

REAL ESTATE REGULATORY AUTHORITY, BIHAR
Before the Bench of Mrs. Nupur Banerjee, Member

Case No. RERA/CC/1372/2020

Ujjawal Prakash

.....Complainant

Vs

M/s Nesh India Infrastructure Pvt. Ltd Respondent

Project: Tiruvantpuram City.

ORDER

19.5.2023

1. This matter was last heard on 05.01.2023 and was fixed for order on 01.02.2023 but due to preoccupation of the Authority in the other matters, order couldn't have pronounced on the date fixed.
2. A detailed Interim Order was passed on 30-08-2022 with following observations: -

Perused the records. The agreement to sale mentions that 20% has to be paid at the time of booking and 35% at the stage of construction up to plinth level. The letter dated 11.9.2018 annexed by the respondent in their reply does not indicate whether the construction up to plinth level has been made or not. The complainant has not given reply sent by him to this letter dated 11.9.2018, while he has admitted that he had received this letter.

The RERA Act, 2016 casts obligation upon both the promoter and the allottee so that the project is completed. The allottee has to make payments as per Agreement to Sale and the promoter is required to inform the allottee about the progress of the project by uploading Quarterly Progress Report on the web page. The Act and the Bihar RERA Rules, 2017 provide that the promoter may charge interest for delayed payment of dues by the allottees. The allottee is entitled to interest on delay in possession.

The Authority observes that before final order is passed it would be necessary to seek clarification from the complainant that whether he had replied to the letter of the respondent dated 11.9.2018. The respondent would also clarify whether they had sent specific communication to the complainant stating therein that work up to plinth level has been completed.

3. On 21-09-2022, the matter was transferred to the single Bench and accordingly, this matter was heard at length.

4. In nutshell, the case of the complainant is that the complainant had paid Rs.6,48,735/- in July, 2013 and accordingly, an allotment was issued on 01.07.2013 for flat no.305, Block-K in "Tiruvantpuram City Vidyut" Khagaul, Patna. By respondent-promoter in favor of the complainant. It has been stated by the complainant that the flat was to be completed in December,2016 with a grace period of six months but neither the same was completed and handed over nor the complainant was informed about the status of the project despite his request. However, a demand notice dated 11.9.2018 was served by the respondent to pay Rs.11,07,705/-. It was further stated that the promoter has subsequently cancelled the allotment. Hence, this matter has been filed against the cancellation of the allotment and not to book the flat to someone else and to direct the respondent to handover the flat to complainant as per the Agreement dated 10-07-2013.

5. The respondent has filed their reply stating that there was some delay in construction due to various reasons and that the complainant did not make payment as per the schedule mentioned in the Agreement to Sale. The respondent submits that the letter was issued to the allottee on 10.9.2018 but he did not respond after which the allotment was cancelled.

6. In consonance to the direction passed in the Interim Order dated 30-08 2022, the complainant filed his reply stating therein that respondent has never informed about the current status of the project in respect to the demand letter issued and

to substantiate the same brought on record through Annexures, the communication of mails.

7. The respondent too has filed affidavit and written notes of Argument stating that the complainant was informed about the dues and compliance of the same in accordance to the schedule payment as stated in the Agreement for Sale dated 10-07-2013 and cancelled the allotment for non-adherence to the payment clause as mentioned in the Agreement for Sale.

8. Take the notes of submissions of both the parties and perused the record. The Authority observes that the issue involves in this case is as following below: -

I. whether the allotted flat which was cancelled by the promoter satisfy the ingredients of section 11(5) of the RERA Act, 2016 or the cancellation of allotted flat made by the promoter on the ground for non-payment Justify the payment clause as mentioned in the Agreement for Sale dated 10-07-2013?

9. The Bench take the consideration of the facts brought on record by the parties and before dealing with the issues stated above, the Bench takes the note of the submissions that flat was booked in 2013 and the map of the project of the said booked flat was sanctioned in the year 2016 and the project was registered with the Authority on 12-12-2018.

10. The Bench also takes the note that the QPR (Quarterly Progress Report) was uploaded and updated by the respondent-promoter in regard to the development of the said project up to Q1 to Q4 in the year 2022 and 2023.

Now coming upon the issue that the allotted flat was cancelled in accordance to section 11(5) of the RERA Act, 2016 or not or the cancellation of allotted flat made by the promoter on the ground for non-payment Justify the payment clause as mentioned in the Agreement for Sale dated 10-07-2013. To draw opinion upon this, the Bench takes the note of the submissions of the parties and observes that it is not in dispute that demand letter was received to the complainant or not. The objection raised by the complainant is that the same was not issue in

accordance to payment clause of the Agreement for sale. Upon which the complainant submits that after the demand letter issued, the complainant made various communications through mail to respondent asking about the construction stage of the project which the respondent has not replied. Upon this, the respondent neither in consonance to the interim order nor during the hearing after that brought on record any documents to show that they had replied to the query of the complainant regarding construction stage. As observed in the Interim order and also very clearly mentioned in the Agreement for sale dated 10-07-2013 that 20% has to be paid at the time of booking and 35% at the stage of construction up to plinth level. Hence, with such opinion drawn and also taking into the QPR uploaded by the promoter in the dashboard, the Bench observes that the cancellation of allotment of flat of complainant as made by the respondent is neither in accordance to section 11(5) of the RERA Act, 2016 nor in accordance to the Agreement for Sale dated 10-07-2013.

The Bench observes that the Judgement referred by the respondent in their affidavit and notes of argument does not apply in the facts and circumstances of this case.

The Bench also notes that in pursuant to direction dated 08-12-2022, the respondent does not bring any evidence on record from which it appears that any third party right is created in respect to the allotted flat in question.

In the light of above observations, the Bench hereby directs respondent to handover the possession of allotted flat to complainant by completing the project in all respect in accordance to the Agreement for Sale dated 10-07-2013.

The complainant is further directed to pay the due amount in accordance to the Agreement for Sale dated 10-07-2013.

The Bench also directs monitoring wing to examine the latches on the part of the respondent-

promoter in uploading the quarterly progress report and take appropriate action in accordance to the provisions of the Act.

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

Sd/-
Nupur Banerjee
Member