

REAL ESTATE REGULATORY AUTHORITY, BIHAR

2nd Floor, BSNL Telephone Exchange Building, Patel Nagar, Patna-800014

Before the Bench of Mr R.B. Sinha, Member

Case No. CC/1738/2020

Damini Maurya.....Complainants

Vs

M/s Sri Anuanand Construction Pvt Ltd.....Respondent

Project: Sai Enclave

Present: For Complainants: In person
For Respondent: Mr Rakesh Roshan Singh, Advocate

18/10/2021

O R D E R

1. Ms Damini Maurya D/o Mr Satish Kumar Mehta, a resident of Amrudi Gali, Nala Road, Patna has filed a complaint petition on 11th November 2020 under section 31 of the Real Estate (Regulation and Development) Act 2016 against the respondent company M/s Sri Anuanand Construction Pvt Ltd through their director Mr Bimal Kumar for setting-aside the cancellation of the allotment of the complainant and for issue of the direction to the promoter to cooperate with the complainant for approval and sanction of home loan from the Axis bank or any other bank.
2. Along with her application, the complainant has enclosed the copies of registered agreement for sale, money receipts, emails, whatsapp chats etc.

Case of the Complainants:

3. The complainant Damini Maurya in her complaint petition dated 10/11/2020 has stated that she had booked a 2 BHK flat of 1100 super built up area (carpet are-825 sqft) on 6th floor in the H Block of the project Sai Enclave along with a covered parking space at the total consideration amount of Rs 33.80 lakh and paid 10% booking amount before execution of registered development agreement in June 2019. The Total price is escalation free except increases on account of development charges payable to competent authority. The agreement for sale also confirms that the project is RERA registered with the registration number BRERAP00393-4/286/R-278/2018 dated 6.12.2018. In the application for registration, the promoter has stated that the Project Sai Enclave consists of 14 Blocks with 750 flats to be developed on 24633.43 square metres (608.75 Decimal) of land with total built up area of 73653 square metres with a FAR of 2.99.

4. In the agreement for sale, the promoter has provided the details of 28 development agreements he has executed during November 2011 to November 2018 on which he proposed to develop the project Sai Enclave and has stated he has got the building plan sanctioned for construction of multi-storied building vide plan number NPK/ Mustafapur(R)/B + G + 9 -38/2012 dated 10-12-2012 under section 314 of Bihar Municipal Act 2007 from the authorities from Nagar Parishad, Khagaul. As per the agreement for sale, the promoter assured to hand over the possession of the Apartment along with ready and complete common areas with all specifications, amenities and facilities of the project in place by 22 March 2021. The Payment schedule was prescribed in schedule C of the agreement for sale.
5. She stated that for making payment of further installment she needed a bank loan. As she is an official of Axis Bank, she wanted to take a home loan from Axis Bank. She therefore required whole set of documents for processing of loan disbursement by the Axis Bank where she works in the credit appraisal department but till date no papers have been given by the respondent to enable her to get loan sanctioned. She has even offered that if loan is not sanctioned from Axis Bank, she will approach other banks. She has annexed with her petition, whatsapp chat screen shots and email communications made with the respondent company.
6. However, after she filed her petition in the RERA, the promoter has terminated her booking and registered agreement for sale without raising any demand letter or issuing a written show-cause notice affording her opportunities to explain her position. She has requested for setting aside the cancellation of the allotment of the flat and for issue of the direction to the promoter to cooperate with the complainant for approval and sanction of home loan from the Axis bank or any other bank.
7. The Authority issued a notice dated 24/12/2020 under Section 31 of the Real Estate (Regulation & Development) Act 2016 was issued to the respondent company M/s Sri Anuanand Construction Pvt Ltd to submit its reply by 18/01/2021.

Response of the Respondent Company:

8. The respondent company did not file any reply to the aforesaid notices. Hence the cases were fixed for hearing.

Hearings:

