

REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR

Bench of R B Sinha and Dr S K Sinha, Members of RERA, Bihar

Complaint Case No. RERA/108/2018

Mr. Sachindra Mohan.....Complainant

Vs

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

Present:

For the Complainants:- In person

For the Respondent:- Ms Manisha Singh, Advocate

11/02/2019

O R D E R

1. Mr Sachindra Mohan, a resident of Flat No-305, Devendra Laxmi Palace, Managalam Colony, Patna has filed a complaint under Section 31 of the Real Estate (Regulation & Development) Act, 2016 on 29/10/2018 against M/s Agrani Homes Pvt Ltd through their MD Mr Alok Kumar for refund of the deposits made by him in the project Agrani Sampatchak Project, Patna along with due interest and penalty. In pursuance to the complaints received, a notice was issued to the respondent company to submit their response by 16/11/2018. The Respondent Company through their learned counsel Ms Manisha Singh, submitted the response to the Authority on 3rd December 2018. Thereafter, hearings were held on 25/1/2019 and 05/02/2019.

Complaint of the Petitioner

2. In his petition, the Petitioner has stated that he had booked a 1222 sqft Super Built up area 3BHK flat on 2nd floor in “Agrani at Sampatchak” project on 08th May, 2014 for a total consideration of Rs 8,24,720 (Rupees Eight lakhs twenty four thousand seven hundred twenty) which included service tax of Rs 24,720/-.

3. In the Memorandum of Undertaking (MoU) signed by the developer and the complainant, the developer had committed to complete the construction of the said building within an estimated period of 36 months with a relaxation period of six months after approval of the map by PMC.

4. He has also stated that he had paid Rs 6 lakhs including service tax of Rs 17,984 to the Respondent Company during May-November 2014, out of which the respondent company encashed Rs 5 lakhs only. As per payment schedule attached to the MoU, the final amount of Rs 2,24,720.00 including service tax of Rs 24,720/- was required to be paid at the time of possession of the said flat. However, the Petitioner claimed that at the request of the developer, he paid Rs two lakhs on 29th March 2017. The Petitioner has also submitted the copies of the cheques issued by him and receipts issued by the respondent company.

5. The complainant has stated that he came to know in late 2017 that the project “Agrani at Sampatchak” was shelved by the Respondent Company due to new Government regulations. Hence he requested the respondent company in December 2017 to refund the deposit made by him along with interest. He has stated that even after repeated requests, he has not been given his hard earned money in the last ten months.

Response of the Respondent Company

6. In response to the notice, learned counsel of the Respondent Company Ms Manisha Singh stated that the project “Agrani at Sampatchak” was conceived in 2014 and accordingly plots of land were purchased from the land-owners and for that an MoU was also signed. However, the project had to be abandoned by the promoter as the entire area fell within Green forest area under the new master plan of Patna. Hence, the Respondent Company could not proceed with the project.

7. She admitted that the Respondent Company had given detailed payment schedule for return of the money to the complainant but that was not adhered to, due to unavoidable circumstances. She assured that the company was bound to pay the entire amount within a period fixed by the Authority.

Hearing

8. In course of hearing on 25/01/2019, the complainant was represented by learned Counsel Mr Jairam Singh while the Respondent Company was represented by the learned counsel Ms Manisha Singh.

9. In his submission, the learned counsel for the complainant reiterated his statement made in his complaint and stated that due to non-commencement of the project even after passage of more than 3 years from the date of booking, he was forced to go for cancellation of the booking.

10. Learned counsel of the Respondent Company confirmed that the project at Sampatchak was shelved due to implementation of new Master plan for Patna. She was directed to submit a copy of the notification of

new Master plan for Patna on the next date of hearing. She however, committed that the respondent company would refund the principal amount at the earliest.

11. On the next date of hearing on 05/02/2019, the Respondent Company was represented by the Managing Director Mr Alok Kumar while the Complainant defended his case himself. The Respondent Company agreed to refund the principal amount of deposit immediately and accordingly gave three post-dated cheques amounting to rupees seven lakhs to the complainant.

Issues for consideration

12. There is no dispute on facts of the case. Both Complainant and the Respondent Company have admitted that they had entered into MoU for sale of an apartment to the complainant in the Project “Agrani at Sampatchak” of the Developer at the total consideration of Rs 8,24,720, out of which Rs 7.00 lakhs had been paid by the complainant. The Complainant paid Rs 5.00 lakhs in May-November 2014 and Rs 2.00 lakhs in March 2017.

13. It is also a matter of fact that as per MoU, the Developer was required to hand over the Apartments within 36 months (plus a grace period of 6 months) after approval of the map by the competent authority. However, the Developer has not yet submitted the map to the competent authority for approval. The contention of the learned counsel that the New Master Plan 2011-31 of Patna forced the company to shelve the project does not appear to be fully correct. The New Master plan for Patna was under consideration of the Government for several years and

was approved by the State Cabinet in October 2016 but the developer had not yet got the map of the Project approved during the intervening period of more than two years, let alone commencement of work until October 2016.

14. It is a matter of fact that the Developer made the booking for apartments in the Project in May 2014 without taking approval of the competent authority for the project like –fire clearance, Building Plan/Map approval etc. They had also demanded and taken part payment of Rs two lakhs in March 2017, well after the approval of the new master plan for Patna in October 2016, when it had already become evident that project would not be able to proceed. Further even when the Complainant requested for refund in December 2017, the Respondent Company did not return/refund the deposited amount in ten months period until October 2018. Further the Payment schedule given by the Respondent Company for refunding the deposited amount to the complainant during September-December 2018 was not also adhered to by the Company.

15. The Petitioner was not required to wait indefinitely for completion of the project, particularly, when they have paid more than 80 percent of the estimated cost at an early stage itself, based on the commitment of the developer. Further, the Respondent Company has not given any cogent and justifiable reasons for inordinate delay in filing the map for approval by the competent authority (May 2014-October 2016). Moreover, whenever complainants approached the developer, they were not given any correct information. Thus the complainant was forced to withdraw from the project, when he came to know that the project at the proposed

site would not come up. Further the Developer did not do anything to accommodate him in any other project. Even after the complainant requested for refund of the deposit, the Respondent company did not refund the deposit amount to the complainants. Therefore, the respondent company should be given deterrent punishment to prevent them from behaving in such irresponsible manner and exploiting the consumers.

Order

16. We therefore order the Respondent Company to pay interest at the MCLR of State Bank of India plus two percent from the date of deposit to the date of refund. The complainant should also be paid an additional percent of interest on the amount of deposit from the date of deposit to the date of refund for demanding part payment of Rs 2.00 lakhs in March 2017 when it had become clear that the project “Agrani at Sampatchak” would not come up due to restrictions in the new master plan of Patna approved in October 2016, the mental trauma and agony they suffered due to non-payment deposit as per payment schedule given by the Respondent company itself. The payment of interest should be made to the complainant within sixty days of issue of this order.

Sd
(R. B. Sinha)
Member
Patna,

Dated the 4thFebruary, 2019

Sd
(Dr S. K. Sinha)
Member