

**REAL ESTATE REGULATORY AUTHORITY, BIHAR,**

Before the Bench of Mr. Ved Prakash,

Special Presiding Officer

**RERA/CC/ 177/2023**

Sarangdhar Mishra .... Complainant

Vs.

M/s Swarndurga Buildcon Pvt. Ltd. .... Respondent

**PROJECT: AKHAURI ANNEX**

For the Complainant: Mr. Prakash Chandra, Advocate

For the Respondent: Mr. Tarun Sagar, Advocate

**11.03.2026**

**ORDER**

Learned counsel Mr. Prakash Chandra on behalf of the complainant and learned counsel Mr. Tarun Sagar on behalf of the respondent are present.

2. Learned counsel for the complainant submits that vide Agreement For Sale dated 23.12.2020 the complainant booked a 3 BHK Flat no.601 on 6<sup>th</sup> floor, having super built up area of 1279 sq. ft. and built up area 1023 sq. ft., along with covered Car Parking no.10 of 150 sq. ft. approx., on ground floor in the project “Akhauri Annex”, located at Kanhauli Bishnudutt, P.S. Mithanpura, District – Muzaffarpur, on consideration amount of Rs.38,09,100/-, out which the complainant made payment of Rs.37,45,000/-, details of which are incorporated in the reply filed on 23.07.2024 and the said claim is supported by the transaction statements of the Bank annexed with the said reply. He further submits that as per Agreement the respondents had to complete the construction and deliver the possession of the flat on 15.06.2020. He also submits that as per Clause 7.6 of the Agreement, in case of delay in delivery of possession of the flat the promoter is to pay interest at the rate prescribed in the Rule for every month of delay till handing over possession. He also submits that when the construction was not completed within the specified time, the complainant visited the office of the promoter and requested for completion of the project, handing over possession of the flat and execution of registered sale deed, but the promoter did not pay heed

to his request and, ultimately, the complainant sent a legal notice dated 11.04.2023 to

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the respondent, which was not responded, and thereafter the complainant again visited the site of the project and he came to know that his flat has been handed over to another person. Consequently, the complainant had no option but to approach the Authority by filing this complaint for a direction to the respondent to hand over possession of the flat and execute the sale deed in favour of the complainant. He also submits that the complainant is ready to make payment of remaining consideration amount as well as GST amount.

3. Learned counsel for the respondent submits that the out of the total consideration amount of Rs.38,09,100/- the complainant had made payment of Rs.29,46,428/- and Rs.3,53,572 as 12% GST amount and, thus, the complainant had made total payment of Rs.33,00,000/-. He further submits that the remaining amount was not paid by the complainant in spite of demand letters dated 01.04.2023, 20.04.2023 & 15.05.2023 respectively sent to him and also the complainant did not give response to these letters. He further submits that as per Clause 9.3 of the Agreement, the respondent sent a notice to the complainant dated 01.06.2023 informing about cancellation of the flat. Lastly, he submits that the respondent is ready to refund the amount of the complainant in installments within a period of one year.

4. Learned counsel for the complainant contradicts the submission regarding deduction of Rs.3,53,572/- as 12% GST out of the total amount of Rs.33,00,000/- because Clause 1.8(iii) of the Agreement does not whisper about deduction of 12% GST out of the payment of consideration amount by the complainant, rather it speaks that “the computation of the price of the apartment includes recovery of price of land, construction of not only the apartment but also the common areas, internal development charges, external development charges, taxes, cost of providing electric wiring etc”.

5(i). Having heard learned counsel for the parties and perused the record, the Bench observes that execution of the

Agreement For Sale dated 23.12.2020 between the parties regarding purchase of 3 BHK Flat no.601 on 6<sup>th</sup> floor, having super built up area of 1279 sq. ft. and built up area 1023 sq. ft., along with covered

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Car Parking no.10 in the project “Akhauri Annex ” on consideration amount of Rs.38,09,100/- is not under dispute. The Bench further observes that the claim of payment of Rs.37,45,000/- by the complainant as well as delivery of possession of the flat and execution of the sale deed by the respondent in favour of the complainant are the questions to be adjudicated.

(ii) As regards claim of payment of Rs.37,45,000/- by the complainant, the Bench on going through the record including the details of payment shown in the reply dated 23.07.2024 observes that the complainant made total payment of Rs.34,00,000/- which is supported by the documentary evidence and the rest amount of Rs.3,45,000/- does not find support from the documentary evidence. However, learned counsel of the respondent has also not disputed the payment of Rs.34,00,000/- to the respondent by the complainant.

(iii) The Bench also observes that the complainant, if so advised, may claim the amount of Rs.3,45,000/- against the respondent at an appropriate forum.

(iv) As regards delivery of possession of the flat and execution of the sale deed in favour of the complainant, the Bench observes that the respondent is liable to deliver possession of the flat and execution of the sale deed in favour of the complainant because of the fact the respondent cannot deny the fact that as per the Agreement, the flat was to be delivered in the year, 2020, which was not honoured by the respondent. Further, the respondent also cannot deny the fact that even though major part of the consideration amount was paid by the complainant by December, 2020 but the respondent failed in delivering possession of the flat within the specified time. The Bench further observes that the respondent fails in bringing any record to show that the respondent had followed the time schedule towards completing the

project and handing over possession of the flat, whereas Clause -5 of the Agreement very specifically says that “the promoter shall abide by the time schedule for completing the project as disclosed at the time of registration” but the said clause has not been followed by the respondent. As such the cancellation of allotment of the flat of the complainant by the

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respondent is unreasonable in the eye of law and, accordingly, cancellation of the flat by the respondent is set aside.

6. Taking into consideration the facts and circumstances of the case and the observations made above, the Bench directs the respondent – company and its Director Mr. Anil Kumar Pansari to deliver possession of Flat no.601 on 6<sup>th</sup> floor, having super built up area of 1279 sq. ft. and built up area 1023 sq. ft., along with covered Car Parking no.10 in the project “Akhauri Annex” and execute registered sale deed in favour of the complainant after completing all legal formalities as early as possible preferably within two months of this order. The complainant is also directed to make payment of remaining consideration amount along with interest at 2% above marginal cost of the lending rate (MCLR) of the State Bank of India to the respondent from the date the amount became due till the date of payment along with GST amount @ 5% after handing over delivery of possession of the flat and before execution of the Sale Deed by the respondent in favour of the complainant.

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

Sd/-

**(Ved Prakash)**

Special Presiding Officer, RERA, Bihar.