



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/752/2019
RERA/AO/186/2019

Sri Ashutosh Kumar, S/o Late Vijay Narayan
Sharma, Sarvoday Nagar, P.O.-Mirzapur, Bandwar,
Begusarai-851129, Bihar.

... Complainant

Versus

1. M/s Patliputra Builders Pvt. Ltd.

Through it's Director and Authenticated Attorney,

2. Sri Anil Kumar, Director, S/o Late Chattu
Chaudhary, having office at Flat No.601,
Maharaja Kameshwar Complex, Frazer Road,
Patna-800001, Bihar.

3. Sri Niranjana Kumar, S/o Sri Yadu Nandan Singh,
Authenticated Attorney of M/s Patliputra
Builders Pvt. Ltd., R/o West Patel Nagar, Near B.
Bhattacharya Clinic, Manas Path, P.S.-Shastri
Nagar, Patna-800014, Bihar.

... Respondents

Present:

Sri Ved Prakash
Adjudicating Officer

Appearance:

For Complainant : Sri Dheeraj Kumar Roy, Advocate

For Respondents : Sri Jai Ram Singh, Advocate

ORDER

09-06-2021

This complaint petition is filed by the complainant,
Sri Ashutosh Kumar against the Respondent No.1,
M/s Patliputra Builders Pvt. Ltd. through it's Director,
Respondent No.2, Sri Anil Kumar and Authenticated Attorney,

Respondent No.3, Sri Niranjan Kumar u/s 31 read with Section-71 of Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the “Act, 2016”) to install Lift and Electric Transformer in the Apartment and to complete the project “Patligram” as per Sanctioned Plan and also to pay Rs.50,000/- as compensation for delayed period in completing the construction and Rs.25,000/- as compensation for his economical, physical and mental harassment with litigation cost of Rs.25,000/-, consequent to non-completion of the project including the flat of the complainant. The complainant has further sought relief to direct the competent authority to make enquiry against the above project of the Respondents.

2. In nutshell, the case of the complainant is that the complainant, Sri Ashutosh Kumar has booked a residential Flat No.301 in Block-I on 3rd floor in the project “Patligram” situated at Branch Road, Mauza-Sandalpur (Patna City, MVR Sl.No.500, Zone-2, Year-2014), P.S.-Alamganj, Pargana Azimabad, District-Patna, Bihar of the Respondents. The Respondents have constructed the aforesaid building with car parking space on the ground floor. The complainant has paid consideration Rs.23,01,000/- with additional amount Rs.4,62,000/- as Stamp Duty to the Respondents. Thereafter, the Respondents have executed registered Sale Deed No.6582

dated 22-07-2015 with respect to the said flat No.301 and handed over possession to the complainant. The Respondents have committed to hand over the flat along with all amenities as categorised in Clause-5 of the Absolute Sale Deed, but they have handed over incomplete connecting stairs and common areas with assurances to complete the same at the earliest. The Respondents have not got approval from Bihar State Electric Supply for installation of Electric Transformer for supply of electricity in the Apartment. They have failed to install Electric Transformer and in result of which the complainant has been facing the fluctuation of electric supply. The entire building is incomplete as yet and pending works are also not done by the Respondents. The Respondents have given assurance to provide a well planned society with facilities of good drainage system, drinking water, lift, electricity etc., but have done nothing. The complainant has repeatedly requested to the Respondents to remove these defects/negligence, but they have not given any attention towards his requests. Hence, being tired the complainant has filed this case seeking the above reliefs against the Respondents.

3. On appearance, the Respondents have filed reply petition pleading *inter-alia* that this complaint case is not maintainable in this Court. The Absolute Sale Deed was executed in the year 2015 i.e. before commencement of RERA Act, 2016 and since then the complainant is living peacefully in the said flat, so initiation of complaint case under the Act, 2016 with regard to installation of Lift and Electric Transformer is not valid reason/cause of action to file this case. However, they are undertaking that they will replace/install Lift and Electric Transformer as per terms of para-2(v) of the Sale Deed. The Respondents have also submitted that since the project is completed much before commencement of the Act, 2016, this complaint case being not maintainable, may be dismissed with cost.
4. On basis of pleadings and submissions of the learned lawyers of both the parties, the following points are formulated to adjudicate the case:-
 - (i) Whether the complaint petition of the complainant, Sri Ashutosh Kumar is maintainable in this Court against the Respondents?
 - (ii) Whether there is need to direct the competent authority to enquire against the project "Patligram" of the Respondents?

