

REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR
Before the Single Bench of Mrs. Nupur Banerjee, Member

Case No: RERA/CC/19/2023

Rupesh Diwakar

...Complainant

Vs.

M/s Ashirwad Engicon Pvt. Ltd.

...Respondent

Project: IOB Galaxy

20/06/2024

ORDER

The matter was last heard on 18.03.2024 and was fixed for orders on 21.05.2024. However, due to pre-occupation of the Bench in other matter, order could not be pronounced on the date fixed. On that date, None appeared on behalf of the complainant. Mr. Ishtiyaque Hussain, Advocate appeared on behalf of the respondent.

In this case, the complainant has prayed for a direction to the respondent to allot a flat as soon as possible which was booked by him and for which entire cost was already deposited and till that time penalty of Rs.50,000/- per month may be imposed.

In short, the case of the complainant is that the complainant had booked a flat in the project 'IOB Galaxy' in the year 2015 and the full amount of the cost of flat being Rs.6.51 lakh was paid to the builder through Bank transfer to the builder's account. The builder has issued a money receipt dated 12.05.2015 for Rs.1.01 lakh only. Thereafter, an agreement for sale was also executed by the builder dated 12.05.2015 in his favour.

The complainant has placed on record the copy of the Agreement for Sale and the money receipt.

A counter affidavit has been filed on behalf of the respondent stating therein that the present case is not maintainable under the RERA Act because RERA came into existence on 1st May, 2017 where the present agreement for sale was entered into much prior i.e. in the year 2015 and the respondent company have not taken the map approval for the entire land. It is stated that in the year 2014 the respondent company had entered into an agreement for sale with the complainant to construct and deliver a 3-BHK flat measuring an area of 1370 sq.ft. in the proposed project IOB Galaxy for a total consideration of Rs.6.52 lakh which the complainant claimed to have been paid. As per para-10 of the agreement, the completion date of the apartment was fixed for five years with a grace period of six months. It is further stated that there are two types of allottees, one is under CLP Plan and another is of under one-time scheme and therefore, the allottee who have booked their respective flat on CLP Plan, the construction is still underway, whereas the construction of the flat of the allottees who have booked under one-time scheme had to be proceed in second phase after completion of the flats booked under construction linked plan. It is also stated that the total consideration of the flat is Rs.6.52 lakh whereas total cost of construction of flat is coming around 25 to 30 lakh with finishing, therefore, the company is not able to fulfil the margin amount due to

financial loss as well as material price hike. This Hon'ble court considering the above facts has already directed the respondent company to refund the booking amount along with interest vide order on 04.09.2023 in Complaint Case No.534/2022. In this circumstance, the company is ready to refund the entire booking amount provided the complainant sent a cancellation letter to the respondent. He has also annexed a copy of the ledger of account of Rs.6.52 lakh and the order dated 04.09.2023 passed in Complaint Case No.534/2022.

On 18.03.2024 learned counsel for the respondent submitted that as because the project is not in a stage to be completed, the respondent is ready to refund the amount with interest. On similar facts and circumstances the Authority has directed the respondent company to refund the principal amount along with interest to the complainant vide order dated 04.09.2023 in Complaint Case No. 534/2022.

Having heard learned counsel for the respondent and perused the records, the Authority observes that the respondent did not honour the commitment made to the complainant in handing over the flat as per the agreement for sale. However, the respondent is ready to refund the amount.

In view of the order passed in similar circumstance in the aforesaid complaint case and the documents placed on records and considering that the respondent has taken the economic benefit of the amount paid by the complainant in lieu of booking of the alleged flat, the Bench hereby directs the respondent company and its Directors to refund the principal amount of Rs.6.51 lakh to the complainant along with interest at the rate of marginal cost of fund-based lending rate (MCLR) of State Bank of India as applicable for three years plus 2% interest from the date of booking till the date of refund within sixty days of issue of this order.

The complainant is at liberty to press other claims, if any, which are in the nature of compensation before the Adjudicating Officer, RERA as per provisions of the Act.

With these directions and observations, the matter is disposed of.

Sd/-

Nupur Banerjee
Member