

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/881/2021

Ashok Kumar Agarwal.....Complainant

Vs

M/s Khyati Construction Pvt Ltd.....Respondent

Project: Om Sai Villa

ORDER

13.04.2022 The matter was last heard on 06.04.2022.

The case of the complainant is that he booked Flat No. 101 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. 43,77,500 (Rupees Forty Three Lakh Seventy Seven Thousand Five Hundred only) against which he has deposited Rs. 10,94,375 (Rupees Ten Lakhs Ninety Four Thousand Three Hundred Seventy Five only) as evident from the description in the Agreement for Sale dated 09.07.2009. The complainant has also alleged that the respondent assured to provide a well planned society with the facilities of good drainage system, electricity, etc. as mentioned under project brochure of the said project but it has neither completed the project nor has submitted Completion Certificate to the complainant.

Hence 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. 101, 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. 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. The respondent has prayed for dropping the proceedings against it 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.

On 18.02.2022 the learned counsel of the landowner appeared and had prayed for time to file vakalatnama and reply which was allowed.

On last date of hearing dated 06.04.2022, the learned counsel for the respondent no.1 was absent. The learned counsel of the respondent company reiterated that the case is not maintainable before the Authority as the land owner is stated to be an allottee under the RERA Regulations, 2021. He submitted that the agreement to sale is with the land owner and the building is complete and the landowner has been given his shares.

The Bench observes that as per the Regulation 6(3) of the Bihar Real Estate Regulatory Authority (General Regulations), 2021.

“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.”

The Bench takes note of the submission of the complainant and respondent and keeping in view the Regulation 6(3) of the Bihar Real Estate Regulatory Authority (General Regulations), 2021, it observes that the landowner has been included as an allottee under the Act as he is getting apartments in lieu of land and the construction of the project is completed. The plea of the complainant to treat the landowner as a co-promoter is rejected in the light of the Bihar RERA Regulations, 2021.

The Bench takes note of the definition of ‘allottee’ as given in

Section 2 (d) of the RERA Act, 2016 wherein it is stated that “...includes the person who subsequently acquires the said allotment through sale, transfer or otherwise...” . Admittedly the landowner Om Prakash is an allottee who has sold this apartment to the complainant. The complainant is therefore included in the definition of the allottee under the Act even though he has not purchased the flat from the promoter.

However, the Authority is not competent to deal with the grievances between two sets of allottees , that is, the landowner-allottee and the subsequent purchaser. The Authority can hear the grievances of both class of allottees vis-à-vis the promoter in so far as it relates to the construction of the project and the amenities to be provided.

The Bench observes that it would not be justified in invoking the jurisdiction of the Authority in the dispute between the complainant who is also an allottee with the landowner who is an allottee as per the Regulation 6(3) of the Bihar Real Estate Regulatory Authority (General Regulations), 2021 and hence such grievances are not maintainable. The Bench observes that the liability of executing the deed of conveyance or handing over possession does not lie on the promoter. The complainant is at liberty to approach the appropriate forum to seek redressal of his grievances against the landowner-allottee.

With these observations the matter is disposed of.

Sd/-
Naveen Verma
Chairman