9. Hearings were held on 10/02/2021, 16/03/2021, 05/04/2021, 11/06/2021, 27/07/2021 and 27.8.2021

10. On 10/02/2021 the complainant reiterated her statement made in her application and stated that she had booked a 2 BHK flat in May 2019 after making payment of Rs 3,54,900 as booking amount. Being an employee of Axis Bank, she was eligible for loan from the bank. She had therefore requested the respondent company to provide related documents for home loan from the bank. When the bank approached the respondent, it found that **the total land on which the project Sai Enclave was sanctioned to be developed was not under the ownership of the promoter.** The respondent did not turn up for meeting with the bank and never provided the required papers/documents for sanction of the loan. She further stated that she was prepared to approach any other bank for loan as she was direly in need of a flat, but the builder was not providing the papers in spite of repeated pursuance through Whatsapp chats and emails. On the other hand, the respondent has sent email stating therein that since she has not paid the due amount, they will be issuing notice terminating the agreement though she has not received any demand notice under the agreement till date.
11. On 16/03/2021 the complainant again prayed for relevant documents so that the concerned bank can sanction loan. On the other hand, learned counsel of the respondent company stated that the flat cannot be handed over to the complainant as she was a defaulter and she had purchased the flat at a concessional rate. The Bench directed the complainant to submit all the evidences regarding the communication with the respondent company and directed the respondent to file reply.
12. The Learned counsel of the respondent company filed a reply on 05/04/2021 wherein they admitted that the complainant booked a 3 BHK flat in May 2019 on a consideration amount of Rs 33.80 lakh and paid Rs 3.54 lakh on a special scheme of much lower rate @ Rs 3000/- per sq ft and 20% amount at the time of booking and rest within 6 months. The actual running rate at that time was Rs 4000/- per sq ft and the present market rate is Rs 6000/- per sq ft. The agreement for sale was signed on 06/06/2019 and thereafter the complainant kept sitting tight and never moved to make further payment or get loan till February, 2021 for which several notices were sent to her and therefore, it is not possible to give her flat at that rate of the scheme because timely and quick payment was the essence of that scheme. He further stated that it is not the liability of the builder to get your loan sanctioned from a particular choice of bank. It is further mentioned that the project is RERA Registered and NGT approved project and more than 350 loans have been sanctioned by various banks after having gone through the required

papers but due to some reasons of the complainant, her loan could not be sanctioned.

13. The complainant again submitted that she only wanted the builder to provide the required documents for which she has made all the communications and pursued the promoter vigorously so that her loan can get sanctioned. She was prepared to take home loan from any other bank. She further stated that she has not been given any benefits and claim of the respondent counsel is not backed by the payment schedule of the Agreement which is construction-linked and related milestone like casting of the 1st floor slab, 3rd floor slabs, fifth floor slabs etc. On direction of the Bench, Learned counsel of the respondent submitted that the Director will provide the documents within a fortnight to get her loan sanctioned from SBI. The Bench also directed both parties to settle the issue amicably.
14. On 11/06/2021 the complainant submitted that she held a meeting with the respondent who is now demanding Rs 42,00,000/- to hand over the flat but she had booked the flat in May 2019 at Rs 33,80,000/- and was ready to pay the interest dues at the rate prescribed in the RERA Rules. She has already paid Rs 3,54,900/- and Rs 18,00,000/- was to be paid this year. She prayed for the documents so that her loan can be sanctioned. The Bench directed the Respondent counsel to deal with the allottee as per the provisions of the Act and agreement for sale executed between the parties. The Bench also pointed out that there was no provision of price escalation in the agreement and hence the present market value has no relevance in the case.
15. On 27/07/2021 the Respondent counsel filed its supplementary counter petition stating that the matter was discussed with the MD and after due consideration, it was decided that if the allottee pays additional amount of Rs 60.6 lakhs for the flat, she can retain the flat or the respondent builder was ready to pay Rs 7 lakhs as compensation for cancelling her flat. He invited the attention to the section 19 (6) & Section 11 (5) of the Act regarding duties of the allottees. He again reiterated that the allottee was offered the price under a special offer and requested the Bench to protect the interest of the promoter as well as mandated under section 33 of the Act. The Bench directed the complainant to file her counter reply and asked both parties to submit final brief of submissions.
16. In her response and final brief submitted in August 2021, the complainant reiterated that she had booked the flat no H-603 in May 2019 and executed agreement for sale on 6.6.2019. She had just requested the promoter to provide related documents for home loan from the bank. However, the loan was not sanctioned by her

employer, Axis Bank as **it found that the total land on which the project Sai Enclave was sanctioned and proposed to be developed was not under the ownership of the promoter.** The respondent did not turn up for meeting with the bank and never provided the required papers/documents for sanction of the loan. She said that she was prepared to approach any other bank for loan though it would be expensive for her as she was direly in need of a flat, but the builder was not providing the papers in spite of repeated pursuance. She further claimed that she has not received any construction –linked demand letters from the respondent as required under Payment Plan under schedule C.

