

REAL ESTATE REGULATORY AUTHORITY, BIHAR

Before Mr R.B.Sinha & Mr S.K. Sinha, Members of the Authority

Case Nos.CC/98/2018

Smt Sushma Devi.....Complainant

Vs

M/s Grih Vatika Pvt Ltd.....Respondent

Present: For the Complainant: In person

For the Respondent: Mr Durga Narayan, Advocate

Mr Mohit Raj, Advocate

22/10/2019

ORDER

1. Smt Sushma Devi, a resident of D/3/4, Param Jyoti Kunj, Purnendru Nagar, Khoja Imli, Phulwari Sharif, Patna-801505 has filed a complaint petition against M/s Grih Vatika Pvt Ltd, having its registered office at 26, A N Path, Boring Road, Patna under Section 31 of the Real Estate (Regulation & Development) Act, 2016 for refund of the principal amount paid by her for a 3BHK flat in the Project Urmila Vatika, along with due interest thereon.

Case of the Complainant:

2. The complainant in her petition has claimed that she had booked a 3 BHK flat of 1300 sq ft on the 5th floor of the project “Urmila Vatika” of M/s Grih Vatika Pvt Ltd, the respondent company at the total cost of Rs 21 lakhs. She claimed that she had paid the booking amount of Rs 3 lakhs through a cheque drawn on State Bank of India on 14/08/2015. In the agreement for sale executed on 26/10/15, the promoter had agreed to sell a 3 BHK flat No-501 in the project “Urmila Vatika” and admitted that the Petitioner had already paid the booking amount of Rs 5 lakhs including Service Tax to the developer as on the date. The developer had also

committed that the construction of the said building shall be completed by December, 2017. The terms and conditions also provided that if the buyer fails to clear all the dues along with interest @ 18% per annum within 60 days from the date of the consideration amount became due, the developer shall be entitled to cancel the allotment of the said flat. The complainant has also enclosed a copy of the agreement for sale along with the copies of money receipts of Rs 8.5 lakh she had paid to the respondent company between 14/08/2015 till 25/07/2017.

Response of the Respondent Company :

3. The respondent company however, did not furnish any response to the notice issued by this Authority on 11/10/2018 seeking their response within two weeks of receipt of the notice. As the project has already been registered with this Authority, another notice was issued to the respondent company on the address mentioned in their application for registration directing it to be present on 11/02/2019 for hearing.

Hearing :

4. Hearings were held on 11/02/2019, 26/03/2019, 04/04/2019, 18/06/2019, 11/07/2019 and 31/07/2019. In course of hearing on 06/03/2019, learned counsel of the respondent company Mr Durga Narayan admitted the delay in construction of the project and agreed to refund the deposit and hand over the cheques on the next date of hearing. On 04/04/2019 learned counsel of the respondent company handed over two cheques each worth Rs 1,75,000/- to the complainant in course of hearing and assured that the remaining amount would be transferred in two installments to the complainant's bank account through RTGS on 30/04/19 and 31/05/19.
5. On the next date of hearing, the complainant however, reported to the Bench that one of the cheques for Rs 1,75,000/- payable on 25/04/2019 got bounced. On direction from the Bench, learned counsel for the respondent company assured that the same amount would be transferred to the complainant by RTGS urgently and accordingly, it was confirmed that transfer of Rs 1.75 lakhs was done on 02/05/2019. The company also

transferred through NEFT Rs 1,00,000/- on 17/06/19. Thus, the respondent company in all refunded Rs 6.5 lakh to the complainant from April and June, 2019.

6. On the next date of hearing on 11/07/2019, learned counsel for the respondent company for the first time claimed before the Bench that they had paid the balance remaining amount of Rs 2 lakhs through bank transfer to the complainant in October, 2015 itself which was immediately refuted by the complainant. The complainant stated that Rs 2 lakhs paid by the company on 29/10/2015 was in respect of another transaction of purchase of land at Greater Noida from the complainant by the respondent company. They also produced the receipts and another NEFT transaction of Rs 1,00,000/- in the month of October-November, 15 to buttress their claim that the complainant had no reason to get refund from the company in October, 2015 as they had been paying their installments till July, 2017 for the apartments. She stated that only after getting frustrated over inordinate delay in the project, she requested for cancellation of their booking and refund of the money. Hence, the claim made by the respondent company that they have refunded Rs 2 lakhs in October, 2015 was erroneous, misleading and an fraudulent attempt to deprive the complainant.

