



REAL ESTATE REGULATORY AUTHORITY (RERA)
IN THE COURT OF ADJUDICATING OFFICER
4TH & 6TH FLOOR, BIHAR STATE BUILDING CONSTRUCTION CORPORATION CAMPUS
HOSPITAL ROAD, SHASTRI NAGAR
PATNA-800023
RERA/CC/651/2019
RERA/AO/167/2019

Sri Sunil Kumar Sah, S/o Sri Dwarika Sah,
R/o Vill+Post-Ganj Bhasara, P.S.-Dinara Bhsara,
District-Rophtas, Bihar, PIN-802218. ... Complainant

Versus

1. M/s Ghar Lakshmi Buildcon Pvt. Ltd.
Through:
2. Sri Rahul Kumar, Director, M/s Ghar
Lakshmi Buildcon Pvt. Ltd.,
- Both residents of E/86, Basant Vihar Colony,
Rajesh Kumar Path, Shrikrishna Puri, Patna,
Bihar, PIN-800013. ... Respondents

Present:

Sri Ved Prakash
Adjudicating Officer

Appearance:

For Complainant : Sri Sharad Shekhar, Advocate
For Respondents : 1. Sri Imtiaz Ahmad Advocate
2. Sri Rahul Kumar, Director

ORDER

09-02-2021 This complaint petition is filed by the complainant,
Sri Sunil Kumar Sah against the Respondent No.1,
M/s Ghar Lakshmi Buildcon Pvt. Ltd. through it's Director,
Respondent No.2, Sri Rahul Kumar u/s 31 read with Section-
71 of Real Estate (Regulation and Development) Act, 2016
(hereinafter referred to as the "Act, 2016") for delivery of the

possession of Flat No.402 along with all amenities in Block-A of the project “Income Tax Residency” and for payment of interest @ 10% on total value of the flat for the delayed period with compensation of Rs.25,000/- and litigation cost of Rs.25,000/-, due to non delivery of said flat within the stipulated period.

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2. In nutshell, the case of the complainant is that the complainant, Sri Sunil Kumar Sah approached to the Respondents for purchase of a flat in their project “Income Tax Residency” and after negotiation, the flat was finalised at cost of Rs.17.00 lacs. Thereafter, the complainant, Sri Sunil Sah on one side and Respondent No.1 through Respondent No.2, Sri Rahul Kumar on other side executed a registered Agreement for Sale No.1867 dated 08-03-2017 for sale/purchase of Flat No.402 having area of 1220 sq.ft. with one reserve car parking space on the ground floor in Block-A of the project “Income Tax Residency” of the Respondents situated at Mauza-Lakhani Bigaha, Survey Thana-Danapur, Present P.S.-Khagaul, District-Patna on consideration of Rs.17.00 lacs, out of which the complainant has paid Rs.4,50,000/-. It is further case that the Respondents have assured that they will provide a well planned society with the facilities of drainage system and electricity etc. Later on,

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when the complainant tried to enquire about the status of the project, no satisfactory response could be given by the Respondents. The complainant has given several oral reminders to the office of the Respondents to settle his physical possession over the flat in question, but no step was taken by the Respondents for redressal of his grievances. The Respondents have misguided him and even after 4 years of the Agreement, they have not delivered possession of the flat to him. Thereafter, the complainant has made several requests to the Respondents for completion of his flat, but no steps in this direction was taken by them. Due to latches on the part of the Respondents, the complainant has suffered heavy financial, physical and mental harassment. When the complainant has found no satisfactory answer from the side of the Respondents, he being fed up with their behaviour, has filed the present complaint case with the above reliefs against the Respondents.

3. On appearance, the Respondents have filed reply pleading *inter-alia* that the registered Agreement for Sale was executed on 08-03-2017 after receipt of only 30% i.e. Rs.4,50,000/- out of total consideration Rs.17.00 lacs against the booked Flat No.402 on 4th floor in Block-A of the project "Income Tax Residency". Thereafter on last occasion 14-12-2018 Rs.1.00 lac i.e. total

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Rs.5,50,000/- has been paid by the complainant to the Respondents. After approval of Map from the competent authority as well as after getting registration from RERA, Bihar, the structure of the building has been completed up to 4th floor. Further case is that the Respondents have applied before RERA, Bihar for extension of completion period, which has granted Registration Certificate with certain conditions, by which the Respondents were granted completion period for 7 months from 02-04-2019 to 30-10-2019. After lapse of the said period, they have again applied for extension, which has been granted. Further case is that in last para-5 at page-6 of the registered Agreement for Sale the payment schedule has been described as under:-

- (i) At the time of booking 30% payment i.e. Rs.4,50,000/-
- (ii) At the time of piling 20% payment.
- (iii) During the time of 1st roof casting 20% payment.
- (iv) During the time of 2nd roof casting 20% payment.
- (v) Before delivery of possession 10% payment.

