

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

**RERA/CC/69/2023**

Surbhi Siddharth

....Complainant(s)

Vs

M/s Vineet Homes Pvt. Ltd.

....Respondent

PROJECT- Dharamsheela Nandan Enclave

For the complainant:

Mr. Sumit Kumar (Adv.)

For the respondent :

Mr. Kishore Kunal (Adv.)

**04.06.2025**

**ORDER**

The complainant has filed the present complaint case against the respondent for enforcement of deed of agreement for sale dated 16.10.2015 and execution of sale deed and delivery of possession with respect to flat no. 302 having area of approximately 1280 sq.ft along with one car parking space in the ground floor in the project, Dharamsheela Nandan Enclave, after receiving the remaining consideration from the complainant.

2. Learned counsel for complainant submits that the complainant along with her husband, Shri Kaushlendra Kumar had entered into an agreement for sale on 16.10.2015 with respect to flat no. 302 admeasuring area of approximately 1280 sq.ft on consideration of Rs. 42,40,000/-, excluding the taxes as per government notification, out of which the complainant has paid Rs. 10 lakh by way of two cheques bearing no. 668681 for Rs. 9,50,000/- and cheque no. 668682 for Rs. 50,000/- , but the respondent arbitrarily with a malafide intention unilaterally cancelled the allotment of the said flat and on 26.12.2017 refunded the booking amount to the complainant without any prior notice. In support of her case, complainant has filed photo copy of the deed of agreement for sale as Annexure -1 series. Thereafter, the complainant was compelled to file consumer case bearing no. 33/2018 before the Hon'ble Consumer forum, Patna. He further submits that

thereafter, RERA Act, 2016 has come into effect on 01.05.2017, whereby all the disputes related to Real Estate matters were brought exclusively under the jurisdiction of RERA. Hence, the respondent put pressure upon the complainant and convinced her that due to introduction of RERA Act, all the cases relating to Real Estate needed to be withdrawn and at that time, the respondent assured the complainant and her husband that he would provide a flat of equivalent value to the complainant in his up-coming new project in the same vicinity or in same apartment at the same price earlier agreed upon in the agreement for sale dated 16.10.2015. The respondent further assured the complainant and her husband that as they were in possession of original allotment agreement, so they had valid proof. The complainant trusting the respondent's words, got ready to withdraw the consumer case. In the back-drop of new development, the respondent compromised with the complainant and settled the grievances outside the court, whereunder the respondent and complainant had filed a compromise petition dated 15.04.2019 before the Hon'ble Consumer Forum, Patna and the aforesaid consumer case was dismissed as withdrawn. The learned counsel has filed photo copy of compromise petition dated 15.04.2019 as Annexure -2 series. He further submits even after withdrawal of consumer case, the respondent did not provide the flat either in the same apartment or respondent's other project on Arya Samaj Road, which goes to show that the respondent only gave assurances to the complainant and with a clear intention to cheat them, unduly influenced them to withdraw the case in the light of compromise, but the respondent did not provide an alternate flat to the complainant.

3. Learned counsel further submits that the respondent was served with two legal notices by the complainant on 08.09.2022 and 29.09.2022, requesting him to provide another alternate flat/apartment in the same project or in other project in the same vicinity to complainant at the same rates, which were earlier agreed upon, within a period of 15 days of the receipt of the notice, but the respondent did not pay any heed to these notices. Learned counsel has annexed legal notice dated 29.09.2022 as Annexure -3 series. Learned counsel further submits that the complainant,

considering the callous and indifferent attitude on the part of the respondent, had no alternative but to institute the present case against the respondent for grant of aforementioned reliefs.