- (iii) Whether Lift, Electric Transformer and other amenities, as assured in clause-2(v) and 5 of the Sale Deed No.6582 dated 22-07-2015 are installed/fulfilled by the Respondents?
- (iv) Whether the complainant is entitled for compensation of Rs.50,000/- for delayed period in completing the Apartment and Rs.25,000/- for his economical, physical and mental harassment against the Respondents?
- (v) Whether the complainant is entitled for litigation cost of Rs.25,000/- against the Respondents?

Points No.(i):

5. The learned lawyer for the Respondents submitted that the project "Patligram" was completed much before the enforcement of the Act, 2016 on 01-05-2017. He further submitted that after execution of Sale Deed in favour of the complainant by the Respondents, he is residing peacefully in the said flat much before commencement of the Act, 2016. So, this case is not maintainable in this Court. On other hand, the learned lawyer for the complainant submitted that as per provisions of the Act, 2016 and rules thereof, if the said project was completed prior to enforcement

of the Act, 2016 on 01-05-2017, then the Completion Certificate should have been issued before commencement this Act. He further submitted that even prior to commencement of the Act, 2016, as per Bihar Building Bye-laws, 2014, the Respondents were under obligation to obtain Completion/Occupancy Certificate issued by competent authority and if this Certificate is available with the Respondents, they should have produced the same before this Court as proof of completion of the project. He further submitted that the Respondents have stated in their reply that they undertake to install Lift and Electric Transformer and on other hand they are pleading that project is completed. So these two versions of the Respondents are contradictory with each other, which proves that the project is still incomplete. He further submitted that due to non-installation of Lift and Electric Transformer, there is much difficulty to the complainant in residing in the said flat. He further submitted that from admission of the Respondents also it is clear that the Lift and Electric Transformer are required to be installed and hence, the project being incomplete, this Court has jurisdiction to entertain the present complaint petition of the complainant and accordingly, this case is maintainable in this Court against the Respondents.

6. The Respondents have stated that the project has already been completed prior to enforcement of the Act, 2016 on

1st May, 2017. The first proviso of Section-3(1) of the Act, 2016 says:-

“Provided that projects that are ongoing on the date of commencement of this Act and for which completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act”

Thereafter, Section 3(2)(b) says that:-

“Notwithstanding anything contained in subsection(1), no registration of the real estate project shall be required where the promoter has received completion certificate for a real estate project prior to commencement of this Act.”

I think, if the project “Patligram” of the Respondents is completed prior to enforcement of the Act, 2016, there is no need for Bihar RERA registration, but for scrutiny/enquiry of the project, whether it is new/on-going/completed, production of Occupancy / Completion Certificate is necessary. The Respondents have not produced Occupancy/Completion Certificate in the Court for showing it’s completion. Hence, in absence of the Occupancy/Completion Certificate, it will be presumed that the project is still incomplete.

The learned lawyer for the complainant has correctly submitted that there were several provisions like Section-7(1) of the Bihar Apartment Ownership Act, 2006, Section-327 of Bihar Municipal Act, 2007, Rules 15, 16 of Bihar Building Bye-laws, 2014 prior to enforcement of the Act, 2016 on 1st May, 2017, which have provided issuing of Occupancy/Completion Certificate and hence, non-production of Completion/Occupancy Certificate shows that the project is incomplete and on-going and the Respondents should have got the project registered with RERA, Bihar.