Further case is that despite several reminders through different modes, some time by visiting at his house and some time on telephone calls by the official staffs of the Respondents to pay the remaining payment, the complainant has failed to pay a single paise. It is further case that on last occasion reminder was given vide letter dated 19-07-2019 intimating about cancellaiton of the flat, which was received by the complainant on 28-07-2019.

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Further case is that after getting several reminders when the complainant did not take notice to make payment as the work was in progress, finding no way out finally the Respondents have sent a Legal Notice dated 05-09-2019 warning him that as he has been failed to make payment against the flat, the same would be cancelled and would be transferred to someone else. It is also real fact that at that time 1st roof casting was done, which is apparent from para-4, 5, 6 and 8 of the Legal Notice and thereafter, the Respondents were threatened by the complainant for facing dire consequences. Hence, in the above facts and circumstances, it is clear that the complainant has failed to fulfil the terms and conditions of the schedule of payment of Agreement for Sale and now only with a view to put pressure on the Respondents, he has filed the complaint case. It is further case that it is quite natural that if the payment is not made on time, how the builder would complete construction of the building within the stipulated time? The alleged delay in completion has occurred due to non-payment of dues by the clients like him and there are many other clients, who have failed to pay the instalments on time and due to which the work could not proceed ahead and which has also caused financial loss to the Respondents, because the price of the building materials are being increased day by day. The Respondents have already intimated the complainant about cancellation of the flat in question due to non-payment on 17-08-2019 itself and even today

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the Respondents are ready to refund the principal amount to the complainant. It is clear that the entire allegations levelled against the Respondents are out and out false and fabricated. It is further case that after cancellation of the flat of the complainant, the said Flat No.402 of Block-A of the project "Income Tax Residency" has been transferred to Asha Abha through Agreement for Sale No.6017. Hence, the complaint petition may be dismissed.

4. On the basis of pleadings of the parties and submissions of the learned lawyers of both the parties, the following points are formulated to adjudicate the case:-

- (i) Whether cancellation of allotment/Agreement for Sale of the complainant of the concerned Flat No.402 in Block-A of the Project "Income Tax Residency" by the Respondents is legal/genuine?
- (ii) Whether the complainant is entitled for execution of Sale Deed and delivery of possession of the Flat No.402 of the "Income Tax Residency" as per Agreement for Sale dated 08-03-2017 by the Respondents?
- (iii) Whether the complaint petition is maintainable against the Respondents?
- (iv) Whether the complainant is entitled for interest @ 10% on total value of the flat for delayed period against the Respondents?

- (v) Whether the complainant is entitled for compensation of Rs.25,000/- against the Respondents for his economical, physical and mental harassment?
- (vi) Whether the complainant is entitled for litigation cost of Rs.25,000/- against the Respondents?

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Points No.(i), (ii) and (iii):

5. Admittedly, the registered Agreement for Sale No.1867 dated 08-03-2017 was executed between Respondent No.1, M/s Ghar Lakshmi Buildcon Pvt. Ltd. through Respondent No.2, Sri Rahul Kumar, Director on one side and the complainant, Sri Sunil Kumar Sah on other side for sale/purchase of Flat No.402 having area of 1220 sq.ft. with one reserve car parking space on the ground floor in Block-A of the project "Income Tax Residency" of the Respondents situated at Mauza-Lakhani Bigaha, Survey P.S.-Danapur, Present P.S.-Khagaul, District-Patna on consideration of Rs.17.00 lacs. It is also admitted case that the complainant/buyer has paid Rs.4,50,000/- as an advance consideration before Agreement for Sale was executed, which also find place in the said Deed. It is also admitted case that the balance amount Rs.12,50,000/- has to be paid by the complainant to the Respondents till delivery of possession and execution of Sale Deed of the concerned flat. The Respondents have got mentioned/scribed the payment schedule in the Deed itself, which are as follows:-

- (i) At the time of booking 30% payment i.e. Rs.4,50,000/-
- (ii) At the time of piling 20% payment.
- (iii) During the time of 1st roof casting 20% payment.
- (iv) During the time of 2nd roof casting 20% payment.
- (v) Before delivery of possession 10% payment.

