

**REAL ESTATE REGULATORY AUTHORITY, BIHAR
IN THE COURT OF SPECIAL PRESIDING OFFICER, RERA, BIHAR**

RERA/CC/101/2022

Rajesh Kumar ----- Complainant

v.

M/s Neel Kantha Solution Pvt. Ltd. & Ors. ----- Respondent

PROJECT : NEEL KANTHA DINESH

10/06/2026

ORDER

The complainant has filed this case to direct the respondent to handover possession of the flat with full amenities and car parking and also to execute absolute sale deed.

2. The complainant's case in brief is that the complainant has booked flat in the proposed project of the respondent for the total consideration amount of Rs. 24,59,000/- for which a deed of agreement was executed on 03.12.2013 and at the time of booking he paid Rs. 3,51,000/-. He has paid total amount of Rs. 17,01,000/- and he is ready to pay the remaining amount of Rs. 7,58,000/- at the time of executing the sale deed. The respondent assured to start the work and deliver the possession within 36 months, but the respondent never gave any satisfactory reply even after repeated requests to handover possession of the said flat and to execute Absolute Sale Deed. The respondent had sufficient time to complete the project and handover possession, since the project was launched much earlier around the year 2014-15. The complainant had paid the said amount more than eight years ago from his hard earned money and also from taking loan from the Bank.

3. The respondent has appeared and filed a written statement stating therein that this case is fit to be dismissed as this case is not

maintainable either in law or in fact and it has been cooked up and manufactured. The present case is hit by the principles of estoppel, waiver and acquiescence and barred by limitation. The complainant and his wife had entered into an agreement to sale with M/s Neel Kantha Solution Private Limited on 03.12.2023 for sale of Flat No. 106, 1st Floor, along with reserved car parking for consideration of Rs. 24,59,000/-. The complainant made payment of Rs. 3,50,000/- as booking amount and made a total payment of Rs. 13,50,000/- including booking amount to the respondent company. The complainant namely Rajesh Kumar, Advocate, was looking after the sale Tax and VAT work from 2006 onwards of A.R. Software a proprietary firm of Ashok Kumar, who is also the Managing Director of M/s Neelkantha Solutions Pvt. Ltd. which was incorporated on 28.03.2012. In this way they are known to each other from several years. M/s Neelkantha Solution Private Ltd. had got into Development Agreement dated 05.10.2012 with the landowner namely Nirmala Devi and thereafter complainant and the respondent entered into an agreement to sale dated 03.12.2013. It was agreed between the parties that the respondents will hand over the constructed flat within three years from the date of the aforesaid agreement to sale, but the complainant could not keep patience for the agreed term and filed the complaint case No. 2881(C) 2015 (Alka Verma Vs. M/s Neelkantha Solution Pvt. Ltd.) in haste on 12.08.2015 itself i.e. after elapse of just one year nine months only. In other words, much before arising of the cause of action. That complaint case was filed against the accused persons with a prayer for institution of F.I.R. and investigation against the accused persons under section 156(3) of Cr. P.C. and accordingly, the learned C.J.M., Patna had sent the complaint petition for lodging F.I.R. and conducting the investigation and it was lodged as Rajiv Nagar P.S. Case No. 222/ 2015 against the respondent and his family members including his wife and

younger brother who was a student and had no connection with the entire matter. The complaint case was filed by Alka Verma wife of Rajesh Kumar the complainant of this case and this complaint case before the Authority has been filed by the husband of Alka Verma i.e. Rajesh Kumar. The flat of the complainant was possible to be completed and handed over to the complainant but due to a general order in PIL matter of the Hon'ble Patna High Court in CWJC No. 8152 of 2013 vide order dated 10.05.2013 all construction work was stopped till the enquiry is completed. Eventually the respondent company had to stop the construction work. During the pendency of the aforesaid Rajeev Nagar P.S. Case No. 222/2015 the respondents were compelled to be hiding around which caused even more delay in the completion of the project of the respondents. The complainant even after lodging the FIR did not sit back and opposed the bail application of the respondent and his family members and also visited several times at the site of the respondent along with his friends and forcefully entered the premises and created different types of nuisance which created hindrance in the smooth progress of the project even in the presence of the intended buyer, who is used to visit the said site for the purpose of buying flat. As per agreement to sale dated 03.12.2013, paragraph- 2 at page no. 7, the complainant has to pay consideration amount as per payment schedule and if the complainant does not comply, the seller can cancel the allotment of the flat and return the amount to the buyer after deducting 2% from the booking amount. The complainant did not make payment of the consideration amount of the flat as per the payment schedule mentioned in page no. 8 of the agreement to sale dated 03.12.2013 and accordingly the respondent sent a notice dated 31.05.2016 to the complainant demanding for up to date payment of the consideration amount of the flat, but the complainant paid no heed to either make up to date of payment of the consideration amount

