

REAL ESTATE REGULATORY AUTHORITY, BIHAR
IN THE COURT OF SPECIAL PRESIDING OFFICER, RERA, BIHAR
 RERA/CC/552/2023

Vandana Kumari ----- COMPLAINANT

VS .

M/s Ashirwad Engicon-----RESPONDENT

PROJECT: IOB GALAXY

06/04/2026

ORDER

Heard Shri Sumit Kumar, learned counsel for the complainant and Shri Ishtiyaque Hussain, learned counsel for the respondent.

2. The complainant has filed this case to direct the respondent concerned to handover the physical possession of the flat to the complainant with all relevant documents as per the Agreement for sale dated 05.03.2016 and execute Absolute Sale deed in favour of the complainant for the said flat and also to give liberty to the complainant to file complaint before the Adjudicating Officer for compensation and/or any other relief/s which deem fit and proper.

3. The fact of the case in brief is that the complainant and the respondent company entered into an agreement for sale dated 05.03.2016 for 3 BHK Deluxe Flat having carpet area of 950 Sq. ft., super built-up area of nearly 1370 Sq. ft., in project IOB GALAXY and paid Rs. 7,36,086/- (inclusive of booking amount of Rs. 11,000/- prior to Agreement for sale) out of total consideration Amount of Rs. 7,01,000/- i.e. in excess of Rs. 35,086/-. After the aforesaid agreement for sale, the complainant reiterated the respondent promoter for the allocation of number of her booked flat and further, requested for registration of aforesaid Agreement for sale, as the complainant had already paid total consideration amount and complied with the terms

of agreement as mentioned under paragraph 34 of the Agreement for sale. But till today the respondent company has paid no heed to complainant's grievance. After registration of aforesaid project with RERA in the year 2018, the present complainant tried to know the status of her booking from the RERA Website but the respondent promoter has failed to upload/ update quarterly progress Report of the project in question. In terms of paragraph-17 of the Agreement for sale, the present complainant and her husband Shri Deepak Kumar has continuously been following the respondent promoter for the execution of Absolute Sale Deed of the aforementioned flat in question, as the project in question is almost complete and ready for possession, but the promoter without any reason and rime avoided the complainant and has not been registering the same. The respondent promoter has neither given physical possession of the aforementioned Flat nor executed the Absolute Sale Deed of said Flat in favour of the complainant as mentioned in the Agreement for Sale and committed breach of contract against the present complainant. Due to laches on the part of the respondent the present Complainant has been compelled to knock the door of the Authority for redressing the above mentioned complaint.

4. The respondent has filed a counter affidavit stating therein that complainant and the respondent company had entered into an agreement for sale with the complainant to construct and deliver the Flat measuring an area of 1370 Sq. ft. carpet area 950 Sq. ft. consisting of 3 BHK and one reserved car parking space in the proposed project Ashirwad IOB Galaxy, situated at Mauza Painal, Bihta Patna for which the complainant claimed to have paid Rs. 737086/- including applicable tax etc. possession of the said flat had to be given within five years from the date of agreement. As a matter

of fact, the aforesaid flat was also booked under onetime scheme which will be evident from the total consideration amount as mentioned in para-2 of the Agreement amounting to Rs. 736086/- to which the complainant claimed to have paid for which respective money receipts have been granted. The present complaint is not maintainable under RERA Act particularly when the proposed project could not be constructed due to some litigation on the part of landowner and its map was also not approved by the competent authority. The respondent company have launched 'IOB Galaxy', construction of the said project had to be proceeded in two phase i.e. one under CLP Plan (Construction Link Plan) in which the allottee have purchased the flat either through loan or by self-payment the construction of Phase 1 is underway after map approval from the concerned Authority and all the flats have been allotted to the respective allottee who booked the flat under CLP Plan. Similarly, the flats of those allottees have to be constructed in second phase who have booked their respective flat under onetime scheme for which the complainant has paid a total consideration amount of Rs. 736086/-. As a matter of fact, the construction of IOB Galaxy of second phase could not be proceeded due to some litigation with landowner and accordingly the respondent company finally dropped the construction of the said second phase flats of which were booked under onetime scheme. On remaining part of the land over which the flat of under onetime scheme even map approval has not been done due to the reason mentioned above. Similarly, total consideration amount of the flat is Rs. 736086/- only whereas total cost of construction of flat is coming around 30 lacs with finishing therefore, company is not able to fulfil the margin amount due to financial loss. In view of the above

facts and circumstances, the company is ready to refund the booking amount.

