

**REAL ESTATE REGULATORY AUTHORITY, BIHAR**

**Before the Full Bench of Mr Naveen Verma, Chairman,  
Mr R.B. Sinha Member & Mrs Nupur Banerjee, Member**

**Case No.CC/1200/2020**

**Afsana Begum.....Complainant**

**Vs**

**M/s Star India Construction Pvt Ltd.....Respondent**

**Project: Shiv Bhajju Vihar**

**28/10/2021:**

**Interim Order**

This matter was last heard in the Full Bench on 26/07/2021 and orders were reserved.

The complainant's case is that she entered into an agreement dated 11/08/2017 for the purchase of unit no. 202, block C on second floor and one car parking space in project Shiv Bhajju Vihar for a total consideration of Rs 48,01,000 and paid Rs. 38,00,000/-. The complainant has submitted that she is ready to pay the remaining consideration, i.e., Rs 10,00,000. The complainant has requested for possession of the flat. The complainant is claiming that the respondent is selling the same flat to another buyer at Rs 85,00,000/-.

The complainant has filed demand notice dated 13/09/2019 and 31/07/2021 from the respondent to pay outstanding dues of unit 202 of block C in project Shiv Bhajju Vihar.

Perused the records. The respondent has not filed any written submission.

On the last date of hearing, dated 26/07/2021, the complainant had reiterated that she is ready to pay the remaining amount. The complainant further submitted that certain works were assured to be done by the respondent, which they have not done yet, and demanded money and threatened to cancel the allotment. She demanded compensation also.

The learned counsel for the respondent company submitted that Rs 18,00,000 out of Rs 48,00,000 is still due, and the respondent has issued a demand letter to the complainant. He further submitted that they had issued a demand the complainant. The respondent company submitted that they could not make any deviation in the plan.

The Authority had observed on the last occasion that that since it is a construction-linked plan, the complainant must pay the rest amount keeping 10% of the consideration money to be paid at the time of handing over the flat so that the respondent company could complete the flat. The Authority had further directed the respondent to fix a date for completion of the project.

After the matter was reserved for orders, the complainant has filed a letter dated 05/08/2021 to cancel allotted unit 202 of block C in project Shiv Bhajju Vihar. The complainant further filed a reply to the letter dated 5/08/2021 stating that the demand notice was sent by the respondent in quick succession and ultimately on 05/08/2021 gave a cancellation letter of the booked flat. The complainant also stated that the respondent couldn't cancel a booked flat when a major part of the consideration was paid and requested the respondent to hand over the booked flat after proper completion; otherwise, the complainant will have to take a legal course of action.

The Authority observes that certain obligations are cast upon both promoters and allottees by various provisions of the Real Estate (Regulation and Development) Act, 2016 and Bihar Real Estate (Regulation and Development) Rules, 2017. The provisions of Section 19(6) of the Act have to be followed by the allottee. The promoter has to strictly abide by the provisions of Section 11(5) of the Act before cancellation. The provisions of the agreement to sale have to conform to the Annexure to Rule 8 of the Bihar Rules. Clause 9.3 of the above mentioned Annexure describes the procedure to be adopted if an allottee is considered to be on default.

The respondent company is directed to submit an affidavit whether these provisions have been followed before issuing the letter of cancellation of allotment during the pendency of this case. The complainant is directed to state on oath whether she has made the necessary payment in terms of the agreement to sale before seeking possession of the apartment.

Put up for final orders on 16.11.2021 after both the parties have submitted their affidavits.

Sd/-  
Nupur Banerjee  
Member

Sd/-  
R.B. Sinha  
Member

Sd/-  
Naveen Verma  
Chairman