

**Ranchi**

**Before Adjudicating Officer**

**Jharkhand Real Estate Regulatory Authority, Jharkhand,**

**Ranchi**

Present ----- Ranjeet Kumar Choudhary

Dated 30<sup>th</sup> Day of March, 2022

**Complaint Case No. 39/2020**

Lakhi Bala Bid, W/o Sri Sudhir Chandra Bid,  
R/o Near Shiv Mandir, Parbad,  
P.O.- Khas Jeenagora, P.S.- Tisra,  
Dist.- Dhanbad- 828 115, Jharkhand

--- Complainant

VERSUS

Pramod Agarwal, S/o Shri Jagdish Prasad Agarwal,  
Shree Balajee Projects,  
Room No. 333, 3<sup>rd</sup> Floor,  
Shri Ram Plaza, Bank More,  
Dhanbad- 826 001, Jharkhand

--- Respondent

Complainant Represented through --- Shri Ranjit Kumar Sinha, Ld.  
Advocate

Respondent represented through ---Shri Pankaj Kumar Prasad, Ld.  
Advocate

## **ORDER**

1. The instant complaint has been brought by the Complainant Lakhi Bala Bid against the Respondent Pramod Agarwal for refund of Rs. 16,38,000/- alongwith 18% interest p.a. till its realization and also payment of Rs. 8,00,000/- as compensation.

2. According to Complaint Petition, it is the case of the Complainant that she had entered into agreement for sale with the Respondent on 11.04.2017 for purchase of Flat No. 405 B having a super built up area of 1000 sq. ft. in project- Shri Balajee Ambika, Wing No. II, Subala Highland at Bhuiphore- Baliyapur, Hirak Road, Dist.- Dhanbad. The consideration amount of the flat was Rs. 19,50,000/-. On 11.04.2017 Rs. 10,000/- was paid in cash by the Complainant to the Respondent and thereafter vide 3 cheques Rs. 3,80,000/- paid by her. Altogether Rs. 3,90,000/- was paid by her to the Respondent. Thereafter she approached LIC Housing Finance Ltd. (LIC HFL) for a loan under Pradhan Mantri Awas Yojna and altogether Rs. 15,60,000/- loan was sanctioned. The Respondent withdrew Rs. 12,48,000/- from this loan account through two cheques issued by LIC HFL. Rest Rs. 3,12,000/- remained to be

paid for which no request was made by the Respondent. As per agreement for sale Respondent was supposed to give possession of the flat in the month of the October, 2018 with a grace period of 24 months but he could not do so. He was to execute sale deed with respect to above mentioned flat after obtaining Occupancy Certificate from competent Authority but he did not do so. Thereafter Complainant sent a reply Pleader's Notice dated 03.11.2020 to the Respondent for handing over the flat within 15 days from the date of receipt of the notice otherwise to return the paid amount with 18% interest. This notice was given by the Complainant in response to notice dated 30.10.2020 issued by the Respondent. Respondent neither gave possession of the flat to the Complainant nor repaid the amount with interest. Hence this case. It has been prayed that Respondent may be directed to refund of Rs. 16,38,000/- to the Complainant with 18% interest from the date of amount paid till its realization and also pay Rs. 8,00,000/- as compensation. Several documents have been filed alongwith Complaint Petition which I would discuss later on.

3. On being noticed, the Respondent appeared before this Court and contested this case after filing written statement. According to this written statement, the case brought by the Complainant is not maintainable. It is said that Rs. 3.12,000/- was the final payment to be disbursed by LIC HFL and this payment was to be disbursed after execution of sale deed. The flat booked by the Complainant was ready for delivery of possession on execution

of sale deed but she avoided to take possession of the flat and get its registration done. Non withdrawal of Rs. 3,12,000/- cannot be attributed to the Respondent rather Complainant is responsible for the same. She has to pay Rs. 1,56,867/- towards GST and she has not paid this amount also. The construction of apartment Balajee Ambika Phase- II was completed within schedule time and possession of almost all flats have been delivered to the purchasers. Complainant was also offered to take possession of flat in the year 2018 but in order to evade the liability to pay the balance consideration amount, she started harping upon Occupancy Certificate though it is not very much essential. Respondent has already applied for Occupancy Certificate on 10.11.2020 but it has not been provided to him by the competent Authority. Purchasers of 38 flats have taken possession of their respective flats and they are residing there for the last 2 to 3 years without any hassle. Complainant has option of purchasing the flat after paying balance amount of Rs. 4,68,867/- including GST. Respondent has invested Rs. 1,00,000/- in the flat for extra work like fixing of wall tiles, collapsible grill etc. which the Respondent is entitled to claim from her. Hence it has been prayed that case brought by the Complainant may be dismissed. Several documents have been filed by the Respondent also which includes Completion Certificate dated 05.10.2019.

