REAL ESTATE REGULATORY AUTHORITY, BIHAR

Before the Bench of

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

RERA/CC/184/2023

Mr. Manju Kumari OR Manju Rai …… Complainant

Vs.

M/s A & A Engicon Pvt. Ltd. …... Respondent

For the complainant: In person

For the Respondent: Mr. Syed Shahid Imam, Advocate

Project: – SAFFRON GARDEN 'A'

O R D E R

03.05.2024 This case was last heard on 03.04.2024 and the order was reserved. The complainant appeared and defended her case. Mr. Syed Shahid Imam, Advocate, appeared and defended the case of the respondent. They were given two weeks' time each to file their respective reply and, accordingly, they have filed the same by mail which would be dealt with hereinafter. The order is being delivered today i.e. 03.05.2024.

2. The complainant by filing complaint dated 16.3.2023 submitted that she booked Flat no.304 of 3 BKH of 1551 sq. ft. 10.12.2013 in the project "Saffron Garden 'A'" on consideration amount of Rs.31,02,000/- + additional charges of Rs.2,75,000/-, which was subsequently changed to Flat no.203 on 29.06.2022 along with car parking, against which she made payment of Rs.19,00,000/- from 24.12.2013 to 13.04.2020 and thereafter Personal Information Form was executed between her and the respondent on 10.12.2013 which is enclosed with the complaint. She also submitted that the flat was assured to be handed over within the specified period of time but till date the same has not been handed over. She also submitted that when she visited Flat no.203 she found someone was residing there and thereafter she made several attempts to meet the respondent - promoter but she could not meet. Consequently, she filed this complaint for handing possession of flat in question along with car parking and she is willing to pay the remaining amount.

3 (i). Learned counsel for the respondent by filing counter reply dated 3.10.2023 and humble petitions dated 6.3.2024 &1.4.2024 submitted that this complaint is barred by limitation as the same has been filed after five and half years of cancellation of allotment on 20.10.2017 with ulterior motive by making misstatements and concealing material facts for wrongful gains. He also stated that the complainant booked the flat in question in the project in the year, 2017 on consideration amount of Rs.33,77,000/-, which includes other charges out of which she paid Rs.15,00,000/- and when the complainant defaulted in making payment as per the schedule mentioned in the Personal Information Form, a notice dated 20.10.2017 cancelling allotment of flat was sent to the complainant through courier, copy of which is annexed with the counter reply dated 3.10.2023, to which the complainant submitted that she did not receive the notice.

(ii) He also submitted that after settlement of all disputes in 2017, the complainant again started depositing some money in the personal Saving Bank Account of respondent no.2 without any agreement but the said deposited money was nothing to do with the company M/S A & A Engincons Pvt. Ltd. He further submitted that after cancellation of booking the flat has been settled to other person and Rs.5,00,000/- was returned to the complainant on 17.10.2017 by MICR CTS-No.MANJU KUMARI - 000000000390 from HDFC Bank to the account of the complainant which stands proved by the statement of the Bank Account of the respondent as contained in Annexure -3 to the respondent's petition dated 6.3.2024. Now, only 10,00,000/- remains to be refunded to the complainant.

(iii) He further submitted that the two payments of Rs.1,00,000/- and Rs.3,00,000/- dated 10.2.2016 & 12.2.2016, as shown in the complaint, are not correct as these payments were never credited to the account of the respondent and in support of the same the respondent - promoter has filed statements of the Bank Account of the concerned Bank of the relevant period as well as letter issued by the Bank that these two amounts were not

credited to the account of the respondent. He also stated that having found the complainant defaulter, the respondent sold all the flats including Flat nos. 304 & 302 to other buyers. He also stated that no flat number is mentioned in the allotment Agreement.

