

REAL ESTATE REGULATORY AUTHORITY, BIHAR

Telephone Bhavan, Patel Nagar, Patna-800023.

Before the Bench of Mrs. Nupur Banerjee, Member

Complaint Case No. RERA/CC/325/2019

Vishwajeet.....Complainant

Vs

M/s Maa Narayani Bhagwati Developers Pvt. Ltd.....Respondent

Project: Vasundhara Villa Enclave

For Complainant: Mr. Vishal Rana, Advocate

For Respondent: Mr. Rakesh Roshan, Advocate

13/04/2022

ORDER

The complainant Vishwajeet, a resident of Ara Garden Residency, Bailey Road, Patna has filed complaint petition against the respondent company M/s Maa Narayan Bhagwati Developers Pvt. Ltd. for the refund of the deposited money with interest.

Case of the Complainant:

The complainant in his petition dated 02/04/2019 has submitted that he booked a 3 BHK flat on 19/08/2010 in the project named "Vasundhara Villa Enclave" situated at Doctors' Colony, Kankarbagh, Patna and his father paid Rs.42 lakh to the respondent company. He further submitted that as per the agreement, the flat was to be handed over in December, 2011. After the death of his father, he entered into a new agreement with the respondent company on 25/12/2013 according to which the flat was to be handed over by March, 2014 failing which the respondent will return the entire amount of Rs. 42 lakh along with interest from December, 2013 till the final payment. He further states that the respondent has not yet given possession of the booked flat and he is living in a rented house paying Rs 21,000/- per month due to which he is suffering from mental trauma. He prays for

refund of the entire deposited amount with 18% interest thereon and compensation for mental harassment.

The complainant has placed on record money receipts dated 18-02-2021 for Rs.7 lakh, dated 08-02-13 for Rs.4 lakh, dated 19-08-2010 for Rs.5 lakh, dated 28-09-12 for Rs.7 lakh & dated 30-09-2011 for Rs.5 lakh, totaling to Rs.28 lakh. Further, the complainant has placed on record account statement summary of ICICI Bank, for the period between 01-07-2010 to 01-10-2010, issued by Shahi Bhawan, Exhibition Road Branch, mentioning total amount Paid to respondent company is Rs.13.49 lakh. He also placed a payment chart in which it is mentioned that Rs.51,000/- has been paid in cash to respondent. Complainant has also placed on record Agreement for Sale dated 19-08-2020 & dated 25-12-2013.

Notices dated 02/05/2019 was sent to the respondent company under Section 03, 12, 18 & 19 of the Real Estate (Regulation & Development) Act, 2016 and Rule 36 of the Bihar Real Estate (Regulation & Development) Rules 2017 was sent to the respondent company to file their reply by 15/05/2019.

Reply of the Respondent Company:

The respondent company, in its reply dated 15/05/2019 submitted that an agreement was signed on 19/08/2010 between the MD of the respondent company and Mr Shankar Prasad (father of the complainant) for a 3 BHK flat on a consideration money of Rs 56 lakh out of which the complainant had actually paid Rs 23 lakh. The respondent company admits that according to the agreement for sale, construction was to be completed by December, 2011 but by order of the Bihar Housing Board Authority, construction and development work in the project was stopped due to non-payment of loan by the bank and the delay occurred due to technical issues. They denied that any agreement was signed between the complainant and M.D. of the respondent company and if it is produced, it is forged and fabricated. Moreover, the money receipt of Rs.5 lakh dated 30/09/2011 produced by the complainant is false, forged and fabricated one. The respondent company further submitted that by way of misadventures, the complainant is trying to put pressure

on the respondent. They further submitted that they are ready to hand over possession of the flat as soon as the project is completed provided the rest amount is paid by the complainant.

The complainant has filed his rejoinder in which he mentioned that they had paid Rs. 42 lakhs to the respondent all the payments have been made through cheques for which bank statement has been filed and only Rs 51,000/- has been paid in cash. The respondent issued money receipt of Rs 23 lakh only and for the rest Rs 19 lakh, he endorsed the said money in the back of the first page of the agreement with cheque number and bank details. As regards agreement, the complainant submitted that on 25/12/2013 he entered into a complimentary agreement with MD of the respondent company in which he stated that he has received Rs.42 lakh on behalf of the first agreement and also agreed to refund the principal amount of Rs.42 lakhs along with interest of 18% per annum since December, 2011.

Hearing:

Hearings were held on 13/01/2020, 20/01/2020, 21/01/2020, 19/02/2020, 17/09/2020, 15/10/2020, 12/03/2021, 09/12/2021 and 31-01-2022.

On 17/09/2021 the complainant submitted that the bank statement shows that Rs 42 lakh has been paid to the respondent through cheques.

Learned counsel of the respondent company assured to refund the money to the complainant as soon as possible.

The Bench directed the respondent to refund the money with interest.

On 15/10/2020 the complainant submitted that he has not got any money from the respondent, to which learned counsel of the respondent company prayed for time and assured that the respondent intends to make refund.

The Bench directed the respondent to pay at least Rs 10 lakhs out of Rs 42 lakh by 04/11/2020.

On 12/03/2020 learned counsel of the respondent company submitted that the respondent is not adhering to his advice and not complying the order of the Bench and trying to linger the matter. He requested the Bench to pass interim order and accordingly the Bench passed Interim Order keeping in view the approach, conduct and continuing the construction work without registration of the project with the Authority under Section 36 read with Section 34(f) and Section 37 of the Real Estate (Regulation & Development) Act 2016, and directed that until further orders, all bank accounts of the respondent company M/s Maa Narayani Bhagwati Developers Pvt Ltd and their two Directors namely; Alok Kumar Poddar and Santosh Kumar Poddar shall be frozen with immediate effect and the IG (Registration) was also requested to issue necessary directions to all DSRs/Sub Registrars including Patna/Phulwari Sharif/Danapur not to register any apartment/plot of the project "Vasundhara Villa Enclave" and any other project of the respondent company.

On 09/12/2021 learned counsel of the complainant reiterated his demand for refund of Rs. 42 lakh with interest.

The Bench giving last opportunity to the respondent to be present on the next date of hearing, failing which the Bench will pass order on the basis of material available on record.

During the last hearing on 31-01-2022, learned counsel of the complainant has submitted that Rs. 42 lakh was paid to the respondent company in 2011 and the flat was to be given in 2011 itself but the same has not yet been given.

Respondent was absent during the last hearing

After considering the documents filed and submissions made, the Bench hereby directs the respondent company and their Directors to refund the principal amount of Rs.42 lakh (Forty Two Lakh) to the complainant along with interest at the rate of marginal cost of fund based lending rates (MCLR) of State Bank of India plus two percent as applicable for three years from the date

of deposit to the date of refund within sixty days of issue of this order.

So far the issue of compensation is concerned, the complainant is at liberty to press claim before the court of A.O.

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

Sd/-

Nupur Banerjee
Member