4. Learned counsel on behalf of respondent by filing the written statement/objection submits that the complainant petition is not maintainable in the eye of law as well as in the light of facts and circumstances of the case, as the complainant is trying her best to mislead the Authority by vague, false and fabricated statement. He further submits that the respondent has allotted flat no. 302 in the above project to the complainant on 16.10.2015 and the allotment letter dated 16.10.2015 was signed by both parties. Thereafter, the complainant has paid Rs. 10 lakh to the respondent for booking of aforesaid flat, but actually, no agreement was made between the parties and only on the request of the complainant, the aforesaid allotment letter dated 16.10.2015 was issued in favour of the complainant. After allotment of the flat in favour of the complainant, she requested the respondent through whatsapp message on 24.12.2017 for cancellation of the allotment of said flat and for return of the said amount of Rs. 10 lakh paid by her to the respondent promoter. As such, naturally, on the request of the complainant, the said amount of Rs. 10 lakh was returned in the bank A/c of the complainant on 26.12.2017 and allotment of the flat in favour of the complainant was cancelled, and the said facts were communicated to the complainant vide letter dated DNE/55/302/17-18/01 dated 26.12.2017. The complainant was also advised to return all the money receipts and letters given to her at the time of booking. Learned counsel has filed photo copies of these messages as Annexure -1 and 2. Thereafter, vide letter no. DNE/SS/302/17-18/02 dated 12.03.2018, reply to the letter dated 16.01.2018 and 03.02.2018 of the complainant was sent by the respondent promoter again advising the complainant to return all the documents as the allotment was cancelled, after refunding the amount paid by them. Learned counsel has filed a photo copy of the messages and letters as at Annexure-1-3. However, those annexures were marked as Annexure A,B and C in the written statement. Hence, the same will be read as Annexures A.B.C as it is filed by the respondent promoter.

5. Learned counsel for respondent further submits that the complainant, with greedy motive and with a view to harassing, humiliating and extracting illegal money from the respondent and also to damage the good-will of the respondent, had sent a legal notice on 26.02.2018. Pursuant thereto, on 27.03.2018, the respondent sent the reply to the aforesaid legal notice through learned counsel, Shri Sandeep Kumar Singh of Hon'ble Patna High Court. He further submits that the complainant was still not satisfied and she filed a case before the Hon'ble State Consumer Dispute Redressal Commission, Bihar, Patna vide complaint case no. 33/2018 seeking specific direction against the respondent promoter to re-allot the aforesaid flat no. 302 or to give alternative flat on same price, same area and place, which was cancelled by letter dated 26.12.2017. Later on, the complainant filed the present complaint case on the same ground before RERA, Bihar. He further submits that on 11.01.2021, the complainant along with her husband, Kaushlendra Kumar and respondent Director, Rakesh Chandra Malhotra signed a joint compromise petition for withdrawal of the consumer case no. 33/2018 on the ground that the case was settled outside the court and now they have no grievances left against the respondent promoter and that is why they have filed the instant petition for withdrawal of the case for the ends of justice. Learned counsel has attached withdrawal petition as Annexure -4, which was wrongly so marked as it is marked as Annexure -D in the written statement filed by the respondent promoter. He further submits that again filing of the present complaint case on the basis of wrong concocted and fabricated grounds is illegal and proceedings under section 340 Cr.P.C as well as under section 195 of the IPC have to be started against complainant. Further the principle of law of Estoppel u/s 115 of the Indian Evidence Act is also attracted against the complainant as she cannot be allowed to take a different stand from the stand taken by her at the time of filing of joint compromise petition filed in the consumer case no. 33/2018. Hence, the complaint case, being not maintainable has to be dismissed.