The Respondents in their reply petition have stated that though their project “Patligram” is completed prior to enforcement of the Act, 2016, but they are ready to replace or install Lift and Electric Transformer under the terms mentioned in para-2(v) of the Absolute Sale Deed of the complainant. Now, it is required to know what building completion means, which has been defined in Section 2(q) of the Act, 2016, which says:-

“completion certificate” means the completion certificate, or such other certificate, by whatever name called, issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority under the local laws”

Rules 15, 16 of Bihar Building Bye-laws, 2014 has detailed the requirement of completion of the building, wherein the builder/promoter has to produce evidence along with other documents to the effect of all public utility services and particularly, sewerage, drainage, water supply and electricity linked to the main public utility system. The Respondents in the above Sale Deed No.6582 dated 22-07-2015 have assured in Clause-5 to provide undivided proportional share in the land, common assets and common area including all amenities, fittings and fixtures, which shows that all the amenities should have been provided to the consumers/allottees/complainant before execution of Sale Deed and if Sale Deed is executed without providing these amenities, then also the Respondents cannot escape from their liabilities.

Section 14(1) (2) says:-

“(1) The proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authority.”

“(2) Notwithstanding anything contained in any law, contract or agreement, after the sanctioned plans, layout plans and specifications and the nature of the fixtures, fittings, amenities and common areas, of the apartment, plot or building, as the case may be, as

approved by the competent authority, are disclosed or furnished to the person who agree to take one or more of the said apartment, plot or building, as the case may be, the promoter shall not make-

(i) any additions and alterations in the sanctioned plans, lay out plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, as the case may be, which are agreed to be taken, without the previous consent of that person:

Provided that the promoter may make such minor additions or alterations as may be required by the allottee, or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by an authorised Architect or Engineer after proper declaration and intimation to the allottee.”

In addition, sub-section 3 of Section-14 of the Act, 2016 says :-

“In case of any structural defect or any other defect in workmanship, quality or provision of services or

any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act."

The Respondents have executed Sale Deed No.6582 on 22-07-2015 in favour of the complainant, Sri Ashutosh Kumar with respect to the concerned flat No.301 in Block-I of their project "Patligram". So, naturally 5 years have elapsed on 21-07-2020. During this period, as discussed above, the complainant was/is facing different types of problems, which could not be removed by the Respondents, in spite of having knowledge about it, for which they were legally bound to provide. It appears from the report dated 22-02-2021 of Bihar RERA team that the project "Patligram" and flat of the complainant are still incomplete, as the Respondents have not taken pain to complete the same till the local inspection. It is also clear that the complainant has filed this complaint petition on 09-12-2019 well within 5 years from execution of the Sale Deed

dated 22-07-2015. Hence, it appears that as per Section 14(3) of the Act, 2016 also, this Court has jurisdiction to entertain the complaint petition of the complainant. Hence, on basis of above discussed material facts and legal norms, the complaint case of the complainant is maintainable in this Court against the Respondents. Accordingly, Point No.(i) is decided in positive in favour of the complainant and against the Respondents.

Point No.(ii):

7. The learned lawyer for the complainant submitted that there are various deviations in the Apartment/building from the plan approved by the competent authority. So there is need to direct the said competent authority to enquire against the project “Patligram” of the Respondents. On other hand, the learned lawyer for the Respondents submitted that there is no deviation in construction of the building by the Respondents from the plan approved by the competent authority. On this issue, the Bihar Municipal Law and Bihar Building Bye-Laws, 2014 have very clearly defined ‘deviation’ and there is already Forum in the Patna Municipal Corporation (PMC) to look into such matters and it may take appropriate action against the defaulters. As such, if there is any deviation, the complainant may move directly to the available Forum in PMC for seeking relief. Hence, there is no need by this Court to direct the competent authority/PMC to conduct enquiry against the project “Patligram” of the Respondents. Accordingly, Point No.(ii) is decided

in negative against the complainant and in favour of the Respondents.

8. Point No.(iii):

The complainant has stated that the Respondents have assured him to hand over the flat along with all basic amenities categorised in clause-5 of the Sale Deed No.6582 dated 22-07-2015, but after execution of Sale Deed, the Respondents have failed to perform their duties and till date they have not provided/installed Lift and Electric Transformer in the Apartment. They have also not completed the incomplete Stairs and also failed to provide amenities in common areas of the Apartment as well as drinking water supply system. He has further stated that entire finishing and amenities of the building including the painting works are incomplete.

