

**REAL ESTATE REGULATORY AUTHORITY, BIHAR
IN THE COURT OF SPECIAL PRESIDING OFFICER, RERA, BIHAR**

RERACC/526/2022

Reetu Anand----- Complainant

Vs

M/s Swapna Vihar Pvt. Ltd. -----Respondent

PROJECT – **SAI VIHAR**

01/06/2026

ORDER

The complainant has filed this case: (i) to set aside the termination notice dated 16.08.2022 issued by M/s Swapna Vihar Private Limited,(ii) to direct the respondent to receive the remaining consideration amount of Rs. 13,50,000/- and get the sale deed executed offlat no. 305 in Sai Vihar in favour of the complainant and also (iii) to direct the respondent to abide by all the terms and conditions as mentioned in Agreement dated 28.02.2021.

2. The complainant's case in brief is that the complainant is an allottee of flat no. 305 of 3rd floor of Sai Vihar by virtue of Agreement to sale dated 28.02.2021 with a total price of Rs. 30,00,000/- including reserved car parking. The project was to be completed in May, 2023 along with a grace period of six months. At the time of booking the complainant paid Rs. 2,00,000/- and also on different dates, she paid Rs. 14,50,000/- as mentioned in the schedule given below: -

Date of payment	Mode of payment	Amount paid
28.02.2021	Cheque	Rs. 2,00,000/- (booking amount)
10.06.2021	Cash	Rs. 2,00,000/-

06.12.2021		Rs. 2,00,000/-
25.12.2021		Rs. 3,00,000/-
05.03.2022	Cash	Rs. 2,00,000/-
23.03.2022	Cash	Rs. 3,50,000/-
		Total= Rs. 14,50,000/-

Further the case of the complainant is that she paid Rs. 16.50,000/- as consideration amount as per the payment mentioned in Schedule-C of the Agreement and the respondent has accepted payment. The claimant/complainant approached the respondent with a dream to own a flat for her and her family. The respondent served a legal notice dated 24.08.2022 upon him with mala-fide intention leaving the complainant helpless, clueless and in grave apprehension of financial loss, which was duly replied vide Legal notice dated 12.09.2022, which was returned. Thereafter, the Legal notice was sent vide Email. The complainant has already paid more than half of the consideration amount for the concerned flat. Whereas, the respondent has been making false allegations of non-payment of the amount beyond Rs. 2,00,000/-. Moreover, the respondent has been consistently and repeatedly making the false allegation through show cause notice dated 06.06.2022, reminder notice dated 23.06.2022 and termination Notice dated 16.08.2022, wherein the respondent has falsely stated that the complainant has only paid Rs. 2,00,000/- till date. The respondent is cheating on him with the mala-fide intention to commit a fraud on him. The respondent has not complied the clauses of said

agreement and not constructed the project within the stipulated period. The claimant is ready to make further payments and settle down the dues willingly. The complainant is suffering from mental and physical harassment everyday due to the negligence and unlawful act of the respondent.

3. Respondents no. (A) and (B) has filed a counter affidavit stating therein that this case is fit to be rejected with heavy cost for the ends of justice. The complainant has paid Rs. 2,00,000/- only whereas the consideration amount was Rs. 30,00,000/- and it was to be paid by the complainant as per Schedule-C of the Agreement for sale. The respondent requested several times to the complainant but no heed was paid towards it and lastly the respondent on 06.06.2022 has sent request letter to the complainant but no response was shown and after that on 23.06.2022 a reminder letter was also sent. Having found no option, he sent letter of termination of Agreement on 16.08.2022. Lastly on 24.08.2022 the respondent has sent legal notice to the complainant, after completion of 90% work of the project/ flat stating therein that after clearing all the dues get the flat through registered sale deed within two weeks from the receipt of the notice failing which his advance amount will be forfeited and agreement for sale dated 28.02.2021 will automatically be treated as cancelled and he will be at liberty to sell it to anybody else. After taking all the steps by way of request to the complainant, the answering respondent had no option except selling the flat and accordingly he sold it. There is/was gross negligence on the part of the complainant in the matter of purchasing the flat in question and also violated the terms and conditions of the agreement for sale. The planning of the respondent was being defeated due to inaction of the complainant. He was facing mental and economical harassment. The complainant never approached the

respondent. The complainant has paid Rs. 2,00,000/- only at the time of agreement in cash and not a single paisa is given by the complainant as chart prepared by her. The complainant has attached collusive and farzi receipts on which the respondent has filed Complaint Case No. 2952 (C)/2023 before the learned C.J.M., Patna which is now pending for enquiry and further proceeding before the learned J.M. Ist Class Smt. Kumari Rinku. The complainant has not replied to the notice and its reminder was sent to the complainant. 90% of the project is complete. The complainant was not willing to purchase the flat in question and she is making fraud with the respondents and she is making illegal pressure upon the respondents with the help of forged and fabricated payment receipts. The respondents have followed all terms and conditions of the agreement and they had no option except selling the flat in question. Having found no other option, the respondents have terminated the agreement for sale.

4. On the request of the complainant, respondent no. 3 was added as a party but he did not appear. The learned counsel for the respondents no. 1 and 2 appeared and stated that this case is to be decided on the basis of the material available on record as he is responsible for the respondents.

5. After having heard Shri Tanu Sagar, learned counsel for the complainant and Shri Sunil Kumar Singh, learned counsel for the respondent and perusal of the record it appears that it is admitted fact that as per agreement for sale, the complainant was bound to pay total consideration amount of Rs. 30,00,000/- within the terms and conditions of Schedule-C. As per complainant, she has paid Rs. 16,50,000/- whereas as per respondent the complainant has paid only Rs. 2,00,000/- at the time of agreement for sale and the complainant has not paid any amount and as such he has sent legal notice, reminder and having found no option,

termination letter also after following the terms and conditions of the agreement. As per complainant she has paid 16,50,000/- in cash for which she has filed photocopy of receipts. The learned counsel for the respondent stated that all these receipts are false and fabricated and the complainant has not paid the amount as per para-2 of the agreement for sale, which is as follows: -

MODE OF PAYMENT:-

“Subject to the terms of the agreement and the promoter abiding by the construction milestones, the allottee shall make all payments, on written demand by the promoter within the stipulated time as per payment Plan (Schedule-C) through A/c Payee cheque/ demand draft/ bankers cheque or online payment (as applicable) in favour of M/S SWAPN VIHAR PVT. LTD., payable at PATNA.”

6. As per this terms and conditions, the complainant has not paid the consideration amount rather she has paid in cash which is against the terms and conditions of the Agreement for sale, but the respondent has admitted the fact that he has received Rs. 2,00,000/- only.

7. Considering the aforesaid facts and circumstances, it appears that the complainant has not complied the terms and conditions of para-2 of agreement for sale for payment of consideration amount. In such a situation, it appears that she has violated the terms and conditions of the agreement. So far receipts filed by the complainant are concerned, they have been disputed by the respondent stating that those receipts are forged and fabricated for which a complaint has been filed against the complainant before the Chief Judicial Magistrate. The Authority has to consider the case in a summary manner i.e. as a summary trial and in a

summary trial genuineness and legalistic of any document cannot be decided and such type of matter is to be decided by the competent jurisdiction of the court i.e. by the civil court.

8. Considering the aforesaid facts and circumstances, this case is dismissed and the complainant is at liberty to take appropriate steps before competent jurisdiction of the civil court for the reliefs and grievances.

Sd/-

(Vinod Kumar Tiwari)
Special Presiding Officer
RERA, Bihar