

REAL ESTATE REGULATORY AUTHORITY, BIHAR

2nd Floor, BSNL Exchange Building, Patel Nagar, Patna-800023.

Before the Bench of Mr R.B. Sinha, Member

Case Nos. CC/255/2019, CC/256/2019, CC/258/2019, CC/259/2019, CC/260/2019 &
CC/261/2019

Binod Kumar Agrawal/Kalyani Kumar & Neeraj Kumar/ Vidyasagar Choudhary/
Suryakant Kumar/Rajesh Kumar Jha/Dhanpat Ram
Agrawal.....Complainants

Vs

M/s Princeton Sky Scrapers Pvt Ltd.....Respondent

Present: For Complainants: In person

For Respondent: Mr R K Srivastava, Advocate
Mr Laxman Kant Mishra, Director
Mr Vitesh Kumar Singh, Advocate
(on behalf of landowner)

19/11/2021

ORDER

(1) Mr Binod Kumar Agrawal (2) Ms Kalyani Kumari & Mr Neeraj Kumar (3) Mr Dhanpat Ram Agrawal (4) Mr Vidyasagar Choudhary (5) Mr Rajesh Kumar Jha, all resident of Radhika Apartment, Indirapuri, Patna-800024 and (6) Mr Suryakant Kumar, a resident of BSIDC Colony, Off Boring Road, Patna-800013 have filed separate but similar complaint petitions on 13.2.2019 against M/s Princeton Sky Scrapers Pvt Ltd through their director Mr Laxman Kant Mishra, for early completion of the project and payment of compensation @ Rs 20,000/- per month for 4 years for providing incomplete flats to them. They all alleged that the respondent company have done cheating and fraudulent activities with the allottees.

The Complainants have submitted copies of the agreement for sale, money receipts issued by the respondent etc along with their application.

Case of Petitioners

2. In their similar complaint petitions, the complainants have stated that the promoter had entered into a development agreement with landowner in 2010 to develop the project **Princeton Radhika Apartment** comprising of 24 flats on 50 : 50 basis. They have claimed that though they have got possession of their flats in the B block of the Project, the flats are incomplete, without lift, DG sets, Transformer, Fire-fighting facilities, Drainage facilities etc. Except one

complainant, other five complainants have not been able to get the registration of the conveyance deeds of their flats done.

3. The Authority issued notices under various sections of the Real Estate (Regulation & Regulation) Act 2016 and Rule 36 of the Bihar Real Estate (Regulation & Regulation) Rules 2017 in all the aforesaid complaint cases to the respondent company M/s Princeton Sky Scrapers Pvt Ltd to submit their response/reply.

Response of the Respondent Company:

4. The respondent company however did not submit its reply In any case. Therefore, the matter was fixed for hearing.

Hearings:

5. Hearings were held on 22/06/2019, 31/07/2019, 17/09/2019, 11/12/2019, 16/01/2020, 07/02/2020, 07/09/2020, 22/09/2020, 09/10/2020, 14/10/2020, 13/11/2020, 09/02/2021, 09/03/2021 & 02/07/2021.

6. The Respondent Company didn't appear on the first two days of hearing. Then the Bench directed the office to send notices to the address of the promoter at Madhubani and through email. On next date, the Bench took seriously the continued absence of the respondent and issued an interim order under section 36 of the Act to freeze the bank accounts of the respondent company and their promoters. IG Registration was also directed to issue necessary instructions to DSR, Patna and Sub DSRs of Patna and Madhubani Districts not to register any flat of respondent company until further orders. The Bench also issued a notice to the landowner to be present on the next date of hearing. Landowner Mr Ramesh Prasad appeared along with his counsel on the next date.

7. The Landowner counsel stated the promoter had executed the development agreement with the landowner in May 2010 to develop the project Princeton Radhika Apartment comprising of 24 flats on 50 : 50 basis. The Promoter has however fled without completing and handing over his/landowner's Block A of 12 flats, in effect without paying the consideration amount of handing over the plot of land to the promoter/builder for development of the project, after selling his own (builder's) quota of flats. He claimed that the promoter was entitled to sell his own quota of flats only when he had constructed the landowner's quota of flats and handed over the possession to the landowner. Learned counsel of the landowner submitted that the agreement was executed on 17/05/2010 and the flats was to be completed within 3 ½ years but the respondent did not complete the flats and without giving the consideration amount, sold the flats to the allottees and did

not give share to the land owner which is 12 flats out of total 24 flats. He said that the plan of the project was sanctioned vide plan case number P/Mainpura/PRN/5-0510-2011 dated 23.04.2011. Since the development agreement expired long ago, the respondent assured to pay Rs 50,000/- per month as rent to the land owner but never paid. He further stated that their flats in Block A has only structure and entire finishing work like doors, windows, plasters, flooring, wash-rooms, kitchens etc remained to be completed even after ten years.

8. It was only on 16.01.2020 that an advocate Mr R. K. Srivastava appeared for the first time on behalf of the respondent company. The respondent company was directed to register the ongoing project with the Authority without any further delay.

9. In course of hearing, the complainants reiterated their statements that the project was only partially complete with poor and inferior quality work and in a few flats, only half of the work has been done. The lift, DG, transformer etc have not been installed. It was also stated that respondent has run away from Bihar and all his projects in Patna are under litigations. The Bench directed the learned counsel of the respondent company to complete the work of installation of lift, transformer, water supply and sewerage and to submit concrete plan for completion of the project within a tight time bound period.

