

REAL ESTATE REGULATORY AUTHORITY, BIHAR  
Before the Bench of Mr. Ved Prakash,  
Special Presiding Officer

**RERA/CC/500/2024**

Sumit Kumar

....Complainant(s)

Vs

M/s Ashirwad Engicon Pvt. Ltd.  
PROJECT- IOB Galaxy

....Respondent

For the complainant:  
For the respondent :

Mr. Amit Upadhaya (Adv.)  
Mr. Ishtiyaque Hussain (Adv.)

**09.01.2026**

**O R D E R**

The complainant has filed the present case against the respondent for delivery of possession of 3 BHK Deluxe Flat in the project, I.O.B. Galaxy.

2. Learned counsel for complainant submits that on 10.03.2015, an agreement for sale between the complainant and the respondent company through its Director, Shri Ajay Singh was executed for delivery of possession of 3 BHK Deluxe Flat, having carpet area of 950 sq. ft. and super built-up area of 1370 sq. ft along with necessary amenities like Generator, Transformer, Intercom and covered car parking, on total consideration of Rs. 6,51,000/-, excluding service tax. The respondent promoter was obliged to deliver said flat within five years after approval of the map from the competent authority with a grace period of six months The learned counsel has attached deed of agreement for sale executed between the parties as Annexure to the petition. He has also filed copy of bank statement against the payments of consideration of Rs. 6,51,000/- along with money receipt of Rs. 21,316/- paid to the respondent against service tax. Learned counsel further submits that the complainant got information from the local people that the respondent has constructed the flats and sold most of them at market price and earned huge money, but the respondent is neither making delivery of said flat to the complainant nor is he making payments of compensation.

3. Learned counsel for complainant further submits that the respondent used to make false assurances to the complainant that they will deliver possession of flat in the project booked by him. He further submits that the respondent was under obligation to deliver possession of an alternate flat in the project to the complainant, but instead of doing that, the respondent is now willing to refund the principal amount and finally refused to deliver possession of flat in the said project. Hence the complaint.

4. Learned counsel for respondent opposes and by filing the counter reply submits that the present complaint case is not maintainable in the eye of law as the agreement for sale was executed on 10.03.2015, whereas RERA Act has come into force with effect from 01.05.2017. He further submits that admittedly, an agreement for sale was executed between the parties on 10.03.2015 to construct the building and deliver 3 BHK Duplex flat, measuring an area of 1370 sq.ft in the proposed project, I.O.B. Galaxy situated in Mauza- Painal, Bihta, Patna. He further submits that the complainant has paid consideration amount of Rs 6,51,000/- and Rs. 21,316/- as the service tax, totaling to Rs. 6,72,316/- and the project was to be completed within five years with a grace period of six month. The learned counsel submits that under the given situation, the respondent was not in a position to construct 3 BHK flat having an area of 1370 sq.ft merely on the price of 6,51,000/- as against this, the cost of such flat was calculated to be around Rs. 20 to 25 lakhs. Hence, the flat meant for the present complainant and others could not be constructed and as such, the plan was dropped. He further added that the respondent has never sold flat to other allottees, which were to be constructed for the complainant and similarly placed other allottees, rather the flats which were constructed under CLP plan were sold to the prospective buyers. Learned counsel further submits that one time payment scheme with respect to the flat got failed due to escalating prices of materials being used in the construction of building as well as disputes with the landowner with respect to the project land. Hence, the respondent dropped the plan of development of said project. The respondent is ready to refund the principal amount to the complainant. He further submits that since in the above facts and

circumstances the respondent is not in a position to deliver flat to the complainant as per agreement for sale.

5. Learned counsel further submits that the construction of the project, IOB Galaxy had to proceed in two phases i.e one under CLP plan (Construction Link Plan) in which the allottees have booked the flat either through loan or by self payment in construction of Phase -I, which is still under construction and flats which fall in the share of respondent company have already been sold/registered agreement for sale has been executed.

6. Learned counsel further submits that the flats of those allottees had to be constructed in second phase, who have booked their respective flat under one time scheme on total consideration of Rs. 6,51,000/-, but the construction of said second phase could not be launched due to some litigation with landowner and as such, the respondent company finally dropped the construction of said second phase flats. Further on remaining part of land even map approval had not been done due to above reasons.

