

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

Case No: RERA/CC/525/2022

Manju Chaudhary

...Complainant

Vs.

M/s Swapn Vihar Pvt. Ltd.

...Respondent

Project: Sai Vihar

12/06/2024

ORDER

The matter was last heard on 09.04.2024, when Mr. Punit Sidhartha, learned counsel for the complainant was present and Mr. Sunil Kumar Singh, learned counsel for the respondent was also absent.

The complainant has prayed for the following reliefs:

- (i) The termination notice dated 16.08.2022 issued by M/s Swapn Vihar Pvt. Ltd. To Manju Chaudhary by way of which her allotment of Flat No. 405 (in Sai Vihar) has been terminated be set aside.
- (ii) The respondent be directed to receive the remaining consideration amount of Rs.23.00 lakh and get the sale deed of 405 in Sai Vihar executed in favour of the complainant.
- (iii) The respondent be directed to abide by all the terms and conditions as mentioned in agreement dated 12.03.2021 executed between the complainant and the respondent.

In short, the case of the complainant is that the complainant had booked a flat bearing Flat No.405 on 4th floor having an area of 1382 sq.ft. in the proposed project Sai Vihar. The said flat was booked by the complainant by virtue of Agreement to Sale dated 12.03.2021 entered by the Director of the Company. It is stated that as per Clause 1.2 of the Agreement to Sale the total price of the said flat including reserved car parking was Rs.41.00 lakh. As per Clause-7 of the Agreement to Sale, the respondent had agreed to construct and give possession of the flat with all amenities by May, 2023 along with a grace period of six months. The complainant out of the said consideration has paid Rs.18.00 through different modes. It is stated that the respondent served upon the complainant the show cause notice dated 06.06.2022 and 23.06.2022 and ultimately the termination letter dated 16.08.2022 wherein the respondent had demanded to make further payments towards the consideration of the flat even though the respondent could have withdrawn the balance amount of Rs.9.00 lakh from the loan amount which shows mala fide intention of the respondent to declare him as defaulter and frivolously terminate the allotment of the said flat. Thereafter the complainant sent a legal notice dated 16.09.2022 to the respondent but the same was returned which was sent on e-mail. It is further stated that as per clause-5 of the agreement, the respondent has not completed the work in stipulated time. The complainant is willing to pay rest of the amount of Rs.23.00 lakh as per the payment plan and thus, the allegations and the demand made by the respondent is completely baseless and frivolous to grab the hard earned money of the complainant. It is also stated that respondent

has violated the terms of Schedule-D of the Development Agreement. The complainant has repeatedly asked the respondent to speed up the progress of work and finish the construction of the said multistoried building in stipulated time but the respondent is violating the same for one pretext or the other. The respondent has failed to provide copy of the sanctioned plan and also failed to form and constitute society/ association of the owners. In spite of knowledge of all the facts, the respondent has miserably failed to abide with the terms and conditions of the said agreement. Hence, this complaint.

The complainant has placed on record the copy of the Agreement to Sale dated 12.03.2021, allotment letter dated 29.01.2022 and the money receipts.

A counter affidavit has been filed on behalf of the respondents stating that after full investigation of the project and reputation of the company, the complainant agreed to purchase Flat No.305 having super built-up area of 1382 sq.ft. in the project and also entered into a registered Agreement for Sale on 12.03.2021 and out of total consideration of Rs.41.00 lakh the complainant has paid Rs.19.00 lakh only. The complainant did not follow the payment plan mentioned in Schedule-C of the agreement and did not pay the rest amount within the time and manner specified therein. The respondent requested the complainant to pay rest dues but no heed was given to his request. It is stated that in spite of request letters dated 06.06.2022 and 23.06.2022 when no action was taken by the complainant, a letter of termination of agreement to sale was sent on 16.08.2022. On 24.08.2022 the respondent has sent a legal notice to the complainant that after clearing all the dues he may get the flat through registered sale deed within two weeks, failing which advance amount will be forfeited and the agreement for sale dated 12.03.2021 will automatically be treated as cancelled and he will be at liberty to sell it to anybody else. Thereafter finding no response, the respondent has sold the flat in question because the complainant was declared defaulter. It is further stated that the complainant has miserably failed to abide the terms and conditions as laid down in the agreement and has also failed to follow the payment as mentioned in Schedule-C. The respondent has completed 95% work in the multistoried building till this date after following all the norms, terms and conditions, laws and satisfaction to all concerned. Hence, the complaint petition has no merit and is fit to be rejected with heavy cost.

On 11.01.2023 in the Conciliation Forum learned counsel for the respondent submitted that the respondent has sold Flat No.405 to someone else before filing of the complaint case before the Authority and, therefore, the respondent is ready to refund the principal amount but not ready to cancel the sale deed. Learned counsel for the complainant also submitted that the respondent has to be directed to deliver the possession of the flat to the complainant as per allotment. Since the parties were not ready to settle the matter mutually, this case has been transferred to this Bench for deciding the case on merits. Thereafter many hearings have been done. On the last date of hearing i.e. on 09.04.2024 the complainant's counsel reiterated his submissions as made in the complaint petition and submitted that the respondent has terminated her letter of allotment, therefore, she has prayed to refund the amount with interest. On the said submission, learned counsel for the respondent stated that the complainant is the defaulter. On 12.03.2021 the agreement for sale was made and she has not paid the amount according to

agreement for sale. Anyhow, the respondent is ready to return the money in 2-3 installments.

In view of the submissions made by both the parties 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.18.00 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 in two installments only. The first installment of Rs.9.00 lakh must be paid within 30 days and the second installment of Rs.9.00 lakh must be paid in next 30 days i.e. within sixty days of issue of this order.

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

Sd/-

Nupur Banerjee
Member