

**REAL ESTATE REGULATORY AUTHORITY, BIHAR**

**Before the Bench of**

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

**RERA/CC/537/2023**

Shilpi Gupta, w/o Ajay Kumar Gupta ..... Complainant

Vs.

M/s R.R. Builders & Developers Pvt. Ltd. .... Respondent

For the complainant: Mr. Jai Ram Singh, Advocate

For the Respondent: Mr. Parth Gaurav, Advocate

**Project:- SANCHAR NAGAR, BLOCK – 03**

**ORDER**

**20.06.2024** This case was last heard on 03.06.2024 and the order was reserved with the mutual consent of the parties. Mr. Jai Ram Singh, Advocate, appeared and defended the case of the complainant. Mr. Parth Gaurav, Advocate, appeared and defended the case of the respondent. The complainant and the respondent both were directed vide proceeding dated 03.06.2024 to file their respective written submissions within two weeks. The complainant has filed rejoinder-cum- supplementary petition vide mail dated 13.06.2024, which would be dealt with here-in-after, but the respondent has not filed till date. The order is being delivered today i.e.20.06.2024

2(i).Learned counsel for the complainant submitted that the complainant booked Flat no.105 of 1633 sq. ft. in Blok -3 of the project "Sanchar Nagar" on consideration amount of Rs.35,16,000/- out of which she paid Rs.30,67,772/- from 25.01.2016 to 08.19.2023 and in support of the said claim she has annexed receipts issued by the respondent and statements of the Bank Account as Annexure -3 series to the complaint. He further submitted that after receiving payment of Rs.17,33,719 + Rs.1,31,053 (for GST) the respondent – promoter got a draft Agreement For Sale created but that was finally not executed by him, which apparently violates Section 13 of the RERA Act, 2016. He also submitted that in the pre-possession letter dated 10.07.2023 sent by the respondent it is said

that Rs.25,91,815 has been paid by the complainant. Thereafter, the respondent sent another letter dated 13.10.2023, whereby, the booking of flat of the complainant was cancelled without affording an opportunity or notice to her, which was responded by the complainant on 22.11.2023, but there was no response at the end of the respondent. Hence, the complainant requests for setting aside the cancellation letter 13.10.2023, which violates the provision of Section 11(5) of the RERA Act, 2016.

(ii) He further submitted that after filing of this complaint the respondent refunded Rs.21,18,600/- to the complainant through RTGS. In this complaint, the complainant requests for handing over possession of flat. She is willing to pay the balance amount of consideration money as well as Rs.21,18,600/- which has been refunded to her by the respondent. On query regarding not making prayer for rejection of cancellation letter dated 13.10.2023, he submitted that he would file a petition seeking amendment to the prayer of the complaint to the extent that the complainant prays for rejection of cancellation letter dated 13.10.2023.

3(i). Learned counsel for the respondent submitted that the cancellation letter dated 13.10.2023 has been issued due to non-payment of installments as per schedule of the Agreement by the complainant. He further submitted that earlier also due to non-payment of installments in time, a cancellation letter was issued to the complainant on 19.3.2020 but on her request that was withdrawn and again pre-possession letter was given to her on 27.10.2021. Again when the complainant became defaulter in making payment, vide letter dated 13.10.2023 booking of flat was cancelled and her flat has been allotted to the another prospective buyer vide Agreement dated 21.10.2023. Now, there is no flat available with the respondent - promoter for allocation to the complainant. The respondent is willing to refund the balance amount, if any, as per Agreement and Rules.

(ii) He further submitted that the complainant made total payment of Rs.23,54,000/- and her total amount of

Rs. 21,18,600/- after deduction of 10% has been refunded. He also submitted that he would seek instructions from his client regarding claim of the complainant that she made payment of Rs.30,67,772/- and if any further amount is found then that amount would also be refunded by the respondent. On query regarding completion of project, he submitted that the project was to be completed in 2022, but due to Corona it could not be completed on time. However, now the project is complete and OC/CC certificates have been obtained from the competent Authority.

4 (a). Learned counsel for the complainant by filing rejoinder-cum-supplementary petition through mail dated 07.06.2024 has requested for amendment of prayers made in the complaint, which are as follows:

(1) To set aside the cancellation letter dated 13.10.2023 issued by the respondent without giving any show cause to the complainant, which violates the provision of Section 11(5) of the RERA Act, 2016 and rule of principle of natural justice.

(2) To execute the absolute Sale Deed of Flt no.105 in Block -03 on the 1<sup>st</sup> floor of 1633 sq. ft. in the project "Sanchar Nagar".

(3) To provide copy of completion certificate & occupancy certificates obtained from the Authority as per provision of RERA Act, 2016.

(b) He has further stated therein that the respondent neither sent any letter regarding cancellation of booking nor sent any demand letter for payment of due amount. The letter dated 27.12.2022 was sent regarding request for flat registration and to pay the interest of Rs.29,92,780 on delayed payment of Rs.14,27,042/-. Another letter dated 10.07.2023 was sent regarding request for registration and admission of payment of Rs.25,91,815/- for booking of flat no.105 on 1<sup>st</sup> floor in Block -3 of the project. The pre-possession letter dated 10.07.2023 (at Annexure -4 of the complaint) shows that on the due amount of Rs.9,24,185, the respondent has calculated compound interest of Rs.33,83,021/- which is totally unreasonable. He has further stated that after the pre-possession letter dated 10.07.2023 the complainant paid Rs.2,00,000/- on 08.10.2023 and orally requested to correct the

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demand of interest amount but the respondent refused the request of the complainant and sent cancellation letter dated 13.10.2023 through mail, which is against the provision of Section 11(5) of RERA Act, 2016 as before cancellation no any demand notice was issued.