On basis of above discussion, it is required to know what are the basic 'amenities' of any Apartment, which has been defined in sub-rule-7 of rule-2(1) of Bihar Building Bye-Laws, 2014 that:

'amenity' means roads, street, open spaces, parks, recreational grounds, play grounds, gardens, water supply, electric supply, street lighting, sewerage, drainage, public works and other utilities, services and conveniences" .

The Respondents in para-5 of the Sale Deed, have assured to provide all amenities in the Apartment, but after registration of the

Sale Deed, they are trying to escape from their liabilities on one or other grounds.

Presently, the Respondents in their reply have stated that they are ready to install Lift and Electric Transformer as per terms mentioned in para-2(v) of Absolute Sale Deed. On going through the para-2(v) of the Sale Deed, it appears that it has been scribed for the liabilities of the purchasers/flat owners to obey the Rules and Regulations of the Society. Hence, there is no responsibility mentioned for the Respondents. Rather, the responsibilities of the Respondents to provide amenities are mentioned only in nutshell in one word in para-5 of the Sale Deed that they will provide all 'amenities', but up-till-now, as per the complainant, major 'amenities' are missing/not installed/not fixed in the Apartment / Building by the builder/promoter/Respondents.

As per Section 14(3) of the Act, 2016, the promoter/builder has to remove the structural defects or any other defects in workmanship, quality or provision of services or any other obligations, as per Agreement for Sale, relating to such development. Admittedly, neither the Respondents have installed Lift nor Electric Transformer in the Apartment. However, during argument, the learned lawyer for the Respondents submitted by showing the reply of the Respondents that they are ready to install Lift and Electric Transformer. It is also submitted that as per direction of this Court, the Respondents have installed Lift in the Apartment, which was

vehemently opposed by the learned lawyer for the complainant and he submitted that the Respondents have done nothing with respect to the installation of Lift, rather the Lift has been installed by the Society of the building through collections from it's flat owners.

Due to claims and counter claims on completion of the Apartment "Patligram" and flat no.301 in Block-1, a Bihar RERA team was constituted, which after local inspection submitted it's report on 22-02-2021, wherein the team has reported that:-

- (1) There was Electric Transformer, but it was not installed.
- (2) There was seepage in the water tank.
- (3) The Emergency Exit Ladder was in broken condition and painting works were also not done and there was no grill present in the vents in the said area.
- (4) The Society has drainage facility, but some of the manholes are open. On query, it was informed that the same would be closed as soon as it got repaired.
- (5) The Lift has already been installed by the residents of said Block as stated by the residents themselves that they have contributed Rs.55,000/- each for installation of the Lift.
- (6) The flat of the complainant is incomplete and in the Kitchen area plaster work has not been done. The Balcony connected to the room is in broken condition

and there was gap in the walls also. The condition of bath room was in worst condition and the plaster works have also not been done in some area and the same condition was in the Kitchen.

- (7) The glasses of the windows were also broken and no Basin was installed in the dining area. The flat of the complainant was full of dirt and garbage.
- (8) To sum-up, it could be said the few works in the flat of the complainant was required to be completed by the Respondents and work in the water tank and Emergency Exit Ladder were also required.

As discussed above, on rival claims of the parties about installation of Lift in the Apartment, it was required for them to produce written document in support of their claims. The Respondents could not file any document with respect to installation of Lift including estimate etc. Whereas, the learned lawyer for the complainant has filed photocopies of the documents with respect to the installation of Lift in the Apartment by the residents of the Apartment on their own cost through the Secretary of the Flat Owners Society, which includes the technical details and specifications, price, taxes, duties and terms of payment as well as Map of Lift and labour expenses bill, in which the Society has paid Rs.6,31,000/- as cost of the Lift and labour charges Rs.1,01,070/= Hence, it is clearly established that the Flat Owners Society of the

