

REAL ESTATE REGULATORY AUTHORITY, BIHAR

Before the Double Bench of Mr. Naveen Verma, Chairman

& Mrs. Nupur Banerjee, Member

Case No.CC/1834/2020

Birendra Kumar Singh.....Complainant

Vs

M/s Arya Building Construction Pvt. Ltd.....Respondent

Project: Maheshwari Nandan Complex

ORDER

12/05/2022

The matter was last heard on 01-02-2022.

The Authority had earlier passed an interim order on 28-4-2022 directing the respondent company to inform the Bench in writing about the status of application for registration and procurement of completion certificate and occupancy certificate from the competent authority. However, no such intimation has been received.

The case of the complainant is that they entered into an Agreement for sale with the respondent on 15.07.2014 for the sale of Flat No- 201 & 202 on 2nd Floor, Maheshwari Nandan Complex having a total area of 2100 sq ft. The complainant has stated that total sum of Rs 62 lakhs was paid towards the purchase of flats and the deed of absolute conveyance was executed on 24.04.2016 even though it was not complete. The complainant has alleged that a number of work are still pending to be completed; none of the amenities as mentioned in the agreement have been provided; parking space has also not been provided; the respondent company is creating obstacle in using the lift; no steps have been taken by the promoter for the maintenance work and they have failed to form and register an

association of allottees. The complainant has also alleged that an additional floor has been constructed by the respondent company covering almost 75% of the terrace area which is unauthorized as the same has not been approved by the competent authority.

The complainant has filed the matter for issuing directions to the respondent company to provide all the amenities as mentioned in the agreement.

The complainant has placed on record a copy of registered absolute sale deed- flat bearing deed no. 4674 dated 26.04.2016.

Reply has been filed by the respondent company wherein the respondent company has raised preliminary objection with respect to the maintainability of the instant case. The respondent company has stated that the registered sale deed was executed on 26.04.2016 and the complainant has been residing in the flat since then and after a lapse of more than 5 years, the complainant has filed instant case raising his grievances. The respondent company, while making reference to section 3(2)(a) of the Act, has stated that for a project to fall within the ambit of the Act, the area of land proposed to be developed should not exceed five hundred square meters or the number of apartments proposed to be developed should not exceed eight and therefore the project does not fall within the purview of the Real Estate (Regulation & Development) Act, 2016 as the area upon which the project has been constructed is 319.49 sq mts which is less than 500 sq mts as provided under section 3(2)(a) of the Act. In the light of this, the respondent company has also filed a written submission annexing two judgments Kanai Lal Sur v. Paramnidhi Sadhukhan reported in AIR 1957 SC 907 and Nathi Devi v. Radha Devi Gupta reported in AIR 2005 SC 648.

Perused the records of the case. Interim order in the instant case was passed by the Bench on 07.09.2021 wherein the issue of maintainability was settled in favor of the complainant. Direction was given to the respondent company to register the project and rectify the short comings in the project. The respondent company was further directed to obtain the

completion certificate and share copies of approved map and the completion certificate with the complainant.

The Authority notes that an appeal bearing REAT Appeal No. 56/2021 was filed before the Hon'ble Appellate Tribunal by the respondent company against the order given by the Bench regarding registration of the Project and the said appeal was dismissed with a direction to register the project and carry out the maintenance work.

In its reply, the respondent company has stated that that two parking lots have been assigned to the complainant which are being used by his tenants and the complainant is asking for an extra parking space . They have stated that the lift is being used by all the flat owners and no complaint has been received from any of them except the complainant. On the issue of amenities , it has been submitted that provision of fire system is not mandatory under Bye laws in a G+3 apartment; and that arrangement of security guard can be done by the society of flat owners.

During the course of hearing, the complainant has stated that the direction of sharing the occupancy certificate has not been complied by the respondent company. He has also alleged other deficiencies in the project such as no drive way; non installation of generator; no painting although a sum of Rs. 2 lakhs as maintenance have been paid by the complainant and other allottees.

The learned counsel for the respondent company orally submitted that they are willing to fulfill their obligations and sought time till July 2022 to meet the requirements.

Having heard the submissions of both the parties, the Authority observes that section 11 to section 17 of the Real Estate (Regulation & Development) Act 2016 casts certain duties upon the promoter to be abided by them in letter and spirit. It takes note of the willingness of respondent company to fulfill all the requirements as mentioned in the agreement to sale by 31.07.2022.

Under these facts and circumstances, the Bench hereby directs the respondent company to complete the remaining work by 31.07.2022 failing

which penalty of Rs 10,000/- would be imposed upon them for each day of delay.

The respondent company is further directed to provide copies of the completion certificate and occupancy certificate to the complainant.

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

Sd/-
Nupur Banerjee
(Member)

Sd/-
Naveen Verma
(Chairman)