REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR

RERA/CC/550/2021

Sadhna …Complainant

Vs.

M/s TCW Realty Pvt. Ltd. …Respondent

Project: The Sai Green Phase-1 & 2

O r d e r

19.09.2023

This matter was last heard on 25.07.2023. Earlier the matter was dismissed for default on 10.09.2021. A petition for restoration was filed on 09.12.2022. Notice was issued on the respondent. The matter was heard on 02.02.2023, however, formal mention of the restoration of the complaint case was not mentioned in the proceedings.

The matter has been filed for possession of three plots in the project vide plot no. A-163, 362 and B-392 of the respondent company. It has been submitted by the complainant that a deed of conveyance with respect to one plot A-163 was executed on 14.08.2018. It has been submitted that finding no work progress in the project, they stopped making payment to the respondent and the matter has been filed for handing over the possession, payment of house rent, and for compensation.

The complainant has filed the copies of the agreement in respect of Plot B-362, Plot no. B 392 and the registered sale deed in respect of plot no. A-163. She also filed a copy of receipts issued in respect of Plot no. B-362 and B - 392.

The respondent has filed reply on 01.06.2023 in which he has inter,alia contested the restoration of the complaint case.

The Authority takes into account the ground of restoration that the matter of the case was dismissed during Covid-19 and it was dismissed for default during the period when the matter was being heard through video conferencing. It takes into account the contention of the complainant that she was not available on the link of the hearing and/or was not able to connect with the link. It would be in the interest of justice to give an opportunity to the complainant to press her claim and pass substantive orders. It, therefore, allows the petition for restoration.

In their reply, the respondent has stated that in respect of plot No. B-362, against the total consideration amount of Rs. 13.59 lacs, the complainant had made a down payment of Rs.2,51,800 and she was supposed to pay Rs. 30,200/- per month for 36 months against which only 9 EMI has been paid. The respondents have stated that a deed of conveyance had been registered in respect of plot No. A 163. The booking of plot B-392 is in the name of Anurag Bharti and against a total amount of Rs. 13.59 lacs and Rs.2,51,800/- was paid at the

time of agreement and rest amount was fixed for payment in 36 monthly plan scheme . EMI of Rs. 30,200/- per month was fixed but 9 EMI was paid upto 31.10.2019 and after two years interval two EMI has been paid in the month of January, 2021 and February 2021. It has been stated that the amount of Rs. 13,98,600/- is still due from the complainant in respect of these two plots. The respondent has admitted that the work was stopped due to Covid-19 and subsequently progress report has been submitted before the Authority and that they are willing to hand over the said plot. The respondent has contested the demand for payment of house rent.

The complainant in the rejoinder has mentioned that Plot A/163 has been registered in which development has not been done. She has reiterated that the payment of EMI was stopped due to non-development of the work and that the grievance of compensation is valid because she wanted to construct house in plot no. A/163. The complainant has reiterated that the plot is not still developed.

Perused the documents filed by the complainant. The documents produced by the complainant supports the case of the respondents that the full amount has not been paid by the complainant.

The Authority observes that the obligation of allottee have been spelt out in section 19(6) of the RERA Act, 2016, according to which the allottee is required to pay the instalments as per the schedule mentioned in the agreement to sale. The promoter has to give possession as per section 18(1) of the RERA Act, 2016 and pay interest for delay in handing over of possession beyond the date as specified in the agreement to sale at the rate prescribed in the Bihar RERA Rules, 2017. The agreement to sale also lays down similar liabilities on the allottee and the promoter. It is for the promoter to show evidence of raising a demand for payment to the allottee before he can charge interest for the period of default.

The complainant ought to have filed a different matter in respect of different plots. The name of all the applicants should have been mentioned in the complaint proceeding. It is clear from the document filed by the complainant that in respect of both the plots, the first applicant is Anurag Bharti and the complainant is the second applicant. The complaint should have been filed in respect of the plots by both the allottees, and hence the complaint petition is defective.

In the present matter, admittedly the allottee has not paid the remaining amount and hence the claim for possession is not tenable. The promoter has submitted that they are willing to hand over possession. The complainant and the respondent are required to abide by the terms of the agreement to sale. However, no specific direction is being given due to the defect in the complaint petition as mentioned above.

With these observations, the matter is disposed of. The allottees may file a fresh petition if any grievance remains outstanding after payment of the entire consideration amount.

Sd/-
(Naveen Verma)
Chairman