6. Section 13(1) of RERA Act, 2016 says that:-

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“A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.”

The Respondents have received Rs.4,50,000/- i.e about 26% of the total cost Rs.17.00 lacs, before execution of Agreement for Sale. In this way, as per Section-13(1) of the Act, 2016 and rule-8 of Bihar Real Estate (Regulation and Developemnt) Rules,, 2017 (hereinafter referred to as “Rules, 2017”), the Respondents themselves have violated these provisions, as they have no right to receive more than Rs.1,70,000/- i.e. 10% of the total cost before execution of Agreement for Sale in favour of the complainant.

7. Now, turning to the other aspects, the Respondents should have scribed the detailed plan in Agreement for Sale Deed, as

prescribed in Section-13(1), (2) of the Act, 2016 and rule-8 of the Rules, 2017, as sub-section 13(2) of the Act, 2016 also says:-

“The agreement for sale referred to in sub-section (1) shall be in such form as may be prescribed and shall specify the particulars of development of the project including the construction of building and apartments, along with specifications and internal development works and external development works, the dates and manner by which payments towards the cost of the apartment, plot or building, as the case may be, are to be made by the allottees and the date on which the possession of the apartment, plot or building is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default, and such other particulars, as may be prescribed.”

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It shows that in Agreement for Sale the Respondents should have detailed the internal and external construction works, date and manner by which payment towards cost of the flat was to be made by the allottee/buyer/complainant and it should have been made clear as to on which date the delivery of possession of the apartment/flat will be made available to the allottee/buyer/complainant. It should also have been written that how much interest is payable by the promoter to the allottee and

allottee to the promoter in case of their default. The Respondents have not included all these provisions in the Agreement for Sale executed between both the parties. They have simply got added that such and such amount has to be paid at such and such time on such and such stage of construction. Rather, they are demanding major portion of the consideration amount till 2nd roof casting, which is not at all reasonable in the eye of law. Annexure to the rule-8 of the Rules, 2017 has very well clarified the model of Agreement for Sale, which has been overlooked by the Respondents. The complainant was allotted Flat No.402 at 4th floor of the building, so at least the payment schedule should have been allowed till 7th floor structure, which has been ignored by the Respondents. The Respondents may answer that the Act, 2016 was not available at the time of entering into the Agreement for sale, so they could not follow the provisions. But, such provisions were already available in Bihar Apartment Ownership Act, 2006, which should have been followed by them, but intentionally they have ignored these available provisions.

Section-19 (1), (2) and (3) of the Act, 2016 says that :-

“(1) The allottee shall be entitled to obtain the information relating to sanctioned plans, layout plans along with specifications, approved by the competent authority and such other information as provided in this Act or the rules and

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regulations made thereunder or the agreement for sale signed with the promoter.”

(2) *“The allottee shall be entitled to know stage-wise time schedule of completion of the project, including the provisions for water, sanitation, electricity and other amenities and services as agreed to between the promoter and the allottee in accordance with the terms and conditions of the agreement for sale.”*

(3) *“The allottee shall be entitled to claim the possession of apartment, plot or building, as the case may be, and the association of allottees shall be entitled to claim the possession of the common areas, as per the declaration given by the promoter under sub-clause (C) of clause (1) of sub-section (2) of section-4.”*

But, as per Section 19(6) of the Act, 2016, *“Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent and other charges, if any.”*

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Sub section 7 of Section 19 of the Act, 2016 says that:-

“The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section-(6).”

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The record shows that the Respondents have not complied any of the above provisions, then what and how they will expect from the complainant to comply these provisions.

