

JUDGMENT

1. The instant case has been brought by the Complainant Gopal Kumar Kheria against the Respondent Deepak Kumar Agarwal, Director-Kalpatru Electricals & Allied Products Pvt. Ltd. with reliefs that Respondent may be directed to complete the construction of the flat booked by him and his wife and deliver its possession to them and execute sale deed in their favour. Alternative relief has been sought that, if the Respondent is unable to deliver its possession within six months from the date of the filing of the Complaint, an Order may be passed directing the Respondent to return the advance consideration amount worth Rs. 25,00,000/- (Twenty-five lakhs) only to them with 18% interest thereon from the date of payment as mentioned in agreement of sale dated 02.05.2011. Respondent has sought damage worth Rs. 13,87,500/- (Thirteen lakhs eighty seven thousand and five hundred) only calculated @ Rs. 18,750/- (Eighteen thousand seven hundred and fifty) only p.m. from February, 2013 till March, 2019.

2. In short, it is the case of the Complainant that he alongwith his wife Sangeeta Devi Kheria entered into agreement for sale dated 02.05.2011 with the Respondent for purchase of flat bearing Flat No. 702, 7th Floor, Block- A having super built-up area of 2200 sq. ft. with a car parking in the “**Krishna Kripa Apartment**” situated at Bankmore, Dhanbad. Consideration amount of flat was Rs. 27,68,000/- (Twenty-seven lakhs and sixty eight thousand) only out of which Rs. 25,00,000/- (Twenty-five lakhs) only was paid by the Complainant to the Respondent at the time of execution of agreement for sale. Respondent was bound to deliver the possession of the flat to the Complainant within 18 months with a grace period of 3 months from the date of the agreement. The flat was not delivered to the Complainant within stipulated period and Respondent

postponed the matter of delivery of possession on some pretext or other despite several request made to him. On 10.02.2016, Complainant sent a Pleader's Notice to the Respondent requesting him to deliver possession of the flat and by reply dated 23.02.2016, Respondent demanded another six months to give delivery of the possession showing various reasons of non-completion of the projects. Then on 12.09.2016, Complainant sent another notice to the Respondent for same relief and thereafter filed C.P. Case No. 3121 of 2016 against the Respondent and other Officials of the Company before Judicial Magistrate, Dhanbad and the Ld. Court was pleased to summon the accused persons u/s 204 Cr. P.C. and Complainant being aggrieved by the Order filed Criminal Revision No. 354 of 2017 before Sessions Court which was dismissed vide the Order dated 22.03.2018 and against this Order, Complainant filed Cr. M.P. No. 1489 of 2018 before the Hon'ble Jharkhand High Court which is still pending. Complainant is entitled for delivery of possession of the flat or refund of advance consideration money with 18% interest thereon. Hence this case.

3. On being noticed, Respondent appeared before this Authority and filed Preliminary Objection dated 26.06.2019 and thereafter filed Written Statement dated 15.10.2019 contesting the case and claim of the Complainant. It is said that Complainant has concealed this fact that he has filed Criminal Case against the Respondent and others before the Chief Judicial Magistrate, Dhanbad. It is said that Complainant was fully aware that land upon building was to be constructed is **Gair-Mazarua** land and at the time of execution of agreement for sale, transfer of land was permissible but from 2012 same was stopped as such there was delay in the construction of the building. It is further said that delay in the construction is not due to fault by the builder, rather due to unavoidable circumstances delay has occurred. It is denied that Complainant has paid

Rs. 25,00,000/- (Twenty-five lakhs) only as advance consideration amount. Hence it has been prayed that Complaint 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. The Ld. Counsel appearing for the Complainant argued that Complainant and his wife booked a flat in the apartment namely “Krishna Kripa”, situated at Bankmore, Dhanbad belonging to the Respondent bearing Flat No. 702, 7th Floor, Block- A having a super built-up area of 2200 sq. ft. and consideration amount was Rs. 27,68,000/- (Twenty seven lakhs and sixty eight thousand) only out of which Rs. 25,00,000/- (Twenty five lakhs) only was paid to the Respondent at the time of execution of agreement for sale. As per Para-7 of the agreement, Complainant was supposed to get possession of the flat within 18 months with a grace period of 3 months from the date of execution of agreement for sale and in Para-14 of the agreement it is very much mentioned that in case of delay Complainant will receive interest @ 9% P.A. When project was not complete till the end of year- 2015, Complainant sent a Pleader’s Notice dated 10.02.2016 for getting possession of the flat and vide the reply dated 23.02.2016, Respondent begged for another 6 months time. After lapse of 6 months time, Complainant sent another Legal Notice dated 12.09.2016 for same relief which was not replied by the Respondent. Then he filed Criminal Case against the Respondent. After creation of this Authority he has filed present complaint with certain reliefs which he is entitled to get. The Ld. Counsel has further submitted that during hearing of this case matter was compromised between the parties and Respondent agreed to pay Rs. 45,00,000/- (Forty-five lakhs) only to the Complainant as full and

