

**REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR
Before the Single Bench of Mr. Naveen Verma, Chairman**

Case Nos. RERA/CC/1009/2020

Soni Kumari **...Complainant**
Vs.
M/s Agrani Homes Pvt. Ltd. **...Respondent**

Project: - IOB Nagar Block - K

ORDER

23.08.2022

24.08.2022

The matter was last heard on 29.06.2022.

The case of the complainant is that she booked a flat in the project – IOB Nagar Block K in 2015. The complainant has paid 15,00,000/- out of the total consideration of Rs. 17,00,000/-. As the respondent failed to hand over the flat, the complaint has been filed for refund of paid consideration with interest and compensation.

The complainant has placed on record copy of KYC dated 14-12-2015, M.O.U. dated 22-12-2015, copy of cheque and money receipts.

On the last date of hearing, the complainant reiterated the request for refund with interest.

Perused the record. The respondent has not filed specific reply to the complaint petition.

The Bench notes that a penalty of Rs. 1,000/- was imposed on the respondent. The respondent is directed to pay the penalty within 1 week.

The Bench imposes a penalty of Rs. 5,000/- for not complying with the last direction of the Bench.

Perused the record. A letter has been sent by Shri Alok Kumar, Director of the respondent company on 12.1.2022 a number of general issues of accounts having been frozen; ban in executing registered sale deeds/ agreements to sale; and applications pending for registering with RERA. In the said letter the promoter had given option

of selling of the plot in Dhabalpura in which he had stated that the plots will be sold after mid-January, 2022.

The Bench recalls that these issues have already been considered on a case-to-case basis. Letters have been sent to the Sub Registrar relaxing the ban on registration and to the concerned banks for de-freezing the account after hearing the concerned complainant or on matters raised by the respondent pertaining to other projects.

The Bench recalls that the Director of the respondent company and other representatives of the promoter who have appeared before the Authority in numerous matters against them have been repeatedly advised to raise resources to refund the amount taken by hundreds of complainants. In many matters the respondent had been advised to issue advertisement of sale and also approach association of promoters like CREDAI, BAI etc.

The Bench observes that instead of taking sincere action in this regard, the letter sent by the promoter seeking permission of the Authority to affect such sale indicates the non-seriousness of the promoter in fulfilling their obligations and even in complying with the final orders passed by the Authority. The promoter is again directed to issue a general advertisement seeking genuine buyers so that the principal amount and interest due to this complainant and many others can be refunded. The Authority recalls that action under section 40(1) and 40(2) of the RERA Act, 2016 read with Rules 25 and 26 of the Bihar RERA Rules, 2017 are being taken to enforce the compliance of such directions.

The Bench observes that in the event of the promoter not taking sincere efforts to find genuine buyers, it would have no option but to consider an e-auction / auction of the various lands and other properties held by the promoter so that the amount received from sale of such lands would be available for distribution to this complainant and allottees in other complaint cases against the promoter and since hundreds of cases are pending and more than Rs 100 crores is involved.

The Bench observes that such an extreme action might be necessary as the track record of the promoter is not encouraging. In the past the promoter had made a commitment of getting Rs 18 crores by sale of house and plot in Patliputra Colony, Patna but unfortunately RERA

was given roughly Rs.1.7 Crore only for distribution between the allottees. This matter was heard by the Full Bench wherein it was observed that the sale of that plot was not recognized by the Authority.

The promoter also appears to be not interested in taking follow up action in option 2 of the said letter, which was about the adjustment of plots in Prakriti Vihar as even the few allottees who were still interested to deal with them have not got the plots as yet. The respondent can certainly display their sincerity by handing over letters of possession and physical possession in compliance with the directions of the Authority passed in some complaint cases.

The Bench notes that relaxation in ban on registration of deeds for those allottees who want to give money to the promoter is being considered if the bank draft of the amount due to the promoter is deposited by the buyers in RERA first to meet the claims of complainants including the present one. This process will continue if the promoter is interested. The other issue raised in the above-mentioned letter is about payment of dues by these allottees. In various matters it has been clarified that both the allottees and promoters have to fulfil the obligation as per the Act and Rules, which also provide action to be taken in case of default. These provisions do not require prior permission from the Authority. However, if these obligations are not fulfilled, any aggrieved person whether it may be the allottees or the promoter can approach the Authority under relevant sections of the Act, if they wish to do so.

The Bench observes that the complainant has not sent any letter for cancellation of his booking to the promoter. The complainant ought to have sent a cancellation letter to the respondent and there after approached the Authority only if the promoter had failed to respond to such request. However, since the matter was taken up for hearing, orders are being passed.

The Bench observes that it is the sole responsibility of the respondent and its directors to refund the paid consideration to the complainant.

After considering the documents filed and submissions made by both the parties, the Authority hereby directs the respondent and its Directors to refund Rs. 15,00,000/- to the complainant along with interest at the rate of marginal cost of fund-based lending rates (MCLR)

of State Bank of India as applicable for three years plus 3% from the date of taking the booking to the date of refund within sixty days of issue of this order.

The complainant is at liberty to approach the Adjudicating officer under relevant sections of the Act for their claims, which are in the nature of compensation from the respondent.

With these directions and observations, the matter is disposed of.

**Sd/-
Naveen Verma
(Chairman)**