REAL ESTATE REGULATORY AUTHORITY, BIHAR

Before the Bench of

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

RERA/CC/576/2022

Mrs. Sumitra Devi and Sanjay Kumar …… Complainants

Vs.

M/s Maa Vindyavasani Developers ……. Respondent

For the complainant: Ms. Kriti Suman, Advocate

For the Respondent: Mr. Amit Singh, Advocate

Project: – RAINBOW RESIDENCY

PROCEEDING

06.10.2023 Hearing taken up. Ms. Kriti Suman, Advocate, appears for the complainants. Mr. Amit Singh, Advocate, appears for the respondent.

Learned counsel for the respondent has filed counter affidavit today in the Bench and a copy of which has been served upon the complainants' counsel.

Learned counsel for the complainants by referring Section 11(5) of the RERA Act, 2016 submits that the promoter may cancel allotment only in terms of the Agreement For Sale and Clause 8.3(ii) of the Agreement For Sale dated 4.10.2020 states that in case of default by allottee for a period beyond two consecutive months after notice from the Developer in this regard, the Developer may cancel the allotment but in this case the respondent did not send any notice before cancelling the allotment. Hence, the respondent company and its Director have not followed the terms of the Agreement and cancelled booking without informing the complainants, which is bad in law. On query regarding non-payment of installments including bounced cheque of Rs.5,00,000/- as per Schedule of Agreement the complainants' counsel submits that the complainants tried to contract the respondent but they were never available, which is denied by learned counsel for the respondent and is stated by him that they were intimated several times verbally.

Learned counsel for the respondent submits that the complainants are defaulter in payment from the date of Agreement dated 20.10.2020 as at the time of booking of the flat they paid Rs.10,00,000/- as advance vide two different cheques and out of them one cheque of Rs.5,00,000/- was bounced and that amount was never paid. The complainants further promised to pay the amount of Rs.15,15,600/- by 30.10.2020, which was also not paid and thereafter for two and half years the complainants never met with the respondent in spite of several intimations given to them. Ultimately, the respondent returned the amount of Rs.5,00,000/- vide cheque dated 23.1.2023 to the complainants cancelling the Agreement on 23.1.2023 and vide letter dated 18.3.2023 the complainants were informed about cancellation of Agreement and thereafter vide letter dated 1.7.2023, the complainants were informed that the flat is being allotted to another buyer. Again vide letter dated 31.7.2023 a reminder letter regarding cancellation and refund of amount of Rs.5,00,000/- was sent to the complainants, which also contained clauses of fresh allotment of the above mentioned flat to new buyers.

Learned counsel for the complainants in reply submits that the respondent never intimated the complainants about dishonor of cheque and when the complainant could come to know about dishonor of cheque they made attempt so many times to meet the respondent but they could not meet. She further submits that when the complainants came to know about cancellation of Agreement they sent a legal notice to the respondent but the respondent did not respond, which is refuted by the respondent's counsel. She also submits that in the conciliation proceeding dated 21.3.2023 the respondent has agreed for mutual settlement of the dispute but it could not be recorded in the proceeding.

Learned counsel for the complainants requests for one month's time to bring on record proof of service of legal notice on the respondent. She is directed to file written

submission along with documentary evidence of her claim of service of legal notice on the respondent with a copy to the respondent's counsel within a month, who will file supplementary counter, if any, within a week thereafter.

Put up for hearing on 24.11.2023.

Sd/-
S.D. Jha,
Member