REAL ESTATE REGULATORY AUTHORITY, BIHAR

Before the Bench of

Hon'ble Member Mr. S.D. Jha, RERA, Bihar,

RERA/CC/1501/2020

RERA/AO/482/2020

Mr. Navin Kumar …… Complainant

Vs.

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

For the complainant: Mr. Anup Kumar Sinha, Advocate

For the Respondent: Ms. Mahima Sharma, Advocate

Project: - **OM TOWER**

O R D E R

01/08/2023 The case was last heard and the order was reserved on 26.07.2023. The order is being delivered today.

2. Heard Mr. Anup Kumar Sinha, Advocate, appeared for the complainant and Ms. Mahima Sharma, Advocate, appeared for the respondent.

3. The case of the complainant, in brief, is that he entered into a registered Agreement For Sale with the respondent on 24.04.2019 to purchase shop no.17 of an area measuring 111.6 square feet on the First Floor in Block – A and its super built up area measuring 145 sq. ft. along with pro rata share in the common area in the project "OM TOWER" situated at Mauza – Amhara, Survey P.S. Maner, P.S. Bihta, Patna, on consideration amount of Rs.6,53,000/- excluding stamp duty and registration charges, government taxes and maintenance charges as applicable. Out of the said consideration amount, he paid Rs.3,46,848/- and acknowledgement receipts thereof were issued by the respondent – company. The respondent – promoter had assured to hand over possession of the shop along with ready and complete common areas with all specifications, amenities and facilities of the project in place in December, 2020.

4. Learned counsel for the complainant submits that the complainant entered into a registered Agreement For Sale with the respondent on 24.04.2019 to purchase shop no.17

of an area measuring 111.6 square feet on the First Floor in Block – A in the project "OM TOWER" situated at Mauza – Amhara, Survey P.S. Maner, P.S. Bihta, Patna, on consideration amount of Rs.6,53,000/- out of which the complainant already paid Rs.3,46,848/-. He further submits that when the complainant visited the site of the project he found the existing area of shop in question only 85 sq. ft., for which he had already paid Rs.3,46,848/- and the rest amount of Rs.1,23,440/- was to be paid to the respondent for an area of 85 sq. ft. He also submits that the complainant approached the respondent several times to pay rest amount of Rs.1,23,440/- for existing area of 85 sq. ft. only in place of agreed area 111.6 sq. ft., but the respondent intentionally and deliberately sent a legal notice dated 12.9.2020 to the complainant for cancellation of booking of the shop, which is against the law. Lastly, he submits that the complainant is ready to pay remaining amount of the shop of an area of 111.6 sq. ft., as per agreement, and the respondent may be directed for handing over possession of the same and to execute sale deed in favour of the complainant.

5. Learned counsel for the respondent submits, inter alia, that an agreement between the complainant and the respondent was executed in the year, 2019 to purchase Shop no.17 in Block – A of 111.6 sq. ft., in the project on consideration amount of Rs.6,53,000/-, which finds mentioned in Clause 1.2 of the agreement, out of which he paid Rs.3,46,848/-. She further submits that the area of the shop to be 85 sq. ft., as highlighted by the complainant, is not correct because the shop has not yet been allotted to him and in this connection she draws attention to Clause 1.7 (at page -8) of the agreement dated 22.4.2019 and states that it is clearly mentioned therein that the promoter shall confirm to the final carpet area that has been allotted to the allottee only after construction of the building is completed and occupancy certificate is granted by the competent authority. She also submits that when a mail dated 11.8.2020 of the complainant was received by the respondent that he had visited the specified shop and found

discrepancy in the area as per agreement, the respondent promptly replied by mail that he would receive the same area as per the agreement and thereafter the complainant was asked repeatedly to pay the balance amount as per terms of agreement but he failed in making payment and thereafter demand letters were sent to him on 25.2.2020, 18.6.2020 & 5.8.2020, but the complainant neither made payment nor replied to the notices and finally the booking was cancelled, as per the terms and conditions of the Agreement For Sale, and the complainant was, accordingly, communicated vide letter dated 12.9.2020. Lastly, she submits that the respondent – company is ready to make refund after forfeiting the earnest money in view of the decision of the Apex Court in H.U.D.A Vs. Kewal Krishna's 1996, AIR 1981, 1996 SCC(4) 249.

