

**JHARKHAND REAL ESTATE REGULATORY AUTHORITY**

**IN THE COURT OF CHAIRMAN, RERA**

**Present ----- Ranjeet Kumar Choudhary**

Dated Ranchi the 26<sup>th</sup> day of June, 2023

**Complaint Case No. 54 of 2021**

Monica Lamba,  
W/o- Pravesh Kumar Lamba,  
R/o- 38/B, Main Road, Chas,  
Bokaro, Jharkhand

----- Complainant

-Versus-

Sonam Agarwal,  
W/o- Dinesh Agarwal,  
R/o- H. No. 48, Near Kali Bari,  
Sahu Market, Main Road,  
Chas, Bokaro, Jharkhand

----- Respondent

Complainant Represented through her husband

--- Mr. Pravesh  
Kumar Lamba

Respondent represented through

--- Mr. Anurag Vijay,



**JUDGMENT**

1. The instant complaint has been brought by Complainant/Builder Monica Lamba against the Respondent Sonam Agarwal with reliefs that Respondent may be directed to pay dues payment of second installments worth Rs. 17,00,000/- (Seventeen lakh) only and Rs. 30,35,000/- (Thirty lakh and thirty five thousand) only alongwith payment of Rs. 2,50,000/- (Two lakh and fifty thousand) only, the cost of amenities. It has further been prayed that Respondent may be directed to pay interest @ SBI MCLR + 2 % on Rs. 17,00,000/- (Seventeen lakh) only since date of the execution sale agreement and interest @ SBI MCLR + 2 % on Rs. 2,50,000/- (Two lakh and fifty thousand) only since date of the execution of sale agreement.

2. According to Complaint Petition, it is the case of the Complainant that Buyer's Agreement was executed between the parties on 30.01.2018 for purchase of one flat at Tower- C of "**Cosmic Campus**", **Main Road, Chas.** Respondent was intending to purchase Flat No. 3- A at 3<sup>rd</sup> Floor of Block- C in Cosmic Campus from the Complainant. As per payment schedule, Rs. 5,00,000/- (Five lakh) only was to be paid as advance and immediately after execution of agreement, Rs. 20,00,000/- (Twenty lakh) only was to be paid and 30 days before registration of the flat, Rs. 30,35,000/- (Thirty lakh and thirty five thousand) only was to be paid.

Respondent paid Rs. 5,00,000/- (Five lakh) only through RTGS on 01.09.2017 and she paid Rs. 3,00,000/- (Three lakh) only on 13.07.2018 through RTGS. She was supposed to pay Rs. 20,00,000/- (Twenty lakh) only after execution of Buyer's Agreement but she paid Rs. 3,00,000/- (Three lakh) only. One time payment of amenities of Rs. 2,50,000/- (Two lakh and fifty thousand) only is also due. As well Rs. 30,35,000/- (Thirty lakh and thirty five thousand) only is also due. Hence, it has been prayed that Respondent may be directed to pay Rs. 17,00,000/- (Seventeen lakh) only and Rs. 30,35,000/- (Thirty lakh and thirty five thousand) only to the Complainant alongwith interest on Rs. 17,00,000/- (Seventeen lakh) only and Rs. 2,50,000/- (Two lakh and fifty thousand) only alongwith with interest. Alongwith Complaint Petition, bunch of documents have been filed by the Complainant.

3. On being noticed and after issuance of Bailable Warrant, Respondent appeared in this case and contested the same by filing Written Statement. According to Written Statement, the case brought by the Complainant is not maintainable. It is said that the Respondent alongwith her Sister-in-law, Radhika Agarwal booked 2 flats in Cosmic Campus for a total sale consideration of Rs. 55,35,000/- (Fifty five lakh and thirty five thousand) only each. The sale agreement may have been signed with Complainant/Promoter Monica Lamba but it was her husband, Mr. Pravesh Kumar Lamba, who was doing all dealings

Author/ff

including receipt of payments. As per agreement, 50% consideration amount will be paid by the buyer at the time of booking of the flat and rest 50% will be paid at the time of taking possession. It was also mentioned that possession will be delivered, when the flat is fully furnished and amenities are provided in the same. The first payment of the flat was made on 01.09.2017 and first payment of the flat of Radhika Agarwal was made on 05.09.2017. Thereafter, on 25.09.2017, Rs. 2,68,000/- (Two lakh and sixty eight thousand) only and on 13.07.2018, Rs. 3,00,000/- (three lakh) only was paid to the Complainant through cheques. Apart from that altogether Rs. 25,00,000/- (Twenty five lakh) only was paid to the Complainant through cash with respect to both the flats. Husband of the Complainant issued receipt with regard to cash payment. It is alleged that Complainant did not fulfill the commitments made in the agreement for sale regarding amenities. Complainant/Builder offered to sell raw flats @ Rs. 2200 per sq. ft. whereas furnished flat was sold @ Rs. 2700 per sq. ft. Respondent had booked flat @ Rs. 2700 per sq. ft. Complainant/Builder has failed to deliver the flat within 36 months from the date of execution of Buyer's Agreement and as such she is liable for penalty. Hence, it has been prayed that case brought by the Complainant may kindly be dismissed.

