

REAL ESTATE REGULATORY AUTHORITY, BIHAR

Before the Bench of Mrs. Nupur Banerjee, Hon'ble Member

Complaint Case No. RERA/CC/645/2019

Bijendra Kumar SinghComplainant

Vs

M/s Jascon Interbuild Pvt. LtdRespondent

Project: Sita Sundari Jascon Plaza

Present: For Complainant: Mr. M.K. Singh, Advocate

For Respondent: Mr. Jairam Singh, Advocate

ORDER

29-07-2022

The matter was last heard on 15-06-2022

This complaint has been filed seeking relief to direct the respondent to complete the remaining work of the Project and to install the generator, lift, construct drainage system, provide possession letter in respect to shares of flat as per the development agreement, allot parking as per the share agreement and do the work of fencing over the boundary wall of Apartment.

The complainant has placed on record Development Agreement dated 01-09-2011, Deed of Share Agreement dated 18-02-2012 and legal notices of different dates.

Perused the case record. The respondent has not filed any specific reply. However, learned counsel for respondent remained present during the course of hearings and made the submissions on behalf of respondent.

During the course of hearing on 23-12-2021, learned counsel of the complainant has submitted that the respondent company was to hand over the flat in 2014. He further submitted that, though 90% of the work has been completed by the respondent but the demarcation is not as per the sanctioned plan. Complainant submitted further that installation of lift is also pending. He further submitted that after the passing of interim order dated 09/04/2021, the respondent approached to complainant to settle the dispute between them amicably and gave cheques for Rs. 6 lakh but only Rs.1 lakh has been in cashed and the cheque for Rs.5 lakh not in cashed due to insufficient balance in the account and the same amount has not yet been given by the respondent company. Complaint also

submitted that project is not registered before RERA. He requested for payment of the due money as agreed on comprise from the respondent.

Learned counsel of the respondent has submitted during the hearing on 23-12-2021, that this case is of civil nature and therefore, it is not maintainable and requested to pass final order. He further submitted that the complainant is land owner and has locked one of the flat, falls in the share of respondent and the respondent can only return the money of the complainant and complete the remaining work when he can sell this flat and raise money out of it. He also submitted further that, his bank account is freezed since April, 2021 by the order of earlier bench of R.B. Sinha then member and he is unable to operate it. He further prayed that the complainant should be directed to release the flat of the respondent company's share so that it can be sold and work is completed and also requested for defreezing of the account of the respondent, so that, he can complete the remaining work. He further submitted that the project has been completed with completion certificate in 2014 and therefore, registration with RERA is not required.

During the last hearing on 20-06-2022, complainant was absent and learned counsel for respondent present has submitted that on the last occasion, the respondent was directed to start installation of the lift but due to some difficulty it couldn't be installed, hence, respondent prays to pass final order with direction.

The Bench observes that authority has jurisdiction to entertain the complainant under section 31 of the RERA Act, 2016 for any dispute arising between the land owner and promoter in respect of their shares of flat which has been not handed over by the promoter to landowner as per the development agreement. The Bench also observes that as per Bihar Real Estate Regulatory Authority (General) Regulations, 2021 Section- 6 (3) which reads as follow:-

“In cases where there is a development agreement or such like arrangement between the promoter and the landowner/s, unless otherwise mentioned in the agreement, the landowner would be treated as an allottee under the Act as he is getting apartments in lieu of land . In all such cases the promoters of the project would be responsible for fulfilling all obligations under the RERA Act and Rules made there under.”

In light of above observation, the issue pertaining to jurisdiction is found to be within the ambit of Authority.

After the perusal of documents placed on record and taking into consideration, the submissions made by both the parties and also considering the prayer of respondent on the last hearing to pass the order with direction, the Bench hereby directs respondent and their directors to complete all the works as stated by complainant in complaint petition in consonance to Development Agreement and install the lift and generator as promised within 60 days of issuance of this order. If the respondent fails to complete the works in 60 days, then a penalty of Rs.1,000/- for each day of delay would be imposed upon respondent.

The respondent is also directed to provide the possession letter to complainant in respect to shares of complainant as per the Share Distribution Agreement.

The Bench also directs respondent to issue letter for the possession of parking space at ground floor in respect to the parking's space allotted to complainant as per the agreement and also hand over physical possession of the same as per the possession letter within 15 days of issuance of this order.

The Bench notes that regarding the de-freezing of the Account, direction has already been passed during the course of hearing on 23-12-2021.

As regards the payment of compromise amount is concerned, the Bench directs both the parties to settle the matter amicably.

With this direction, this complaint is disposed of.

Sd/-
Nupur Banerjee
Member