

JHARKHAND REAL ESTATE REGULATORY AUTHORITY

Complaint Case No. 107 of 2019

Sanjeev Anand, S/o- Sri K.P. Lal,
C/o- Mehandi, Station Road, Jhumari Tilaiya,
P.O.- Jhumari Tilaiya, Dist.- Koderma, Pin- 835 409

--- Complainant

-VERSUS-

M/s Bhagwati Developers Infra Pvt. Ltd.,
Proprietor- Sri Navin Kumar Jha,
G- 4, Bhagwati Sai Enclave, Puran Vihar,
Argora, Ranchi- 834 002.

--- Respondent

Dated Ranchi the 23th Day of February, 2023

Complainant Represented through his next friend -- Vijay Kumar Gupta,

Respondent represented through --- Vikramaditya Roy, Ld. Advocate
---Siddharth Jain, Ld. Advocate

**Coram: Hon'ble Chairman Shri Ranjeet Kumar Choudhary
Hon'ble Member Shri Birendra Bhushan**

JUDGMENT

1. The instant case has been filed by the Complainant Sanjeev Anand against the Respondent Bhagwati Developers & Infra Pvt. Ltd. represented through its proprietor Naveen Kumar Jha with reliefs that Respondent may be directed to prepare parking, provide electrical connection for lift and flat, to provide generator and to pay compensation for delay in project and payment for rent realized by the Respondent by letting out the flat of the Complainant to some other person.

2. In short, it is the case of the Complainant that he had booked Flat No. 203 in the project '**Bhagwati Orchid**', Anand Vihar, Booty More, Ranchi and in this regard agreement for sale was executed on 25.04.2011 between the parties and on same date allotment letter was issued by the Respondent in favour of the Complainant (xerox copy of agreement for sale and allotment letter are on the record). Complainant made substantive payment to the Respondent against consideration amount but suddenly Respondent cancelled his allotment of flat and thereafter Complainant moved District Consumer Disputes Redressal Forum, Ranchi for redressal of his grievances vide Consumer Complaint Case No. 144 of 2014 and vide the Order dated 25.05.2018, it was decided in favour of the Complainant and he was directed to pay Rs. 3,57,000/- (Three lakhs and fifty seven thousand) only to the Respondent and Respondent was directed to deliver possession of the flat in question to him after receiving this amount. The Respondent did not comply this Order and then Complainant filed execution proceeding before District Consumer Disputes Redressal Forum, Ranchi which is still pending. Hence it has been prayed that Respondent may be directed to prepare parking in the apartment, provide electrical connection for lift, provide generator facility and give compensation for delay and rent.

3. On being noticed Respondent appeared before this Authority and filed Written Statement opposing the case and claim of the Complainant. It is admitted that agreement for sale was executed between the parties and consideration amount was fixed @ Rs. 9,16,800/- (Nine lakhs sixteen thousand and eight hundred) only. Out of this amount Complainant made payment of Rs. 4,09,000/- (Four lakhs and nine thousand) only and despite issuance of Reminders for payment of balance amount as per agreement for sale when the Complainant did not respond, vide the Letter No. BDIPL/BO/REM/03 dated 21.05.2012, his allotment was cancelled and he was duly informed. Thereafter Complainant approached the Respondent for this flat and cost of the flat was revised to Rs. 14.03 lakhs. Out of this amount only Rs. 5.09 lakhs was paid which is 36% of total amount and as such allotment of the flat was cancelled. Thereafter Complainant moved before Consumer Forum, Ranchi and producing concocted evidence he obtained some order in his favour but no Order was passed by the Consumer Forum regarding registration of the flat. Hence it has been prayed that case brought by the Complainant may be dismissed.

4. The only point arising out of this case for determination is whether the Complainant is entitled for reliefs as claimed for ?

FINDINGS

5. Next friend of the Complainant Mr. Vijay Kumar Gupta argued this case on behalf of the Complainant. He has submitted that Complainant has filed xerox copy of the judgment delivered by the Consumer Court in order to show that Consumer Court has directed the Respondent to give delivery of possession of the flat to him. Respondent has neither complied this Order nor he has filed any Appeal against this Order before any competent Authority. He has submitted that Respondent had put the flat of the Complainant on rent and recently he has sold this flat to some person. It is

his further argument that despite receiving amount from the allottees, Respondent has not installed generator set and has not taken electrical connection in the lift. Parking space is also is under prepared. Hence Respondent may be directed to take electrical connection for the lift and provide generator in the apartment and do registration of the flat in question in his favour. Compensation for delay has also been sought. He has further argued that Respondent may be directed to give rent realized by him by letting out of this flat. Preparation of proper parking should also be done by the Respondent.