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

## FINDINGS

5. The husband of the Complainant argued this case on behalf of his wife. He has submitted that Respondent initially avoided to contest this case and only after issuance of Bailable Warrant, she appeared before the Court which shows her intention. The Respondent visited the site and booked the 3BHK Flat at the cost of Rs. 55,35,000/- + Rs. 2,50,000/- (for amenities) + GST. She paid Rs. 5,00,000/- (Five lakh) only as advance amount through RTGS on 01.09.2017 prior to execution of Buyer's Agreement. On 30.01.2018, Buyer's Agreement was executed and as per payment schedule of Annexure- III, she was supposed to pay Rs. 20,00,000/- (Twenty lakh) only immediately after agreement but on 13.07.2018, she paid Rs. 3,00,000/- (Three lakh) only instead of Rs. 20,00,000/- (Twenty lakh) only. She was requested to clear the dues amount of Rs. 17,00,000/- (Seventeen lakh) only of 2<sup>nd</sup> installment but she avoided to do so. The Complainant sent 03 letters to the Respondent dated 18.06.2021, 25.06.2021 and 01.07.2021 for making payment. After receiving the above letters, Respondent visited the flat and sent reply dated 05.07.2021. In her reply, she admitted that **according to our last visit, lift and electrical connection to our flat is still pending, once the same is completed by you, please inform us about the same, so that we could inspect the flat and complete our remaining obligations as per said agreement.** The Complainant replied that

electrical connection is not the scope of the work of the builder, rather owner shall apply for the same to JBVNL. Complainant sent notice dated 05.07.2021 asking the Respondent to make payment as per schedule of agreement. It was duty of the flat owner to adhere to the payment schedule and default in payment shall invite 18 % interest. Complaint sent demand notice dated 07.07.2021 for clearing 2<sup>nd</sup> installment with interest but Respondent did not reply. Finally, Complainant sent Legal Notice dated 19.07.2021 to the Respondent with request to clear dues amount with interest within 15 days and this Legal Notice was replied by the Respondent vide Letter dated 07.08.2021. In this reply, Respondent did not mention anything regarding dues amount of Rs. 17,00,000/- (Seventeen lakh) only. Then, the Complainant filed Complaint before this Court. He has further submitted that a chit of paper filed by the Respondent regarding payment of Rs. 20,00,000/- on 18.08.2017 is forged and fabricated paper. Only at the time of filing of the Written Statement, this plea was taken by the Respondent that she has already cleared Rs. 20,00,000/- (Twenty lakh) only of 2<sup>nd</sup> installment. Hence, he was prayed that the case brought by the Complainant may be allowed and Respondent may be directed to pay 2<sup>nd</sup> installment of Rs. 17,00,000/- (Seventeen lakh) only with interest and Rs. 30,35,000/- (Thirty lakh and thirty five thousand) only as final payment as per agreement and also pay Rs. 2,50,000/- (Two lakh and fifty thousand) only with interest.

6. The Ld. Counsel for the Respondent vehemently opposed the prayer made by the Complainant. He has argued that two agreement to sale of the flats at Cosmic Campus were executed separately on 30.01.2018 between Monica Lamba and Sonam Agarwal and between Monica Lamba and Radhika Agarwal. It was mutually agreed (Orally) between the parties that Respondent and Radhika Agarwal shall pay 50 % of the cost of the flats at the time of booking and remaining 50 % will be paid at the time of taking possession. Respondent had booked the flat type 'furnished' as indicated in the Buyer's Agreement @ Rs. 2700 per sq. ft. Many of the fitting and fixtures in the said furnished flat was orally agreed between the parties apart from those already mentioned in the agreement. The Complainant did not provide agreed fitting and fixtures in the flat and did not furnish the same. Complainant took payment of some amount from the Respondent before signing of the agreement for sale which is contrary to the Real Estate Regulatory Authority Act. He has further submitted that Respondent has filed handwritten money receipt issued by the husband of the Complainant regarding receipt of payment of Rs. 20,00,000/- (Twenty lakh) only on 18.08.2017. He has also submitted that it has falsely been alleged by the Complainant that 1<sup>st</sup> installment of agreed consideration amount is still due rather Respondent has made full payment of 1<sup>st</sup> installment prior to execution of Buyer's Agreement. Hence, he has prayed that Complaint brought by the Complainant may be dismissed with suitable cost and she may be

directed to handover furnished flat to the Respondent after receiving balance consideration amount.