6. On the basis of pleadings as well as submissions of the learned counsel of the parties, the following points are framed for proper adjudication of the present case:-

- ( i ) whether the present complaint case filed by the complainant is maintainable;
- ( ii ) whether there was an allotment letter issued on 16.10.2015 by the respondent in favour of the complainant with respect to flat no. 302 in the project, Dharam Sheela Nandan Enclave;
- ( iii ) whether there was an agreement for sale on 16.10.2015 executed between the complainant and the respondent Director for sale of flat no. 302 of the said project, Dharam Sheela Nandan Enclave;
- ( iv ) whether the complainant has compromised and withdrawn the case no. 33/2018 filed before the Consumer Forum;
- ( v ) whether the complainant and respondent promoter have filed a joint compromise petition in consumer case no. 33/2018 and both of them have withdrawn the said case from the Consumer Forum;
- ( vi ) whether the complainant has requested the respondent promoter/Director for cancellation of the allotment and whereupon the respondent promoter accepted her prayer and cancelled the allotment and consequently refunded the principal amount of Rs. 10,00,000/- to the complainant;
- ( vii ) whether the Hon'ble Consumer Forum has permitted the complaint to withdraw the complaint case as the complainant was willing to file a complaint case before RERA, Bihar under the provisions of section 71 of RERA Act, 2016.

7. As the issues framed above are consequential to each other, they need to be addressed jointly. Admittedly, the complainant has approached the respondent promoter, Shri Rakesh Chandra Malhotra for purchase of a flat, which was accepted by the respondent promoter. It is also an admitted fact that the complainant was allotted flat no. 302 by the respondent in the project, Dharam Sheela Nandan Enclave on consideration of Rs. 42,40,000/- and out of the said consideration, she paid Rs. 10,00,000/- to the respondent, but there was a dispute arisen between both the parties on the point as to whether the letter dated 16.10.2015 for allotment of flat by the respondent in favour of complainant, Mrs. Surbhi Sidharth and her

husband Shri Kaushlendra Kumar was an allotment letter or it was an agreement for sale.

8. In the Bihar RERA Rules, 2017 the format for agreement for sale is annexed which is based on Rule 8 of the said Rule, which prescribes the terms and conditions, including consideration, escalation of price, mode of payment, time of completion of the project, delivery of possession, procedures for taking possession along with details of property and other terms. Though the present letter dated 16.10.2015 (Annexure-1) bears the signatures of both the parties, but the subject has been defined in the knowledge of complainant as allotment of flat no 302 on 3<sup>rd</sup> floor in the said project, Dharam Sheen Nandan Enclave, wherein the tentative consideration Rs. 42,40,000/- has been mentioned, excluding taxes and further receipts of payment of Rs. 10 lakhs by the complainant to the respondent promoter through two cheques have been mentioned. However, other terms and conditions are missing as required by Annexure appended to the format of agreement for sale that are detailed in Bihar RERA Rules, 2017. The Hon'ble Consumer Forum, Bihar, Patna has also on 15.04.2019, while admitting the complaint case no 33/2018 has mentioned the said letter as an allotment letter dated 16.10.2015. Hence, from any point of view, the letter dated 16.10.2015 executed by the respondent along with signatures of the complainant and her husband does not appear to be an agreement for sale. Accordingly, this Bench finds that the letter dated 16.10.2015 is an allotment letter issued by the respondent for allotment of flat no. 302 in the said project in favour of the complainant and he has also got the signatures of the complainant and her husband for confirmation.

9. Another important point relating to cancellation of allotment by the respondent is that the respondent, relying on the request of the complainant through WhatsApp message sent on 21.12.2017 regarding return of principal amount of Rs. 10 lakhs paid by her, acted accordingly and he has not only refunded Rs. 10 Lakhs in bank A/c of the complainant on 26.12.2017 after cancellation of allotment but has also communicated this fact vide letter no. DNE/SS/302/17-18/01 dated 26.12.2017 as at Annexure -2 series (wrongly so marked as it is written as Annexures B

series). However, learned counsel for the complainant has vehemently opposed it and submitted that neither communication for cancellation of allotment of flat was requested by the complainant nor was it informed to the complainant by the respondent. He has further submitted that WhatsApp messages are not legally admissible as per Evidence Act. He further submits that actually the complainant has withdrawn the consumer case under Order 23 Rule 1 and on her withdrawal petition, read with provisions of section 71 (1) of RERA Act, 2016, the complaint case was dismissed as withdrawn by the Hon'ble Consumer Forum, Bihar, Patna and further that it was not disposed of on the basis of joint compromise petition filed under Order 23 Rule 3 of CPC.