10. On 14/10/2020 the complainant Suryakant Kumar stated that he has paid the full consideration amount of Rs 40 lakh to the builder. The Bench directed the respondent to submit the receipt of payment for lift with an undertaking that the lift will be installed as soon as possible and that the work of generator and transformer must be completed by 31st December, 2020.

11. On 09/02/2021 Mr Lal Babu Kesari, the land owner reiterated that there were no improvement in the status of the project and Block A was the most neglected. The Complainants also pleaded for installation of the lift at the earliest. The Bench directed the respondent to install the lift and make it operational by 15th March, 2021. The respondent prayed for three months' time and assured to complete the remaining work within the period.

12. On 09/03/2021 learned counsel of the respondent company stated that flats have already been handed over to the complainants and assured that the lift will be installed by 30th April, 2021. He submitted that the complainant Rajesh Kumar Jha has given two cheques which bounced and therefore, his case was separated from the clubbed cases. Learned counsel of the landowner submitted that the promoter did not comply with the order and had not yet provided doors, windows, tiling, bath rooms, kitchen, lift, generator, DG sets etc. He further prayed for permission to construct his share of flats on his own so as to make them habitable.

14. The Bench observed that none of the complainants have filed FIRs against the respondent who is absconding after taking full money from many allottees and left the project incomplete, deliberately abstaining from the court and has not registered the project with RERA even after repeated directions for which a show cause notice under Section 59(1) of the RERA Act was also issued. The Bench directed all the complainants, if they so desire, to file FIR against the respondent, form an association of allottees and get it registered under the Societies Registration Act, 1860 and submit a proposal for completion of the project under section 8 of the Act. The Bench further directed both the parties i.e. the complainants and the land owner to submit their final written brief of arguments.

Issues for Consideration:

15. There is no dispute on the facts of the case. The respondent company has admitted that they haven't been able to complete the project and committed repeatedly to complete the project within three months but failed to do so. The Respondent also claimed that some of the allottees have not made final payment but allottees claimed that they can pay full payment only when the project is completed and conveyance deeds of the flats are executed. Atleast one allottee has made full payment and registration of the flat of one of the allottees has been done.

16. There are following issues for consideration before the Bench :

Firstly 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 in the State of Bihar;

Secondly whether the project was inordinately delayed and the promoter was required to complete the project without any further delay and pay compensation for inordinate delay in completion of the project to the complainants.

17. As regards the first issue, it is an established fact that the project is still incomplete. Out of two Blocks, in one block (Block A) only structure is standing and all other remaining work like doors, windows, flooring/tiling, bath rooms, kitchen, lift, generator, DG sets etc. are still required to be provided. In Block B, only half of the work has been done. The lift, DG set, transformer etc have not been installed. Thus it is proved beyond doubt that 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 in the State of Bihar. Therefore, the promoter was required to register the Project Princeton Radhika Apartment with the Authority under section 3 of the Act.

18. In so far as the second issue is concerned, there is no doubt that the project has been delayed inordinately as the development agreement was executed in May 2010, building plan was approved in April 2011 and the project has not been completed till date. All complainants had executed the agreement for sale on different dates during 2013-2016 with different completion dates. While the development agreement enjoined upon the promoter to complete the project within three years and six months i.e. by October 2013, a few allottees were assured that flats would be handed over by 31st October 2013 with a grace period of six months, Mrs Kalyani kumari and Mr Neeraj kumar were committed to be handed over the flat by October 2014 with a grace period of six months.

The MD of the respondent company Mr Laxman kant Mishra did not cooperate in the proceedings and deliberately abstained from the court inspite of repeated directions, notices and show cause and has been absconding from Patna leaving the remaining civil work of the project, installation of lift, transformer, water supply and sewerage work incomplete. For all practical purposes, he has run away from the state.

19. It is therefore evident that all complainants are entitled for compensation for the period of delay in completion of project as stipulated in the agreement for sale executed by each complainant with the respondent company.

Order:

20. The Bench orders the respondent company and its directors to get the Project registered with the Real Estate Regulatory Authority within thirty days of issue of this order, failing which the Authority may initiate proceedings under section 59 of the Act for contravention of section 3 of the Act.

21. The Promoter is directed to complete the project within ninety days, failing which the Authority may initiate procedure to determine the liabilities of the promoter towards complainant/allottees including landowner/allottee and declare the promoter as defaulter, blacklisted and barred from the real estate sector in the state.

22. As the promoter has not cooperated in the proceedings and not registered the project with the Authority inspite of repeated directions, all assets (moveable and unmoveable) including land, building, bank/insurance accounts, FDs, other financial assets etc of both directors Mr Laxman Kant Mishra and Mrs Savita Kumari Mishra are brought under the lien of the Real Estate Regulatory Authority, Bihar with immediate effect until further orders.

23. The allottees including the landowner/allottee are directed to form an association of allottees and get it registered under the Societies Registration Act, 1860. The association of allottees may thereafter apply for construction of the remaining part of the project under section 8 of the Act, get the re-

validation/re-approval of the sanctioned plan done and apply for registration of the project with the Authority.

24. In so far as resolution of the allegation of cheating and fraudulent activities is concerned, the complainants may, if they so wish, file FIR/criminal case under relevant sections of IPC against the directors of the respondent company and approach competent civil court.

25. As regards the claim for compensation is concerned, the complainants are at liberty to approach the Adjudicating Officer of the Authority under section 31/71 of the Real Estate (Regulation and Development) Act 2016.

R.B. Sinha
Member