

REAL ESTATE REGULATORY AUTHORITY, BIHAR

**Before the Bench of Hon'ble Inquiry Commissioner, Mr. Sanjaya Kumar Singh, RERA,
Bihar**

RERA/CC/298/2023

Julie Osta

.....Complainant

Vs

M/s Iyom India Constructon Pvt. Ltd.

.....Respondent

Project: Uma Residency

Present: For Complainant: Mr. Kishore Kunal, Advocate

For Respondent: Mr. Hemant Kumar, Advocate

11/07/2025

ORDER

Heard Mr. Kishore Kunal, learned counsel for the complainant along with Mr. Prem Kumar Osta, the husband of the complainant and Mr. Hemant Kumar, learned counsel for the respondent.

The complainant has prayed for the following reliefs:

- (i) To declare the cancellation as arbitrary as the same is not in accordance with the provisions of the Act and Rules.
- (ii) To direct the respondent to execute the sale deed and hand over the possession of the flat as per the first allotment.
- (iii) To initiate proceeding for offering the flat on 4th floor for which neither the map has been approved nor registration has been taken from the RERA.
- (iv) To provide interest for the delay in accordance to the provisions of Section 18 of the RERA Act.
- (v) To impose penalty on the respondent for taking the payment in contravention of the Act and Rules.

On 29.04.2025 both the parties were heard at length and the order was reserved with a direction to both the parties to file written notes of argument on their behalf along with relevant documents/ evidences. In compliance to the said order learned counsel for the complainant has filed written notes of argument on 02.05.2025 and learned counsel for the respondent has filed a detailed written Notes of Argument. on 05.05.2025. Thereafter on 23.05.2025 an interim order was passed and both the parties were directed to file respective documents regarding refund amount to prove the veracity of their statement. The Registration Wing was also directed to submit details of approval regarding construction of 4th floor and the matter was posted for hearing on 03.06.2025.

On 03.06.2025, the husband of the complainant accepted that the respondent has actually returned Rs.2.00 lakh and not Rs.1.50 lakh as wrongly claimed by him earlier. After hearing both the parties, the order was reserved with a direction to the Registration Wing to comply with the order dated 23.05.2025. In compliance to the said order, the Registration Wing has submitted its report stating that the promoter has submitted an application for a change in the building details from G-3 to G-4 on the RERA web portal on 26.06.2023 but the application is currently under process and no corrigendum has been issued by the Authority in this regard.

Perused the entire material available on record.

In short, the fact of this case is that on the offer made by the respondents no. 1 to 3, the complainant booked a flat bearing Flat No.103 on the 1st floor of the said project having an area of 1020 sq.ft on the assurance given by the respondents that they will hand over the physical possession of the said flat by November, 2022. It is stated that out of a total consideration amount of Rs.22.00 lakh, the complainant paid Rs.2.20 lakh as booking amount through cheque dated 11.07.2021 and it was assured by the respondent that soon the Agreement for Sale would be executed but even after a lapse of a considerable period, no Agreement for Sale was executed. Thereafter the complainant asked the respondent to execute the same, following which the respondent asked the complainant to pay the rest amount in five instalments so that the deed would accordingly be executed. It is also stated that as demanded, the complainant paid the entire consideration amount as per the schedule. She approached several times to the respondent for execution of the deed but the respondents did not execute the same. Since there was a dispute between the respondents no. 1 to 3 and respondent no.4, she came to know that a share distribution agreement had been entered between the promoter and respondent no.4 i.e. the landowner and the allotted flat has fallen in the share of the promoter. Thereafter the complainant requested the promoter to execute the deed but he did not execute the same and he asked her to cancel the booking. It is stated that on the pressure of the respondent, she wrote a letter to the respondent for cancellation of the booked flat with a request to refund the entire amount of Rs.22.00 lakh. Thereafter on 06.07.2022, a letter was received from respondent no.1 accepting the cancellation request with an assurance to refund the amount. It is further stated that the respondents no. 1 and 2 came with an offer that instead of refund they would allot a new flat to the complainant on 4th floor bearing Flat No.403 and the booking was confirmed for the re-allotted flat with an assurance that the Agreement for Sale would be executed after PMAA approval for extension of the said project floors. Then, left with no other option, the complainant accepted

the offer but after several requests made by her for the execution of Agreement for Sale of the new flat, the respondents did not give any reply and again finding no option, she asked for the refund of the entire amount but they did not make any effort to refund the amount paid by her. Therefore, for such arbitrary act, the respondents are liable to be penalized under the RERA Act. Hence, this complaint.

The complainant has placed on record a copy of the booking application form as Annexure 2, a cheque of Rs.2.00 lakh as Annexure 3, instalment details as Annexure 4, money receipts as Annexure 5, Development Agreement dated 09.03.2021 as Annexure 6, Legal notice as annexure 7, Share Agreement dated 20.12.2022 as Annexure 8,, letter dated 05.05.2022 as Annexure 9, letter dated 06.07.2022 and the receiving dated 09.06.2022 as Annexures 10 and 10/1, a mail for withdrawal of her application dated 01.08.2022 as Annexure 11, mail offering another flat dated 13.02.2023 as Annexure 12, letter accepting the offer for another flat no.403 as Annexure 13, a letter dated 03.05.2023 as Annexure 14 respectively.

