REAL ESTATE REGULATORY AUTHORITY, BIHAR
IN THE COURT OF SPECIAL PRESIDING OFFICER, RERA, BIHAR
RERA/CC/ 125/2023
RERA/AO/11/2023

Neelam Kumari ----------Complainant

Vs

M/s Kanishka Buildcon Pvt. Ltd. ----- ---------- Respondent

Project: KANISHKA BUILDCON, BLOCK-B

15/04/2026 **O R D E R**

Heard the complainant- Neelam Kumari and Shri Sumit Kumar, learned counsel for the respondent.

2. The complainant has filed this case to direct the respondent to make repayment of Rs. 1,85,000/- alongwith interest, as well as cost of litigation to the complainant, the compensation for the mental agony and physical harassment. It is also to direct the respondent to compensate the complainant for willful breach of the terms and condition of sale deed dated 23.09.2020 by providing only 1802 Sq. ft. instead of 2205 Sq. ft. i.e. about 400 Sq. ft. built up area, in utter violation of the terms and condition of the sale deed dated 23.09.2020.

3. The case of the complainant in brief is that after full and final payment of Rs. 80,00,000/-, a deed of Absolute Sale was executed by the respondent in favour of Complainant on 23.09.2020, for purchase of a Flat i.e. Flat No. 503, at 6th Floor, Block B, having super built up area of 2205 Sq. ft. along with common space and Reserved car parking space at ground floor, with undivided proportionate share in the land of Apartment named as " Vidyanand Maheshwari Complex, situated at Mohalla Judges Colony, Manglam Road, Mauza Saguna, Police Station Danapur, District Patna. As per the aforesaid sale deed as mentioned in schedule third, said flat was to be handed over to the complainant in completely well furnished condition, with facilities of Lift, Generator, Reserved Car parking space, windows and grills in well fitted condition. Since at the time of registration of sale deed, aforesaid facility was not available, but it was assured by the respondent that within three months of registration of sale deed, all the facilities and conveniences as mentioned in the sale deed shall be made available to the

complainant, but relying upon the assurance, given by the respondent, Complainant made full and final payment of Rs. Eighty Lakhs and got the sale deed registered on 23.09.2020 as she was being compelled to pay higher rate of rent. Before entering into the flat, it was noticed by the complainant that even Grill and Windows were not fitted in the flat, and when attention of the respondent was drawn towards the same, he requested the complainant to get it fitted at her own cost, for the present, which shall be reimbursed, within a very short period of time, and relying upon the commitment, she got it fitted at her own cost, in which Rs. 80,220/- was paid for installation of Grill and Window, Rs. 8500/- for Pest Control in walls, and Rs. 70,500/- for plastering and painting of walls and as such total an expense of Rs. 1,85,000/- was sustained by the complainant, in order to make the Flat habitable, as she was in dire need of rent free house, but it is surprising to note that till date such amount has not been reimbursed to her, and respondent has been deliberately avoiding to repay the same till date, on one pretext or other for the reasons best known to him. After entering into the flat, Complainant also noticed that built up area of the said flat was 400 Sq. Ft. less than the area as agreed in the sale deed, i.e. 2205 Sq. ft. whereafter the same was measured by an Engineer, whereupon it transpired that instead of 2205 sq. ft only 1802 Sq. ft has been provided to the complainant, which is complete violation of the terms and condition of the sale deed dated 23.09.2020 and by that way, complainant has been subjected to sustain enormous loss, despite full payment of the flat, as per the terms and condition of sale deed. For the act of the respondent, the complainant is entitled to be compensated for the same as the respondent did not redress the grievances even after pleader notice given on 24.09.2022.

