

REAL ESTATE REGULATORY AUTHORITY, BIHAR

Before the Bench of

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

RERA/CC/240/2023

Rajesh Prasad Complainant

Vs.

M/s GrihVatika Homes Pvt. Ltd.Respondent

For the complainant: Ms. Ananya Shewani, Advocate,

For the Respondent: Mr. Ankit Kumar, Advocate

Project:– VIP PREMIUM BLOCK

ORDER

20.06.2024 This case was last heard on 18.06.2024 and the order was reserved with mutual consent of the parties. Ms. Ananya Shewani, Advocate, appeared and defended the case of the complainant. Mr. Ankit Kumar, Advocate, appeared and defended the case of the respondent. Vide proceeding dated 18.06.2024 the respondent was granted one day's time i.e. 19.06.2024 to file counter reply which has been filed by mail dated 19.06.2024 and the same would be dealt here-in-after. Hence, this order is being passed today i.e., 20.06.2024.

2. Learned counsel for the complainant submitted that the complainant booked Flat no.301 on 3rd floor of 2361 sq. ft. in the project "VIP Premium Block" situated at Gola Road, District – Patna, in the year, 2015 on consideration value of Rs.54,86,964/- out of which he paid Rs.19,00,000/- to the respondent – promoter through cheques dated 12.07.2015, 22.09.2015, 02.10.2015 & 05.02.2016. He further submitted that the flat was assured to be handed over within the specified period of time but till date neither the flat has been handed over nor his money has been refunded. The complainant requests for refund of his money of Rs.19,00,000/- with interest and in this connection the complainant has already sent cancellation letter to the respondent - promoter on 06.06.2024 for refund of money but there is no response at the end of the respondent so far.

3. Learned counsel for the respondent by filing counter reply through mail dated 19.06.2024 submitted that the

complainant made total payment of Rs.19,00,000/- against booking of his Flat no.301, Premium Block, of 2361 sq. ft in the project in the year, 2015 and the last amount of Rs.3,00,000/- was received by the respondent – promoter in the year, 2016. He further submitted that the respondent – promoter always tried his level best but the complainant did not make payment as per terms and condition of the booking. He also submitted that there is no agreement between the parties. The complainant has withdrawn from the project himself then how the respondent is liable to pay the interest on the amount paid by the complainant. The construction work of the said block is already complete. By referring Sections 19(6) and 19(7) of the RERA Act, 2016, he also submitted that when an allottee enters into an Agreement For Sale to purchase apartment or plot under Section 13 of the RERA Act, 2016 he/she is responsible to make necessary payment as specified in the Agreement and in case of any delay in payment the allottee shall be liable to pay interest at such rate as may be prescribed. Hence, the respondent is ready to refund the principal amount after deduction of the amount as per the company norms. Lastly, he submitted that the entire occurrence has been occurred in the year, 2015 before enactment of the RERA Act, 2016, the present case is not maintainable.

4. Having gone through the record, the Authority notes that the respondent in his counter reply filed through mail dated 19.06.2024 has raised mainly three following points while opposing the relief sought by the complainant:

(i) The complainant did not make payment as per terms and condition of the booking. Since the allottee did not make payments on time, he is liable to pay interest and further there is no Agreement For Sale between the parties. Hence, the respondent would refund the principal amount after deduction of the amount as per the company norms.

(ii) The complainant has withdrawn from the project himself then how the respondent is liable to pay the interest on the amount paid by the complainant.

(iii) Since the entire occurrence had occurred in the year, 2015 before enactment of the RERA Act, 2016, the present case is not maintainable.

5. The Authority considered the aforesaid three points and observed here-in-below separately:

(a) The Authority observes that the respondent – promoter has violated the provision of Section 13 of the RERA Act, 2016, which says that no deposit or advance to be taken by promoter without first entering into Agreement For Sale, whereas, in this case the respondent – promoter had received 19,00,000/- without any Agreement. When the Agreement For Sale itself has not been executed and no booking document mentioning of terms and conditions of making payment has been brought on the record then on what basis the respondent can claim that the complainant did not make payment as per terms and condition of the booking and the respondent would refund the money after deduction as per the company norms. Hence, the point raised at 4(i) by the respondent is not sustainable and is ,accordingly, rejected.

(b) The Authority observes that the respondent – promoter has not brought on record any document to establish that the project was completed within the specified time as assured to the complainant. When the respondent – promoter himself did not honour the commitment of handing over the flat within the specified time then in that case the complainant is at liberty to withdrawn himself from the project and can claim refund with interest at such rate as may be prescribed as provided in Section 18 of the RERA Act, 2016. Hence, the point raised at 4(ii) does not have leg to stand and is ,accordingly, rejected.

(c) The Authority would like to refer the decision of the Hon'ble Supreme Court passed in M/s Newtech Promoters and Developers Pvt. Ltd ... Appellant (s) Versus State of UP & Ors. Etc., ... Respondent(s), wherein it has been observed that provision of the Act is retroactive in nature and that the Statute

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primarily aims to protect the right of the home buyers. Further, the respondent has not brought any document like Completion Certificate/Occupancy Certificate on record to show that the project was completed before coming into force of the RERA Act, 2016. Hence, the point raised at 4(iii) is not sustainable and is, accordingly, rejected.

6. Considering the aforesaid facts and the submissions made on behalf of the parties, the Authority directs the respondent - company and its Director Mr. Ranjit Kumar Jha to refund the principal amount of Rs.19,00,000/- to the complainant along with interest within sixty days of issue of this order. The rate of interest payable by the promoter shall be at two percent above the prevalent Prime Lending Rates of the State Bank of India on the date on which the amount becomes due till the date of payment.

7. The complainant is at liberty to press other claims, which are in the nature of compensation, before the Adjudicating Officer, RERA.

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

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