REAL ESTATE REGULATORY AUTHORITY, BIHAR

Before the Bench of

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

RERA/CC/114/2023

Mrs. Leena Sharma …… Complainant

Vs.

M/s Sunit Housing Pvt. Ltd. …..… Respondent

For the complainant: In person

For the Respondent: Mr. Jai Ram Singh, Advocate

Project:– SUNIT AMBROSIA, A AND B

O R D E R

06.05.2024 This case was last heard on 04.04.2024 and the order was reserved. The complainant appeared and defended her case. Mr. Jai Ram Singh, Advocate, appeared and defended the case of the respondent. The complainant was directed to file reply, if any, within two weeks and the same has been filed which would be dealt with hereinafter. The complainant was directed to file reply, if any, within two weeks and the same has been filed which would be discussed hereinafter. The order is being delivered today i.e. 06.05.2024

2. The complainant submitted that three Agreements For Sale were executed on 3.2.2020 between her and the respondent to purchase Flat nos.101 (on first floor), 102 & 213 (on second floor) having super built-up area of 1825 sq. ft., 1850 sq. ft., & 1950 sq. ft., along with two covered car parkings in Tower A & B of the project on consideration amount of Rs.88,59,375/-, out of which the complainant paid Rs.33,41,000/- on 27.1.2020, 16.7.2020 & 16.7.2020. She also submitted that due to sudden demise of her husband in Corona, she could not make payment of remaining amount of Rs.55,18,375/- as per schedule. She further submitted that the project is complete and she is willing to pay the remaining amount of flats as soon as possession thereof is handed over to her.

3. Learned counsel for the respondent by filing counters reply dated 31.1.2024 & 3.4.2024 submitted that the complainant booked three Flat nos.101, 102 & 213 in the project

"Sunit Ambrosia, A & B" on 27.01.2020 by making payment of Rs.6,00,000/- (Rs.2,00,000/- for each flat), which finds mention in para 1.8 (iv) of the of the Agreement and thereafter three separate unregistered Agreements For Sale were executed on 3.2.2020 and allotment letters for all three flats were issued. Thereafter, husband of the complainant paid Rs.7,00,000/- for Flat no.101, Rs.7,00,000/- for Flat no.102 & Rs.6,00,000/- for Flat no.213 vide cheques dated 14.2.2020, copies of which are annexed as Annexure R/1 series to the counter reply. After these payments no further payment was made by the complainant in spite of demand notice issued vide letter dated 21.10.2021 and reminder dated 22.11.2021, copies of which are kept on the counters reply. When the complainant did not respond to the aforesaid demand notice and reminder, the respondent sent final reminder vide letter dated 27.1.2022 informing her that the respondent are now forced to take decision to cancel the booking if dues are not received by 15.02.2022 and thereafter vide letter dated 22.2.2022 an intimation was sent to the complainant for cancellation of booking in the light of provision of Section 11(5) of the RERA Act, 2016 and on 14.12.2022 & 26.12.2022 the entire amount of Rs.26,00,000/- was returned to the complainant through RTGS. He further submitted that after cancellation of booking of aforesaid three flats, the respondent has executed Absolute Sale Deeds to other persons, which are annexed with the supplementary counter reply, and now no flat is available with the respondent. By referring to an order passed by BREAT in REAT Appeal no.31/2013, he submitted that there is clear cut observation in the said order that there is no provision under the RERA Act, 2016 to cancel the registered Absolute Sale Deed.

4. Learned counsel for the complainant by filing rejoinder dated 18.04.2024 and supplementary affidavit dated 23.04.2024 through mail on 24.04.2024, in substance, stated that the final notice dated 27.01.2022 for cancellation of booking of Flat nos. 101, 102 & 231 is not in accordance with law and that is the unilateral decision taken by the respondent – promoter. He further stated that in the supplementary show cause of the

respondent it has been wrongly stated that no flat is available in the project whereas there are several flats lying vacant in the project but due to malafide intention the respondent – promoter states that there is no flat available with him. He also stated that Section 19(7) of the RERA Act,2016 clearly stipulates that the allottee shall be liable to pay interest at such rate as may be prescribed for any delay payment but before cancellation and entering into Agreement to sell flats in question with another person, the respondent – developer neither asked nor sent any notice, which violates that norms as well as condition of the Agreement.

5. Perused the record. The Authority notes that after payment of Rs.33,41,000/- on 27.1.2020, 16.7.2020 & 16.7.2020 the complainant did not make further payment in spite of demand notice issued by the respondent vide letter dated 21.10.2021 and reminder dated 22.11.2021. When the complainant did not respond to the aforesaid demand notice and reminder, the respondent sent final reminder vide letter dated 27.1.2022 informing her that the respondent – promoter would be compelled to take decision to cancel her booking if dues are not received by 15.02.2022. Thereafter, vide letter dated 22.2.2022 an intimation was sent to the complainant for cancellation of booking of flats in the light of provision of Section 11(5) of the RERA Act, 2016 and her entire amount was refunded through RTGS and flats in question were sold to other person. Hence, the Authority holds that the cancellation made by the respondent is not unilateral in nature, rather the same has been made by following the provision of Section 11(5) of the RERA Act, 2016. Further, the Authority cannot pass an order in a matter where Conveyance Deeds have already been executed, as claimed by the respondent – promoter, after cancellation of booking by following the provision of Section 11 (5) of the RERA Act, 2016.

6. Taking into consideration the aforesaid facts and the observation made above, the Authority does not think it proper to pass an order directing the respondent to hand over possession

of flats in question to the complainant and, accordingly, the prayer for the same is rejected and this complaint case is dismissed.

With the aforesaid observations, this case is disposed of.

Sd/-
S.D. Jha,
Member