

REAL ESTATE REGULATORY AUTHORITY, BIHAR

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

RERA/CC/297/2023

Leena Wilfred Henry

.....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

23/05/2025

ORDER

Hearing taken up. Mr. Kishore Kunal, learned counsel for the complainant is present. None appears on behalf of the respondent.

Heard Mr. Kishore Kunal, learned counsel for the complainant along with Mr. Wilfred Henry, husband of the complainant.

The complainant has prayed for the following reliefs:

- (i) To declare the cancellation as arbitrary as the same is not in accordance with the Agreement for Sale dated 09.03.2021 as well as the provisions of the Act and Rules.
- (ii) To direct the respondent to hand over the possession of the booked flat as per the Agreement for Sale dated 09.03.2021 and allotment thereof.
- (iii) To initiate a proceeding for invalid offering of the flat on 4th floor for which neither the map has been approved nor the registration from the RERA has been taken.
- (iv) To direct for payment of interest for the delay as per 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.

Though the respondent is absent today but he has filed a detailed written Notes of Argument in his behalf on 05.05.2025. Mr. Hemant Kumar, learned counsel on behalf of the respondent had appeared on 29.04.2025 and had also presented his case.

Perused the entire material available on record.

In short, the fact of the case is that on offer made by the respondents no. 1 to 3, the complainant booked a flat bearing Flat No.203 on the 2nd 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.17.00 lakh, the complainant paid Rs.1.70 lakh as booking amount and accordingly, entered into an Agreement for Sale on 09.03.2021. After the execution of the Agreement for Sale, the respondents came with a proposal that if the complainant pays the rest amount immediately then Rs.2.00 lakh would be lessened from the total consideration amount. Agreeing to the said offer, the complainant paid the rest amount of Rs.13.30 lakh and accordingly, a credit note of Rs.2.00 lakh was made in her favour by the respondent. Since there was dispute between respondents no. 1 to 3 and respondent no.4, she came to know that her booked flat had been given in the share of the respondent no.4 i.e. the landowner without any intimation to the complainant in contrary to the conditions laid in the Agreement for Sale. Thereafter the respondents no. 1 to 3 asked her to cancel her allotment and they would refund the amount of Rs.15.00 lakh plus 2.00 lakh as per the offer. It is further stated that on such arbitrary act of the respondents and pressure given by them, she sent a mail for cancellation of the said flat and requested for refund of the entire amount of Rs.17.00 lakh. It is also stated that after approval of the cancellation and assurance to refund the money, the respondents did not refund the said amount. Thereafter it came to her knowledge that the respondents had taken a loan for further construction over the said project and on coming to know about the said fact, she sent a mail for withdrawal of her cancellation. It is further stated that the respondents no. 1 and 2 came with an offer that instead of refund and allotment of the said flat, they will allot a new flat on 4th floor being Flat No.401 and the booking was confirmed with an assurance that the Agreement for Sale would be executed after PMAA approval for extension. 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, they did not give any reply and again finding no option she asked for the refund of the entire mount 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, Agreement for Sale dated 09.03.2021 as Annexure 3, money receipts and credit note as Annexure 4, Development Agreement dated 09.03.2021 as Annexure 5, Legal notice as annexure 6, Share Agreement dated 20.12.2022 as Annexure 7, mail dated 05.06.2022 as Annexure 8, letter dated

06.07.2022 and the receiving as Annexures 9, letter for withdrawal of cancellation and the reminder as Annexures 10 and 11, mail offering another flat and acceptance as Annexures 12 and 13 respectively.

Perused the records. A compromise petition has been filed on behalf of the respondent on 10.04.2024 in which it is stated that the complainant had booked a flat in the said project on 27.02.2021 and thereafter an unregistered Agreement for Sale was executed between the parties on 09.03.2021 for a total consideration amount of Rs.17.00 lakh with an offer of Rs.2.00 lakh in case of onetime payment. The complainant then paid Rs.14.75 lakh out of total consideration of Rs.17.00 lakh for which payment receipt was 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.1.00 lakh to the complainant and the respondent is always ready and willing to return the remaining amount to the complainant without interest in six monthly instalments with a grace period of two months instalment. 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 the preliminary objection. Apart from the other submissions, it is also submitted that the respondent has already refunded an amount of Rs.1.50 lakh to the complainant out of total paid amount of Rs.14.75 lakh.

In compliance of the direction passed on 29.04.2025 the complainant has filed written argument on 02.05.2025 in which the complainant reiterating the facts stated above has prayed for a direction to the respondent to pay the rest principal amount of Rs.13.25 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 petition which is against law and if the prayer is amended, the complainant is liable to get his amount without interest by forfeiting the booking amount (Rs.1.50 lakh). Apart from the other submissions, the respondent has submitted that cancellation of 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 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 an agreement for sale was executed between the complainant and the respondent for booking Flat No. 203 on 09.03.2021 and the complainant has made initial payment of Rs.1.70 lakh and subsequent payment of Rs.13.05 lakh (wrongly mentioned in the complaint Rs.13.30 lakh), thus total payment of Rs.14.75 lakh.. On perusal of the record it is also observed that the said agreement for sale executed between both the parties was unregistered. Still both the parties are on a common page as regards to the amount paid by the complainant which comes to a total of Rs.14.75 lakh and the amount refunded by the respondent which comes to a total of Rs.1.50 lakh., The complainant during the course of hearing and in his final written argument has submitted that on account of an informal agreement between the respondent and the landowner concerned, the said flat was informally agreed to be handed over to the landowner and hence, the complainant was verbally coerced/ pressurised by the respondent to cancel the booking of the said flat No.203.

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. 203 was handed over to the landowner by the respondent.

Now, taking the above fact into consideration, it is clear that the complainant has cancelled booking of her flat No.203 on 05.06.2022 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 entire amount without interest to the complainant within a period of six months plus a grace period of two months i.e. within a total extended period of eight 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.1.50 lakh only within the above said period of eight months which ended on 09.12.2024. 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 after the completion of the above said extended period of eight months as agreed upon by the respondent.

The respondent is, therefore, directed to make payment of the remaining principal amount of Rs.13.25 lakh to the complainant along with interest at the rate of marginal cost of fund-based lending rate (MCLR) of State Bank of India as applicable for three years plus 2% interest from that date onwards within sixty days of issue of this order. The interest will be leviable over the entire unpaid amount of Rs.13.25 lakh at the above rate from 10.12.2024 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. as per the provisions of the Act.

During course of hearing as well as perusal of the details submitted by the respondent in another case RERA/CC/298/2023 pertaining to the same project, it has been submitted explicitly by the respondent that the construction of 4th floor has been completed in the said project. The Registration Wing of the Authority is also hereby directed to verify from its records whether permission regarding the same had been obtained by the respondent from the Authority or not. In case it has not been done so, the Registration Wing may proceed further with filing a suo motu case against the respondent for violation of the provisions of the Act regarding the same.

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

Sd/-

(Sanjaya Kumar Singh)
Inquiry Commissioner,
RERA, Bihar