final settlement but after paying Rs. 10,00,000/- (Ten lakhs) only, he jumped from the compromise. The Ld. Counsel has submitted that now the case should be decided on its merit ignoring the factum of compromise. Since the project of the Respondent is not complete an Order may be passed for refund of the money with 18% interest P.A. and suitable compensation may be awarded to him.

6. The Ld. Counsel for the Respondent has submitted that case brought by the Complainant is not maintainable. He has submitted that Complainant has paid only Rs. 10,00,000/- (Ten lakhs) only to the Respondent as advance consideration amount which Respondent has already refunded to him when the matter was compromised between the parties. The circumstances were beyond the control of the Respondent due to which project could not be completed. In Clause- 10 of the agreement it was very much mentioned that if the work is not completed due to unavoidable circumstances, the Respondent will not liable for that. The Ld. Counsel has further argued that as per provision of the RERA Act, a person can approach only one forum for redressal of grievance and in present case he has approached this Authority after filing criminal case against the Respondent. Hence, he has prayed to dismiss the case.

7. Perused the case record, the documents filed by the Complainant as well as Respondent and also considered the arguments adduced by the parties. From perusal of agreement for sale dated 02.05.2011, it is clear that Complainant Gopal Kumar Kheria alongwith his wife Sangeeta Devi Kheria had entered into agreement for sale with the Respondent for purchase of a flat bearing No. 702, 7th Floor, Block- A having a super built-up area of 2200 sq. ft. with a car parking in the a **“Krishna Kripa Apartment”** situated at Bankmore, Dhanbad and consideration amount was Rs. 27,68,000/- (Twenty seven lakhs sixty eight thousand) only. In the

Para- 2, Page No. 6 of the agreement, it is mentioned that Rs. 25,00,000/- (Twenty five lakhs) only was paid by the Complainant as a part payment towards costs, charges and expenses as and by way of earnest money. It is very much mentioned that builder (Respondent) admit and acknowledge receipt of the money. Hence no question arises to doubt that Complainant has paid Rs. 25,00,000/- (Twenty five lakhs) only as advance consideration amount. There is no basis to believe that Complainant has paid only Rs. 10,00,000/- (Ten lakhs) only to Respondent as advance consideration amount as submitted by the Ld. Counsel for the Respondent. In Para- 7, page- 8 of the agreement, it is mentioned that possession of the flat shall be given within 18 months with a grace period of 3 months from the date of the execution of the agreement for sale. Certainly, the flat has not been handed over to the Complainant till today. It is true that in Clause- 10 of this agreement, it is mentioned that unless prevented by unavoidable circumstances, the Respondent shall within the aforesaid time construct and complete the construction but Respondent has not been able to establish that what was the unavoidable circumstances due to which the possession of the flat was not given to the Complainant within 18 or 21 months from the date of execution of agreement for sale.

8. I find that when the flat was not handed over to the Complainant, he sent a Pleader's Notice dated 10.02.2016 to the Respondent asking him to handover the possession of the flat within 15 days from the receipt of the notice and pay interest @ 9% on the money given by him to the Respondent as advance. Xerox copy of Pleader's Notice is on the record. I further find that vide the reply dated 23.02.2016, Respondent sent reply of this Pleader's Notice requesting him for some time to complete the project. In this reply, delay in construction of the flat was attributed upon the landowner. It is mentioned that Respondent got power of attorney at

belated stage which caused delay in sanction of the map. In this reply, it is nowhere mentioned that due to the nature of the land, registration of the flat was not possible, as argued by the Ld. Counsel for the Respondent. So, this submission of the Ld. Counsel for the Respondent has got no legs to stand that entire problem is happening because the state of Jharkhand/DC/CO. They by not taking a decision, even after publication of notification dated 15.07.2020 issued by the state of Jharkhand which empowers Circle Officer to grant receipt, if the settlement of the land has been done before 01.01.1946. Issue of non-issuance of rent receipts of the land in question is something different issue. If the rent receipt of land in question upon which the apartment has been constructed is not being issued by the Authority, registration of the flat is not possible but possession of the flat can be given to the prospective purchaser after completing the flat in question.

