

REAL ESTATE REGULATORY AUTHORITY, BIHAR

Before the Bench of

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

RERA/CC/530/2023

Shankar Prasad &Anrs. Complainant

Vs.

M/s Bhuswami Buildcon Pvt. Ltd.Respondent

For the complainants: Mr. Vijay Anand, Advocate

For the Respondent: Mr. Amit Singh, Advocate

Project:– SUN CITY RESIDENTIAL COMPLEX

ORDER

06.09.2024 This case was last heard on 23.08.2024 and the order was reserved. Mr. Vijay Anand, Advocate, appeared and defended the case of the complainants whereas Mr. Amit Singh, Advocate, appeared and defended the case of the respondent. Learned counsels for the parties vide the last proceeding dated 23.08.2024 were directed to file written arguments and, accordingly, they have filed the same, which would be dealt with here-in-after at the appropriate place. The order is being passed today i.e. 06.09.2024.

2. Learned counsel for the complainants submitted that the complainants had booked two flats (bearing nos.201 & 202) in the project "Sun City Residential Complex" on consideration amount of Rs.34,00,000/- which was paid by the complainant and then an Agreement For Sale was executed on 30.07.2020 between the complainants, namely, Sri Shankar Prasad and Smt. Rina Sultaniya and the respondent, wherein, it was agreed that in case delivery of possession of flats are not handed over by July, 2023, the respondent – promoter would pay Rs.44,00,000/- to the complainants against the deposited amount of Rs.34,00,000/-. He also submitted that apart from Rs.34,00,000/- the complainants had made further payment of Rs.2,00,000/- to the respondent - promoter on the ground of escalation of price of flats, but till date flats have not been

handed over to the complainant. Hence, the complainants have filed this complaint on 7.11.2023 for delivery of possession of both flats.

3 (i). Learned counsel for the respondent submitted that at the time of filing this complaint the complainants did not disclose about pendency of a Title Suit no. 944/2023 in connection with these flats before the Civil Court, Gaya. He further submitted that there was no execution of Agreement For Sale between the parties relating to the flats in question, rather a Memorandum of Understanding was executed between the parties which may be ascertained from the statements made at several places in the complaint.

(ii) By filing counter reply dated 07.06.2024 he further submitted that the project in question was verified and sanctioned by Mukhiya of Gram Panchayat and as per sanction plan 200 flats were constructed, out of which 113 flats have already been booked and Flat no.202 on 2nd floor was booked in favour of one Ravi Jain vide Agreement dated 23.06.2022. He further submitted that the complainant along with his wife lent about Rs.34,00,000/- each on different occasions and on 30.07.2020 two Agreements were executed between the respondent and the complainant and his wife Smt. Rina Sultaniya. He also submitted that from perusal of the Agreement, it would be evident that the complainant and his wife lent Rs.34,00,000/- each to the respondent in installment on different dates which was to be returned by July, 2022 along with profit of Rs.10,00,000/-. As per Agreement, the respondent was required to be returned amounting to Rs.88,00,000/- including profits by July, 2022. He also submitted that even though due to Covid -19 the business of the respondent – builder was badly affected but he continued to refund money to the complainants and finally by 09.04.2024 he returned about 92,00,000/- including compensation. He also submitted that before filing of the Title Suit the complainants had given two legal notices to the

respondent regarding above dues, which was replied by the respondent through registered post on 08.09.2023.

4(i). Learned counsel for the complainants by filing rejoinder dated 02.07.2024 contradicted the aforesaid submissions and stated that Title Suit no.944/2023 is pending before the Civil Court, Gaya, in connection with other two flats, for which the complainants had also paid Rs.34,00,000/- and the Agreement For Sale was executed on 10.07.2020 between Smt. Rina Sultaniya and Sri Shankar Prasad and the respondent but later on out of that amount of Rs.34,00,000/- the respondent refunded Rs.15,00,000/- and remaining amount has not been refunded so far. He also submitted that copy of Agreement annexed with the complaint as Annexure -1 itself shows that an Agreement For Sale relating to both the flats in question was executed between the parties and not the MOU as on 2nd page of Annexure -1 it is very clearly stated as "*Ekrarnama (Agreement for Sale)*". He further submitted that Annexure -3 series dated 30.07.2020 to the counter reply, which are Agreement For Sale, are incomplete and forged documents as last handwritten portion on the last page is disappearing if they are compared with the original documents.

(ii) He also submitted that the statement made in paragraph -13 of the counter reply that the respondent returned about Rs.92,00,000/- including compensation to the complainant is baseless and unfounded and Annexure -4 of the counter reply showing refund of Rs.92,00,000/- in cash is self created document on plain paper having no receiving or any endorsement of the complainant and, therefore, the said document cannot be relied upon for simple reason that one cannot believe that such a huge amount would refunded without getting receiving or endorsement of the complainant.

5(i) Learned counsel for the respondent by filing supplementary reply on 22.07.2024 submitted that the Title Suit has been filed before the Principal Sub – Judge, Gaya, prior to

the filing of the present complainant on the same matter and related to the same amount, parties and date and this fact has been dishonestly suppressed by the complainants. He further submitted that time and again the RERA has adjudicated upon the issue of maintainability of M.O.U in several cases and has affirmatively concluded that M.O.U is not within the purview of RERA. He further submitted that intent and content of the document dated 30.07.2020 is an investment for profit and, therefore, the dispute does not fall within the scope and ambit of RERA for adjudication and resultantly the promoter cannot be directed to execute Agreement For Sale as provided under Section 13 of the RERA Act, 2016. He further submitted that the complainant in their rejoinder have admitted that allotment was made For Flat nos.201 & 202 by handwritten notice under coercion from the complainant.