7. Heard learned counsels for the parties and perused the record.

8. Admittedly, the registered agreement for sale between both the parties was executed on 10.03.2015 and the complainant had agreed to get the said residential unit consisting of 3 BHK Deluxe flat from the builder, having the carpet area of nearly 950 sq.ft and super built-up area of nearly 1370 sq.ft along with amenities like Lift, Generator, Transformer, Intercom and covered car parking space on consideration of Rs. 6,51,000/- with additional service tax on the above amount from the builder. As per the agreement, the respondent was under obligation to deliver the completed flat to the complainant within five years from the date of approval of building construction plan by the competent authority with a grace period of six months. It is also the admitted case that the complainant has paid the total consideration amount of Rs. 6,51,000/- to the respondent promoter under one time payment scheme.

9. Learned counsel for the respondent submits that firstly due to land disputes with the landowner of the project, IOB Galaxy, the respondent decided to drop the development of the project and finally dropped the construction of said second phase of flats, which were booked under one

time payment scheme and for remaining part of land, even map approval has not been done.

10. Learned counsel for complainant could not produce any evidence on the second phase to show that respondent has wrongly submitted on land dispute with the land owner and the map was approved with respect to the second phase of the project IOB Galaxy. In this respect, the onus lies on the complainant to file approved map to disapprove the claim of the respondent, but except the demand of flat, he did nothing. Hence, the defence of the learned counsel for respondent appears reasonable and acceptable.

11. Learned counsel for the respondent submits that due to escalating price of materials being used in the building, the respondent has dropped the plan of construction of the project, as the cost of each flat was coming to the tune of Rs. 20 to 25 lakh. The Bench observes that it is a serious lapse/fault on the part of the respondent company to make a wrong assessment of cost of the flat, as the escalation of price for building material is very imminent. It is always on increase/decrease. It is never stable. So, keeping this trend in mind, the respondent should have fixed the consideration amount.

12. On the other side also, learned counsel for complainant could not produce any evidence on record which might show that the respondent company had constructed the flat of the project, which were meant for the complainant and other similarly situated allottees and have been sold on higher prices as the onus lies on the complainant to prove these facts and the learned counsel for respondent has very clearly submitted that the respondent has not sold the flats, which were to be constructed for the complainant and others. Learned counsel for respondent further submits that the respondent has sold only those flats which were constructed under CLP plan, which might be a different plan, in which neither the complainant has invested nor the respondent has accepted money. Hence, the allegation of the complainant that the respondent, after construction of flat(s) meant for the complainant and others have sold on higher price, has no leg to stand as mere allegation is not sufficient, rather the same has to be proved with evidence like sale deed(s) etc.

13. The respondent has frankly admitted that he has received the consideration money of Rs. 6,51,000/- from the complainant for construction of flats in the above project along with service tax of Rs. 21,316/-, but due to escalation of cost of materials as well as disputes with the landowner over the project land, , he could not construct the building and hence dropped the idea. The Bench observes that since the respondent has dropped the programme to construct the building, how he can be in a position to deliver flat to the complainant. Therefore, respondent cannot be forced to deliver flat to the complainant. Accordingly, the relief of the complainant against the respondent to deliver residential unit consisting of 3 BHK Deluxe flat having carpet area of nearly 950 sq.ft and super built-up area of nearly 1370 sq.ft along with amenities is hereby rejected, but in such facts and circumstances of the case, the complainant is entitled to get refund of the principal amount along with interest without deduction.

14. Hence, the respondent company through its Director, Shri Ajay Singh is directed to refund the principal amount of Rs. 6,51,000/- plus Rs. 21,316/- as service tax amount to the complainant along with interest @ 2 per cent above MCLR of State Bank of India since the date of payment till the date of refund, within 60 days, failing which the respondent shall be liable to pay penalty under the provisions of section 63 of RERA Act, 2016.

15. The complainant, if so advised, may press other relief(s), if any, which are in the nature of compensation before the Adjudicating Officer, RERA, Bihar.

With the above observation and directions, the matter is disposed of.

**Sd/-**  
**( Ved Prakash )**  
Special Presiding Officer