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 MaaVindyavasani Developers ……. Respondent

For the complainants: Ms. Kriti Suman, Advocate

For the Respondent: Mr. Amit Singh, Advocate

Project:– RAINBOW RESIDENCY

O R D E R

27.02.2024 This case was heard on 16.1.2024 and order was reserved. Ms. Kriti Suman, Advocate, appeared and defended the case of the complainants. Mr. Amit Singh, Advocate, appeared and defended the case of the respondent. The order is being delivered today i.e. 27.02.2024.

2 (i). Learned counsel for the complainants submitted that the complainants had entered into an Agreement For Sale with the respondent to purchase Flat no.306 in the project located at Vijay Singh Path, Saguna, Patna on 4.10.2020 on consideration amount of Rs.63,79,000/- out of which an amount of Rs.10,00,000/- was paid by them through two cheques dated 3.10.2020. She further submitted that out of two cheques one cheque of Rs.5,00,000/- was bounced and when the complainants tried to contact the respondent to pay the remaining amount including the amount of bounced cheque the respondent did not give positive response. Thereafter, the complainants sent a Legal Notice dated 1st August 2022 to the respondent – promoter, which was not responded.

(ii) She further submitted that contrary to Clause 8.3 (ii) of the Agreement the respondent vide letter dated 21.3.2023 terminated/cancelled the Agreement For Sale dated 4.10.2020. The said Clause 8.3(ii) states that the Developer shall intimate the allottee about such termination at

least thirty days prior to such termination but in this case the Agreement was terminated without any intimation. She also referred to Section 11(5) of the RERA Act, 2016 and submitted that the respondent may cancel the allotment only in terms of the Agreement but in this case the respondent - company and its Director have not followed the terms of the Agreement and cancelled booking unilaterally without assigning sufficient cause, which is bad in law. She further submitted that the complainant wants possession of flat and they are ready to make payment of remaining amount as per Agreement For Sale dated 4.10.2020.

(iii) On query regarding non-payment of installments including bounced cheque of Rs.5,00,000/- as per Schedule of Agreement, the complainants' counsel submitted that the complainants tried to contact the respondent but they were never available, which is denied by learned counsel for the respondent and was stated by him that the complainants were intimated several times verbally on phone by the respondent but they did not respond.

3 (i). Learned counsel for the respondent submitted that there is no dispute that the complainants had entered into an unregistered Agreement For Sale with the respondent to purchase Flat no.306 in the project located at Vijay Singh Path, Saguna, Patna, on 4.10.2020 on consideration amount of Rs.63,79,000/- out of which an amount of Rs.10,00,000/- was paid by them through two cheques dated 3.10.2020, but out of two, one cheque of Rs.5,00,000/- on being deposited in the Bank got bounced. When one cheque got bounced, the respondent informed the complainants and asked them to make payment the amount of Rs.5,00,000/- which got bounced as well as remaining due amount, upon which the complainants had promised to make payment of Rs.15,15,600/- by 30.10.2020 but the said amount was not paid and thereafter for two and half years the complainants remained silent and never met with the respondent in spite of several intimations given to them.

(ii) He also submitted that the complainant had to pay Rs.20,51,600/- including the amount of bounced cheque of Rs.5,00,000/- by 31st October, 2020 but the same was not paid by the complainants and, ultimately, having lost all hopes of payment by the complainants, the respondent refunded them Rs.5,00,000/- through RTGS on 23.1.2023 without any deduction, which was accepted by the complainant's counsel before the Conciliation Forum in the proceeding dated 21.3.2023. Thereafter, the respondent cancelled the unregistered Agreement dated 4.10.2020 and sent cancellation letters dated 18.3.2023 & 1.7.2023 and then reminder thereof on 31.7.2023 informing the complainants about cancellation of Agreement and allotment of flat to another buyer. He further submitted that before cancellation of the Agreement the respondent sent several notices to the complainants to make payment but they failed in making payment. Lastly, he submitted that he did not receive any notice as submitted by learned counsel for the complainants and as on date no any flat is available with the builder.

4. Learned counsel for the complainants by filing supplementary petition dated 12.1.2024 further submitted that the complaint was filed on 3.12.2022 and the responded refunded the amount of Rs.5,00,000/- on the date of hearing i.e., 23.1.2023 and cancelled the allotment of flat on 1.7.2023 when the matter was transferred to the Authority. The cancellation process adopted by the respondent is in violation of Section 11(5) of the RERA Act, 2016 and Clause 8.3 of the Agreement For Sale dated 4.10.2020. She further submitted that the respondent has not brought on record any such documents indicating any kind of intimation prior to cancellation of the allotment and, therefore, cancellation of allotment is unilateral in nature. She also submitted that the Agreement For Sale bears signature of the Director of the respondent's company who put his signature by accepting the Agreement For Sale signed by only one holder out of two, which makes it clear that the Director of the respondent - company