8. Admittedly, the complainant has paid Rs.4,50,000/- before the execution of Agreement for Sale dated 08-03-2017 and thereafter he has paid Rs.1.00 lac on 14-12-2018 total Rs.5,50,000/- to the Respondents, which is about 32% of the total consideration Rs.17.00 lacs. The Respondents, vide letter dated 19-07-2019 have threatened to the complainant that due to non-payment of the dues, they have decided to cancel the flat or shift him to another Block, as they have accepted the payment of only Rs.5,50,000/-. The Respondents have filed Legal Notice dated 05-09-2019 wherein they have warned to the complainant that since he has failed to make payment against the allotted flat, hence, the same would be cancelled and transferred to someone else. It is also mentioned therein that in spite of the fact that the 1st roof casting of the building has been completed, but having

information, he has not paid installments of the consideration and thereafter, the Respondents were threaten by the complainant for dire consequences. However, the Respopndents have filed photostate of the postal receipt, which does not bear the correct address of the complainant, so that it may reach to the complainant. I think, for proving information of Legal Notice to the complainant, the Respondents should have produced original postal receipt, wherein the correct address of the complainant would have been written, which may lead to presume that said Legal Notice has not been received by the complainant. The Respondents have cancelled his allotment only due to non-payment of dues of the consideration. The Respondents have stated that they have informed to the complainant about payment of balance consideration through different mode, some time verbal by visiting at his house and some times on telephone calls through his officials, but he has failed to abide the terms and conditions of the Agreement for Sale. The complainant has challenged this version of the Respondents and has stated that no information about payment was given to him and he has filed photocopy of the letter dated 19-07-2019 issued by them and reply dated 17-08-2019 issued by him to the Respondents. The Respondents have not filed any documentary evidence, except Legal Notice to support that they have informed to the complainant about the stage of construction, amenities installed and requirements of the dues of the instalments

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of the consideration from him and in absence of any information, how he will be able to arrange fund and pay to the Respondents. As it is not expected from any person that he has always fund available with him.

9. The Respondents have promised in Agreement for Sale that they will complete and deliver possession of the flat within 2 years and 6 months with grace period of 6 months from execution of the said Deed. The Agreement for Sale was executed on 08-03-2017 and after execution of the Deed, the said project should have been completed till 07-03-2020. It has to be mentioned that in the other Case No.RERA/CC/705/2019/AO/442/2020 of the same project, it has been stated on 17-02-2020 that the structure up to 7th floor of the building has been completed. It shows that the version of the complaint is correct that previously no construction was going ahead in proper manner. However, from both the versions of the Respondents it is clear that up-till-now only 7th floor structure has been constructed. It is also to be noted that previously RERA, Bihar has granted Registration of the project for construction from 02-04-2019 up to 30-10-2019 and presently the Registration is extended from 31-10-2019 till 18-12-202, so it is clear that the project is still incomplete and during this period the concerned flat has been sold to other person namely; Aaha Abha vide Agreement for Sale No.6017 (date not mentioned). Though it is correct that the complainant should have paid the required instalments at due

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time, but it is also necessary that the required informations should have been given to the complainant at proper time, which has not been done by the Respondents. Rather, in arbitrary manner, they have cancelled the allotment of the flat of the complainant, which should/can not be allowed in the eye of law, otherwise anyone like the Respondents will do whatever they like against the allottee. It is also to be added that the Agreement for Sale dated 08-03-2017 is done through registered instrument and still there is advance consideration amount Rs.5,50,000/- in account of the project of the Respondents. So, it cannot be cancelled through one side approach of the Respondents, as the same can/should be cancelled through legal procedure either through the parties or by Civil Court. In such facts and circumstances, it is well proved that the Respondents have acted in arbitrary and unilateral manner in cancellation of the Agreement for Sale/Allotment of the flat in illegal way. Hence, I find and hold that this complaint case is maintainable against the Respondents and cancellation letter issued by the Respondents about allotment of the flat of the complainant is illegal and further the complainant is entitled for registered Sale Deed and delivery of possession of the Flat No.402 of the project by the Respondents. Therefore, the Respondents have to withdraw their cancellation letter of the allotted flat of the complainant and thereafter, receive proportionate 58% advance consideration out of total cost Rs.17.00 lacs of the flat within 60

(sixty) days of this order. Further, the Respondents have to execute registered Sale Deed and deliver possession of Flat No.402 of the project “Income Tax Residency” to the complainant within 60 (sixty) days of it’s completion. Accordingly, point no.(i) is decided in negative against the Respondents and in favour of the complainant and points no.(ii) and (iii) are decided in positive in favour of the complainant and against the Respondents.