4. The only point arising out of this case for determination is whether the Complainant is entitled to get reliefs as prayed for or not ?

### **FINDINGS**

5. The Ld. Counsel appearing for the Complainant has submitted that there is no dispute that sale agreement was executed between the parties on 11.04.2017 and possession of the flat was to be delivered by October, 2018 but the project is not complete till date. Complainant has paid Rs. 16,38,000/- to the Respondent out of total consideration amount of Rs. 19,50,000/-. Complainant has to pay balance amount of Rs. 3,12,000/- which will be paid by LIC HFL. So far as GST component is concerned, Respondent has never raised this claim prior to filing of written statement in this case. As per section 11 (4) (b) of the Real Estate (Regulation & Development) Act, 2016 (in short RERA Act), the Promoter is duty bound to obtain Completion Certificate or Occupancy Certificate or both as applicable from the relevant competent Authority as per local laws but till date Occupancy Certificate has not been obtained by the Builder. He has further submitted that as per section 17 of the RERA Act, Promoter is duty bound to execute registered conveyance deed in favour of the allottee and after obtaining Occupancy Certificate, it shall be responsibility of the Promoter to handover necessary documents and plan to the allottee or association of allottees. If the developer fails to obey terms & conditions of the

agreement or violates any provision of the law, as per section 19(4) of the RERA Act, allottee shall be entitled to claim the refund of amount alongwith interest. He has also submitted that Jharkhand Building Bye Laws, 2016 also stipulates that every builders shall obtain Occupancy Certificate from the Authority prior of occupation of building in full or part. Since the Respondent has not been able to obtain Occupancy Certificate from the competent Authority, Complainant is not inclined to get possession of the flat and get its registration done. Hence she has filed this case for refund of money. The Ld. Counsel has also submitted that prior to institution of this case Respondent had issued a notice to her claiming balance amount of consideration money and this notice was duly replied by the Complainant through her lawyer and perusal of this reply notice will indicate that Complainant has claimed for refund of money also, if the possession of the flat is not given to her within 15 days from the date of receipt of the notice by the Promoter. Hence he has prayed that necessary order may be passed directing the Respondent to refund the money of the Complainant alongwith 18% interest from the date of last payment till the realization of the same and also necessary order may be passed regarding payment of Rs. 8,00,000/- as compensation payable to the Complainant.

7. The Ld. Counsel has appearing for Respondent has submitted that there is no dispute that agreement for sale for purchase of flat in Shree Balajee Ambika, Phase No.. II, Subala

Highland was executed between the parties and this project belongs to the Respondent located at Bhuiphore- Baliapur, Hirak Road, Dist.- Dhanbad. He has further argued that the flat of the Complainant was ready within stipulated period but dues of Rs. 3,12,000/- of consideration amount of the Complainant was not disbursed by LIC HFL. This amount was demanded by the Respondent from the Complainant alongwith Rs. 1,56,867/- which is payable as GST by the consumer but these amounts were not paid to the complainant. The Complainant has not cited any cogent reason for not taking possession of the flat. She may be directed to pay dues amount to the Respondent and take possession of the flat. The Ld. Counsel has further submitted that Clause- 2B & 2C of the sale agreement clearly states that in default of payment of amount in time, the purchaser shall pay to the developer interest @18 p.a. and if the Complainant wants refund of paid amount, it can be paid to her after deducting 5% of the total consideration amount. It is his further submission that Respondent has obtained Completion Certificate from architect on 05.10.2019 and he has applied for issuance of Occupancy Certificate by the competent Authority. It is his further argument that Respondent has sold 39 flats of this apartment to different purchasers and sale deed with respect to same have been executed. Respondent has filed xerox copy of the 39 sale deeds executed by him in favour of purchasers. It is his further argument that Respondent is ready to refund the amount which he has received from the Complainant but the amount which has been

deposited by the Respondent to the government as GST will be deducted from this amount. He has also submitted that Complainant is not entitled to receive any compensation from the Respondent because she as per her wish is withdrawing from the sale agreement. Hence he has prayed to pass necessary order.

