REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR
Before the Double Bench of Mr. Naveen Verma, Chairman &

Mrs. Nupur Banerjee, Member

Case No: RERA/CC/630/2021

Stuti Sinha ...Complainant

Vs.

M/s Agrani Homes Real Marketing Pvt. Ltd. ...Respondent

Project: IOB Nagar G to J

Present: For Complainant: Manas Prakash

For Respondent: Adv. Sumit Kumar

Mr. Satwik Singh,

Legal Representative

27.04.2022 **O R D E R**

This matter was last heard along with the batch of cases before the Double Bench on 12.04.2022.

The complaint has been filed under section 31 of the Real Estate (Regulation and Development) Act, 2016. The complainant has booked a flat bearing no 604 on 6th floor, Block- H having 1222 Sq. Ft. in the project IOB Nagar. The complainant has stated that the total consideration amount of the flat was Rs. 32,55,000, out of the total consideration amount the complainant had paid Rs.20,55,000 which is about 65% of the total consideration amount. He further submitted that an Agreement for sale was executed on 16.05.2019 accordingly to which the said flat was to be completed up to December, 2019 with a grace period of six months but still project is not completed by the respondent company. Hence, the complainant has filed this case seeking relief to handover the

possession of the flat along with the interest as per the terms of Agreement for sale by the respondent company, and compensation for the delay in the handing over the possession.

The complainant has place on record copy of agreement for sale dated 10.05.2019, Form C dated 17.12.2018.

In the hearing conducted on 02.09.2021, learned counsel Manas Prakash appeared on behalf of the complainant had filed vakalatnama on behalf of 36 allottees and submitted before the Bench that negotiation was going on between the association of allottees and the new promoter namely M/s Winsome Infrastructure and that the new promoter is ready to complete the remaining work in the project costing Rs 4.4 crores. In a subsequent affidavit it was admitted that Rs.3.5 cores were due to be paid by the allottees. The learned counsel further apprised the Bench that out of 56 flats, 3 flats are unsold for which the association may be granted permission to sell those flats.

The learned counsel appearing on behalf of the association of allotees had also submitted that since the registration of the project has lapsed, the respondent has no locus standi and as per Section 8 of the Act, the association of allottees may be considered among the alternatives to complete the project.

A reply on affidavit has been filed by the respondent wherein Mr. Alok Kumar, MD of the company has stated that G, H, I and J blocks were registered as one project with RERA and taking the three blocks together 2/3rd of the allottees are with him and therefore H block cannot be considered as a separate project. The MD of the respondent company has specifically stated in his reply that they are ready to complete the construction of the project at the agreed cost. It has also been stated that a sum of Rs. 3.63 crore is yet to be paid by the allottees. A list of 28 allottees out of 56 allotees has been submitted before the Bench who have defaulted in payment of the remaining amount to the respondent company. It has further been stated by the respondent company that they can complete the project within 9 months from the date of appropriate orders by the Bench.

The representatives of the association of allottees objected to the submission of the respondent company and submitted that the allottees stopped paying the instalments as the project was to be completed by 2014-15 but the respondent delayed the project.

During the hearing conducted on 30.09.2021, the learned counsel appearing on behalf of the association of allottees submitted that the money taken by the respondent company from the allottees is more than the cost of work done in H Block and that only 55% work has been completed till date. The counsel further prayed to delink Block H from other blocks as the association lacks trust in the in the respondent and pressed for passing of final orders as they did not want to work with the present promoter. Detailed reply has also been filed by the association of allottees in response to the affidavit filed by the respondent company on 08.09.2021.

The respondent company, in its submission placed before the Bench on 03.02.2022, assured to complete the work of H Block in one year i.e. by 03.02.2023. The learned counsel for the association of allottees, on the other hand, submitted that the matter should be decided under Section 8 of the Real Estate (Regulation & Development) Act, 2016.

During the course of hearing on 15.02.2022, the learned counsel for the association of allottees prayed before the Bench to defer passing orders in cases as the allottees were in two minds-whether to allow the present promoter i.e. M/s Agrani Homes to carry out the remaining development work or get the work done by a new promoter. The President of the society/association also requested for a clear cut plan from the respondent company for the completion of the project. Upon hearing such submissions, the Bench allowed the prayer of the association of allottees and granted them time to take a final decision and submit before the Authority.

On the last date of hearing, i.e. on 12.4.2022, the association represented by learned counsel Sri Manas Prakash filed a supplementary affidavit annexing a copy of resolution dated 07.10.2021 and 23.02.2022 passed by general body of association and copies of letters by allottees consenting to carry out the work by the new promoter and a copy of agreement for construction of

remaining portion of "IOB Main Phase" H Block dated 07.09.2021. The learned counsel further informed the Bench that more than 50% amount has been paid by the allottees and that the association is ready to carry out the remaining work with the new promoter and pay the remaining amount to the new promoter. The counsel pressed before the Bench that order was to be pronounced u/s 8 of the Act but the same has not been done.

The learned counsel for the respondent countered these submissions stating that the project registration has not yet lapsed as the application for extension is pending with the Authority. The respondent company also contended that no order had been communicated by the Authority on whether registration had lapsed or not.

The Bench takes note of the submissions of both parties and documents filed by them. The Bench observes that the association of allottees entered into an agreement with the new promoter M/s Winsome Infrastructure for completing the remaining work. They also sought time to re-think and re-consider whether to permit the respondent Agrani to carry out the development work.

The Bench notes that the Association of Allottees has filed the supplementary affidavit on behalf of the complainant mentioning that they have agreed to carry out the remaining development work through another promoter namely, M/s Winsome Infrastructure Ltd. 38 allottees out of 56 allottees of H- block have passed a resolution to form an association and register the association under section 8 of the Companies Act, 2013 (considering typographical error in mentioning citation of the Act i.e 1956 as 2013).

