

REAL ESTATE REGULATORY AUTHORITY, BIHAR
IN THE COURT OF SPECIAL PRESIDING OFFICER, RERA, BIHAR
RERA/CC/10/2023

Dhananjay Kumar **Complainant**

Vs
M/s Ashirvad Engicon Pvt. Ltd. **Respondent**

Project: IOB GALAXY

Present: **For the Complainant: In person**
For the Respondent: Mr. Ishtiyaque Hussain, Advocate

05.01.2026

O R D E R

Hearing taken up. Complainant is himself present. Mr. Ishtiyaque Hussain, learned counsel appears on behalf of the respondent.

2. The complainant has filed this case to direct the builder to give possession of the flat, as agreed in the Agreement for Sale executed on 22.03.2015, at the earliest as the complainant is living in a rental premises.

3. The complainant's case, in short, is that the complainant had booked a 3-BHK flat in the project "IOB Galaxy" which was proposed to be built by the builder Ashirwad Engicon Pvt. Ltd. by paying Rs.4,00,000/- on 31.12.2014 and subsequently, an Agreement for Sale was executed on 22.03.2015 between the complainant and the respondent. It was agreed to hand over the flat within five years. Later on, on 30.04.2015 the complainant had paid balance amount in full as per the agreement. Now the builder is denying to hand over the flat and ready flats are selling to other buyers.

4. On behalf of the respondent, a counter affidavit has been filed stating therein that the present case is not maintainable under the RERA Act as the RERA Act came into existence on 01st May, 2017 whereas the present Agreement for Sale is of 22.03.2015 and the respondent-Company have not taken the

approval of the map for the entire land. On 12.03.2015, the respondent-Company entered into an Agreement for Sale with the complainant to construct and deliver a flat measuring an area 1370 Sq.ft. consisting of 3-BHK in the proposed project “IOB Galaxy” situated at Mauza- Painal, Bihta, Patna. As per the agreement, total consideration amount of the flat in question was fixed at Rs.6,51,000/- to which the complainant claimed to have paid vide MR No.4236 dated 31.12.2014. The completion date of the apartment was fixed for five years with further six months’ grace period to hand over the building. The Company had have plan to construct 2200 flat in the aforesaid project after obtaining map approval, only 25% area have been constructed after passing the map etc. and from its profit, remaining lands have to be developed. On remaining part of the land, even map approval has not been done due to lack of money as well as hike of material price. Similarly, the total consideration amount of the flat is Rs.6,51,000/- only, whereas the total cost of construction of the flat is coming around Rs.25,00,000/- to Rs.30,00,000/- with finishing. Therefore, the Company is not able to fulfil the margin amount due to financial loss. The present project “IOB Galaxy” township apartment from one-time scheme, there are number of allottees who have booked their respective flats on CLP plan.

5. Admittedly, as per the Agreement for Sale, the complainant has paid Rs.6,51,000/- to the respondent, which has also not been disputed by the learned counsel for the respondent.

6. The respondent has filed an order of the Hon’ble Authority dated 04.09.2023 vide Complaint Case bearing No.RERA/CC/534/2022 (Deep Kumar Vs. M/s Ashirwad Engicon Pvt. Ltd.) to show that in similar nature of case, the Authority has ordered to pay principal amount along with interest as the Company was ready to refund the booking amount.

7. In this case also, the respondent has stated that he is ready to pay the principal amount paid by the complainant. So no question arises regarding maintainability.

8. After considering the aforesaid facts and circumstances, it appears that the respondent has clearly stated that he is not in a position to construct the aforesaid flat and to hand over the possession of the flat and is ready to refund the consideration amount which the complainant has paid.

9. As the respondent is not able to give the concerned flat, so in such a situation, considering the aforesaid order of the Hon'ble Authority dated 04.09.2023, in this case also it is justified to order for refund of the amount with interest.

10. Considering the facts and circumstances of this case and admission by the respondent that he is ready to refund the amount, the complainant is also entitled to get compensation as per the law prescribed.

11. So, the respondent-Company and its Director are directed to refund the principal amount of Rs.6,51,000/- (Six lakh fifty one thousand only) to the complainant along with interest within sixty days of the issue of this order. The rate of interest payable by the promoter shall be at 2% above the prevalent Prime Lending Rates of the State Bank of India on the date on which the amount becomes due till the date of payment.

12. The complainant is at liberty to press other claims, which are in the nature of compensation, before the Adjudicating Officer, RERA.

13. With the aforesaid observations and directions, this case is disposed of.

Sd/-

**(Vinod Kumar Tiwari)
Special Presiding Officer
RERA, Bihar**