6. Ld. Counsel for the Respondent submitted otherwise. He has submitted that when Complainant did not make payment of flat in question as per terms and conditions in the agreement for sale, Respondent gave him several reminders for payment and when Complainant did not respond, vide the Letter No. BDIPL/BO/REM/03 dated 21.05.2012, his allotment was cancelled. Respondent is ready to return the amount received by him from the Complainant against the consideration amount. The Ld. Counsel has further submitted that Complainant approached District Consumer Forum against the Respondent and certainly the Ld. Consumer Forum delivered judgment but no Order was passed by the Ld. Consumer Forum for registration of the flat in favour of the Complainant. The matter is sub-judice before Consumer Forum in Execution Proceeding and hence this Authority should not give any findings regarding delivery of possession and registration of the flat issue. He has also submitted that when the allotment of the flat in favour of the Complainant has already been cancelled in the year 2012, other reliefs sought by him is not at all maintainable. Hence he has prayed to dismiss the case.

7. Perused the case record and the documents filed by the parties. Also considered the argument adduced by the parties. No doubt the Complainant

was intending to purchase a flat in Bhagwati Orchid belonging to the Respondent and with respect to Flat No. 203, agreement for sale was executed and consideration amount was fixed @ Rs. 9,16,800/- (Nine lakhs sixteen thousand and eight hundred) only. Out of this amount Rs. 4,59,000/- (Four lakhs and fifty nine thousand) only was paid by the Complainant (as per money receipt filed by the Complainant). On different dates representative of the Complainant Mr. Manoj Yadav was informed and asked to pay installments which were due but when the Complainant did not respond vide the Letter dated 07.05.2013 his allotment was cancelled. Thereafter the Complainant moved before District Consumer Disputes Redressal Forum, Ranchi against the Respondent vide Complaint Case No. 144 of 2014 and on contest this case was decided by the Ld. Consumer Forum, Ranchi vide Judgment dated 25.05.2018. Perusal of this Judgment indicates that Complainant was directed to pay Rs. 3,57,000/- (Three lakhs and fifty seven thousand) only to the Respondent against balance consideration amount and Respondent was directed to receive this amount and after receiving this amount and paying compensation of Rs. 50,000/- (Fifty thousand) only, he will give possession of the flat to the Complainant. Certainly no Order has been passed by the Ld. Consumer Forum, Ranchi regarding registration of the flat. This Order has not been complied by the Respondent and matter is again pending before District Consumer Forum, Ranchi in execution proceeding vide Execution Case No. 31/2018. Presently it is clear cut position that allotment of the flat made in favour of the Complainant by the Respondent has been cancelled way back in the year 2012. Before this Authority the legality and propriety of the flat cancellation letter have been challenged by the Complainant and hence this Authority is not going to pass any Order regarding cancellation order. As per submission of the next friend of the Complainant, Respondent has sold this flat to somebody else. Moreover, it is very much

clear that presently the Complainant is not an allottee in the apartment of the Respondent. Hence in my view the reliefs sought by the Complainant in the Complaint Petition cannot be given to him.

CONCLUSION

8. In the circumstances we come to this conclusion that the Complaint Case filed by the Complainant has no merit and accordingly and it stands dismissed. However since the Complainant has paid Rs. 4,59,000/- (Four lakhs and fifty nine thousand) only to the Respondent which is lying with him and Respondent is ready to refund this amount to the Complainant, so he is directed to refund this amount to the Complainant with @ 8 % simple interest per annum from the date of cancellation of flat allotment till the payment of amount by him to the Complainant. In the facts and circumstances Rs. 50,000/- (fifty thousand) only compensation is also awarded to the Complainant.

(Birendra Bhushan),
Member,
JHARERA, Ranchi

(Ranjeet Kumar Choudhary),
Chairman,
JHARERA, Ranchi