

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

Case No: RERA/CC/1090/2021

Ashok Kumar Agarwal

...Complainant

Vs.

Dokania Developers Pvt. Ltd.

...Respondent

Project: Gokuldham

Present: For Complainant: Mr. Lokesh Kumar, Advocate

For Respondent: Mr. Pramod Kumar Singh, Advocate

27/04/2023

ORDER

In this matter, the complainant has booked a flat in Gokuldham project, which is a registered project under RERA and after payment of Rs.5.00 lakh and Rs.5100/- possession of the flat was given to the complainant in which the complainant expended about Rs.20.00 lakh and in the meantime the respondent requested payment of cost of the flat against which he has paid Rs.21,55,100/- and the complainant requested to make an agreement but the respondent for one reason or the other has not made any agreement. It is stated that in March, 2020 due to covid lockdown the complainant locked his flat and after lockdown when his contractor visited his flat to complete the interior work, the lock was found changed. Thereafter the complainant met the agent who said that it will be opened after payment of full cost. It is stated that the complainant agreed to pay balance amount at the time of execution of agreement for sale but the respondent refused to do so though he has paid more than 40% of the consideration and expended Rs.20.00 lakh in interior work in the flat in question. Therefore, he has prayed to direct the respondent to refund the total amount of Rs.41,55,100/- with interest and compensation.

The complainant has placed on record the copy of the Partnership Deed, registration certificate of the project and the legal notice.

In response to the notice a rejoinder/ show cause has been filed on behalf of the respondents stating therein that the complaint petition is not maintainable either on facts or in law. It is stated that the said project has got RERA approval and the complainant himself approached the respondent for purchasing a flat in the said project. It is an admitted fact that the complainant made payment of Rs.5100/- and after payment the respondent requested for agreement for sale but he did not pay any heed due to mala fide intention. The respondent has denied to hand over the key of the flat to the complainant for doing the work., therefore, it is wrong to say that the complainant has spent Rs.20.00 lakh in interior work. It is further stated that the complainant has only paid Rs.10,05,100/- to the respondent for which they have annexed the Bank statement. The respondent has denied that the complainant has paid Rs.21,55,100/- to them. It is further stated that the complainant has to pay GST of Rs.1,07,143/- against the payment made and therefore, after making payment of GST the respondent has only liability of Rs.8,97,957/-. Apart from the said payment the complainant has not paid any penny against the flat in

question. It is also stated that in spite of request made by the respondent for execution of sale agreement the complainant has always avoided. In sum and substance, the case of the respondent is that they are ready to refund Rs.8,97,957/- to the complainant on the condition that the complainant will have no claim on the flat in question. It is stated that the complainant has not come with clean hand and his claim of Rs.41,55,100/- is not bona fide and the same are based on conjectures and surmises and the same may be dismissed.

A supplementary petition has been filed on behalf of the complainant in which it is stated that the complainant booked a flat on 4th floor bearing Flat No.403 of 1340 sq.ft. of 3-BHK at the rate of Rs.3900/- per sq.ft. for a total consideration of Rs.52.26 lakh against which the complainant has paid a total sum of Rs.21,05,100/- through different modes. It is stated that after receiving the payment the respondent has handed over the key of the flat to him for doing interior work and for the same the complainant has expended Rs.20.00 lakh. It is further stated that after the demise of one of the partner, his son Sachin Kumar Dokania created problems and placed his own lock in the said flat and forcibly dispossessed him but the complainant is ready to pay the balance consideration of Rs.31.21 lakh and get the flat registered in his name. It is also stated that the respondent has violated the terms of the approved plan.

A rejoinder to the petition dated 05.12.2022 has been filed on behalf of the respondents reiterating the same facts as in the rejoinder petition filed earlier.

On the last date of hearing the complainant reiterated his submissions as stated in the complaint petition and wanted possession of the flat in question but in the complaint petition the complainant prayed for refund of the money with interest.

Learned counsel for the respondent submitted that the complainant has prayed for redemption. There is no such agreement between the parties. The complainant has paid only Rs.10,05,100/-. Thereafter no payment was made and the respondent is ready to refund the said amount.

In the light of the documents placed on record and submissions made it is clear that this disputed question of fact cannot be looked into by the Authority and the complainant is advised to file a civil suit before the competent court of civil jurisdiction in which both the parties may adduce evidence oral and documentary for deciding the question in hand.

As regards claim for compensation is concerned, the complainant is at liberty to press the same before the A.O. as per the provisions of the Act.

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

Sd/-

**Nupur Banerjee
(Member)**