

REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR
Telephone Bhavan, Patel Nagar, Patna-800013.
Before the Single Bench of Mr Naveen Verma, Hon'ble Chairman

Case No. CC/115/2018

Dr Shivani SinghComplainant

Vs

M/s Ramsuyash Projects & Marketing Pvt. Ltd & Ors.....Respondents

Project: Meera Apartment

ORDER

10/06/2022 The matter was last heard on 14-2-2022 and posted for order on 07-03-2022. However, the order in the instant case could not be passed due to some other pre-occupation of the Bench and hence is being passed on this date.

The complainant had booked a flat bearing flat no. 302 on the third floor having super built up area of 1880 sq. ft. with proportionate share in land with car parking space. The complainant states that as per the agreement for sale executed between the complainant and the respondent company on 16-05-2010, the total consideration of the flat was Rs. 25 lakhs out of which an advance sum of Rs 5 lakhs was paid at the time of execution of agreement. The complainant has alleged that the respondent company has failed to complete the construction of the project. The complainant has also stated in her complaint that the ground floor has been handed over to ICICI Bank Limited on lease and the main stair of the building has been encroached by Bank. Therefore the complaint has been filed praying for issuing direction to the respondent company to complete the project and handover possession to the complainant. The

complainant has further prayed for clearance of the encroachment on stairs by ICICI Bank Ltd for general use.

The Bench notes that Respondent no.1 namely M/s Ramsuyash Projects & Marketing Pvt. Ltd has not appeared on any of the dates of hearing nor any reply has been filed. The Bench further notes that ICICI Bank Limited, who had taken part of the premises on lease , has been made Respondent no. 2 in the case by order of the Bench of Shri R B Sinha dated 28-01-2019 and that Rahul Kumar and Poonam Singh, the owners of the said premises in which the bank was functioning, have been made Respondent No.3 and 4 on the prayer of the Respondent No.2 through their petition filed on 14-03-2019.

During the course of hearing before the Bench of Member, Shri R.B Sinha, the complainant Dr Shivani Singh has orally submitted that the map was approved by the competent authority in 2008 which expired in the year 2013. The complainant further alleged that the construction of the building was going on illegally and without obtaining the re-approval of the map from the competent authority. On the last date of hearing, the Bench was informed that work in the project was being undertaken by the respondent till 2012 but later the flat was forcibly encroached by a third party. The complainant further submitted that the Director of the respondent company is absconding and is traceless. The Bench was further informed that the lease of the premises on ground floor to ICICI Bank Limited was illegal as according to approved map the project was entirely for residential purposes and not a commercial one. The complainant has reiterated her prayer for either possession of the flat or refund of the money with interest.

The learned counsel appearing on behalf of Respondent No. 2 namely ICICI Bank Limited has filed petitions stating therein that they are neither necessary nor proper party to the case and therefore prayed for deletion of their name. It was submitted that the flats on the ground floor G1 and G2 were leased out to the Bank vide lease deed no.

1861 dated 14.02.2014 between Respondent no. 3 and 4 and ICICI Bank Limited, which now stands vacated. The counsel further informed that as per direction of the Authority, Rs 25 lakhs rent was deposited with the Authority for payment to the rightful claimants Rahul Kumar and Poonam Singh (Respondent No. 3 and 4) who had signed the Indemnity Bond claiming that the flat G1 and G2 is allotted to them. On the last date of hearing, the Bench had allowed the payer of the Respondent No. 2 and expunged Respondent No.2 ICICI Bank Limited from the case as there were no grievances against the Bank.

The learned counsel Ms Parul Prasad, appearing for Respondent No. 3 and 4 Mr. Rahul Kumar and Mrs.Poonam Singh has also filed an application stating therein that they are not necessary parties to the case as the onus lies on the promoter to obtain the completion certificate. The learned counsel has further stated in her application that they are bona fide purchasers of flats G1 and G2 and registered sale deeds have been executed in their favour.

The landowner Meera Prakash has filed her supplementary affidavit and written notes of arguments wherein it is stated that a development agreement was executed between the respondent company and Meera Prakash on 23.04.2009 which was duly registered on 03.07.2008. The landowner has stated that she is the rightful owner of flat No. G1 on the Ground floor. It has further been stated that the respondent company executed a supplementary development agreement by forging signature of Meera Prakash for which a criminal case bearing Complaint Case No. 30352(C) of 2014 was filed before the Learned Chief Judicial Magistrate, Patna for the fraud committed.