(c) He has also stated that the respondent – promoter also violated the provision of Section 13 of the RERA Act, 2016 as even after getting payment of more than 87% of the total consideration money he did not execute the Agreement For Sale, whereas, the said Section says that no deposit or advance shall be taken by the promoter without first entering into Agreement For Sale. He has also stated that the respondent has accepted all amount paid by the complainant except an amount of Rs.7,13,772/- which was paid on 22.02.2018 and that finds mention in copy of ledger of the respondent sent on 10.07.2023, which is attached with the rejoinder and, thus, the total payment made by the complainant is Rs.30,67,772/- from 25.01.2016 to 08.19.2023, details of which are given at page -3 of the rejoinder dated 07.06.2024. Lastly, he submitted that as per the complainant's knowledge, the respondent has neither executed any Sale Deed nor Agreement For Sale against the Flat no.105.

5. Perused the records. The Authority notes that during course of the proceedings the complainant raised following points:

(i) The cancellation letter dated 13.10.2023 issued by the respondent is unilateral in nature having no sufficient cause as before cancellation no notice was sent to the complainant assigning therein reasons, which violates the provision of Section 11(5) of the RERA Act, 2016 as well as rule of principle of natural justice.

(ii) The pre-possession letter dated 10.07.2023 (at Annexure -4 to the complaint) showing Rs.33,83,021/- as interest on due amount of Rs.9,24,185 is totally unreasonable demand and is against the provision of the RERA Act, 2016.

(iii) The respondent – promoter has violated the provision of Section 13 of the RERA Act, 2016 as even after getting payment of more than 87% of the total consideration money he did

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(iv) not execute the Agreement For Sale, whereas, the said Section says that no deposit or advance shall be taken by the promoter without first entering into Agreement For Sale.

(v) He further stated that the complainant paid Rs.2,00,000/- on 08.10.2023 and after five days of the said payment cancellation was made on 13.10.2023. If the respondent - promoter thought the complainant to be defaulter he should not have accepted that amount. Further, the respondent refunded the amount after the complaint was filed.

(vi) All amount paid by the complainant except an amount of Rs.7,13,772/-, which was paid on 22.02.2018, has been accepted by the respondent. Further, the amount of Rs.7,13,772/- finds mention in copy of ledger of the respondent sent on 10.07.2023, which is annexed with the rejoinder. Thus, the complainant made total payment of Rs.30,67,772/-.

6. The Authority further notes that the respondent has mainly raised following points while opposing the relief sought for by the complainant:

(i) Due to non-payment of installments as per the schedule in the Agreement, the respondent sent cancellation letter dated 13.10.2023 to the complainant and after deduction of 10% from the total amount of Rs.23,54,000/- paid by the complainant, the respondent refunded her Rs.21,18,600/- through RTGS. On verification if further balance amount is found, that would also be refunded to the complainant.

(ii) The respondent has allotted Flat no.105 to another prospective buyer vide Agreement dated 21.10.2023. Now, there is no flat available with the respondent - promoter for allocation to the complainant.

7. Having considered each of the above points raised by the parties, the Authority observes as follows:

(a) The cancellation letter dated 13.10.2023 is unilateral in nature having no sufficient cause as before cancellation no demand notice assigning reasons was sent to the complainant, which violates the provision of Section 11(5) of the

RERA Act, 2016. Further, five days before cancellation on 13.10.2023, the respondent accepted the payment of Rs.2,00,000/- on 08.10.2023 from the complainant. If he was defaulter, the respondent – promoter should not have accepted that amount. Hence, cancellation of booking having no sufficient cause stands rejected.

(b) The Authority further observes that the respondent – promoter has violated the provision of Section 13 of the RERA Act, 2016 as he had not executed Agreement For Sale even after getting payment of much more than 10% of the consideration amount as Section 13 says that no deposit or advance shall be taken by promoter without first entering into an Agreement For Sale. Hence, the Authority holds that the respondent has violated the provision of Section 13 of the RERA Act, 2016.

(c) The Authority also observes that in this case Agreement For Sale has not been executed and the Allotment letter cum letter of schedule payment does not mention about compound interest of 18% for delay payment on due amount then how the respondent calculated delay penalty of Rs.33,83,021/- on due payment of Rs.9,24,185/-. Hence, the demand of compound interest @ 18% on due amount stands rejected being found to be unreasonable.

(d) The Authority also observes that the complainant had paid Rs.30,67,772/- which stands almost proved by the submission of the respondent that the complainant paid Rs.23,54,000/- and rest Rs.7,13,772/- on 22.02.2018 which finds mention in the copy of ledger of respondent sent on 10.07.2023 against Flat no.105. Hence, the Authority holds that the complainant made total payment of Rs.30,67,772/ to the respondent - promoter.

8. Taking into consideration the aforesaid facts and the observations made above, the Authority directs the respondent – company and its Director Sudha Singh to handover possession of Flat no.105 or any other flat of the same dimension with all the amenities and execute the Absolute Sale Deed in favour of the complainant after completing all the legal formalities within two months from the date of issue of this order. The complainant is also

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directed to make payment of the entire consideration money including Rs.21,18,600/- which has been refunded to the complainant before execution of the Sale Deed.

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

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