( a ) On perusal of Annexures 1 to 3 / Annexure A to C filed on behalf of the respondent, it appears that the respondent has regularly informed the complainant through WhatsApp messages since 2<sup>nd</sup> April, 2017 at the time of approval of the project on 15.04.2017, 02.08.2017 as well as on 21.12.2017 when the complainant has requested the respondent about the refund of the principal amount otherwise, for taking legal action against the respondent. Lastly, on the same day she has expressed her willingness to the respondent that she has already communicated to the respondent to refund her money and at the same time, the respondent has sent a message – O.K. According to the respondent, on 26.12.2017, he has cancelled the booking allotment and refunded the principal amount of Rs. 10 Lakhs and credited the same in the A/c of the complainant.

10. Now, it is to be examined as to whether the WhatsApp messages are admissible in the eye of law or not. Section 61 of Bharatiya Sakshya Adhiniyam, 2023 says that electronic or digital documents are admissible in evidence subject to section 63. Hon'ble Bombay High Court in Kross Television India Pvt. Ltd vs. Vikhayat Chitra Production has confirmed that WhatsApp messages comprising double blue ticks implies delivery and seen and the same can be authentic documents. Likewise, section 4 of Information Technology, 2000 also implies the admissibility of evidence like email, WhatsApp etc. The Hon'ble Supreme Court during Covid -19 has recognized the email and WhatsApp messages as a legal process for service

and it was confirmed in the Central Enterprises Regulatory Commission vs. National Hydro Electricity Power Production Ltd, 2021. The Hon'ble Delhi High Court in different cases of similar nature have also recognized that the notices sent through email, WhatsApp may be legally allowed.

11. In the present case, the complainant has sent WhatsApp messages to the respondent since 2<sup>nd</sup> April, 2017 21.12.2017 and in reply thereto, the respondent has also sent messages. However, the message of cancellation seen by the complainant and for return of money by the respondent on 26.12.2017 till 16.50 pm and 16.51 pm with double blue ticks implies service of cancellation of notice to the respondent. Hence, there is no force in the submission of the learned counsel for complainant that the complainant has not requested for cancellation of allotment and communicated through WhatsApp message and accordingly, the respondent has not only cancelled the booking, but he has also informed the complainant on 26.12.2017 on WhatsApp along with refund of Rs. 10 Lakhs in the A/c of the complainant.

12. Further, learned counsel for complainant has claimed that the complainant has unilaterally withdrawn the case under order 23 Rule 1 CPC and case no. 33/2018 was not jointly compromised and withdrawn by both the parties from the court of Hon'ble Consumer Forum, Bihar, Patna under Order 23 Rule 3 of CPC. On going through the joint petition, it appears that both the parties have put their signatures on the joint petition (Annexure-2), which was jointly filed by the complainant and her husband, Shri Kaushlendra Kumar and O.P no. 1 and 2 Shri Rakesh Chandra Malhotra on behalf of himself and company. They have jointly sworn an affidavit before filing the compromise petition before the Hon'ble Forum. Hence, it is evidently clear that the said compromise petition was not unilaterally moved on behalf of complainant and her husband, but the same was also filed by the respondent promoter, Shri Rakesh Chandra Malhotra.

