REAL ESTATE REGULATORY AUTHORITY, BIHAR,

Before the Bench of Mr. Ved Prakash,

Special Presiding Officer

RERA/CC/18/2023

Rakesh Kumar …. Complainant

Vs.

M/s Ashirwad Engicon Pvt. Ltd. ….Respondent

PROJECT: IOB GALAXY

For the Complainant: None

For the Respondent: Mr. Ishtiyaque Hussain, Advocate

16.04.2025 **O R D E R**

The complainant is absent but learned counsel Mr. Ishtiyaque Hussain on behalf of the respondent is present.

2. The case of the complainant is that he booked a flat in the project "IOB Galaxy in the year, 2015 and paid its full consideration money of Rs.6.51 lakh to the builder. He paid Rs.4.01 lakh through Bank transfer to the builder's account and the same finds mention in the Agreement For Sale executed between the complainant and the respondent – promoter on 12.05.2015 and the money receipt issued by the respondent. The remaining amount of Rs.1.50 lakh was paid by him in cash. He further submits that the complainant requests for a direction to the respondent to allot a flat as soon as possible which was booked and consideration amount was paid by him.

3. Learned counsel for the respondent submits that the respondent is not able to hand over the flat, which was agreed vide Agreement dated 12.05.2015 as the respondent could not procure those land over which the multistoried buildings were to be constructed. The respondent is ready to refund the amount with interest. He also submits that there were two types of allottees, one under CLP Plan and another under One Time Scheme and, therefore, the allottees, who 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 proceeded in second phase after completion of the flats booked under construction linked plan but it could not be started and, therefore, the respondent failed to deliver flat to the complainant who booked under one time scheme. He also submits that out of total consideration amount, the complainant had paid only 4.51 lakh.

4. It is relevant to mention that in the proceeding dated 08.07.2024 the complainant and learned counsel Mr. Ishtiyaque Husain on behalf of the respondent were present. In the said proceeding, the Authority directed the respondent to refund the amount of Rs.6.51 lakh to the complainant before the next date of hearing (20.08.2024) but till date the respondent has failed to refund the principal amount of complainant. It is crystal clear from the proceeding dated 08.07.2024 that the aforesaid direction of the Authority to the respondent for refund of Rs.6.51 lakh to the complainant was made in presence of both the parties and they did not have any objection.

5. Further, it is relevant to mention that in the proceeding dated 05.03.2025 the complainant was not present. On that date the Bench directed the office to issue notice to the complainant and, accordingly, notice was issued to the complainant on 20.03.2025 fixing the next date of hearing on 16.04.2025, but again on 16.04.2025 the complainant is not present. Hence, the Bench is left with no option but to pass the order on the basis of material available on the record as the matter cannot be allowed to keep pending for longer period.

6. Having gone through the record and heard the respondent's counsel, the Bench observes that the respondent – promoter neither honoured his commitment made to the complainant in the Agreement to handover possession of flat within the specified in spite of making payment of full consideration amount of Rs.6.51 lakh nor refunded the amount within the time granted by the

Authority in the proceeding dated 08.07.2024. However, during course of arguments learned counsel for the respondent submits that the respondent is ready to refund entire consideration money paid by the complainant.

7. Taking into consideration the submission of learned counsel for the respondent and on going through the material available on record, the Bench directs the respondent - company and its Managing Director Mr. Ajay Singh to refund the principal amount of Rs.6.51 lakh to the complainant along with interest at 2% above marginal cost of lending rate (MCLR) of the State Bank of India on total principal amount which becomes due till the date of payment within sixty days of issuance of the order.

8. The complainant is at liberty to press other claims, if any, which are in the nature of compensation, before the Adjudicating Officer, RERA.

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

Sd/-

(Ved Prakash)

Special Presiding Officer, RERA, Bihar.