

REAL ESTATE REGULATORY AUTHORITY, BIHAR

Telephone Bhavan, Patel Nagar, Patna-800023.

Before the Bench of Mrs. Nupur Banerjee, Member

Complaint Case No. RERA/CC/966/2021

Ajay KumarComplainant

Vs

M/s Tirupati Homes Pvt Ltd.....Respondent

Project: Royal Garden

For Complainants: Mr. Rahul Srivastava, Advocate

For Respondent: Mr. Raushan Advocate

26/04/2022

ORDER

The complainant Ajay Kumar, a resident of Royal Garden, Nageshwar Colony, Patna has filed complaint petition on 15-09-2021 against the respondent company M/s Tirupati Homes Pvt. Ltd. for non completion of the remaining work in the building along with amenities as per the brochure and the agreement for sale dated 21-05-2011 and absolute sale deed dated 09-02-2017.

The complainant in his complaint dated 15/09/2021 has stated that he booked a flat in Royal Garden project launched by M/s Tirupati Homes Pvt. Ltd situated at Nageshwar Colony, Patna on consideration money of Rs. 24 lakh and paid Rs. 1,01,000/- as advance through cheque at the time of execution of agreement for sale dated 21/05/2011 and remaining balance amount at the time of executing sale deed. He further submitted that as promised at the time of booking and as per brochure, agreement for sale and absolute sale deed, the respondent has not provided the amenities like swimming pool, club, gymnasium, generator connection, car parking, community hall, health club etc. He further stated in complaint petition that when he was delivered physical possession of the flat, it was found that there was no construction of

swimming pool, gym and health club, community hall, club house as agreed in terms of brochure, agreement for sale and sale deed and as such the whole project was an incomplete one which is not completed till date. It has been further submitted by the complainant that basement constructed in the complex suffers from water accumulation. It has been further submitted that there are many irregularities in the building as walls and lobby of flats in residential complex have damp and termites, incomplete provision of firefighting arrangement, out of two ducts for two lifts, only one lift has been installed and the generator installed is old one, there is no inverter in spite of the fact that the respondents have collected the entire payment on account of onetime maintenance from every purchaser and consolidated fund of maintenance has not been handed over and therefore, discouraging formation of association of allottees.

Complainant further stated that on various occasions the complainant along with other flat owners escalated written letters to respondents regarding the grievances of building in respect to completion of remaining works and providing of amenities services as promised but no affirmative action has been taken by the respondent regarding the same. On 03-02-2019, respondent no.2 held a meeting with the complainant and other purchasers and acknowledged the grievances and assured to complete all the pending works and other issues by 31-03-2019 but despite repeated reminders and false assurances, the respondent did not settle the grievances. It has been also submitted by the complainant that a legal notice dated 07-06-2021 was issued by one of the residents of the complex through an advocate for setting out 15 issues of grievances of all the purchasers of apartment in the complex for which reply dated 06-07-2021 has been made by the advocate of respondent denying the grievances raised in the notice. Hence, the present complaint is filed praying to direct the respondent to complete the remaining construction work and provide the amenities as assured.

On 13-01-2022, respondent has filed written submissions stating therein the present complaint petition is filed alleging that few amenities as per the brochure has not been provided to the complainant and submitted that the respondents have not violated any provisions of the Act and therefore pursuant to an Absolute

Sale Deed, if there has been any dispute relating to the clauses of the Absolute Sale Deed then competent court of original civil jurisdiction has the power to look into the dispute relating to clauses of the Absolute Sale Deed. It has been further submitted that on a bare perusal of clause 20 of the Agreement for Sale dated 21/05/2011, it is evident that in case of any dispute, the matter is to be referred to arbitration but unfortunately the complainant have chosen the wrong forum and therefore the present complaint petition is devoid of any merit and is fit to be dismissed. It has been further stated that transformer of the project site got fused and the complainant along with all the flat owners requested the respondents to install a new transformer and the complainant along with other flat owners will pay the cost incurred by the builders after collecting money from flat owners and on assurance of the complainant along with similarly situated flat owners respondents had purchased a transformer for Rs. 12 lakhs and got it installed at the project site and for which respondent has incurred approximately Rs. 3.5 lacs in resurrecting the old transformer and both the transformers were installed at the project site. It has also been further stated that when the respondents requested the flat owners for money they started delaying the incurred total cost of Rs. 15.5 lacs approximately then in retaliation to it a legal notice was sent by the lawyer on behalf of one flat owner to impede and disturb the respondents.