9. The Ld. Counsel for the Respondent has relied upon a decision of the Punjab RERA passed in case between ***“Bikramjit Singh & M/s H.P. Singh” and another decision passed in Haryana RERA in case between “Sukhbir Singh Grewal & M/s MVL Limited”*** and has submitted that complaint against project not registered with RERA will not be entertained by the Authority and if the delay is beyond the control of the builder, he cannot be penalized. I feel that both these decisions are not relevant so far as present case is concerned. The Hon’ble Apex Court in its decision passed in ***“CIVIL APPEAL NO(S). 6745- 6749 OF 2021 (Arising out of SLP (Civil) No(s). 3711- 3715 OF 2021- M/s NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD. VERSUS STATE OF UP & ORS. ETC.”*** has opined that ***“the statute is not retrospective merely because it affects existing rights or its retrospection because a part of the requisites for its action is drawn from a time antecedent to its passing, and at the***

same time, retroactive statute means a statute which creates a new obligation on transactions or considerations already passed or destroys or impairs vested rights". The Hon'ble Apex Court has clearly opined that RERA Act is retrospective as well as retroactive in nature and by giving such opinion, the Hon'ble Court has enlarged the ambit of RERA Act.

10. Perusal of case record shows that at the initiative taken by this Court both the parties settled their disputes and on 22.02.2022, Joint Compromise Petition was filed by the parties by which Respondent agreed to pay Rs. 45,00,000/- (Forty five lakhs) only to the Complainant against Rs. 25,00,000/- (Twenty five lakhs) only which was given by the Complainant as advance consideration amount in lieu of flat. From the day first, Respondent avoided to make payment as per terms & conditions mentioned in the Compromise Petition and as first installment he paid Rs. 5,00,000/- (Five lakhs) only through cheque in place of first installment of Rs. 10,00,000/- (Ten lakhs) only. This cheque was not honoured by the bank and subsequently through RTGS, Rs. 5,00,000/- (Five lakhs) only was transferred in the account of the Complainant. Till 12.10.2022 Rs. 10,00,000/- (Ten lakhs) only was paid to the Complainant and thereafter no payment was made and the Compromise Petition became waste paper. Thereafter, the matter was heard on merit.

11. In view of the aforesaid discussion, we find that on or before 02.05.2011, Complainant had made payment of Rs. 25,00,000/- (Twenty five lakhs) only to the Respondent as advance consideration amount against the total consideration amount for purchase of the flat worth Rs. 27,68,000/- (Twenty seven lakhs and sixty eight thousand) only. Within 18 or 21 months from the date of agreement i.e. 02.05.2011, Respondent was supposed to handover the possession of the flat to the Complainant but till date it has not been done. Certainly, in view of Section- 18 of the RERA

Act, Complainant is entitled to get refund of the money alongwith interest specified in agreement for sale from the date of payment made by the Complainant to the Respondent. The rate of interest is @ 9% P.A. as transpires from Clause- 13 & 14 of the agreement for sale. Hence, we feel that Complainant is entitled for refund of Rs. 25,00,000/- (Twenty five lakhs) only from the Respondent alongwith interest @ 9% P.A. from 02.05.2011 till date which comes to Rs. 26,62,500/- (Twenty six lakhs sixty two thousand and five hundred) only.

12. In the circumstances, it is hereby.....

ORDERED

13. that the Respondent will pay Rs. 41,62,500/- (Forty one lakhs sixty two thousand and five hundred) only to the Complainant as refund of the booking amount alongwith interest @ 9% P.A. [after deducting Rs. 10,00,000/- (Ten lakhs) only which has already been paid to the Complainant earlier in view of compromise] within 2 months from the date of this Order failing which he will entitled for refund of this amount alongwith 11% interest P.A. till the realization of this amount.

14. In the facts and circumstances of this case, Complainant deserves compensation as well as litigation costs. Respondent is directed to pay Rs. 5,00,000/- (Five lakhs) only to the Complainant as compensation and Rs. 50,000/- (Fifty thousand) only as litigation cost. All the payments will be made within 2 months from the date of this Order.

15. As such this case succeeds on contest.

Member,
JHARERA, Ranchi

Chairman,
JHARERA, Ranchi