REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR
Telephone Bhavan, Patel Nagar, Patna-800013.

Before the Single Bench of Mr Naveen Verma, Hon'ble Chairman

Case No. CC/880/2021

Ravindra Kumar Agarwal ……..….Complainant
Vs
M/s Khyati Construction Pvt Ltd……Respondent

Project: Om Sai Villa

INTERIM ORDER

7-2-2022 The matter was last heard on 24-01-2022.

The case of the complainant is that the complainant booked a Flat No. 201 on 2nd Floor in Block A along with an exclusive car parking space for which an Agreement for Sale was executed on 09/07/2009. The complainant has stated that the total consideration of the flat was Rs. 27,20,250 (Rupees Twenty Seven Lakh Twenty Thousand Two Hundred Fifty only) out of which the Complainant has deposited Rs. 9,06,750 (Rupees Nine Lakh Six Thousand Seven Hundred Fifty only) as evident from the description in the Agreement for Sale dated 09/07/2009. The complainant has also alleged that the respondent company assured the complainant to provide well planned society with the facilities of good drainage system, Electricity, etc. as mentioned under project brochure of the said project but the respondent company has neither completed the project nor has submitted Completion Certificate to the complainant.

Therefore the complaint has been filed praying for direction to the respondent company to complete the project and provide all the amenities as mentioned and committed under the terms of Agreement for Sale dated 09/07/2009, to provide physical possession of the Flat

along with parking at ground floor for Flat No. 201, of the building namely, 'Om Sai Villa Block A' with proper demarcation as per Agreement for Sale dated 09/07/2009, to direct the respondent company to execute registered absolute sale deed in favour of the complainant, pay amount of Rs. 25,000/- as compensation for inconvenience, harassment and mental torture, pay litigation cost of Rs 25,000/-.

The complainant has placed on record agreement for sale between Om Prakash and the complainant dated 09-07-2009.

Reply has been filed by the respondent company wherein, while denying the averments of the complainant, it has stated that the complaint is not maintainable before the Authority as the flat has been purchased from the landowner and the agreement is between the complainant and Mr. Om Prakash who is a landowner. It has further been alleged that no transaction has taken place between the complainant and the respondent company and the complainant, with malafide intention has made respondent company a party to the case. The respondent company has prayed for dropping the proceedings against the respondent company as the instant case does not fall within the ambit of the Real Estate (Regulation & Development) Act,2016 and has prayed for impleading Mr. Om Prakash as a party to the case.

During the course of hearing, the complainant was directed to file a rejoinder clarifying how the instant case was maintainable before the Authority. However no rejoinder to this effect has been filed even after allowing the prayer of an adjournment on 24-1-2022 and the matter was fixed for orders on 7-1-2022.

However, an Interlocutory Petition has been filed by the complainant on 30-1-2022 wherein the complainant has impleaded Mr. Om Prakash as respondent no.1 and has stated that since Mr. Om Prakash is a party to the development agreement and is making profits out of sale of the flats in his share, he is a co-promoter and is also

responsible for the completion of the project. He has quoted the circular issued by Maharashtra RERA on this issue.

The Bench observes that as per the Regulation 6(3) of the Bihar Real Estate Regulatory Authority (General Regulations), 2021, the landowner is an allottee under the Act as the he is getting apartments in lieu of land. However, a situation where landowner-allottee has sold the flat while the construction of the project is not complete or ongoing and completion certificate and occupancy certificate is yet to be obtained from competent authority whether the landowner would be a co-promoter under the Real Estate (Regulation & Development) Act, 2016 or not would have to be settled.

The Bench observes that before passing final orders, a copy of the Interlocutory Petition filed by the complainant on 30-1-2022 may be served to both the promoter and landowner i.e Mr. Om Prakash to appear before the Bench and put forth their stand. The complainant is directed to furnish the correct and updated address of Mr. Om Prakash to the Authority in a day.

Let notice be issued to both the allottee Mr. Om Prakash and the respondent company to file their counter reply.

Put up for hearing on 18.2.2022.

Sd/-
Naveen Verma
Chairman