or to give reply of the notice of the respondent. The respondent on various dates of the Rajiv Nagar P.S. Case No. 222/2015 made verbal requests to the complainant to make payment of the consideration amount of the flat as per payment schedule before cancellation of his sale deed dated 03.12.2013, but in vain. The respondents again sent a notice dated 02.05.2018 requesting for payment of the consideration amount of the flat or else the agreement to sale shall be terminated and the booking shall be cancelled but the complainant again did not pay any heed to respond to the notice of the respondent. Thereafter, as per the terms of the agreement to sale dated 03.12.2013, the respondents vide notice dated 21.05.2018 terminated the agreement to sale dated 03.12.2013 and accordingly cancelled booking of the aforesaid flat due to non-performance of the agreement on the part of the complainant. The cancellation/termination of the agreement to sale was made on 21.05.1918 and after elapse of more than 6.5 years from the stipulated date of possession of the flat i.e. 01.12.2016 as per the agreement to sale dated 03.12.2013. The complainant never made any demand either for giving possession of the flat or refund of money before the respondent and have directly filed the present complaint case against the respondent before this Authority for possession of the concerned flat. The complainant has not filed any money suit or any other civil suit for recovery of the money from the present respondents, but instead they have preferred criminal case against the respondents, which is punitive in nature. The complainant has made a total payment of Rs. 13,50,000/- only to the respondent which is also supported by Bank statement and money receipt. The documents filed by complainant are forged and manufactured documents only with a view to mislead this court for illegal gain. The aforesaid documents haveneither the signature of respondent nor the letter head belongs to the respondent and those documents are forged and fabricated documents hence, require

forensic testing. The respondents are filing a separate petition for the same. The complainant is alleging to have made payment of Rs.17,01,000/- to the respondent and has stated that only Rs. 7,58,000/- is left for him to be paid but the complainant's wife Mrs. Alka Verma in para 17 of her rejoinder dated 16.12.2019 to discharge petition dated 13.03.2019 in Raiv Nagar P.S. Case No. 222 of 2015 has stated that she has given Rs. 15,50,000/- to the respondents and was always ready to give the remaining Rs. 11,00,000/- to the respondents. The total consideration amount was Rs. 24,59,000/- but as per this statement she has made payment of Rs. 24,59,000- 11,00,000/ = Rs. 13.59,000/- and this statement itself falsify the statement of the complainant. The complainant was very well aware of the cancellation of the sale deed dated 03.12.2013. The complainant had to pay the expenses of registration, stamp duty and the respondents had no concern with it. The respondents are taking advise for filing of appropriate civil as well as criminal case against the complainant before appropriate forum as well as Bar council of India for manufacturing forged documents and using forged signature of the respondent in view of the fact that the complainant is himself an advocate and is very well aware of the lawful systems, processes and methods of the court. The complainant case is time barred and is fit to be dismissed on this score alone. The complainant has caused harassment, mental agony and also huge financial loss to the respondents in terms of litigation costs and on this score alone this case is fit to be dismissed.

4. Heard Shri Zeeshan Khan, learned counsel for the complainant and Shri Mohit Raj, learned counsel for the respondent. Perused the case record. The learned counsel for the complainant argued that a same type of case was filed against the respondent by another complainant and as

such same type of order dated 01.07.2024 may be passed against these respondents. After perusal of order dated 01.07.2024 it appears that the fact of the case in RERA/CC/84/2022 is different than of this case and in that case there was no any objection regarding payment of consideration money, whereas in the present case, the payment of part of the consideration money has been disputed stating therein that the payment made by the complainant is not true and document has been manufactured and they are forged documents. Moreover, that order is dated 01.07.2024, whereas about two years after the situation has been changed.

5. As per agreement of sale, it was executed on 03.12.2013 and work was to be completed within three years. As per agreement dated 03.12.2013 the agreement was executed between the respondent and complainant along with his wife. It also appears crystal clear that the wife of the complainant has filed a complaint case before the Chief Judicial Magistrate under sections 406 and 420 of the Indian Penal Code in which the FIR has been lodged against the respondent of this case along with his family members. The complaint case has been filed by the wife of the complainant of this case. It appears that the parties of the agreement of sale as purchaser are two persons husband and wife. Complainant himself filed case in RERA whereas his wife filed a case in civil court for lodging FIR. Filing of the complaint case under sections 406 and 420 I.P.C. itself clears that he was not interested in proposed flat, rather interested for his money only. As per respondent, due to non-payment of consideration money as per schedule mentioned in the agreement of sale, he has cancelled the agreement of sale, whereas as per complainant he has paid the consideration amount but the payment of consideration amount has been disputed. This court has to decide the case as a summary trial and the

concerned document, which has been produced by the complainant, is said to be a forged and manufactured document and it cannot be decided in a trial, which is in nature of summary trial and this type of matter can be decided by only the court of competent jurisdiction having such power to decide the document is forged or not. Unless and until it is decided how much consideration money is really given by the complainant to the respondent and also document is a forged document or genuine document, this court cannot decide the matter.

6. A separate petition has been filed by the respondent to make forensic enquiry of the concerned document, which has been filed by the complainant. This Court has no jurisdiction to make any forensic enquiry as it can only be made in a competent court not before this court who has jurisdiction of summary trial.

7. Considering the aforesaid facts and circumstances, it appears that this Court cannot decide the matter, which is jurisdiction of having summary trial and as such it is not maintainable here. Under the facts and circumstances, this case is dismissed with a liberty to both the parties to approach the appropriate Forum/ Court to decide the matter for the said reliefs.

Sd/-

(Vinod Kumar Tiwari)
Special Presiding Officer
RERA, Bihar