

**REAL ESTATE REGULATORY AUTHORITY, BIHAR**

**2<sup>nd</sup> Floor, BSNL Telephone Exchange, North Patel Nagar, Road No. 10,  
Patna -800023**

**Before the Double Bench of Mr. Naveen Verma, Chairman  
& Mrs. Nupur Banerjee, Members**

**Complaint Case No.: CC/1061/2020**

**Sanjay Kumar Saraf.....Complainant**

**Vs.**

**M/s Nissa Realtors Pvt. Ltd.....Respondent**

**Project: Ghar Apna Phase- II**

**ORDER**

23-11-2021

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26.11.2021

The matter was last heard before the double bench on 27.10.2021.

The case of the complainant is that he had entered into an agreement for sale on 13.12.2011 with the respondent company for purchasing Flat bearing Flat No. D-5, in block - B, measuring 991 sq.ft. along with parking space in Ghar Apna Phase-II project and total consideration amount of flat was Rs.18,85,241/- and Rs.1,48,650/- for miscellaneous charge and out of which he had paid Rs.23,51,000/- as total amount of the flat, till now the possession has been not given to the complainant.

The complainant has placed money receipts on record dt. 30-06-2010 for Rs.3,05,084/-, dt.18-08-2011 for Rs.7,856/-, dt.27-01-2013 for Rs.1,94,350/-, dt.31-10-2012 for Rs.1,94,350/-, dt.03-05-2012 for Rs.2,67,195.87/-, dt.20-08-2012 for Rs.2,91,524/- , dt.16-09-2012 for Rs.1,94,349.49/-, totaling to Rs.14,54,709.36/-. The complainant had placed a receiving dt.28-11-2011 marked as Annexure -II at page-15 of complainant petition in which it is

mention that, the complainant had paid Rs.1,86,500/- in cash to respondent company. Further, the complainant has placed dt.18-11-2013 & 02-12-2013 installment call notice with hand written receiving and sign of Rs.1,94,349.49/- & Rs.58,792/- respectively, issued by the respondent company.

The respondent company has filed its reply on 12-04-2021, stating therein that, the present case relates to the period of Prabhat Kumar Verma, who was then, the Managing Director of the company and at the time of his death, the company had negative balance of Rs.1,23,22,270/-. It has been further submitted that after his death, the audit report was prepared by the Chartered Accountant and it was found that Rs. 2,83,37,303/- has been transferred in three transactions in the personal account and two private firm of M.D. Prabhat Kumar Verma. The respondent while referring to Annexure- B of the counter affidavit, submits that, the complainant had requested to withdraw the booking by letter dt.22-07-2016 and given undertaking for the same and respondent in view of this letter, refunded Rs.1.5 lakh by cash on 15-09-2016. The respondent further submitted that total money left to be return is Rs.1,76,220.36/- only. It also further submitted by the respondent that, the present management is facing financial crisis after the death of MD Prabhat Kumar Verma and new management is trying to make arrangement of money, so that the paid consideration amount of the complainant is refunded and in this process, it may take 18 months' time there fore requested to provide appropriate time for refund of this amount to the complainant. It is also submitted by the respondent company that there is no flat available in this project.

The complainant filed reply to show cause filed by the respondent on 05-11-2021, denying all the averments made by respondent in counter affidavit. It has been further submitted by the complainant that, the respondent has

refunded Rs.1.5 lakh only and the entire amount mentioned in sale agreement is due and requested for the refund of the same with interest& compensation.

During the last hearing on 27-10-2021, the learned counsel for the complainant vehemently denied the contention in para 4 of the reply filed by the respondent company that the complainant was not interested in taking the flat. He reiterates that without their consent, the respondent has allotted flats to some other person which is illegal. The learned counsel of the complainant also reiterated as to how without cancelling the registered agreement to sale which was still valid, the flat had been sold out to some other person.

The learned counsel of the respondent company reiterated the contents of the counter affidavit and reiterated his pleadings that the company would refund the amount paid by the complainant available in their records in instalments.

The Authority takes note of the submissions made by both parties and observes that when the new Directors took over the company after the death of Shri Prabhat Kumar Verma, the then MD, they should have taken care of all the liabilities of the company as well as its assets. Their plea that the erstwhile management was responsible for diversion of funds and for not handing over the apartment is not tenable under the Real Estate (Regulation and Development ) Act, 2016 as they both own the assets and liabilities of the company. These cases are for the project which was started way back in 2010. The Bench further notes that the present Directors have not given any evidence of steps taken by them to file criminal and civil cases to recover the funds diverted to the personal accounts of the then MD, since deceased from his family members or by sale of his properties. In so far as the issue of breach of agreement to sale is concerned, the parties are free to file cases in respect to that before the appropriate forum.

On the basis of the submissions and taking into consideration the documents filed by both the Parties, the Bench directs the respondent company to refund Rs.18,85,241/- amount paid as per registered sale agreement dated 13-12-2011 after deducting 1.5 lakh already paid to complainant by respondent on 15-09-2016 along with interest on such amount at the rate of marginal cost of fund based lending rates (MCLR) of State Bank of India as applicable for three years plus four percent from the date of taking the booking till repayment within sixty days of issue of this order

The complainants are at liberty to press their claim for compensation before the Adjudicating Officer.

Nupur Banerjee  
Member

Naveen Verma  
Chairman