

REAL ESTATE REGULATORY AUTHORITY, BIHAR

Before the Single Bench of Mr. Naveen Verma, Chairman

**Case No: CC/1103/2021, 1104/2021, 1105/2021, 1106/2021, 1107/2021,
1108/2021, 1109/2021, 1110/2021, 1111/2021**

**Anand Kmar, Veema Mishra, Ritesh Kumar, Anuj Kumar Rathor, Dilip
Kumar Jha, Randhir Prasad Singh, Chitranjan Kumar, Bacha Nath
Tiwary, Tripurari Kumar Singh ...
Complainants**

Vs.

M/s Balaji Sapphire Homes Pvt. Ltd.

...Respondent

Project: Balaji City

Present: For Complainant: Mr.Jai Ram, Advocate

For Respondent: Mr. Punit Kumar, Advocate

25.04.2022

INTERIM ORDER

The matter was heard at length on 08.02.2022 and 06.04.2022.

The complainants have filed this case for completion of certain works and some amenities of the project as per the brochure and specifications agreed.

The learned counsel for the complainants submitted that although they have got possession of their flats but even after paying the full consideration amount, the promoter has not completed all the development work as per the agreed brochure and specification agreed. He further submitted that the promoter has not registered the project with RERA although the sale deed of flats were executed after the enactment of the RERA Act and work in block-B is still in its development stage. He also submits that the promoter has not provided occupancy certificate and possession certificate to the complainants.

The learned counsel for the respondent challenged these submissions stating that the complainants had purchased the concerned flats and also possession were taken by them before 2016 before the RERA Act 2016 came into force . Further as these cases were filed by the allottees in 2021 these matters are not maintainable under provision of section 14(3) of the Act.He further submitted that deficiencies in the amenities have to be removed by the Association of the Flat owners under the provisions of the Bihar Apartment Ownerships Act 2006. He referred to the REAT Appeal No- 15/2019 where it was held that “From the fact of the case, it appears that the project was completed for habitable nature and it has been in settled occupation much before the coming in to force of the Act. The procedural lapse alone cannot be constructed as ongoing. It may be considered as deficiency of service but before the coming into existence of the Real Estate (Regulation and Development) Act, so other form could be availed of.”

The learned counsel of the complainant countered this by stating that after the enactment of the RERA Act, 2016 the project was not registered which is apparent from the date of execution of sale deeds. He stated that all sale deeds were executed after the enactment of the RERA Act. He referred to REAT Appeal No. 56/2021 where it was held that “the registration of such real project is not required wherein the promoter has received the completion certificate of the real estate project prior to the commencement of Act i.e. 1st May 2017”. However in this matter neither completion certificate nor occupancy certificate has been provided to the complainants and transferring ownership of apartments to allottees by registering sale deed in their favour without obtaining completion as well as occupancy certificate in violation of provisions of Real Estate (Regulation and Development) Act, 2016 as well as Section 7 of the Bihar Ownership Act, 2006.

The basic issue which is to be decided at this stage is whether this case is maintainable before the Authority.

The Bench observes that the respondent has not challenged the submissions of the complainant on whether the project is ongoing or not . The onus is on the promoter to satisfy the Authority that the project has been completed in the absence of occupancy

certificate and possession certificate as submitted by the complainant.

If the project is ongoing the promoter would have to get the project registered with the Authority and fulfil all the obligations as prescribed in the Act, including enabling formation of an association of allottees.

The Act envisages that the apartments would be registered after completion and occupancy certificate issued by the competent authority would have to be shared with the allottees.

The Act then goes further to protect the interest of allottees as per section 14 (3)“....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....”

If the project is found to be completed and if the complainants drawn the attention of the promoter towards the issues of deficiency in the development of the project vis-a vis the prospectus/brochure within a period of five years from the date of handing over the possession, as alleged through legal notice date 24.07.2019, the promoter is bound to rectify these deficiencies. The complainants can then approach the Adjudicating Officer for compensation as provided in the Act.

The question of limitation would apply only after the respondent files an affidavit stating that the project has been completed in terms of the brochure and submits copies of the completion certificate and occupancy certificate.

Put up on 13.05.2022

Sd/-
Naveen Verma
Chairman