Perused the records. A compromise petition was filed on behalf of the respondent on 10.04.2024 in which it has been stated that the complainant had booked a flat in the said project on 11.07.2021 and thereafter an Agreement for Sale was executed between the parties for a total consideration amount of Rs.22.00 lakh. The complainant then paid Rs.2.20 lakh towards booking of the said unit on 14.07.2021 out of total consideration amount of Rs.22.00 lakh. Thereafter the complainant on several dates has paid the total amount of Rs.22.00 lakh for which payment receipts were issued by the promoter. It has been stated that after cancellation made by the complainant, both the parties agreed for refund of the money without interest. Thereafter the respondent refunded Rs.1.50 lakh to the husband of the complainant and the respondent claimed that he was always ready and willing to return the remaining amount to the complainant without interest in nine monthly instalments with a grace period of three months. It has further been stated that both the parties are ready to settle the matter amicably and also as per the direction of the court.

A preliminary objection has been filed on behalf of the respondent on 27.02.2025 in which it is stated that the present complaint is wholly misconceived, groundless and unsustainable in law and hence, it is liable to be dismissed on the ground that the complainant has sought relief for possession of her flat but during argument the complainant has prayed for refund of the entire amount. On the same day the complainant has filed a written statement reiterating the same facts as in her preliminary objection. Apart from the other facts, it has also been submitted that the respondent has already refunded an

amount of Rs.2.00 lakh to the complainant out of total paid amount of Rs.22.00 lakh.

In compliance of the direction passed on 29.04.2025 the complainant has filed a written notes of argument on 02.05.2025 in which the complainant reiterating the facts as stated earlier, has prayed for a direction to the respondent to pay the remaining principal amount of Rs.20.50 lakh along with interest and compensation.

The respondent has also filed his written argument in which he has prayed to reject the complaint on preliminary ground itself because the complainant has pleaded in the complaint petition for delivery of possession but prayed for refund without amending the said petition which is against law. Apart from the other submissions, the respondent has also submitted that cancellation of the said flat was done several times by the complainant and it was accepted by the respondent and hence, cancellation is not arbitrary in nature. Once the cancellation/ revocation is accepted and well communicated, the agreement becomes unenforceable and therefore, the complainant is not liable for the relief of possession. He has further submitted that the complainant is not liable for interest for the delay in possession because the flat was cancelled by the complainant prior to maturity period of the agreement and this court is not competent to grant interest for the delay in handing over the possession for which she has to file a case before the competent authority.

Perused the file and gave a serious consideration to the facts and evidences available on record.

Having considered the entire points raised by both the complainant as well as respondent during hearing, it has been found that the booking of Flat No. 103 was done on 11.07.2021 and the complainant had made initial payment of Rs.2.20 lakh and thereafter she paid the entire consideration amount of Rs.22.00 lakh. On perusal of the record, it is clear that both the parties are on a common page as regards the amount paid by the complainant is concerned, which comes to a total of Rs.22.00 lakh and the amount refunded by the respondent which comes to a total of Rs.2.00 lakh., The complainant during the course of hearing and in his final written argument has submitted that on account of share distribution agreement entered into between the promoter and the landowner of the project, the allotted flat fell in the share of the promoter and hence, the complainant was verbally coerced/ pressurised by the respondent to cancel the booking of the said flat No.103.

After examining the record, it was found that the complainant while cancellation of his booking has nowhere put the above mentioned fact as a

reason for cancellation of her booking. The only fact which may be considered to be supporting her above claim is that after cancellation of the booking, there was a mutual written agreement between the respondent and the landowner in December, 2022, wherein the above said flat No. 103 was handed over to the promoter by the respondent.

Now, taking the above fact into consideration, it is clear that the complainant has cancelled booking of her flat No.103 on 05.05.2022 which was accepted by the respondent vide his letter dated 06.07.2022. Again considering the written compromise petition filed by the respondent, it is clear that the respondent had agreed to make payment of the remaining amount without interest to the complainant within a period of nine months plus a grace period of three months i.e. within a total extended period of twelve months from 10.04.2024 onwards but a perusal of the record makes it clear that the respondent till date has made a total payment of Rs.2.00 lakh only within the above said period of twelve months which ended on 09.04.2025. It is also clear that the respondent has enjoyed the benefit of the entire money paid by the complainant to him. Thus, it is clear that the respondent is liable to pay interest on the entire unpaid principal amount from the date of completion of the above said extended period of twelve months (i.e. from 09.04.2025 onwards) as agreed upon by the respondent.

The respondent is, therefore, directed to make payment of the remaining principal amount of Rs.20.00 lakh to the complainant along with interest at the rate of 2% above the MCLR (marginal cost of fund-based lending rate) of State Bank of India as applicable for three years within sixty days of issue of this order. The interest will be leviable over the entire unpaid principal amount of Rs.20.00 lakh at the above rate from 09.04.2025 onwards till the date of payment of the principal amount.

As regards claim for compensation is concerned, the complainant is at liberty to press the same before the A.O. (Adjudicating Officer) as per the provisions of the Real Estate (Regulation and Development) Act, 2016.

In compliance of the orders dated 23.05.2025 and 03.06.2025, the Registration Wing has submitted its report stating that the promoter has submitted an application for a change in building details from G-3 to G-4 on the RERA web portal on 26.06.2023 but the application is currently under process and no corrigendum has been issued by the Authority in this regard as of now. Therefore, the Registration Wing is directed to submit its report again as to whether the respondent has complied with the provisions of Section 14 of the Real Estate (Regulation and Development) Act, 2016 or not. In case it is not,

necessary action may be taken accordingly against the respondent for violation of Section 14 of the Act.

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

Sd/-
(Sanjaya Kumar Singh)
Inquiry Commissioner,
RERA, Bihar