4. The respondent filed a reply stating therein that the respondent is a law abiding company and the complainant has filed this case with a view to mislead the Authority by misleading the fact that the complainant has booked a Flat bearing no. 503 of project Kanishka Buildcon, Block B, admeasuring 2205 sq. ft. along with common space and reserved car parking space at ground floor. Accordingly, after understanding all the terms and conditions, the complainant had agreed to buy the aforesaid flat. The company without any delay handed over the concerned flat to the complainant and the

complainant has also been provided with the common space along with parking space. The respondent has already provided the parking space to the complainant and also issued a circular that the concerned allottees shall use their respective parking space. The complainant may sign and collect the parking allotment letter by coming to the office of the respondent company. Moreover, in respect of the Lift the respondent company had already repaired which is currently in working condition. Installation of Generator has already been ordered and brought to the apartment and soon further will be installed. The company assurances that all the grievances of the complainant are currently in progress and same will be completed soon. It is wrong to say that the reimbursement of the expense for the installation of grill and pest control will be made by the complainant. The respondent had provided the grill and pest control to the complainant. The respondent had not agreed vide said Absolute Sale Deed dated 23.09.2020 to provide the grill and pest control to the complainant and at the time of registry the complainant had no grievance regarding the flat condition and amenities such as plastering, painting of walls and window etc. and the complainant has no any proof for such grievances as such the same transpires the ulterior motive of the complainant to just harass and gain illegal gratification.

5. The complainant has given the fake, fabricated and forged report from of some unrecognized Civil Engineer who is also not a Government recognized Civil Engineer and trying to misguide this Authority. Hence, this case is fit to be dismissed with exemplary cost.

6. Heard both side and perused the case record. As per complainant the respondent did not give concerned flat as agreed by the respondent whereas as per the respondent he has given concerned flat with all amenities as per absolute sale deed. It is admitted fact that the complainant purchased the concerned flat by absolute sale deed. After perusal of the absolute sale deed dated 23.09.2020 mentioned in page-5 paragraph-2 it appears that the purchaser (complainant) is fully satisfied with all types of materials, amenities, fittings, fixtures, constructions, specifications, area calculation, facilities and structures with all type of finishing fully described in 2ndschedule of the absolute sale deed, he entered into the execution of the sale deed. As per the schedule of the Absolute sale deed, the concerned flat

No. B, 503 on the 5th floor having super built up area of 2205 Sq. ft. (appropriate with one reserved car parking space) on the ground floor along with undivided proportionate share in the land of apartment is the property which has been given to the purchaser i.e. the complainant. The deed of sale shows that the area is given as super built up area which is 2205 Sq. ft, whereas as per the complainant such area is not given to her.

7. After perusal of the sale deed it is clear that being satisfied by not only all the amenities rather area, the complainant has accepted the concerned flat, the deed of sale was executed on 23.09.2020 and this case has been filed in the year 2023 after lapse of three years and the complainant has not given any reason as to why this case has not been filed within limitation, which is after possession of the concerned flat. The learned counsel for the respondent argued that the project has already been completed and has obtained completion certificate prior to the enforcement of RERA Act, 2016 and as such this Authority as well as the Adjudicating Officer has no jurisdiction over the instant project and has drawn attention of the court towards the judgment made in the case of **M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P. and others (Civil Appeal No. 6745-6749 of 2021** that RERA has no jurisdiction under section 3 of the Act as it is a completed project. The respondent has not violated any terms and conditions of the Absolute Sale deed as well as any provisions of the RERA Act, 2016 or Rules. The complainant has stated that the super built up area is not according to the Absolute Sale Deed but it has not been mentioned separately what is the carpet area, built up area and super built up area. So far the report of the Civil Engineer is concerned, the learned counsel for the respondent challenged his report as he is not a competent person as per law prescribed and even if his report is vague. After perusal of the report, it appears to be vague as carpet "Carpet area of the Flat= 1442 Sq, ft. Open Terrace= 396 Sq. ft., Super Built up Area of the Flat= 25% of the Carpet Area = 1802 Sq. ft, Map of Flat Attached. The report of the concerned Engineer appears to be vague and moreover, his competency has also been challenged. Even though, the complainant has taken possession after being satisfied by area and all facilities and after lapse of three years, it appears that this case has been filed only to put pressure on the respondent having no

legalvalue and as such this Authority has nojurisdiction as per the judgment of M/s Newtech Promoters and Developers Pvt. Ltd.(supra).

8. Considering the aforesaid facts and circumstances, this case is dismissed.

Sd/-

(Vinod Kumar Tiwari)
Special Presiding Officer
RERA, Bihar