

REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR

Before Mr R.B.Sinha & Mr S.K. Sinha, Members of the Authority

Case Nos.CC/181/2019

Shambhu Prasad Jaiswal.....Complainant

Vs

M/s Star India Construction Pvt LtdRespondent

Present- For the Complainant : In Person

For the Respondent : Md Imteyaz, Advocate

Mr Basant Kumar, Director

24/12/2020

ORDER

1. Shambhu Prasad Jaiswal, S/o Mr Ravindran Prasad Jaiswal, C/o M/s Ircon International Ltd, Ist Floor, Sone Bhawan, D P Rai Path, Patna-800001 has filed a complaint petition on 5th January 2019 under Section 31 of the Real Estate (Regulation and Development) Act 2016, against M/s Star India Construction Pvt Ltd for rectification of faults in his newly purchased and registered flat No-305 in Project Uma Regency, located at Ram Jaipal nagar, Gola road, Patna, developed by the respondent company along with payment of interest for delay in completion of flat and compensation on account of house rent paid, tension/mental agony/ high blood pressure etc undergone by him.

Case of the complainant:

2. In his petition, the complainant has stated that he had booked the flat no-305 in the Project Uma Residency in March 2013, to be developed by M/s Star India Construction Pvt Ltd at the total cost of Rs 26,08,000 (Rupees twenty six lakhs and eight thousand only). The Promoter had agreed to complete the project by December, 2014. However, the

registration of agreement for sale with the developer was executed on 27.03 2014, with the completion date of June 2015. He has stated that the project was delayed by more than three and half years. In spite of that, there were several faults in the flat. He stated that he got his flat registered on 14.03.2018 after paying last installment in October 2017. He has requested for removal /recification of faults in his flat. He has also claimed for interest amount of Rs 2,73,840 for inordinate delay in completion of the project, compensation of Rs 4.62 Lakh on account of payment of house rent for period of 33 months (July 2015- March 2018), Rs 1.50 lakh for rectification and painting work of the flat and Rs 5.00 lakh on account of tension/mental agony and resultant high blood pressure etc.

3. He has also stated that he felt cheated by the promoter and therefore has made claims for the aforesaid compensation. He has submitted a copy each of the registered agreement of sale, registered deed of absolute sale of the flat, a few photographs of allegedly bad/inferior quality of work done in the flat etc along with his application.

4. In pursuance to the receipt of the complaint petition, a notice was issued by the Authority to the respondent company, seeking their response on the issues raised by the complainants by 18th February 2019.

Response of the Respondent Company:

5. The Respondent Company through their director have furnished their detailed response on 19th February 2019, stating that complaint petition was false, frivolous, vexatious one and has not been filed by the owner of the flat or allottee. Therefore, the petition filed by the husband of the owner without any GPA/SPA was liable to be dismissed with an exemplary cost. The Respondent company also enclosed the copies of the allotment cum possession letter of the Flat no-305 in Uma Residency dated 14th March 2018 duly signed by the wife of the complainant, the owner of the flat and a letter from her (Mrs Ragini Jaiswal), owner of the flat to the Senior General Manager of the

respondent company, expressing her full satisfaction with the construction and fittings of the flat before taking possession and registration of the conveyance deed of the flat. They also stated that the allottee had herself selected and purchased the tiles and even fittings were of her own choice. The Respondent company had incurred additional expenses for rectifying the works wherever desired by the complainant.

6. The Respondent company stated that though there was delay in making payment of installments by the complainant, the promoter didn't impose any penal provisions enshrined in the terms and conditions of the Agreement for sale. They stated that during 2015 & 2016, there was a huge shortage of sand/stone-chips due to Government policies, resulting into sluggish/slow work of construction in the real estate sector during the period. Further, the stay order of the Patna High Court in May 2013 had also an impact, leading to increase in cost of construction of the flats but they have not charged any escalation cost from the allottees.

7. The Respondent Company stated that they had sent a letter on 22nd May 2017 to the complainant for taking over the possession of the flat. Thereafter the complainant had physically inspected the flat and had given their letter of satisfaction regarding construction work and fittings in the flat. The Respondent company have also rectified a few complaints even afterwards.

Hearing :

8. Hearings were held on 28/03/2019, 02/05/2019, 24/06/2019, 08/07/2019, 20/08/2019, 13/09/2019 and 19/10/2019.

9. In course of hearing, Mr Shambhu Prasad Jaiswal represented himself whereas the respondent company was represented by their Learned counsel Md Imteyaz and Director of the Company Mr Basant Kumar. The Bench noted that the possession of the flat has been taken by the allottee in May 2017 after due physical verification and

registration of the conveyance deed of the flat has already been done in March 2018. The Bench therefore directed the Respondent company to rectify the shortcomings being pointed out by the complainant as a goodwill measure in view of the fact that none of the issues highlighted by the Complainant were found to be in category of the structural defects. The Bench gave a month to the respondent company to rectify the shortcomings. Though the Respondent company submitted a compliance report along with a few photographs to show their rectification work, the complainant was not satisfied with the work done.