Apartment including the complainant has installed the Lift in the Apartment on total cost of Rs.7,32,070/-. I think, it is very surprising that previously the Respondents have handed over the building to the flat owners including the complainant without providing necessary amenities in incomplete condition and now on wrong basis after installation of the Lift by the Society of flat owners, claiming that the same has been installed by them. It also proves malafide intention of the Respondents to harass the complainant and other flat owners. In like manner, the Electric Transformer has also not been installed and as per complainant, in absence of Electric Transformer, they are facing different types of difficulties, as fluctuations of electricity supply damages their electrical and electronic equipments. The learned lawyer for the Respondents has assured in the Court through the reply that the Respondents will positively get installed Electric Transformer in the Apartment, which is available on the ground floor of the site of the project. In this way, I think, all these utility services must have been provided prior to handing over the flats to the allottees. But, the Respondents have not done the same and now they are making unreasonable excuses, which are neither morally nor legally correct. In such facts and circumstances, the Respondents have to install Electric Transformer to connect electricity to Block-1 of the Apartment and also to pay Rs.7,32,070/- to the Society of the flat owners of the project "Patligram" Block-I and also paint the building and provide other

amenities including completion of stairs, water supply system etc. as per clause-5 of the Sale Deed No.6582 dated 22-07-2015 and Section 14(1), (2) and (3) and Section 18(3) of the Act, 2016. Accordingly Point No.,(iii) is decided in positive in favour of the complainant and against the Respondents.

9. Point No.(iv):

Admittedly, the complainant is in possession of Flat No.301 in Block-I of the project “Patligram” since execution of the Sale Deed No.6582 dated 22-07-2015, but he along with other flat owners of the Apartment are facing different types of difficulties in absence of primary amenities stated above. It also appears that the Respondents have executed Sale Deed and handed over possession of the flat to the complainant and others on false assurance that they will provide all facilities/amenities at later stage, but did nothing, which is required to be looked into and provided by the Respondents within the stipulated period, so that the residents of the Apartment may live peacefully. In this way, from the available evidence, it is well established that due to non-fulfilment of the assurance by the Respondents to the complainant and others, they are facing difficulties and harassment, which have to be compensated by the Respondents. The complainant has claimed compensation Rs.50,000/- for the delayed period of providing amenities in Block-1of the Apartment and flat no.301 of the complainant and further Rs.25,000/- for his economical, physical

and mental harassment, which appears on higher side for providing compensation to any individual flat owner/complainant. In such facts and circumstances, I think, Rs.40,000/- may be reasonable compensation, as a whole, to the complainant for his economical, physical and mental harassment, which has to be paid by the Respondents. Accordingly, Point No.(iv) is decided in positive in favour of the complainant and against the Respondents.

10. Point No.(v):

The complainant has visited several times to the Respondents office, met with them and their staffs and requested for redressal of his grievances, whereon, the Respondents and their staffs did not give any attention, hence, being compelled the complainant has filed this case. The complainant would have naturally incurred expenses in travelling to the office of the Respondents to meet with them and their staffs and also for filing the present complaint case in RERA, Bihar, preparation of documents, engagement of lawyer payment of Court Fee etc. Though the complainant has not brought any document on the record to show the actual expenditure incurred by him for these purposes, but I think, in all these activities the complainant would not have incurred more than Rs.15,000/-, which must be paid by the Respondents. Accordingly, Point No,(v) is decided in positive in favour of the complainant and against the Respondents.

Therefore, the complaint case of the complainant, Sri Ashutosh Kumar is allowed on contest with litigation cost of Rs.15,000/- (Rupees fifteen thousand only) against the Respondents. The Respondents are directed to install Electric Transformer to connect electricity supply to Block-I of their project “Patligram” and also pay Rs.7,32,070/- (Rupees seven lacs thirty two thousand seventy only) to the Secretary of the Flat Owners Society of Block-I of the “Patligram” Apartment. The Respondents are further directed to provide all other assured basic amenities and complete the remaining works in Block-1 as well in the flat no.301 of the complainant within 60 (sixty) days. The Respondents are further directed to pay Rs.40,000/- (Rupees forty thousand only) to the complainant for his economical, physical and mental harassment. The Respondents are directed to comply the order within 60 (sixty) days, failing which the complainant is entitled to get enforced the order through process of the Court.

Sd/-
(Ved Prakash)
Adjudicating Officer
RERA, Bihar, Patna
09-06-2021