4. The complainant by filing petitions dated 16.11.2023 & 22.01.2024 stated that she booked the flat in question under Construction Linked Installment Plan scheme and made payment of Rs.19,00,000/- by 13.04.2020. The flat was to be completed and delivered by the end of the year, 2016, but till date the same has not been completed and , therefore, the respondent had no right to ask for further payment. She also stated that not a single farthing has ever been refunded. So far refund of Rs.5,00,000/- to the complainant, it is stated that on 17.10.2017 vide Annexure – 3 to the rejoinder dated 16.11.2023, the respondent refunded Rs.5,00,000/- in connection with some legal issues with the taxation department. The said refund of Rs.5,00,000/- has nothing to do with the said Rs.19,00,000/- deposited by her on 9.10.2017. She has sought direction to the respondent to complete the project in all respects and obtain CC/OC certificate, to handover flat along with car parking after taking remaining consideration amount and compensation.

5. The complainant by filing supplementary affidavit dated 08.042024 and written submission dated 10.04.2024 stated that besides payment of Rs.19,00,000/- from 24.12.2013 to 13.04.2020 she had also made payment of Rs.5,00,000/- on 18.08.2017 through RTGS, which was transferred from her account (A/c no.30984670450 of SBI) to the account of the respondent – company (HDFC Bank A/c no.16492320000231) which was inadvertently missed in the complaint, the details of which are mentioned at page -4 of the written statement. She further stated that the submission advanced on behalf of the respondent that two payments of Rs.3,00,000/- made on 10.02.2016 & Rs.1,00,000/- on 12.02.2016 by her has not been credited to the account of the respondent is misconceived and irrelevant as both the aforesaid payments were credited to the Axis Bank Account

no. 914020034749658 of the respondent - A & A Engicon Pvt. Ltd. She further stated that the certificate and copy of the RTGS transaction issued by her banker namely UCO Bank and State Bank of India clearly confirms that both the aforesaid amounts were credited to the respondent – company's A/C no. 914020034749658. She further stated that the question of issuance of notice of cancellation of allotment on the ground of non-payment of installments as averred by the respondent is neither correct nor tenable in the eye of law as the respondent did not intimate her before cancellation and nothing has been brought on record to demonstrate as to whether any such letter has ever been issued to the complainant to make payment. Merely filing of any courier service receipt without demonstrating its service is absolutely unsustainable in facts.

6 (i). Learned counsel for the respondent by filing consolidated reply dated 3.4.2024 to the two petitions dated 16.11.2023 and supplementary petition dated 20.01.2024 as well as written submission dated 23.04.2024 submitted that the averments made in the supplementary affidavits by the complainant are totally different from the averments made in the original complaint and, thus, the complainant has changed the nature of complaint. He further stated that the complainant booked a flat of 1551 sq. ft. in the Saffron Garden project on 10.12.2013 @ Rs.2000/- per sq. ft. which total amount comes to Rs.31,00,200/-. In addition to this she was to pay Rs.2,75,000/- as other charges and, thus, the total amount comes to Rs.33,77,000/- which is also evident from statement in para -3 of the complaint petition. Out of the said amount of Rs.33,77,000/- in seven years the complainant paid Rs.15,00,000/- from 10.12.2013 to 13.04.2020, which is less than half of the consideration money and, that too, she paid only Rs.11,00,000/- in the account of M/s A & A Engincons Pvt. Ltd. and Rs.4,00,000/- in the personal account of respondent Mr. Asif Ghafoor, whereas, the respondent had strictly directed the complainant not to deposit any amount because she majorly defaulted in payment and her Agreement of flat has become

automatically abrogated in terms of the Agreement. As per her own version she made first payment on 24.12.2013 and the last payment on 12.02.2016 and further she paid in the personal account of Mr. Asif Ghafoor till 13.04.2020.

(ii) He further stated that at the time of entering into Agreement the complainant opted "construction linked installment plan" and the intending allottee was to pay the company entire consideration money as per the payment plan but the complainant failed and become defaulter in making payment of installments. He also stated that clause -8 of the Agreement says that the allottee must pay 18% interest over any delayed installment payment. It also makes it clear that in case of default in making payment the company has full right to cancel the allotment and forfeit entire amount of earnest money. Since the complainant did not make payment even half of consideration amount in seven years, her Agreement became abrogated and she herself voluntarily approached the respondent to get her allotment cancelled as she is not able to pay the remaining consideration amount and thereafter the respondent returned her Rs.5,00,000/- and as a confirmation the respondent sent a notice dated 20.10.2017 about cancellation of allotment by mutual consent which ends the transaction and the respondent always wanted to payback her booking amount and never intended to forfeit the money in terms of the Agreement.