6. Perused the record including the Agreement For Sale dated 24.04.2019 executed between the complainant and the respondent, which is kept on the record. The Bench notes that admittedly an agreement between the parties was executed in the year, 2019 to purchase Shop no.17 in Block – A of 111.6 sq. ft., in the project on consideration amount of Rs.6,53,000/-, which finds mentioned in Clause 1.2 of the agreement, and out of the total consideration amount , the complainant paid Rs.3,46,848/- to the respondent and acknowledgement receipts thereof were issued by the respondent company, which are on the record. The Bench further notes that after payment of Rs.3,46,848/- the complainant did not make payment of the remaining amount to the respondent in spite of requests made to him on the ground that the area of the shop of 111.6. sq. ft. as agreed, does not match with the existing area of 85 sq. ft., but in support of this submission the complainant's counsel has not brought on record the material evidence justifying his claim that there is discrepancy in the existing area of the shop, whereas the respondent's counsel by referring Clause 1.7 (at page -8) of the agreement dated 22.4.2019 submits that it is clearly mentioned in the agreement that the promoter shall confirm to the final carpet area that has been allotted

to the allottee only after construction of the building is completed and occupancy certificate is granted by the competent authority. In this case neither final area of the shop has been confirmed nor occupancy certificate has been granted. Merely on surmises he cannot claim that there is discrepancy in the area of the shop. The Bench also notes that the respondent in response to the mail dated 11.8.2020 of the complainant had also informed him that he would receive the same area as per the agreement and thereafter the respondent had asked the complainant repeatedly to pay the balance amount as per terms of agreement but he failed in making payment and thereafter demand letters were sent to him on 25.2.2020, 18.6.2020 & 5.8.2020 respectively but the complainant neither made payment nor replied to the notices and ultimately the booking was cancelled as per the terms and conditions of the agreement.

7. After having heard learned counsels for the parties and gone through the material available on the record, the Bench observes that the respondent has cancelled the booking of the shop in question by exercising the provision of Section 11 (5) of the RERA Act, which says that the promoter may cancel the allotment only in terms of the agreement for sale provided such cancellation is not in accordance with terms of the agreement for sale, unilateral and without any sufficient cause. In this case, as appeared from the record, the respondent before cancelling the booking had repeatedly made requests and sent letters dated 25.2.2020, 18.6.2020 & 5.8.2020 to the complainant to make payment of remaining amount but the complainant failed in doing so and ultimately the booking of the shop was cancelled and a letter of cancellation dated 12.9.2020 was sent to the complainant, which is acknowledged by the complainant also.

8. The Bench further observes that as per Clause 1.7 of the agreement dated 24.04.2019, the promoter was to confirm the final carpet area that has been allotted to the allottee only after construction of the building is completed and occupancy certificate is granted by the competent authority, but in this case the respondent – promoter had neither confirmed the final carpet area to the complainant that has been allotted to the complainant nor occupancy certificate is granted by the competent Authority. Merely on surmises and having no evidentiary proof that there is discrepancy in the area of the shop, the complainant was not supposed to stop payment of remaining amount in spite of requests made and notices/letters sent to the complainant by the respondent. Further, the respondent had also sent a mail to the complainant in response to his mail dated 11.8.2020 informing that he would receive the same area of the shop as has been agreed in the agreement for sale. However, the complainant ignored all these communications/correspondences of the respondent and failed in making payments as per the terms of the Agreement For Sale. The Bench , therefore, feels that the cancellation of the allotment by the respondent does not suffer from any illegality in view of the provisions under Section 11(5) of the RERA Act, 2016.

9. Considering the aforesaid facts, this complaint petition requesting for a direction to the respondent to hand over the shop and to execute sale deed in his favour is rejected. However, the complainant is at liberty to file a fresh complaint to get the amount paid by him to the respondent – company refunded.

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

sd/-
S.D. Jha,
Member