5. After having heard both side, perusal of record and written argument of the complainant and also documents annexed, it appears that it is admitted fact that that the complainant and the respondent had entered into an agreement of sale for 3 BHK Flat to construct and deliver the same including one reserved car parking space. It is also admitted fact that the total consideration amount was Rs. 7,01,000/- whereas the complainant has paid Rs. 7,36,086/- i.e. in excess of Rs. 35,086/- till 24.07.2016 and excess amount is said to be for applicable tax etc. As per complainant the above project construction work is completed and the respondent is not providing the same and is not ready to execute the Absolute Sale Deed as the concerned project construction is not ready due to non-availability of the land required for the same as some of the landowners have not given the respective land. Further the respondent plea is that the cost of construction has increased and he is not able to construct the same due to crisis of fund. The learned counsel for the complainant draws the attention of the Court towards the agreement of sale and stated that as per agreement the respondent has to handover the possession as he has received total consideration amount. So far plea of the respondent concerned that there are two plans one under CLP Plan and other onetime scheme is concerned, that is not supported by either any evidence or it is mentioned in agreement of sale. So far plea of cost of construction has raised and he is not able to construct the same does not appear proper as the agreement of sale itself clears that such type of plea cannot be taken. In such a situation, the respondent is bound to follow the terms and conditions of the agreement for sale. So far plea of respondent regarding the land is not available for

construction of the same project due to not providing land by some of the landowner, it is only statement but it has not been supported by any documentary evidence. Moreover, he has not stated how much land and in which khata and plot number is not in possession of the respondent for construction of the same.

6. The learned counsel for the complainant draws attention of the court to the copy of the registration of the project bearing project registration no. BRERAP0036-2/22/R-64/2018 related to the IOB Galaxy which clears that the concerned project is ongoing project and it is a registered project. The QPR of the IOB Galaxy appears to show that from 2018 to 2023 in every quarter the progress has been made and it is mentioned in the report with image. It has also been alleged that the respondent has applied for extension of registration to the RERA Authority and the registration has been made and certificate has been issued and that is commencing from December, 2025 till 2047. There is no doubt that this is not for only that project rather it includes extension of IOB. The learned counsel for the respondent stated that registration is for Phase-2, not for Phase-1, which is other than complainant phase. After perusal of description of land is of same District, circle, Halka Mauza and plot. The learned counsel for the respondent has not brought any evidence that the land which is in phase-1 is under Phase-2. In such a situation, it is stated that the act of the respondent appears to escape from his liability of the aforesaid agreement and not to comply the agreement making false and fabricated reasons for not providing the concerned flat to the complainant.

7. Considering the aforesaid facts and circumstances, the complainant appears to be entitled to get the relief as prayed for in the present complaint.

8. So the respondent is directed to handover the physical possession of the 3BHK Deluxe flat of having carpet area of 950 Sq. ft. and super built up area of 1370 sq. ft. in project IOB Galaxy and if it is not possible, in any other project for the same area within sixty days of this order and also execute Absolute sale deed accordingly. The complainant is at liberty to file complaint before the court of Adjudicating Officer of RERA for compensation. If it is not complied by the respondent, he will be liable for penalty as per law prescribed.

9. With the aforesaid observation and direction, this complaint is disposed of.

Sd/-

(Vinod Kumar Tiwari)
Special Presiding Officer
RERA, Bihar