REAL ESTATE REGULATORY AUTHORITY, BIHAR

Before the Bench of

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

RERA/CC/600/2021

RERA/AO/226/2021

Krian Upadhayay and Ram Kumar Upadhayay …… Complainants

Vs.

M/s Sri Anunand Construction Pvt. ……. Respondent

For the complainants: Mr. Gaurav Sharma, Advocate

For the Respondent No.1: Mr. Shantanu Kumar, Advocate

Respondent no.2 : None

Project: - SAI ENCLAVE

O R D E R

12.12.2023 This case was last heard and order was reserved on 05.12.2023. Mr. Gaurav Sharma, Advocate, appeared and defended the case of the complainants. Mr. Shantanu Kumar, Advocate, appeared and defended the case of the respondent no.1. The respondent no.2 is absent. The order is being passed today 12.12.2023.

2. Learned counsel for the complainants submitted that the complainants had entered into an Agreement For Sale with the respondent to purchase Flat no.804A in Block F of 1100 sq.ft. along with car parking in the project "Sai Enclave" located at Vijay Singh Yadav Path, Danapur, Patna, on 18.4.2015 on consideration amount of Rs.20,00,000/- but he paid excess amount Rs.26,70,000/- from 6.2.2015 to 25.1.2018, which finds mention in the complaint application dated 23.6.2021. He further submitted that on direction of the respondent the complainants paid Rs.9,00,000/- to the sister company of the respondent, namely, Ma Tara Homes out of the total amount paid of Rs.26,70,000/-. He also submitted that the delivery of possession of the flat was to be handed over in June, 2015 with grace period of six months i.e. January, 2016, but even after expiry period of stipulated time the respondent – promoter has neither completed the project nor has handed over possession of the flat. He further submitted that the complainants request for possession of the flat, return of excess

amount of Rs.9,00,000/- and for making payment of house rent of Rs.12000/- per month, as specified in the Agreement For Sale.

3. Learned counsel for the respondent Mr. Mukul Kumar Singh, Advocate, by filing counter affidavit dated 2.9.2023 submitted that indisputably an Agreement For Sale between the complainants and the respondent was executed on18.4.2015 to purchase Flat no.804 of 2 BHK along with car parking in the project on consideration amount of Rs.20,00,000/- out of which the complainants paid Rs.12,53,000/- only in the years, 2015 to 2018. He also submitted that the flat was to be handed over within two years with grace period of six months from the date of Agreement. He also submitted that there was typing error in the Agreement that the flat would be handed over by the year 2015. He also submitted that 90% of the project is complete and only finishing work is left. He also submitted that since the complainant did not make complete payment he could not be handed over possession of the flat.

4. The respondent no.2 by filing counter affidavit dated 15.9.2023 has submitted that the complainant booked Flat no.84 of 2 BHK in Flock – F on 10.2.2015 and an Agreement For Sale was executed on 18.4.2015 through him. He was again directed vide proceeding dated 10.10.2023 to file written submission within a week but neither the written submission was filed nor he appeared on subsequent dates of hearing.

5. It is relevant to mention that in the proceeding dated 10.10.2023 one Mr. Abhiraj Pujan, Advocate, appeared for the respondent without Vakalatnama. He was directed to file written submission along with Vakalatnama within a week but the same was not filed. In the next proceeding dated 28.11.2023 another learned counsel Mr. Shantanu Kumar, Advocate, appears for the respondent. He was also directed to file written submission within a week on the reply dated 19.9.2023 filed by the complainants with further observations that in case of non-compliance, an order will be passed on merit on the basis of material available on the record and no further adjournment would be given, but the same has not been filed till the date of passing of this order.

6 (i). Perused the record. The Authority notes that an Agreement For Sale between the complainants and the respondent was executed on 18.4.2015 to purchase Flat no.804A in Block F of 1100 sq.ft. along with car parking in the project ”Sai Enclave” located at Vijay Singh Yadav Path, Danapur, Patna, on consideration amount of Rs.20,00,000/- and complainants paid excess amount Rs.26,70,000/- from 6.2.2015 to 25.1.2018, which finds mention in the complaint application dated 28.6.2023. The Authority further notes that on direction of the respondent - promoter the complainants paid Rs.9,00,000/- to his sister company Ma Tara Homes, which has been arrayed as respondent no.2 in this complaint, out of the total amount paid of Rs.26,70,000/- and one Krishna Prasad, who claims himself to be an Agent of Maa Tara Home has admitted in his counter affidavit dated 15.9.2023 that the flat in question was booked on 10.2.2015 through him.

(ii) The Authority further notes that though the respondent - promoter in the counter affidavit dated 2.9.2023 has stated that out of total consideration amount, the complainants paid only Rs.12,53,000/- in the years, 2015 to 2018 but he did not enclose the statement of Bank Account or flow chart of the Bank of the dates on which the complainants claim to have paid to the respondent Rs.26,70,000/- by cheques, housing loan & cash of which money receipts were issued by the respondent. The Authority further notes that several opportunities were given to the respondent - promoter to file written submission to establish his claim or contradict the submissions made on behalf of the complainants but the respondent – promoter failed in rebutting the submissions of the complainants despite sufficient opportunities provided to him.

(iii) Hence, the Authority holds that the complainants have been able to prove beyond doubt by filing details of statement of payments made to the respondent, which finds mention in their complaint that they paid Rs.26,70,000/- for purchase of Flat no.804 A in the project against its total consideration amount of Rs.20,00,000/-.

7. Accordingly, the Authority directs the respondent – company and its Managing Director Mr. Bimal Kumar to hand over possession of Flat no.804A in Block F of 1100 sq.ft. along with car parking in the project ”Sai Enclave” located at Vijay Singh Yadav Path, Danapur, Patna, to the complainants and execute Absolute Sale Deed in their favour after completing all the legal formalities and also refund excess amount of Rs.6,70,000/- to them with interest. The rate of interest payable by the promoter shall be at two percent above the prevalent Prime Lending Rates of the State Bank of India on the date on which the amount becomes due till the date of payment within two months from the date of issue of this order.

With the aforesaid observation and direction, this case is disposed of.

Sd/-
S.D. Jha,
Member