

REAL ESTATE REGULATORY AUTHORITY, BIHAR

Before the Single Bench of Mr. Naveen Verma, Hon'ble Chairman

RERA/CC/1130/2021

Bijendra Prasad.....Complainant

Vs.

Mundeshwari Multicon Pvt. Ltd.... Respondent

PROJECT : "Mundeshwari's Jamalpur Tower Complex"

Interim Order

23.06.2022

24.06.2022

This matter was last heard on 20.05.2022.

The case of the complainant is that he has filed the present case on behalf of his father Mr. Bhorik Ray. The father of complainant along with others entered into a development agreement with respondent on 19.11.2010 for construction of Multi storied Building on a percentage share basis of 50-50. As per the said agreement, the project was supposed to be completed within 3 years 6 months from the date of agreement with further grace period of 12 months. As per the development agreement, the respondent was supposed to pay compensation of Rs.1,75,000/- per month if the project did not get completed within the stipulated time. The complainant has alleged that the project work has not started till date nor has any amount paid to the complaint as compensation. The complainant has also alleged that the respondent is only lingering the project.

It has been further stated in the petition that on 14.06.17, the complainant's father along with five others entered into another development agreement with Mundashwari Multicon Pvt. Ltd.

through its Managing Director Mr. Samrendra Singh, for construction of multistory building upon an area of 76.75 Dec. (24 Kattha 11 Dhur) of land situated at Mohalla-Abhimanu Nagar, Mauza- Jalalpur, P.S.-Danapur, Sub Registry Office-Danapur, District, Patna, upon the share distribution of 50% in the constructed area. Accordingly, complainant was supposed to be handed over six flats by the builder.

It has also been further stated that while according to the new development agreement dated 14.06.17 the project was supposed to be completed within 3 years and 3 months, possession has not yet been handed over to him. As per the development agreement dated 14.06.17, the complainant is entitled to get 1% extra share in addition to his 50% share as compensation after expiry of every six months delay in completing the project. Since, the time period to hand over the possession has lapsed on 14.09.20 as per the development agreement, hence, complainant is entitled for all over 2% extra share in the building addition to the share determined in the development agreement.

The Complainant further stated that a legal notice dated 06.09.21 was also send to the respondent to hand over the possession according to the terms and conditions of development agreement but no reply to that has been made by the respondent.

The present complaint has been filed seeking relief for delivery of possession, after finishing all work with all fixtures and extra 5% share in the said property as compensation according to the terms of the development agreement.

The complainant has placed on record copy of both the development agreements and legal notice.

Perused the records. The respondent during the course of hearing has filed reply stating that the complaint filed by the complainant is related to share distribution and thus it is not maintainable. He further stated that RERA Act does not deal with dispute between two developers, and as in this matter the land owner comes within the purview of developer as there is no

grievance from any allottee. Hence on this ground also the case is not maintainable in RERA. He also stated that the project has already been completed and the respondent has submitted all the necessary documents for issuance of completion certificate in August 2020 itself. He further submitted that GST and one time maintenance amount has not been paid by the complainant unlike other land owners and they do not want to pay the dues and are deliberately not taking the possession of the flat.

The respondent denied charges of alleged violation of development agreement of 14.6.2017. Instead the project was completed within the stipulated time as per the development agreement.

On the last date of hearing the learned counsel for the respondent reiterated that if the complainant pays G.S.T, possession of flats would be handed over.

The complainant reiterated his prayer and submitted that the promoter has not completed the project till date. He further submitted that G.S.T is supposed to be paid after handing over of the flat and no notice has been served to the complainant to pay G.S.T. The complainant further stated that he is ready to pay G.S.T.

The Bench observes that landowners are allottees as per Regulation no. 6(3) of the Bihar Real Estate Regulatory Authority (General) Regulations, 2021 and hence the matter is maintainable.

The Bench observes that the project has been completed by the respondent in the year 2020. It is not clear as to why this matter has been filed before the Authority in 2021.

The Bench also takes note of the submissions of the respondent that they have applied for occupancy certificate in August 2020 itself and directs respondent to provide the copy of the completion certificate that has been submitted to the competent authority.

The matter whether one time maintenance charges are admissible under the RERA Act needs to be established.

The deficiencies in services or amenities as pointed out by the complainant would have to be brought to the notice of the promoter first in terms of Sec 14(3) of the RERA Act, 2016.

The issue of whether the possession is given as per the time frame in the development agreement and compensation for delayed possession on this count are issues that have to be settled by the Adjudicating Officer.

The Bench also takes note of submissions of respondent that possession has been handed over to other land owners who had paid the G.S.T. The Bench notes that a reference was made to GST authorities regarding the G.S.T. payable by land owner allottees and some reply has been received. Let a copy of the reply be given to both the parties so that the complainant may pay the GST as mandated. The Bench further observes that parties have raised the issue of construction of the project which is already completed.

The Bench observes that the matter has been filed by the son of the landowner without any proper authorization. The issue of maintainability of such applications also needs to be settled.

It is not clear why the parties has raised the issue of construction if the project is already completed.

List this matter again on 25.8.2022.

Sd/-
Naveen Verma
(Chairman)