The Bench takes note of the fact that the real estate project **IOB Nagar (G to J)** was registered as an ongoing project upon Khesra No./Plot No.1410,1411,1412,1413,1376,1422,1423, Khata No.126,129,134, 135,145 and 158, Thana No. 44, situated at Mauza Sarari, bearing Registration no. – BRERAP00011-11/192/R-305/2018. The registration was initially valid till **31.12.2019.** Promoter filed an application in Form E, for extension of registration of real estate project on **13.03.2020**, i.e. after lapse of three months of Registration of the real estate project. However, Rule 6(1) of the

Bihar Real Estate (Regulation and Development) Rules, 2017, provides that "*The registration granted under Section 5 of the Act, may be extended by the Authority, on an application made by the promoter in Form E, in triplicate, until the application procedure is made web based,* ***within three months prior to the expiry of the registration granted".*** Since the application for extension of registration was submitted after the project had lapsed, there was no obligation to pass any speaking order on this issue.

The Authority notes that in the interest of allottees, particularly those who have filed complaint cases, the promoter has been given time to complete the project in respect of different blocks. The Full Bench of Authority vide Order dated **09.10.2020** passed in RERA/CC/168/2019, extended the registration of real estate project **IOB Nagar J Block** till **15.07.2021.**

The Bench takes notes of the submission of the respondent regarding the real estate project IOB Nagar (G-J) as one project and when the Authority had earlier granted extension to Block- J they had reiterated their request for extension of other blocks.

The Authority observes that all the blocks are being treated as separate projects keeping the interests of allottees in mind i**s justified on the basis of powers given to the Authority to issue directions as given under** Section 37 The Real Estate (Regulation and Development Act, 2016) which provides that "Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned."

This power was exercised to protect the interest of the allottees of J Block who had agreed to get the remaining work of the block to be carried out by the respondent. Subsequently, while disposing complaint cases, time has been allowed to the respondent with the consent of the complainants to complete the remaining works in G and I Block, IOB Nagar.

The Bench further observes that **even if it is presumed that** the registration of the real estate project '**IOB Nagar (G to J)' has been extended by the above Order but the present promoter failed to complete the construction of the project by 15.07.2021. Hence the extended validity of** registration of all the blocks has ended.

The Bench, therefore, comes to the conclusion that the registration of real estate project IOB Nagar Block H has lapsed.

Since more than 2/3rd allottees of H block has filed an affidavit stating therein that they want to construct the remaining work of the project by another builder and press to pass an order under section 8 of the RERA Act, 2016, the Bench is of the view that the promoter's right to construct remaining of the project has ceased to exist as per the provision of section 8 of the RERA Act, 2016 due to the lapse of registration of the project.

In view of the above, the Bench finds no merit in granting the completion of remaining work in H Block by the respondent, especially when allottees and their association are vehemently opposing it. The Bench also notes that even various opportunities were given to respondent to complete the project. The Bench also finds that various FIRs have been lodged against the respondent in respect of other projects and allegations have been levelled regarding diversion of funds. They have not completed various projects neither they have given refund of the amount after cancellation of flat and even after the direction of the Authority. Under these circumstances, the Bench agrees with the submission of allottees not to get the remaining work done by the respondent and endorses the proposal of the association of allottees to get the remaining development work completed by a new promoter with the observation that this may be referred to State Government as provided under section 8 of the RERA Act, 2016.

Let this matter be referred to government for consultation as provider under section 8 of the RERA Act, 2016.

The Bench directs the allottees of association / new promoter to make an application for the registration the project for block- H

under section 4 of RERA Act, 2016 after the views of the State Government are obtained.

The Bench takes note of submissions made by the Association of Allottees in the supplementary affidavit dated 07-04-2022 and the Agreement annexed along with the affidavit regarding total expenditure likely to be incurred in the construction of the remaining work of the project is Rs.4,24,30,151/- . Since admittedly, the amount due to be collected from the 53 allottees is Rs.3.5 crore , and given the schedule for payment in the Agreement mentioned above, the, promoter would presumably raise the remaining resources to complete the project. The Authority will not give any directions on the issue of payment as prayed in the affidavit as it is for the association of allottees and the new promoter to mutually decide the same for completion of the remaining work.

The Authority observes that the Agreement mentions that the amount to be realised by sale of cancelled bookings would retained by the New Promoter . In that event the new promoter would have to make the refund to those allottees who have cancelled their bookings. The Agreement also mentions that the new promoter would have all rights on the three unsold apartments in the project.

The Authority directs both the respondent and the new promoter to share the cost involved in undertaking valuation of the project as on date by a chartered valuer. The respondent is directed to share the amount received in the project and the expenditure made so far, as certified by a civil engineer and chartered accountant. The valuer will also determine the estimated resale value of the unsold partly constructed flats. In case the valuation of construction of Block-H is less than the amount taken from the allottees, the respondent would either return the excess amount to the Association of Allottees or lose his rights on the unsold flats to the extent of the difference between the amount collected for the project and amount spent thereon. In the event of the valuation being equal to or more

than the deposits taken from allottees the respondent would retain his rights on the three unsold flats but they would share the proportionate cost for completing the remaining work in these three flats along with other allottees, if they are required to raise additional resources to be given to the new Promoter.

So far, the complainant relief regarding compensation for delay in handing over the possession of flat is concerned, the complainant is at liberty to press the claim before the Adjudicating Officer.

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

Sd/-

Nupur Banerjee
(Member)

Sd/-

Naveen Verma
(Chairman)