Respondent further submitted in its written submissions that so far the issue of swimming pool, club, gym and generator connection is concerned, it is to be clarified that certain charges depicted which was never paid by the complainant as can be manifested by the absolute sale deed 09/02/2017 and payment was made against the flat and proportionate share in land only. It has been also submitted further that the clauses of the Agreement for Sale is very well enumerated and the complainant as per paragraph 13(f) of his complaint petition has relied upon clause 8 of the Agreement for Sale dated 21/05/2011 which clearly states that "the fittings, fixtures and amenities to be made and provided by the builder shall generally conform to the specifications detailed in schedule "D" hereunder or as may be and/or amended by the architects subject to quality. It is being agreed that after the date of possession and/or the delivery of possession whichever be earlier the buyers shall not be entitled to make any claim regarding any item or work, the material used for construction etc. and the builder shall not be liable for any claim whatsoever for these or for any other such claim or claims."It has been submitted that it is relevant to state that after the delivery of possession to the complainant which he has taken after verifying all the details, the

complainant cannot turn back and file a complaint that amenities were not provided to the complainant and as such, he himself is violating clause 8 of the Agreement for Sale dated 21/05/2011. It has been further submitted that the legal notice was sent on behalf of one Rajeev Kumar son of late Tilak Raj and not by the present complainant and thereafter the legal notice dated 07/06/2021 was responded by the advocate of the respondent company by a letter dated 06/07/2021 and the present complainant was not a party to the aforesaid transactions and it is also pertinent to mention here that one time maintenance was not paid by the complainant as depicted from page no. 86 & 87 of the absolute sale deed; the respondent were paying the amount of Rs. 105000/- because all the flat owners had a meeting with the respondents and they requested that for few months the amount of Rs. 105000/- should be paid to a common bank account and they will collect the money and refund it to the respondents but they never refunded the money. It has been also submitted that expenses were born by the respondent company towards maintenance and installation of certain machines and equipments in the apartment complex have yet not been paid to the respondent company despite several requests and in retaliation to the same the present complaint has been filed to evade from paying money.

On 24-01-2022, complaint has filed written argument seeking relief to direct the respondent to hand over the corpus fund of about 2 crore on account of one time maintenance already collected from the purchaser and construction of remaining work and providing of amenities services. It has been also further prayed to direct the respondent to hand over the paper of insurance bond/ certificate pertaining to the whole project of complex with current premium payment receipts and imposing penalty as per the provisions of the Act.

The complainant has placed on record via Annexures Brochure & Subsequent Brochure, Agreement for sale dated 21-05-2011 and Deed of Absolute Sale dated 09-02-2017, letters dated and mails dated 16-04-2019, 17-03-2021 & 8-05-2019 & 18-03-2021 respectively, legal notice dated 07-06-2021, reply to legal notice dated 06-07-2021 and statement of Bank Account for the period of from 1-08-2020 to 21-07-2021.

In the light of submissions made by both the parties and considering the documents filed, the bench observed and in view of that the respondent is duty bound to perform his duties as mentioned in the Section 11(4) (a) & 14(3) of the RERA Act, 2016 and directs the respondent to cure the defects raised by the

complainant in building complex within 60 days of issuance of this order. So far the issue of completing of remaining work is concerned, the bench directs the respondent to complete the remaining work stated in the Agreement for sale dated 21-05-2011 & Deed of Absolute Sale Dated 09-02-2017 as early as possible.

So far the issue of amenities and facilities not provided as per brochure is concerned, the respondent is responsible to provide all the facilities and amenities as promised at time of advertising the flat for booking as these facilities and amenities are the part of the amount included in flat at the time of booking and will be used as common facilities by the allottees of building and directs the respondent to provide amenities and facilities as mentioned in brochure as early as possible.

So far the issue of corpus fund of about 2 crore on account of one time maintenance is concerned, the bench directs respondent to conduct meeting with the allottees of building including complainant and form a societies and after formation of society and their registration, transfer the fund after audit by C.A. to society who will look after the maintenance of building on day to day basis.

So far the issue of compensation is concerned, the complainant is at liberty to press claim before the court of A.O.

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

Nupur Banerjee
Member