The Respondent Company alleged that they have tried to meet all genuine requirements of the complainant but he was not satisfied. They expressed their inability to do further work. They stated that none of the other allottees have any issues with the promoter but though the complainant was provided the benefit of selection of tiles, they were still not satisfied. The Respondent company reiterated their stand that there was no justification in the claim of complainant for interest on account of delay in construction and compensation on account of payment of house rent, rectification and painting work of the flat and tension/ high BP etc

10. The Complainant also requested the Authority to adjudicate the case based on the records available with it.

Issues for consideration :

11. There are following issues under consideration

1. Whether the Project was an ongoing project as on 1.5.2017, the date on which the provisions of the Real Estate (Regulation and Development) Act 2016 came into operation;
2. Whether, the complainant has any right to claim any damages or compensation from the promoter when the allottee has taken the possession of the flat after due physical verification and after having expressed her “full satisfaction with the flat including its

construction and fittings, having found them in full conformity with the terms and conditions of Agreement”;

3. Whether there was an inordinate delay in completion of the project. If there was a delay, what were causes for delay and whether any interest or any other compensation was required to be paid to the complainants from the scheduled date of completion;

12. As regards the first issue, it is noted that in its own response, the Respondent company had stated that they wrote to the complainant/allottee on 22nd May 2017 for taking the possession of the flat. Further, the on-going nature of the project was also confirmed by the allottee, wife of the Complainant as during the physical verification of the flat she agreed to take possession of the flat even when “ongoing construction work of other blocks of the project and this block” might cause inconvenience to her. Hence, it is an admitted fact that the Project Uma Residency was an ongoing project as on 1.5.2017, the date on which the provisions of the Real Estate (Regulation and Development) Act 2016 came into operation. Therefore, the Project Uma Residency was required to be registered by the Promoter with the Authority under section 3 of the Act.

13. As regards the second issue, it is noted that the allottee of the flat had expressed her full satisfaction with the quality of flat including its construction and fittings, having found them in full conformity with the terms and conditions of Agreement. Therefore, the complainant ‘s claim of inferior quality of work well after the registration of the conveyance deeds of the flat is not appropriate and convincing. Further, on direction of the Bench, the respondent company had rectified the faults in the flat. Moreover, there is merit in the claim of the respondent that all other allottees were satisfied with the quality of the flat and have not filed any complaint with the Authority.

14. So far as the issue of delay in the project was concerned, it is noted that the respondent company had handed over the possession of the flat to the allottee on 22nd May 2017 as against stipulated date of 30th June 2015. Further, the respondent company had claimed that the delay in

construction work of the Project had occurred to shortage of sand/stone-chips during 2015 and 2016 due to Government's directives/policies. The stay order issued by the Patna High Court on the construction of multi-storied flats on roads not exceeding twenty feet within the municipal area of Patna also had an impact on construction work in real estate sector for a few months. Further, the registered agreement for sale executed between both parties provided for exclusion of period of scarcity of materials or any other problems beyond the control of the vendor from the construction period. There is therefore no doubt that there has not been any inordinate delay in completion of the project. There appeared to be valid justifications for delay in the construction of the project for atleast a year.

Further, the Respondent company has also claimed that the allottee had not paid the construction-linked installments timely. In spite of that, they have not levied any penal provisions on the allottee. The contention of the respondent company has not been contested by the complainant by giving the details of timely payment of installments made by him. The agreement for sale also provided for payment of interest only after a grace period of six months

15. The Bench therefore feels, keeping all relevant factors in view, that ends of justice would be met if the respondent company pays an interest at the rate of six percent per annum on the deposits made by the allottee till 30th June 2015 for a period of six months.

Order :

16. The Bench directs the respondent company to register their ongoing project Ums Residency with the Authority under section 3 of the Real Estate (Regulation and Development) Act 2016.

Further, the Bench directs the respondent company to pay an interest at the rate of six percent per annum on the deposits made by the allottee till 30th June 2015 for a period of six months, within sixty days of issue of this order.

17. As regards the other claims for compensation, the owner of the flat, if she so wishes, may approach the Adjudicating officer under sections 31/71 of the Real Estate (Regulation and Development) Act 2016

Sd
(R.B. Sinha)
Member

Sd
(S.K. Sinha)
Member