rs 2.40 lakh in commercial plan (CLP Option) of the promoter in February-August 2016. In the Memorandum of Undertaking (MoU) signed between M/s Agrani Homes Pvt Ltd and the Complainant, it was agreed upon that the developer would allot a 1300 sq ft 3BHK apartment on the 4th Floor in IOB Nagar Phase-3 at the total consideration of Rs 18 lakh. The developer had committed that the said building would be completed within an estimated period of 36 months with a relaxation period of six months after approval of Map/Plan by the Patna Municipal Corporation. The MoU further confirmed that the Petitioner had paid Rs 16.001 lakh through different cheques during February-August, 2016. It was also stated that the final amount of Rs 2,65,925/- plus applicable service tax shall be payable by the petitioner at the time of possession of the flat. The complainant has also submitted receipts of the payment made by him to the Respondent Company.
3. In his complaint, the complainant has stated that in spite of his best efforts, he could not get any confirmation or information regarding the progress of construction of the project till March, 2017. In March, 2017, he was informed by a representative of the Respondent Company that the Project for construction of 3BHK flats in Phase-3 plan has not materialized and his 3 BHK booking would have to be



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shifted to Phase-2. However, things did not move even thereafter. Finally in September, 2017, he requested for cancellation of the booking of 3 BHK apartment in IOB Nagar, Phase-3 but he has not yet got the full refund of the deposit made by him.

Response of the Respondent Company:

4. In response to the notice, Ms Manisha Singh, learned counsel for the respondent company stated that the present complaint with regard to the booking was not maintainable as per law. She stated that everything was disclosed to the complainant before he deposited the initial amount in the account of the company as mentioned in the MoU signed by the complainant on 26/06/2016. She further claimed that the complainant could lodge the complaint only after 36 months (plus 6 months as grace period) from the date when approval of the map was granted by the competent authority for construction of the building. The respondent company however did not contest the claim of the complainant that IOB Nagar Phase-3 project was shelved by the company. She further claimed that the registry wing of the Authority has been lacking in processing the complaint filed by the complainant and she claimed that incomplete complaint petition has been allowed to be processed. She cited errors in the complaint filed by the complainant. Learned counsel for the respondent submitted that if there was any violation of any rules or any provisions of the Real Estate (Regulation & Development) Act, 2016, then only the jurisdiction of the Authority comes into play, otherwise the complainant can take recourse of Section-88 of the Act because provisions of this Act was not in derogation of provisions of any other



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law time being in force. She claimed that the company has already paid a sum of Rs 11.50 lakh out of Rs 16 lakh to the complainant. She claimed that though the company would pay the balance amount but they were not liable to pay interest on the deposit made by the Petitioner and compensation. She further submitted that even though the agreement between the allottee and the promoter was not yet registered, still it was a valid contract and the Authority may consider the various clauses of the agreement with regard to completion of the project, payment schedule, process of refund and charges of cancellation before passing any order because the allottees who have booked their apartments were not lay persons but they have signed the agreement document with open eyes.

Hearing

5. In course of hearing on 19/12/2018, the complainant was represented by his brother Mr Sanjeev Ranjan Prasad while the respondent company was represented by Ms Manisha Singh. In his submission, the representative of the complainant reiterated their statement made in the complaint and stated that out of frustration due to non-start of the project, the Petitioner cancelled the booking and in spite of his best efforts, he has been able to get only Rs 11.50 lakh from the Respondent Company as against payment of Rs 18.40 lakh. He claimed that the Respondent Company has not yet paid Rs 6.90 lakh even after a year of his request.
6. Learned counsel for the respondent assured that the company would return the remaining amount to the complainant and on 11/01/2019,



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they would file the documents in support of payment. However, no such documents were submitted by the Respondent Company.

Issues for Consideration

7. There is no dispute on the facts of the case. The complainant's contention that they have made payment of Rs 18.40 lakhs to the developer, has been accepted by the Respondent Company. It is also accepted by both parties that Rs11.90 lakhs have been returned back to the Complainant. The next issue to consider is whether the project (Phase III) in which Petitioner had done the booking and paid more than 80 percent of the total estimated cost of the Apartment, was proceeding normally as per schedule or has been shelved mid-way or not taken off at all. The Petitioner has claimed that in March 2017, on his repeated enquiries about the progress of the project, he was informed that Phase III has been shelved and that his booking would be shifted to Phase- II. The discontinuance of the project was also not disputed or refuted by the learned counsel of the Respondent Company. Hence it is confirmed that the Phase III of IOB Nagar project of the Developer, in which the Petitioner had done the booking and made significant payment was shelved at the initial stage itself i.e. no plan/map of the project was prepared or approved by the competent authority. Further, the Developer had taken advance of more than 80 percent of the cost of apartment for uncertain and future events and did not either refund the deposit immediately back to the customer or offered to shift his booking to any other similar project. The Complainant has claimed that he waited for nearly six months for shifting of his booking to the Phase II but he didn't get any concrete



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information. In the last, he requested for cancellation of his booking in September 2017, which appeared to be a reasonable and logical course of action for any prudent person.

8. The contention of the Respondent Company that the complainant has no right to lodge any complaint under the Act before completion of the entire period of 42 months (including grace period of six months) during which the project was to be completed, is illogical, unconvincing, lacks merit and prudence as any prudent individual would like to see progress of the project during the course of its construction, particularly when he has already paid more than 80 percent of the estimated cost of the Apartment in the initial stage itself as down payment. The Phase III of IOB Nagar project was shelved ab initio before it could take off and the respondent Company did not take any action to transfer the booking in spite of reminders of the Complainant. It is therefore but natural that any investor would get jittery and anxious to save his hard-earned and precious money. The Bench found no merit in the contention of the respondent company as they had taken deposits/advances from the customers well in advance of requirement, without taking any initiative to undertake preliminary action like purchase of land, getting the fire clearance, approval of map etc. It is therefore felt that in the given background, the Complainant has acted in a reasonable way by withdrawing from the Phase III project of IOB Nagar.

Order

9. It is ordered that the respondent company should refund the balance amount of Rs 6.90 lakh along with interest at the rate of MCLR of the

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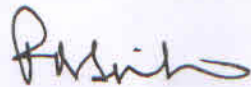


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State Bank of India applicable for loans of two years or more plus two percent as on the date of issue of this order. The payment should be made within 60 days of the issue of this order. It is also ordered that the Respondent Company should act responsibly in such situations in future and refund the booking amounts within shortest time period (not more than three months), once they decide to discontinue or abandon any project.




(R.B. Sinha) 30/1/2019
Member




(Dr S.K. Sinha) 30/01/2019
Member

Patna,
Dated the 30th January, 2019.