The Bench notes that the court of learned Chief Judicial Magistrate was pleased to take cognizance against the Director of Respondent No.1 u/s 420, 468 and 323 of the Indian Penal Code on 20.04.2016. It has further been alleged that the construction of the flat is not complete. The landowner has also mentioned in her arguments that a title suit bearing case no. T.S. 257/2019 has also been filed by Respondent No. 4 Mrs.

Poonam Singh which is pending before the Civil Court, Patna. Mr. Sharad Shekhar, learned counsel for the landowner orally informed the Bench that the share division as per the development agreement was 45%-55% and the respondent company has sold all the flats falling in its share.

On a query by the Bench on the last date of hearing, Ms Parul Prasad, learned counsel of the Respondent no. 3 & 4 informed that arbitration was initiated by the landowner Meera Prakash wherein ex-parte order was passed by the Arbitrator. The Bench was informed that the third floor was allotted to the share of the land owner.

On the last date of hearing, the complainants have prayed for refund of the deposited amount with interest if the possession cannot be handed over to her..

Have gone through the entire records of the case and considered the submissions of the parties present. The Bench observes that more than one agreement has been signed for the same flat, final conveyance deed has been executed with someone else without cancelling the agreement for sale executed with the third party. Since a particular flat has been allotted and registered to more than one person, the question of forming an association of allottees as directed by the Bench earlier does not seem feasible.

In the instant case, the complainant has filed agreement for sale dated 16.10.2010 executed with the respondent company for flat no. 302 on third floor but Ms. Parul Prasad, learned counsel for the Respondent No. 3 and 4 has raised objections stating that all the flats on third floor fall in the share of the landowner Meera Prakash. But, on perusal of the Arbitral Award dated 10 April 2019 in Arbitration Case No. 30 of 2018, the Bench finds that the flats falling in the share of the complainant is Flat No. G1, 102(second floor), 301(third floor), 401(fourth floor) and sole flat on top floor and not the flat in question.

The Bench observes that if the Director of the respondent company has executed a deed of absolute conveyance with some other person despite having a registered agreement to sale with the complainant, the appropriate forum to redress the grievance of the complainant would be a Court of competent Civil jurisdiction. The Real Estate (Regulation and Development) Act, 2016 does not give the mandate to the Authority to declare a registered sale deed as null and void. The Authority can pass orders for completion of flats, handing over of possession or refund of deposited amount.

The Bench notes that there is a dispute with respect to the flat in question and that action u/s 8 of the Real Estate (Regulation & Development) Act, 2016 can be taken only when the legal entitlement to the flat in question is clear.

In the present matter, the complainant has sought either handing over of the possession of the flat or refund of the outstanding principal with interest. Hence, taking into consideration the submissions that third party right has been created in the flat in question, the Bench hereby directs the respondent company and its Directors to refund the principal amount deposited by the complainant along with interest on the deposited amount at the rate of marginal cost of fund based lending rates (MCLR) of State Bank of India as applicable for three years or more plus four percent from the date of receiving the payment till date of refund within sixty days of issue of this order.

The Bench clarifies that the liability of the Directors of the company to refund the amount would not cease to exist even if the company is no longer in existence. If the payment is not made within sixty days, the complainants would be at liberty to approach the Authority for execution of its orders which would then take action to recover this amount as arrears of land revenues or as per the provisions of the Act. The complainants are urged to give the present address of the Directors of the respondent company so that the order could be pasted on their premises. The complainants are also requested to give details of the

properties owned by the Directors of the respondent company as this would facilitate in recovering their due amount.

Since the respondent company has continuously violated the orders and directions issued by the Bench from time to time, a penalty of Rs 1 lakhs is imposed upon the Directors of the respondent company to be paid within 30 days from the date of the order.

The complainants may file a case before the Civil Court and /or a criminal matter for the fraud that has purportedly been committed by the respondent company.

The complainants are at liberty to approach the Adjudicating Officer for any claim of compensation.

With these directions and observations, the matter stands disposed of.

Sd/-
Naveen Verma
Chairman