(iii) He also stated that the complainant does not have valid Agreement and her Agreement became abrogated due to non-payment of installments in terms of the Agreement and the respondent by invoking various clauses including clause -8 of the Agreement cancel the allotment and intimated him vide notice dated 20.10.2017 but cunningly she did not reply the notice as it was mutually agreed. If her allotment was wrongly cancelled she must have brought a complaint or suit before the competent court but she kept mum for about five and half years and, thus, the matter has become time barred.

(iv) He also stated that the matter of allotment was initiated in the year, 2013 being first cause of action and at that time the Real Estate (Regulation and Development) Act, 2016 was not into force. He also stated that a title suit no.246 of 2021 has been filed by one Sanjay Kumar(plaintiff) in the court of Sub-Judge –I, Danapur with regard to the land over which several apartments including the respondents project which is also part of the suit and in this connection the complainant has made averment in her petition dated 16.11.2023 and has annexed therewith copy of the order dated 23.12.2022 of the Full Bench of Hon'ble RERA Court, wherein the Full Bench has observed that "in the matter where there is a land dispute and is pending for adjudication before the Civil Court, the authority would not be able to direct the respondent to hand over the possession of the flat". He also stated that the complainant has brought a new fact of Rs.5,00,000/- which she did not bring in her first complaint petition or any other petition. However, the burden of proof of any such payment is on the shoulder of the complainant.

7(i). Perused the record. The Authority notes that the complainant booked Flat no.304 of 3 BKH of 1551 sq. ft. on 10.12.2013 in the project "Saffron Garden 'A'" on consideration amount of Rs.31,02,000/- + additional charges of Rs.2,75,000/-, which was subsequently changed to Flat no.203 on 29.06.2022 along with car parking, against which she claims to have made payment of Rs.19,00,000/- from 24.12.2013 to 13.04.2020 and thereafter Personal Information Form was executed between the parties on 10.12.2013, which is on the record whereas the respondent claims that only Rs.15,00,000/- was paid to the account of the respondent and, that too, out of which Rs.11,00,000/- was paid to the account of the respondent – company and Rs.4,00,000/- was paid to the personal account of one of the Directors of the respondent – company Mr. Asif Ghafoor and further the amount of Rs.3,00,000/- and Rs.1,00,000/- claims to have been paid on 10.02.2016 & 12.02.2016 were never credited to the Bank account of the respondent's company and in support of non-payment of these

amounts he has filed letter dated 20.03.2024 issued by the HDFC Bank, which is disputed by the complainant and stated in the written submission dated 10.04.2024 that the amount of Rs.3,00,000/- was credited to the respondent's HDFC Bank A/c no.914020034749658 & Rs.1,00,000/- to respondent's Axis Bank A/c no.914020034749658 on 10.02.2016 & 12.02.2016 against her Cheque Nos.684903 & 657499. Both these amounts were not sent to the HDFC Bank Account no.16492320000231. Considering these facts, the Authority observes that the complainant paid Rs.19,00,000/- against the booking of Flat.

(ii) The Authority further notes that in the written submission dated 10.04.2024 besides payment of Rs.19,00,000/- from 24.12.2013 to 13.04.2020 the complainant claims to have also made payment of Rs.5,00,000/- on 18.08.2017 through RTGS, which was transferred from her account (SBI A/c no.30984670450) to the account of the respondent – company (HDFC Bank A/c no.16492320000231), which is disputed by the respondent and stated in the supplementary affidavit dated 23.04.2024 that the onus to prove of making further payment of Rs.5,00,000/- on 18.08.2017 lies on the complainant. Going through the details given by the complainant, the Authority constraints to observes that the complainant also paid Rs.5,00,000/- to the HDFC Bank account of the respondent – company and, thus, she paid amount of Rs.24,00,000/-.