7. Heard and perused the case record including the documents filed by the both the parties. Also considered the argument put forward by the parties. No doubt on 30.01.2018, Buyer's Agreement was executed between the parties by which Respondent agreed to purchase Flat No. 3A, Block- C, 3<sup>rd</sup> Floor having an area of 2050 sq. ft. furnished flat (as per Annexure- I) at the rate of Rs. 2700/- per sq. ft. in the project of the Complainant namely "**Cosmic Complex**" and total consideration amount comes to Rs. 55,35,000/- (Fifty five lakh and thirty five thousand) only. This price does not include other charges and admissible taxes. Annexure- III of this Buyer's Agreement is payment schedule. It's perusal shows that prior to execution of this agreement, Respondent paid Rs. 5,00,000/- (Five lakh) only to the Complainant on 01.09.2017 as advance. As per agreement, Rs. 20,00,000/- (Twenty lakh) only was to be paid immediately by the Respondent and remaining Rs. 30,35,000/- (Thirty lakh and thirty five thousand) only was to be paid at the time of taking possession. It is case of the Complainant that instead of Rs. 20,00,000/- (Twenty lakh) only of 1<sup>st</sup> installment, Respondent paid Rs. 3,00,000/- (Three lakh) only on 13.07.2018. It is case of the Respondent that on 18.08.2017, Respondent paid an amount of Rs. 20,00,000/- (Twenty lakh) only to the husband of the Complainant as advance

towards consideration amount. I fail to understand, when on 18.08.2017, Rs. 20,00,000/- (Twenty lakh) only was paid by one Chiranjeevi Lal towards advance consideration amount of the flat being purchased by the Respondent, why this fact was not incorporated in the Buyer's Agreement. This Chiranjeevi Lal is none other than father-in-law of the Respondent. Further I find that reply of the Pleader's Notice was sent by the Respondent when a Pleader's Notice was sent to her on behalf of the Complainant and in this reply, it is nowhere mentioned that Respondent has made payment of entire money of 1<sup>st</sup> installment. I find that in Pleader's Notice of the Complainant, specific demand was made for payment of 1<sup>st</sup> installment but despite that no clear cut answer was given by the Respondent regarding payment of Rs. 20,00,000/- (Twenty lakh) only. I find that when the Written Statement was filed by the Respondent, plea of payment of Rs. 20,00,000/- (Twenty lakh) only was made and at very belated stage on 22.05.2023, the alleged original handwritten payment receipt was filed. Further on behalf of the Complainant, statements of account of Cosmic Builders situated at State Bank of India has been filed and in this statement of account, Complainant has written names of the person from whom he received money. He has written the name of Chiranjeevi Lal also against the payment made for the flat of Radhika Agarwal. This alleged money receipt is said to be in the writing and signature of husband of the Complainant. When I compare the word "Chiranjeevi Lal" on both papers, I find difference in writing. So, I am



of the opinion that plea of payment of Rs. 20,00,000/- (Twenty lakh) only before execution of Buyer's Agreement does not appear to be convincing.

8. This plea has been raised by the Respondent that Buyer's Agreement was for furnished flat. In the Buyer's Agreement at Page No. 7, it is written that type of flat is furnished (**As per Annexure- I**). In the Annexure- I, details have been given regarding furnishing. Complainant has filed two sale deeds executed by the Complainant in favour of other buyers and two Buyer's Agreement to show that these flats were sold at higher rate i.e. @ Rs. 3149.70 per sq. ft. and these flats were super furnished flats, different from the furnished flats as mentioned in the Buyer's Agreement of the present case. When I compare the Annexure- I of the Buyer's Agreement of present case with the Annexure- I of the Buyer's Agreement made between Complainant and one Mamta Sarkar/Robin Sarkar, I find difference in furnishing proposals. For example, in the present case against kitchen, **granite working top only is written** while in other Buyer's Agreement of Mamta Sarkar against kitchen, it is written that **kitchen top of granite with full modular kitchen with fittings**. Similarly, in other heads also there are differences. So, certainly the Respondent is entitled to receive the flat furnished as per Annexure- I of the Buyer's Agreement.

9. The flat booked by the Respondent is very much ready and Respondent can take possession of the same, when she desires.

10. In the result, I find that Respondent has made payment of Rs. 5,00,000/- (Five lakh) only to the Complainant before execution of Buyer's Agreement and in place of Rs. 20,00,000/- (Twenty lakh) only of 1<sup>st</sup> installment, she has made payment of Rs. 3,00,000/- (Three lakh) only only after execution of Buyer's Agreement. She is entitled to get possession of the furnished flat as per Annexure- I of the Buyer's Agreement and she is not entitled to get super furnished flat whose rate is higher than the rate which is involved in the present case.

11. Resultantly, I find merit in the case filed by the Complainant which is hereby allowed and it is.....

### **ORDERED**

12. that within three months from the date of this Judgment, the Respondent shall pay Rs. 17,00,000/- (Seventeen lakh) only + interest 2% more of the SBI MCLR rate of interest from the date of execution of the agreement for sale and Rs. 2,50,000/- (Two lakh and fifty thousand) only with interest 2% more of the SBI MCLR rate of interest from the date of execution of the agreement for sale to the Complainant. After that she will pay Rs. 30,35,000/- (Thirty lakh and thirty five thousand) only to the Complainant, who will handover possession of the flat to the



Respondent after furnishing it as per **Annexure- III** of the agreement for sale. Accordingly, this case is hereby allowed on contest.