(ii) By filing written argument dated 27.08.2024 the respondent has reiterated his earlier submissions that the Title Suit no.944/2023 is pending before the Civil Court, Gaya for adjudication on the same matter relating to same amount and same relief as agitated in the instant complaint. It is clearly declared by the complainant that the transaction was done before the M.O.U was executed – money lent from 2017 -2020 and is in the nature of loan for acquisition of land and hypothecated flats were provided as security. The handwritten note was made under coercion from the complainant as admitted in para 12 of the first rejoinder. The M.O.U. and promissory notes completely destroy the case made out by the allottee. The dispute does not fall within the scope and ambit of RERA for adjudication. All the reported judgments referred in the supplementary reply dated 22.07.2024 of the respondent are almost exactly similar and on the same issue wherein it has been held that the complainant is not an allottee as per Agreement For Sale (M.O.U) and further held that transaction between the parties of loan is not covered

under RERA, rather the dispute between the parties are of civil nature.

6. Learned counsel for the complainant by filing written arguments dated 02.09.2024 has also reiterated his earlier submissions that the Managing Director of the respondent – company had entered into an Agreement For Sale on 30.07.2020 whereby the respondent was liable to handover two flats to the complainant before July, 2023 after full finishing with additional term and condition that if the respondent will return all the amount of Rs.34,00,000/-+ Rs.10,00,000/- by July, 2022 then the complainant will not be entitled to claim over the aforesaid two flats but the respondent – company failed to fulfill either of the promises before the schedule date. When the respondent - promoter failed to meet the promises, he allotted Flats nos.201 & 202 and in that connection received additional amount of Rs.2,00,000/- through two cheques of Rs.1,00,000/- each and that amount was credited in the account of the respondent company. He further submitted that the submission made in para -9 of the counter reply that Flat no.202 on 2nd floor was booked in favour of Ravi Jain vide agreement dated 23.06.2022 is clear breach of agreement dated 05.08.2021 made with the complainant, wherein, the complainant has been allotted Flat no. 201 & 202. He also submitted that the submission made in para 13 of the counter reply that the respondent refunded Rs.92,00,000/- against the booked flats is totally false and Annexure -4 to the counter reply showing payment of Rs.92,00,000/- on a plain paper having no receiving or endorsement of the complainant is forged document. He also submitted that the submission made in para -14 of the counter reply that Rs.2,00,000/- received through two cheques was refunded to the complainant by cheque on 13.09.2022 is false statement but no proof thereof has been enclosed with the counter reply. He also submitted that the statement made in para 15 of the counter reply that the complainant filed a title suit

no.944/2023 regarding the issue involved in this case is totally false rather that suit has been filed against another Agreement dated 30.07.2020 in which the complainants also paid Rs.34,00,000/- for two flats but out of that amount Rs.15,00,000/- has been refunded and for the rest amount that title suit has been filed. As regards the submission in para -13 of the supplementary counter reply by the promoter that in RERA MOU has no place as there is prescribed format of agreement for sale as mentioned in Section 13(2) of the RERA Act, 2016, he submitted that it is the duty of the promoter and not the allottee to make agreement in the prescribed format and the promoter is duty bound to do so as he is registered with RERA.

7. Perused the records including the so-called Agreement For Sale dated 30.07.2020. The Authority notes that the Agreement For Sale dated 30.07.2020, as per averments made therein, does not seem to be an Agreement because of the fact that paragraph -2 of the Agreement itself speaks that the respondent - promoter was in need of money and he got an amount of Rs.34,00,000/- from the complainant in last three years in different installments. It was decided between the respondent and the complainant that if the respondent would return Rs.34,00,000/- + Rs.10,00,000/- as profit, the total amount of Rs.44,00,000/-, to the complainant from 01 July to 07 July, 2022 then complainant would have no claim over flat. In paragraph -4 of the said Agreement, it was also decided between the complainant and the respondent that if payment is made before 24 (twenty four) months then proportionately amount would be reduced in Rs.10,00,000/- and in case the amount is refunded beyond twenty four months then in that ratio amount would be increased in Rs.10,00,000/-. Hence, the Authority observes and holds that Agreement dated 30.07.2020 is not an Agreement For Sale, rather that is Memorandum Of Understanding executed for getting loan, for which the flat was hypothecated by the respondent.

8. The Authority further notes that Section 13(2) of the RERA Act, 2016 clearly states that the Agreement For Sale shall specify the particulars of development of the project including the construction of building and apartments along with specification and internal development work and external development works, the date and the manner by which payments towards the cost of the apartment are to be made by the allottees and the date on which the possession of the apartment, is to be handed but these facts are completely missing in the Agreement dated 30.07.2020. Hence, the Authority further observes that the Agreement in question is not an Agreement For Sale and is out-and-out Memorandum Of Understanding, which is against the very tenet of Section 13 (2) of RERA Act, 2016.

9. The Authority also observes that since the Agreement in question itself has not been proved to be a valid document for the purpose of booking the flats in question and that has been found to be Memorandum Of Standing, the Authority does not think it fit to delve into further issues involved in this case and, accordingly, this complaint is dismissed.

10. With the aforesaid observations, this case is disposed of.

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