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Points No.(iv) and (v):

10. Admittedly, the project “Income Tax Residency” should have been completed till 07-03-2020 as per terms and conditions of the Agreement for Sale dated 08-03-2017. The Respondents have stated that the construction of the structure of the complex/ building/project has been completed up to 7th floor. RERA, Bihar has extended the registration period of the project till 18-12-2021. So, it is clear that the project is still incomplete and under construction. The Respondents have stated that since the complainant has failed to pay further installments as per terms and conditions scribed in the Agreement for Sale, the flat of the complainant has been cancelled and the said flat has been sold to one Asha Abha through Deed No.6017 (date not mentioned). It is well established from the above discussion that the Respondents have failed to inform the complainant as to when, how and what consideration was to be paid by the complainant to them and also as to on what consideration they have sold the said flat to Asha

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Abha after cancellation of the allotment of the flat of the complainant. Further, legally unless and until any registered Agreement for Sale is not cancelled through proper/legal procedure, the 2nd Agreement for Sale for the same flat cannot/should not be effective. It is also clear that neither the complainant has requested to the Respondents to refund his advance consideration nor the Respondents have refunded the same to him as yet. As per Section 25 and 37 of the Contract Act, 1872, when there is legal consideration available in the Agreement, the Respondents are bound to perform their part of Agreement. In this way, the Respondents are legally bound to execute and register the Sale Deed and deliver possession of the flat, as still advance consideration of Rs.5,50,000/- of the complainant is in the account of the concerned project.

However, the complainant has claimed interest @ 10% on the total value of the flat for the delayed period and compensation of Rs.25,000/- for his economical, physical and mental harassment. It is also clear that delivery of possession may be handed over only after completion of the project on 18-12-2021, so naturally as per Agreement for Sale, there will be delay in delivery of possession of the flat by the Respondents to the complainant. During this period, the complainant is paying rent of the other flat using for his residential purpose. On other hand, the Respondents are also badly affected due to Covid-19 lockdown and slow business in real

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estate sector and construction of the building might have been affected due to non-payment of dues/instalments by some other buyers. The complainant has paid Rs.5,50,000/- out of total consideration of Rs.17.00 lacs, which was/is being used in the construction of the project and up to 7th floor structure of building has been completed. Hence, there is no benefit to the Respondents in ratio the amount paid by the complainant to the Respondents. So, at this stage, it is not proper to allow interest and compensation etc. to the complainant against the Respondents. Accordingly, points no. (iv) and (v) are decided in negative against the complainant and in favour of the Respondents.

Point No.(vi):

11. The complainant has claimed litigation cost Rs.25,000/-, which appears on higher side. The complainant has visited several times to the Respondents office, met with them and their staffs and requested for completion and delivery of the flat allotted to him, whereon the Respondents and their staffs did not give any attention, which compelled the complainant to file this case. The complainant would have naturally incurred expenses in travelling to the office of the Respondents to meet with them and their staffs, in engagement of lawyer, preparation of documents for filing the present complaint case in RERA, Bihar, payment of Court Fee etc. Though the complainant has not brought any document on the

record to show the actual expenses incurred by him in these activities, but I think, in all these processes the complainant would have incurred not less than Rs.5,000/-, which must be paid by the Respondents. Accordingly, Pont No.(vi) is decided in positive in favour of the complainant and against the Respondents.

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Therefore, the complaint case of the complainant, Sri Sunil Kumar Sah is allowed on contest with litigation cost of Rs.5,000/- (Rupees five thousand only) against the Respondents. The Respondents are directed to withdraw their cancellation letter of allotted flat of the complainant and receive proportionate 58% out of total consideration of Rs.17.00 lacs from the complainant within 60 (sixty) days of this order. The Respondents are further directed that after receipt of balance consideration, execute registered Sale Deed in favour of the complainant with respect to the Flat No.402 of Block-A in the project "Income Tax Residency" within 60 (sixty) days of it's completion and deliver possession thereof to him. The Respondents are directed to comply the order within the stipulated period, failing which the complainant will be entitled to get enforced the order through process of the Court.

Sd/-
(Ved Prakash)
Adjudicating Officer
RERA, Bihar, Patna
09-02-2021