8. Perused the case record, the documents filed by the parties and considered the argument adduced by both the parties. Also considered the judgments of the Hon'ble Apex Court passed in Civil Appeal No. 5785 of 2019. There is no dispute that vide the sale agreement dated 11.04.2017 Complainant has agreed to purchase a flat in the project Shree Balajee Ambika, Phase No. II, Subala Highland vide Flat No. 405 having super built up area of 1000 sq. ft. at the consideration amount of Rs. 19,50,000/- and this project certainly belongs to the Respondent. It is also not in dispute that Respondent has received Rs. 3,90,000/- from the Complainant through cash and cheques and an amount of Rs. 12,48,000/- has been paid to the Respondent by the LIC HFL as the Complainant had taken Housing Loan worth Rs. 15,60,000/- from this institution. It is also apparent from perusal of the documents filed by the Respondent that the above said project is complete and on 05.10.2019 architect Prem Kumar Singh has issued Completion Certificate with respect to this project. I also find that 39 purchasers who had booked their flats in the above mentioned project has been given possession right from the year, 2017 to 2021 and Respondent has executed sale deed in favour of the purchasers. I find that in the

month of December, 2017, 2 sale deeds have been executed by the Respondent in favour of 2 purchasers. It means that certainly in the year 2018 the project of the Respondent was complete apparently within stipulated period as mentioned in the sale agreement, the project was complete. I find that since the Respondent has not been able to obtain Occupancy Certificate from the competent Authority, Complainant is not inclined to get possession of the flat booked by her and also get its registration done.

9. Section 17 (1) & (2) of the RERA Act discuss about transfer of title and it is very much mentioned in this provision of the Act that Promoter shall execute registered conveyance deed in favour of the allottees alongwith the undivided proportionate title of the common areas to the association of allottees and it shall be responsibility of the Promoter to handover the necessary documents to the allottees and necessary documents includes Occupancy Certificate also. In the present case till date Occupancy Certificate has not been obtained by the Promoter and this is the reason Complainant is not inclined to take possession of the flat and get sale deed executed in her favour. Section 18 of the RERA Act stipulates that if the Promoter fails to complete or is unable to give possession of an apartment, plot or building in accordance with terms & conditions of the sale agreement allottees are entitled for refund of amount and compensation. Section 19(4) of the RERA Act also discuss about refund of money with compensation. According to this provision of the Act, the allottees shall be entitled

to claim the refund of amount paid alongwith interest at such rate as may be prescribed and compensation in the manner as provided under the Act from the Promoter if he fails to comply or is unable to give possession of the apartment, plot or building in accordance with terms of agreement for sale. I find that since Promoter has failed to obtain Occupancy Certificate from the competent Authority, the Complainant wants return of money with interest as well as compensation.

**10.** From perusal of the case record it is ample clear that Respondent has sold and executed registered sale deed in favour of 39 flat owners of same project i.e. Shri Balajee Ambika Project and flat of the Complainant is also ready for taking possession. Technically Complainant is correct if she is not taking possession of the flat booked by her and getting its registration done in her favour but at the same time I feel that if Occupancy Certificate has not been issued in favour of the Promoter, he is not at fault because he has already obtained Completion Certificate from the Architect which is on the record and he has filed application before Jharkhand Mining Area Development Authority (JHAMADA) for issuance of Occupancy Certificate on 10.11.2020 and on 21.12.2021. It is true that when the Complainant as well as Respondent filed application under Right to Information Act before JHAMADA regarding filing of application by the Respondent for issuance of Occupancy Certificate, it was replied in negative by the Public Information Officer of JHAMADA. The Ld. Counsel for the Respondent has

argued that he has filed xerox copy of application dated 10.11.2020 and 21.12.2021 to show that he had filed application for issuance of Occupancy Certificate before JHAMADA and perhaps this application was misplaced. Again he is trying to obtain Occupancy Certificate which must be issued by JHAMADA in near future. I am convinced that issuance of Occupancy Certificate by JHAMADA is no issue and certainly it will be obtained by the Promoter in near future and absence of Occupancy Certificate will never cause any hindrance in execution of sale deed. As discussed above technically Complainant is correct at her point and due to absence of Completion Certificate she is not receiving the possession of the flat, and hence she cannot be compelled to take possession of the flat and go for its registration. She is entitled for refund of his money which she has paid to the Developer against purchase of flat with interest. At the same time I feel that Complainant is not entitled for any compensation from the Developer in want of Occupancy Certificate.

**11.** On 09.03.2022 Respondent has filed some papers to show that Rs. 1,33,714.28 has been deposited by the Developers in the account of the government towards GST from the money received from the Complainant. Certainly this amount will be deducted from the refund amount of the Complainant.

It is thereby

**ORDERED**

12. In the circumstances, I come to this conclusion that the present case must succeed. Respondent is directed to refund Rs. 15,04,286/-(Rupees 16,38,000 – 1,33,714) to the Complainant alongwith 9% interest p.a. from 14.07.2017, which is the last day when Rs. 16,38,000/- was paid by the Complainant to the Respondent, till the realisation of the amount. Respondent is directed to pay this amount to the Complainant within 45 days of this order failing which she will at liberty to realize this amount from him through the process of this Court. Further Respondent is directed to give Rs. 30,000/- to the Complainant as litigation cost.

Dictated & Corrected  
By me

Adjudicating Officer  
JHARERA

Ranjeet Kumar Choudhary  
Adjudicating Officer  
JHARERA