

REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR
Before the Single Bench of Mrs. Nupur Banerjee, Member

Case No: RERA/CC/18/2023

Rakesh Kumar

...Complainant

Vs.

M/s Ashirwad Engicon Pvt. Ltd.

...Respondent

Project: IOB Galaxy

20/06/2024

INTERIM ORDER

The matter was last heard on 18.03.2024 and was fixed for orders on 21.05.2024. However, due to pre-occupation of the Bench in other matter, order could not be pronounced on the date fixed. On that date, None appeared on behalf of the complainant. Mr. Ishtiyaque Hussain, Advocate appeared on behalf of the respondent.

In this case, the complainant has prayed for a direction to the respondent to allot a flat as soon as possible which was booked by him and for which entire cost was already deposited and till that time penalty of Rs.50,000/- per month may be imposed.

In short, the case of the complainant is that the complainant had booked a flat in the project 'IOB Galaxy' in the year 2015 and the full amount of the cost of flat being Rs.6.51 lakh was paid to the builder (Rs.4.01 lakh through Bank transfer to the builder's account and Rs.1.50 lakh by cash).. The builder has issued a money receipt dated 31.12.2014 for Rs.2.01 lakh only. Thereafter, an agreement for sale was also executed by the builder dated 12.05.2015 in his favour.

The complainant has placed on record the copy of the Agreement for Sale and the money receipt.

A counter affidavit has been filed on behalf of the respondent stating therein that the present case is not maintainable under the RERA Act because RERA came into existence on 1st May, 2017 where the present agreement for sale was entered into much prior i.e. in the year 2015 and the respondent company have not taken the map approval for the entire land. It is stated that in the year 2014 the respondent company had entered into an agreement for sale with the complainant to construct and deliver a 3-BHK flat measuring an area of 1370 sq.ft. in the proposed project IOB Galaxy for a total consideration of Rs.6.52 lakh which the complainant claimed to have been paid. As per para-10 of the agreement, the completion date of the apartment was fixed for five years with a grace period of six months. It is further stated that there are two types of allottees, one is under CLP Plan and another is of under one-time scheme and therefore, the allottee who have booked their respective flat on CLP Plan, the construction is still underway, whereas the construction of the flat of the allottees who have booked under one-time scheme had to be proceed in second phase after completion of the flats booked under construction linked plan. It is also stated that the total consideration of the flat is Rs.6.52 lakh whereas total cost of construction of flat is coming around 25 to 30 lakh with

finishing, therefore, the company is not able to fulfil the margin amount due to financial loss as well as material price hike. It is stated that out of total consideration the complainant has only paid Rs.4.51 lakh and therefore, the total consideration of Rs.6.52 lakh has not been paid by the complainant as per company record. This Hon'ble court considering the above facts has already directed the respondent company to refund the booking amount along with interest vide order on 04.09.2023 in Complaint Case No.534/2022. In this circumstance, the company is ready to refund the entire booking amount provided the complainant sent a cancellation letter to the respondent. He has also annexed a copy of the ledger of account of Rs.4.51 lakh and the order dated 04.09.2023 passed in Complaint Case No.534/2022.

From perusal of the records, it appears that in Clause-3 of the Agreement for Sale dated 12.05.2015 it is mentioned that the total consideration amount will be Rs.6.51 lakh, against which the buyer has already paid an advance of Rs.4.51 lakh to the builder and the respondent in para-10 of the counter affidavit has also stated that out of total consideration amount the complainant has only paid Rs.4.51 lakh which is also supported by the ledger account filed by the respondent but the complainant in the complaint petition has stated that he has paid the full amount of Rs.6.51 lakh. Therefore, the complainant is directed to file an affidavit actually what amount he has paid with evidence thereof. . . .

Office is directed to inform both the parties accordingly.

Put up for hearing on 08.07.2024.

Sd/-

Nupur Banerjee
Member