had no objection on this issue and moreover the parties had also acted on the said Agreement. She also submitted that since the respondent company had held the principal amount of Rs.5,00,000/- paid by the complainant vide cheque dated 2.10.2020 and earned economic benefit and interest on it, the respondent's company is liable to pay interest on the principal amount till the date of refund. Further, the respondent company's Director had assured to pay the interest on the principal amount of Rs.5,00,000/- during the conciliation proceeding on 23.1.2023, which was recorded in the proceeding as "The principal amount to the tune of Rs.5,00,000/- has been refunded to the complainant through cheque by the Director and he submits that the remaining amount will be paid." She also submitted that the respondent - promoter may either be directed to hand over possession of the flat invalidating the cancellation of allotment or to direct him to pay the interest as applicable on the principal amount from the date of depositing of Rs.5,00,000/- till the date of refund.

5. Learned counsel for the respondent by filing written notes of argument through mail dated 20th February, 2024 submitted that the respondent is ready and willing to pay the interest on partial token booking amount of Rs.5,00,000/- from 2.20.2020 till 23.1.2023. He further submitted that after partial payment of Rs.5,00,000/- the complainant had blocked the flat for three years without any payment which resulted in irreparable financial loss to the respondent and the respondent had to construct the flat from his own sources and money. He also submitted that the complainant never contacted the respondent throughout the period of three years for making remaining payment. Lastly, he submitted that there are provisions in the RERA Act, 2016 which provide for penal interest in case of non-payment of due amount by the allottee within the prescribed period of time.

6(i). Perused the record including the Agreement For Sale. The Authority notes that an Agreement For Sale dated

04.10.2020 was executed between the complainants and the respondent to purchase Flat no.306 in the project located at Vijay Singh Path, Saguna, Patna, on consideration amount of Rs.63,79,000/-. Out of total consideration money, as per Agreement, at the time of booking the complainants paid Rs.10,00,000/- through two cheques dated 3.10.2020 of Rs.5,00,000/- each but on being deposited the same to the Bank one cheque of Rs.5,00,000/- got bounced due to insufficiency of money in the Bank Account.

(ii) The Authority also notes that the complainants have not brought on record any document of the relevant period to show that they made attempts to make payment of bounced amount of Rs.5,00,000/- as well as the next instalment of Rs.15,61,600/-, which was to be made in the month of October, 2020 itself, rather they remained silent over the matter of payment for a longer period of about two years and on 01.08.2022 they sent a Legal Notice dated 01.08.2022 highlighting therein willingness to make payment of remaining amount including bounced booking amount of Rs.5,00,000/-.

(iii) The Authority also notes that the respondent has refunded the amount of Rs.5,00,000/- through RTGS to the complainant on 23.1.2023 without any deduction and thereafter the respondent cancelled the unregistered Agreement dated 4.10.2020 and sent cancellation letters dated 18.3.2023 & 1.7.2023 and then reminder thereof on 31.7.2023 informing the complainants about cancellation of Agreement and allotment of flat to another buyer, which have been rebutted by the complainants.

7. The Authority observes that the complainants cannot brush aside the fact that from the very beginning of booking of the flat they became defaulters in making payment of booking amount of Rs.10,00,000/-, which was paid through two cheques of Rs.5,00,000/- each dated 2.10.2020 but one cheque got bounced due to insufficiency of fund in the Bank Account. The complainants must have known

how much balance amount they had in the Bank Account and what would be the fate of the cheques if they would be deposited in the Bank. As a natural corollary, due to insufficiency of fund in the Bank Account one of the cheques got bounced but the complainants have failed to bring any document to show that they took immediate steps in making payment of that amount as well as the next installment of Rs.15,61,600/- which was to be made in the month of October, 2020 itself, rather they remained silent for about two years till the date of issue of Legal Notice dated 01.08.2022. If the respondent – promoter was not giving positive response to their request they were at liberty either to get a Legal Notice issued to the respondent or to move the Authority in the year, 2020. However, since the respondent-company had held the principal amount of Rs.5,00,000/- paid by the complainant vide cheque dated 2.10.2020 and earned economic benefit and interest on it, the Authority holds that the respondent-company is liable to pay interest on the principal amount of Rs.5,00,000/- till the date of refund, for which the respondent and the complainants both agree in their written notes of argument dated 20.02.2024 and the supplementary petition dated 12.01.2024.

8. Accordingly, the Authority directs the respondent company and its Director Mr. Sanjay Kumar to make payment of interest on the principal amount of Rs.5,00,000/- till the date of refund to the complainants within sixty days of issue of this order. 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 payment of Rs.500,000/- was made till the date of refund to the complainants.

With the aforesaid observations and direction, this complaint is disposed.

Sd/-
S.D. Jha,
Member