

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

RERA/CC/245/2022

Mr. Upendra Kumar Pandey

....Complainant(s)

Vs

M/s Ashirwad Engicon Pvt. Ltd.

....Respondent

PROJECT- I.O.B. Galaxy

For the complainant:

Mr. Vishal Vikram Rana (Adv.)

For the respondent :

Mr. Ishtiyaque Hussain (Adv.)

04.07.2025

ORDER

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 06.06.2015, 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. 8,01,000/-, excluding service tax. The respondent promoter was obliged to deliver said flat within five years after approval of the map from the competent authority. The learned counsel has attached deed of agreement for sale executed between the parties as Annexure to the petition. He has also filed money receipts against the payments of consideration of Rs. 8,01,000/- along with money receipt of Rs. 28,431/- 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 consideration money along with interest 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 06.06.2015, 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 06.06.2015 to construct 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 though the complainant has paid consideration amount of Rs 8,01,000/- and the project was to be completed within five years with a grace period of six month but the construction of flat under one time scheme within the consideration of Rs. 7-8 lakhs could not succeed due to higher cost of materials being used in the construction and as such, the respondent could not proceed ahead. However, the respondent continued to proceed further with construction of project for those allottees who had booked their flat in CLP plan.

5. Learned counsel further submits that the respondent company had a plan to construct 2200 flats in the aforesaid project after acquiring 10 Bighas of land and rest of the flats had to be sold out to some other allottees under CLP plan. The learned counsel further 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 8 lakhs. As against this, the cost of such flat was calculated to be around Rs. 20 to 25 lakhs. Hence, the flats 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. Hence, the respondent dropped the plan of development of said project. However, the respondent is ready to refund the booking amount to the complainant. He further submits that since the respondent is not in a position to deliver flat to the complainant as per agreement for sale, hence, the complaint petition has to be dismissed.

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

7. Admittedly, the registered deed of agreement for sale between both the parties was executed on 06.06.2015 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. 8,01,000/- 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 to the respondent promoter under one time payment scheme.

8. However, it is also apparently evident that the respondent, due to escalating price of materials being used in the building, has dropped the plan of construction of the project, as the learned counsel for respondent has submitted that the cost of each flat was coming to the tune of Rs. 20 to 25 lakh. 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.

9. 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.

10. The respondent has frankly admitted that he has received the consideration money of Rs. 8,01,000/- from the complainant for construction of flats in the above project, but due to escalation of cost of material, he could not construct the building and hence dropped the idea. When 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.

11. Hence, the respondent is directed to refund the principal amount of Rs. 8,01,000/- plus Rs. 28,431/- 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.

12. The complainant, if so advised, may file a complaint case before the Adjudicating Officer, RERA, Bihar for claim of the compensation against the respondent.

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

Sd/-
(Ved Prakash)
Special Presiding Officer