

REAL ESTATE REGULATORY AUTHORITY, BIHAR

Before the Bench of

Hon'ble Member Mr. S.D. Jha, RERA, Bihar,

RERA/CC/239/2023

Vikash Kumar Complainant

Vs.

M/s Star India Construction Pvt. Ltd. Respondent

For the complainant: Mr. Amit Singh, Advocate

For the Respondent: Md. Imtiyaz, Advocate

Project:- DHANRAJ COMPLEX

ORDER

28.05.2024 This case was last heard on 26.04.2024 and the order was reserved. Mr. Amit Singh, Advocate, appeared and defended the case of the complainant. Mr. Sumit Kumar, Advocate and Md. Imtiyaz, Advocate appeared and defended the case of the respondent. The respondent requested for three weeks' time to file written notes of argument, which was allowed but the same has not been filed till date. However, on 26.04.2024 he filed final argument cum reply which was discussed also. Hence, the order is being delivered today i.e. 28.05.2024.

2 (i). Learned counsel for the complainant submitted that the complainant booked Flat no.Dc-503B on 5th Floor, in Dhanraj Complex, Phase II (Block –B) on consideration amount of Rs.42,19,800/- by making payment of Rs.1,51,000/- and thereafter an Agreement For Sale was executed on 7.2.2020. Out of the total consideration amount the complainant paid Rs.22,47,920 till January, 2022. The flat was to be completed and handed over by March, 2023, but the project is still under construction. He further submitted that the complainant having found no progress in construction work stopped in making further payment and thereafter on 6.4.2022 the respondent cancelled the booking unilaterally. The complainant requests that the cancellation of booking made by the respondent unilaterally without any prior demand notice may be rejected and the

respondent may be directed to handover possession of flat to the complainant. He also submitted that the complainant is willing to pay the remaining amount after handing over possession of flat as per the Agreement.

(ii) Learned counsel for the complainant also submitted that in another identical matter relating to the present project, the Full Bench after having heard learned counsels for the parties has reserved the order. He also submitted that the registration certificate of the project was valid upto 2019. There are numerous cases pending against the respondent - M/s Star India Construction Pvt. Ltd and the claim of the respondent that only two cases are pending is incorrect.

3 (i). Learned counsel for the respondent submitted that the registration of the project is valid till March, 2024 and thereafter nine months of COVID -19 pandemic Force Majeure extension is there as per general notification of RERA. He further submitted that the respondent – promoter may apply for further extension of registration if it is required. He also submitted that the work of the project is still going on. The respondent is not habitual offender as till date the respondent – promoter has already completed more than 20 projects without any litigation and no other cases except two cases is pending against the respondent - company.

(ii) He further submitted that the complainant is habitual defaulter since beginning as despite several demands and reminders he did not make payment on time. The respondent had sent more than five letters dated 2.1.2021, 20.1.2021, 6.2.2021, 6.12.2021 & 16.12.2021 to the complainant to make payment, which are annexed with the preliminary submission dated 18.1.2024, but the complainant made next payment after one year of communication. As a result, the respondent was left with no option but to cancel the booking and vide letter dated 6.4.2022 the allotment was cancelled and Rs.10,00,000/- was refunded to the complainant on 13.01.2023.

On query by the Authority as to why the entire amount was not refunded to the complainant immediately after cancellation, the respondent's counsel submitted that due to financial constraints, the amounts are being refunded in installment. He further submitted that the complainant has returned back the amount of Rs.10,00,000/- to the respondent about one year after refund and thereafter he filed this complaint on 22.04.2023. He also submitted that after more than one year of cancellation, the complainant sent a letter dated 27.01.2023 to the respondent for withdrawal of cancellation which was not accepted.

4. Learned counsel for the complainant in supplementary affidavit dated 18.4.2024 stated that the complainant received four demand letters dated 2.1.2021, 20.1.2021, 6.2.2021 & 16.12.2021 and in compliance thereof he made payments till 18.5.2021 and Rs.1,50,000/- in January, 2022. When the complainant visited the site of the project after making payment in January, 2022 there was no progress in work at all there. The complainant time and again reminded the respondent - promoter that there is not noticeable development in construction work but they are making continuous demand for payment. He also stated that Schedule – C of the Agreement clearly states that at the time of casting of 3rd floor total Rs.24,68,585/- was to be paid by the complainant. The casting of 3rd floor roof was done in September, 2022. By the time of casting of 3rd floor the total amount of Rs.21,85,858/- was to be paid whereas by that time the complainant had already paid Rs.22,47,920/- and the respondent had issued cancellation letter on 06.04.2022.

5. Learned counsel for the complainant by filing written notes of argument by mail on 09.05.2024 stated that the continuity of payment can be measured by the payment receipts attached with the complainant. He further stated that the complainant never claimed that the project was to be completed

in 2020. The complainant has placed the provisions of Covid -19 moratorium but the same has been wrongly interpreted as the complainant in paragraph -4 of the supplementary affidavit dated 13.3.2024 agrees that the project was to be completed in December, 2023. He also stated that the submission made in paragraph -4 of the reply filed by the respondent that RERA Registration is valid till March, 2024 is false and misleading because the RERA Certificate was valid only till 31.12.2023.

6. Perused the record. The Authority notes that the complainant booked Flat no.Dc-503B on 5th Floor, in the project on consideration amount of Rs.42,19,800/-, out of which he paid Rs.22,47,920 till January, 2022. The flat was to be completed and handed over by March, 2023. The Authority further notes that the respondent – promoter sent demand letters dated 2.1.2021, 20.1.2021, 6.2.2021 & 16.12.2021 for making payment and the complainant made payment in May, 2021 and thereafter in January, 2022 of Rs.1,50,000/-, which has not been disputed.

7. The Authority also notes that as per Agreement in Schedule –C, at the time of casting of 3rd floor total amount which required to be paid was Rs.21,85,858/- whereas the complainant had already paid Rs.22,47,920/- before casting of 3rd floor. The casting of 3rd floor roof was done in September, 2022, which has not been rebutted at the end of the respondent, and the cancellation letter was issued on 06.04.2022 on the ground of default in making payment. Further, before cancellation on 06.04.2022 the respondent did not send any demand notice as stipulated in paragraph -2 of the Agreement as no such document has been brought on the record and the demand letters, which are brought on the record, are of the year, 2021. Hence, the Authority observes and holds that the cancellation of booking by the respondent vide letter dated 06.04.2022 not only causes violation of Section 11 (5) of the RERA Act, 2016 but also breaches the terms of the Agreement and, therefore, the cancellation of

booking of flat vide letter dated 06.04.2022 stands rejected and this complaint case is accordingly allowed.

8. Accordingly, the respondent – company and its Chairman Mr. Shashi Bhushan Prasad is directed to hand over possession of flat with all amenities as per the Terms and conditions of the Agreement and to execute the Conveyance Deed after completing all legal formalities within two months from the date of issue of this order.

9. The complainant is directed to pay the remaining consideration amount along with interest, if payments made by him are not found in the manner and within the time as specified in the Agreement For Sale, after handing over possession of flat and before execution of Conveyance Deed. Further, the complainant is also at liberty to move the Adjudicating Officer, RERA, to claim for compensation if delivery of possession of flat is not handed over as per the Agreement for Sale dated 07.02.2020.

With the aforesaid observations and directions, this case is disposed of.

**Sd/-
S.D. Jha,
Member**