Issues for Consideration :

7. There is no dispute on the fact that the complainant had entered into an agreement with the respondent company for purchase of a 3BHK apartment in “Urmila Vatika” and made booking after making payment of Rs 5 lakhs in August/October, 2015. Thereafter, an agreement for sale was executed on 26/10/2015 wherein it was confirmed by the developer that Rs 5 lakhs had already been paid by the complainant to them till then. The Complainant has also submitted the two money receipts for Rs 3.00 lakhs and Rs two lakhs dated 14th August 2015 and 7th October 2015 respectively issued by the respondent Company in this respect.
8. In course of hearing, it had been agreed initially by the respondent company that there was another transaction between the parties in which

sale of a plot of land at Greater Noida by the complainant to the respondent company for a total sum of Rs 5 lakhs was done. In this transaction, the consideration was paid in two installments (Rs 2 lakhs paid in cash and Rs 3 lakhs in two tranches through bank account/NEFT transaction). Therefore, it became evident that the complainant has paid Rs 8.5 lakh in all for the apartment in between 14/08/2015 and 25/07/2017 as follows :-

14/08/15	Rs 3,00,000/-
07/10/15	Rs 2,00,000/-
22/06/17	Rs 1,50,000/-
24/07/17	Rs 1,00,000/-
25/07/17	Rs 1,00,000/-
Total :	Rs 8,50,000/-

9. The Respondent company has given the details of refund made by them. They have stated that they have refunded Rs 6.5 lakhs in between April 2019 to July 2019. Besides they claimed that they paid Rs 2 lakhs in October 2015. The Bench accepts the contention of the respondent company in respect of refund of Rs 6.5 lakh from 11/04/2019 and 19/06/2019 which is also confirmed by the complainant. The claim of the respondent company for refund of Rs 2 lakhs on 29/10/15 is however rejected as there was no occasion for refund of the said amount in October 2015 as the agreement for sale of the 3 BHK flat was executed barely three days ago (26.10.2015).
10. The Complainant claimed that Rs 2 lakhs was given to her in respect of another transaction which the respondent company had entered with her regarding sale of plot of land by her. Further, there were additional payments made by the respondent company through NEFT and cash during October/November, 2015 to the complainant in the said transaction of land, which were however not mentioned by the respondent company. On query from the Bench on this count was not satisfactorily answered by the learned counsel of the respondent company Mr Mohit Raj. He gave evasive answer when asked by the Bench.

11. In course of hearing, the MD of the company had earlier admitted the second transaction of sale of land with the complainant. It also goes against the common sense as there was no reason for the complainant to seek refund of the deposit within three days of executing the agreement for sale. Had the complainant sought and received the part refund of the booking amount/deposits in October 2015, there was no reason for her to pay further Rs 3.50 lakhs in 2017 for purchase of the flat. Thus, the transaction of Rs 2 lakhs claimed to have been done by the respondent company on 29/10/2015 is not countable in this case.

Order :

12. Therefore, the Bench orders the respondent company to pay additional sum of Rs 2 lakhs to the complainant forthwith. Further, there was inordinate delay in completion of the project which was required to be completed by December, 2017. The project has still not been completed. Hence, the complainant is well within her rights to withdraw from the project. Hence, the respondent company is directed to pay the interest @ MCLR of SBI as applicable for more than three years plus 2% from the date of deposit to the date of refund. The part payment of principal amount of Rs 2 lakhs along with the interest is required to be paid to the Complainant by the Respondent Company within sixty days of this order.

Sd/-

(S.K. Sinha)
Member

Sd/-

(R.B. Sinha)
Member