

REAL ESTATE REGULATORY AUTHORITY, BIHAR

Before the Single Bench of Mrs. Nupur Banerjee

Case No.CC/787/2021

Shri Kumar Gaurav LalComplainant

Vs

M/s Arya Building Construction Pvt. Ltd.....Respondent

Project: Maheshwari Nandan Complex

Present: For Complainant: In person

For Respondent : Mr. Puneet Siddhartha, Advocate.

Mr. Sumit Kumar, Advocate

03/08/2022

ORDER

This complaint has been filed seeking relief to direct the respondent to complete the remaining work of the Project like installation of fire and security system, allotment of the parking areas, do proper maintenance of the building etc. as per the agreement. Complainant also sought to direct the respondent to pay the litigation cost.

The facts of the cases in short reveals that complainant had entered into Agreement for Sale with the respondent for the purchase of flat bearing flat no. 102 in Maheshwari Nandan Complex and accordingly full filling the terms and conditions of the said agreement, Sale Deed was executed between the parties on 04-10-2016 by falsely assuring the complainant about the completion of flat in all aspects. It has been further submitted that complainant was compelled for executing the sale deed and in the terms of the agreement, the respondent had to sell and give possession of the well finished flats completing all the terms and conditions mentioned and providing all the basic amenities of a fully furnished flat but respondent has not provided the same till now. It has also been submitted that the respondent has not obtained and provided the completion and occupancy certificate to complainant as well as to other allottees. It has also been submitted that the parking space was also not provided as per the Agreement and also illegal construction was made in contravention to approved plan. It has also been submitted that respondent has not

performed their duty casted under the Act of forming society and has violated the provisions of the RERA Act, 2016.

The complainant has placed on record Agreement for Sale dated 19-09-2016 and Deed of Absolute Sale dated 04-10-2016.

The respondent no.1 has filed show cause petition stating therein that respondent company undertakes to get the grievances of the allottee redressed and for that he prays for reasonable time. It has been further submitted that a society was formed but ceased to operate due to some dispute arising between the flat owners and the association is still in existence. It has been further submitted that parking space is allotted to complainant and other flat owners and even the same is already being used by the complainant. It has been further submitted that painting work was done but it has got faded and respondent is ready to re paint it as advised by contractor in winter. It has also been submitted that respondent is ready to install the generator for which they need reasonable time.

The respondent no.1 has placed on record society formation declaration and parking allotment letter.

The Respondent No.2 has filed their reply along with list of documents enclosing Double Bench Order dated 12-05-2022 passed in RERA/CC/1834/2020, Appellate Tribunal Order dated 25-10-2021 in REAT Appeal no. 56/2021 and RERA/CC/19/2022, filed by respondent no.2 against the respondent no.1.

On 11-07-2022, complainant has filed photographs showing the incomplete works in the building along with the Appellate Tribunal order and highlighting the list of works to be completed by the promoter.

During the course of hearing on 27-05-2022, the complainant has submitted that he received the copy of reply. He further submitted that the flat was purchased from respondent no.2, who is the land owner. The Promoter has not obtained the completion certificate. The land owner has also filed a case against the builder for incomplete work. The work in the building is incomplete. He further submitted that there is no guard, no electricity, no water supply etc in the building. The statement made in the reply is totally false. They have maintained one joint account where they deposited the amount of maintenance. The respondent has disrupted

everything in the society. They are not cooperating there also. He has illegally staying on the 4th floor. He further submitted that the lift is not working properly, electricity is not there, it is totally dark and there is no generator. The Bank account is not in the name of the society. There are so many pillars in the parking space. There was illegal construction therein building and also wash room is constructed in the parking space area. There is no open area in the building which is mandatory. In the year 2018 painting work is started. For all these grievances there is already an order passed in one case by the Bench of Hon'ble Chairman. He further submitted that builder is liable to pay the electricity bill which is due prior to taking possession of respective flat in building.

Learned counsel for the respondent no.1 has submitted that they have already given an undertaking to complete all the work. So far as the guard and common electricity bill is concerned, some of the flatiers have opened a Bank account and payment was being made. The builder is not responsible for the common area. All of them have to pay maintenance. As far as the painting is concerned, they are ready to do painting, and install generator, for which they want time up to 31st July, 2022 to complete all the works. As far as respondent no.2 is concerned, the land owner has already sold the flat. He has no locus and unnecessarily he was made party in this case. The possession has been given in 2017.

During the last hearing on 04-07-2022, learned counsel for the complainant has submitted that earlier order was passed for maintenance and parking but no work has been done. Possession has already been given. He further submitted that one extra floor has been made illegally and without Authorization.

Learned counsel for respondent no.1 has submitted that parking has already been allotted and time was granted to complete rest of the work till 31st July, 2022. They (the builder) have already completed the painting work. The complainant has purchased the flat from the land owner.

Learned counsel for respondent no.2 has submitted that even the order of the Tribunal has not been complied till date. The builder has encroached the parking area.

The Bench observes that section 11 to section 17 of the Real Estate (Regulation & Development) Act 2016 casts certain duties upon the

promoter to be abided by them in letter and spirit. It takes note of the willingness of respondent company to fulfill all the requirements as mentioned in the agreement for sale and undertaking to complete the remaining work.

The Bench also observes that from the perusal of photographs placed on record by the complainant, it appears that many works in the building is still left to be completed. The Bench also observes that opportunity was given to respondent to complete the work by 31st July, 2022 by the order passed by Hon'ble Chairman Bench in RERA/CC/1834/2020 as well this Bench during the course of hearing on 27-05-2022 but considering the photographs placed, the Bench in view that lots of works are still pending to be completed.

In the light of above observations, the Bench hereby directs the respondent company to complete the remaining work as mentioned in complaint petition in consonance to Agreement for Sale within 60 days of issuance of this order, failing which penalty of Rs 15,000/- would be imposed upon them for each day of delay.

The Bench further observes that under section 17(2) of the RERA Act, 2016, responsibility is upon the promoter to hand over the necessary documents plans, including common areas, to the association of the allottees or the competent authority within 30 days after obtaining the occupancy certificate . Further the Bench also observes that under section 19 of the Act certain rights were given to the allottees for which allottees are entailed to claim from promoter.

Considering the above observation, the Bench hereby directs respondent to perform his obligation casted under the above stated sections and provide a copy of completion certificate and occupancy certificate to the association of allottees as well as to complainant and also hand over the common areas to the association of allottees within 15 days, failing which penalty of Rs 1,000/- would be imposed upon them for each day of delay.

The Bench also observes that so far the issue of maintenance of common area is concerned, the respondent/promoter is liable to form an association of society and register it and allottees therein the Apartment is duty bound to pay the maintenance charge as decided by the association of

society and even any land lord or promoter residing in any flat of Apartment, they are also equally liable to contribute for maintenance of the Apartment.

The Bench also observes that till allottees got the possession of the flat, the electricity bill prior to that period will be paid by the promoter only.

So far as construction of washroom in parking areas and other construction done deviating from the sanctioned plan is concerned, the office is directed to send a copy of order to the competent authority to take appropriate action.

The respondent is also directed to provide the parking space with proper demarcation to complainant and further directs respondent to place a board on the parking area specifying the allotted parking number to respective allottees with their proper demarcation made their in the space available for parking as per the sanctioned plan.

With these directions and observations, this complaint petition is disposed of.

Sd/-
Nupur Banerjee
Member