(iii) The Authority also notes that a notice dated 20.10.2017 cancelling allotment of flat is claimed to have been sent to the complainant by the respondent through courier, on 3.10.2023, which is contradicted by the complainant that she did not receive the notice. The Authority observes that the cancellation of booking made by the respondent is not valid and is in violation of Section 11 (5) of the RERA Act, 2016 as the respondent has not brought on record to show as to whether any such letter has ever been issued to the complainant to make payment. Merely filing of any courier service receipt without demonstrating its service report

is not unsustainable and, therefore, the cancellation of booking stands rejected.

(iv) The Authority also notes that the respondent raised an issue of delay by stating that if her allotment was wrongly cancelled she must have brought a complaint or suit before the competent court but she kept mum for about five and half years and, thus, the matter has become time barred. The Authority observes that the RERA Act, 2016 does not prescribe any time limit for filing a complaint.

(v) The Authority also notes that the respondent raised that the allotment was made in the year, 2013 and at that time the Real Estate (Regulation and Development) Act, 2016 was not into force and, therefore, this case is not maintainable. The Authority observes that the Hon'ble Supreme Court in M/s Newtech Promoters and Developers Pvt. Ltd … Appellant (s) Versus State of UP & Ors. Etc., … Respondent(s) has observed that provision of the Act is retroactive in nature and that the Statute primarily aims to protect the right of the home buyers. The objective of the statute would be defeated if the promoter chooses not to register the project or fulfill the mandatory requirements for registration. Hence, the plea that the Authority has no jurisdiction on the ground that the project is not registered with the Authority is not tenable.

(vi) The Authority also notes that the respondent has stated that a title suit no.246 of 2021 has been filed by one Sanjay Kumar(plaintiff) in the court of Sub-Judge –I, Danapur with regard to the land, over which several apartments including the respondents project which is also part of the suit, and in this connection the complainant has made averment in her petition dated 16.11.2023 and has annexed therewith copy of order dated 23.12.2022 of the Full Bench of Hon'ble RERA Court, wherein the Full Bench has observed that "in the matter where there is a land dispute and is pending for adjudication before the Civil Court, the authority would not be able to direct the respondent to hand over the possession of the flat". The Authority observes that the said

Bench would also go by the decision of the Full Bench and holds that the Authority would not direct the respondent to hand over possession of the flat till the title suit is decided by the Civil Court.

(vii) The Authority also notes that the respondent stated that after cancellation of booking the flat has been settled to other person and Rs.5,00,000/- was returned to the complainant on 17.10.2017 by MICR CTS-No. MANJU KUMARI -000000000390 from HDFC Bank to the account of the complainant which stands proved by the statement of the Bank Account of the respondent as contained in Annexure -3 to the respondent's petition dated 6.3.2024, to which the complainant said that the respondent refunded Rs.5,00,000/- in connection with some legal issues with the taxation department and the said refund of Rs.5,00,000/- has nothing to do with the said Rs.19,00,000/- deposited by her on 9.10.2017. The Authority observes that after cancellation of booking the respondent refunded Rs.5,00,000/- on 17.10.2017 by MICR CTS-No.MANJU KUMARI -000000000390 from HDFC Bank to the complainant as the complainant has not brought any documentary evidence to establish that the said amount was returned in connection with some legal issues with taxation department.

8. Taking into consideration the aforesaid facts and the observations made above, the Authority holds that the complainant made total payment of Rs.19,00,000/- in connection with purchase of flat in question. Keeping in view the order dated 23.12.2022 passed by the Full Bench in RERA/CC/26/2022 (Mrs. Nutan Kumar v. M/s A & A Engicon Pvt. Ltd., **Project**: "SAFROON GARDEN"), which is annexed with the petition dated 16.11.2023 of the complainant, the Authority observes that in a matter where there is a land dispute and a title suit is pending before the Civil Court, Danapur, for adjudication, the Authority would not be able to direct the respondent to hand over possession of flat until the title suit is decided by the Civil Court, Danapur.

With the aforesaid observations, this case is disposed of.

Sd/-
S.D. Jha,
Member