13. Here, it will be relevant to refer to Order 23 rule 1 of CPC, which says that the plaintiff may withdraw or abandon his suit or abandon a portion of claim against all or any of the defendant at any time after it is entertained. This right requires the court's permission if the plaintiff is a minor or



otherwise under Order 32 or if the plaintiff seeks to withdraw with liberty to file a fresh suit on the same cause of action due to formal defects or sufficient grounds. Withdrawal without such permission can vacate the complainant's ability to file a fresh suit. Learned counsel for complainant has claimed that under the provisions of section 71 of RERA Act, 2016, the complainant has filed the present complaint case in RERA, Bihar, but the provisions of section 71 says that if any complaint in respect of matters covered under section 12, 14, 18 and 19 is pending before the Consumer Forum established under section 9 of Consumer Protection Act, 1986 on or before commencement of this Act, he may, with permission of such Forum or Commission, as the case may be, withdraw the complaint case pending before it and file an application before the Adjudicating Officer under this Act.

14. In the above facts and circumstances of the case, it appears that the complainant has not sought such permission of the Hon'ble Consumer forum to permit her to file a fresh complaint either before Consumer Forum or before RERA, Bihar. Hence, the contention of the learned counsel for complainant on both grounds are not tenable in the eye of law. Hence, it is rejected. On the other hand, the Order 23 Rule 3 CPC deals with terms of the suit wherein the parties are allowed to resolve their disputes amicably and key aspect includes proof of lawfully filed written agreement signed by the parties and the court recording this agreement passes the decree on the basis of such terms. However, the agreement has to be signed by both the parties. In the present case, on going through the joint compromise petition, it appears. that both the parties have signed thereon with declaration that through this joint petition, both the parties of the present case have since settled their grievances outside the court and therefore, the complainant wants to withdraw the instant case on the ground of having settled the issue outside the court and having no grievances left against the O.Ps. Hence, the instant petition for withdrawal of the case is filed for the ends of justice. It is further mentioned in the joint compromise petition that the present petition for withdrawal of the pending consumer case no. 33/2018 is being filed out of free will of both complainants and on account of compromise

reached between the parties outside the court. Hence, the complainants ( 2 in number) do not want to continue with the instant consumer case, and therefore, the Hon'ble Forum may allow the withdrawal petition in the interest of substantial justice. It needs to be further noted that the joint affidavit has been sworn in by the complainants as well as respondent and filed before the Hon'ble Forum. Hence, it is clear that the complainant has filed the joint compromise petition for withdrawal of the complaint case before the Hon'ble Consumer Forum, Bihar. Accordingly, the Hon'ble Forum has passed the order on 19.01.2021 and was pleased to mention that in view of the joint compromise petition, the petition stands withdrawn. Accordingly, the copy of the same was sent to the respondent company on 21.01.2021. It shows that the submission of learned counsel for complainant is not tenable as the compromise petition has been filed with joint signatures as it was filed and disposed of under the provisions of Order 23 Rule 3 CPC.

15. In the light of such provisions, the complainant might have filed the Misc. Petition before the Hon'ble Consumer Forum, instead of filing a complaint case before the RERA, Bihar to set aside the compromise petition as a fresh complaint is not permissible under Order 23 Rule 3 (A) CPC.

16. On the basis of discussions made above, it is evidently clear that the complainant in spite of knowledge that she has filed a complaint case before the Forum with reliefs for delivery of possession of Flat 302 in the said project against the respondent, which was, later on, compromised and disposed of by the Hon'ble Forum as withdrawn without permission of the Forum to file a fresh case anywhere like forum/ Authority, as per provisions of section 23 Rule 1 of CPC and provisions of section 71 of RERA, Act, 2016. In addition, it is clear from the joint compromise petition that both the parties have jointly filed the compromise petition for withdrawal. Accordingly, the Consumer forum has allowed the withdrawal petition and dismissed the complaint case as withdrawn. The remedy available to the complainant has also been exhausted by her before the Hon'ble Consumer Forum, Bihar Patna. Now, the complainant has no right to file the complaint case on the same ground before the Authority, which has already been taken

by her before the Hon'ble Consumer Forum. Hence, the complaint case being not maintainable is dismissed.

With the above observations and directions, this complaint petition stands disposed of.

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