17. She claimed that she was informed that her booking of the flat was terminated by email dated 1.10.2020. She has claimed that no notice of demand for payment of further installment was sent to her and neither any notice intimating proposed course of action of termination of allotment was sent to her prior to the email dated 1.10.2020. She claimed that after she filed this case in RERA, she was sent a termination letter through lawyer of the respondent company. She claimed that the respondent has not followed the provisions of the 11 (5) of the Act, Para 1.8 (iv), Para 2- Mode of Payment , Schedule C and Para 9.3 of the Agreement for sale before terminating her allotment and therefore the termination letter was liable to be set aside.
18. She has also claimed that that the respondent has falsely represented at the time of booking that they have the ownership of the entire land of the project which they do not have. She has therefore claimed compensation under section 12 and 18 (2) of the Act and expressed her willingness to forego them if the matter is sorted out.

Issue for Consideration:

19. There are following issues for consideration :
 - Firstly Whether the project was an ongoing project as on the date of commencement of the RERA Act i.e. 1.5.2017;
 - Secondly whether the promoter is required to provide general assistance and documents like sanctioned plans, land papers etc to the allottees/banks in obtaining loans from a bank ;
 - Thirdly Whether an allottee is duty bound to make payment of the installment as per payment schedule prescribed in the agreement for sale;
 - Fourthly whether the promoter has the right to unilaterally cancel the booking and terminate the registered agreement for sale of an allottee;

- Fifthly whether the promoter has right to escalate the price of the flat in course of completion of the project

20. As regards the first issue, it may be stated that Sai Enclave is a RERA registered ongoing **residential** project consisting of 14 Blocks with 750 flats of which A to D Blocks are a B+G+7 structure and E to N Blocks of B+G+9 structure. The building plan/Map of the building was approved/ sanctioned on 10.12.2012 **for a period of three years** to be developed on 24633 square metres (608.75 decimal) land by a Certified Architect Raman Kumar.

21. So far as 2nd issue is concerned, Section 11 (3) of the Act stipulates that the promoter at the time of booking and issue of allotment shall make available sanctioned plans, lay out plans along with specifications duly approved by the competent authority, the stage-wise time schedule of completion of the project including civic infrastructure like water, sanitation and electricity to the allottees. Further, Paragraph 27 of the terms and conditions of the agreement for sale binds the promoter to execute, acknowledge and deliver to the allottee other such instruments and take such action to effectuate the provisions of the Agreement. Thus, there is no doubt that the promoter has to provide general assistance and furnish requisite documents to enable the allottees in obtaining the loans from banks.

19. The one of the main reasons behind the allottee facing difficulties in obtaining home loan for financing the purchase of a flat in the Project Sai Enclave was the questionable process followed by the promoter in obtaining land on continuous basis for a project Sai Enclave launched in 2012 and for which the building plan was approved on 10.12.2012 on the basis of land, the ownership of which was not available with the promoter. In the Application for registration of the project, the promoter sought approval of total built up area of 73653 square metres in the building plan on the his claim of the availability of 24633.43 sq. metres of land with permissible FAR of 3. However as the promoter/builder had only 151 decimal (6008 sq. mtrs) of land available with them as on date of sanction of the plan/Map, the permissible built up area should have been about 18000 sq. metres only, one-fourth of the approved built up area by the architect.

Further Bihar Building Byelaws as applicable on the date of sanction of the plan and new Bihar Building Byelaws 2014 mandates the promoter to get the revalidation/extension of the validity period of the sanctioned plan up to two years before the expiry of the plan if the project has not been completed within three years. On lapse of five years, the building plan will have to

reapproved afresh from the competent authority, if the project is not completed within five years.

22. It is evident that the complainant was an allottee of the respondent company since May 2019 when she made the first payment to the promoter for her booking of flat in H Block of the project Sai Enclave. However it is observed that the promoter did not have the entire land of 608.75 decimal on the date of approval of the plan. It is evident from the agreement for sale that the promoter had only about 151 decimal of land as on the date of approval of the plan and following 16 development agreements have been executed by the promoter during 2013- 2018 well after the sanction of plan on 10.12.2012 as mentioned in the registered agreement for sale:

Sr No	Date of Development Agreement	Name of the Land Owner	Area of Land given for development in Decimal
1	26.02.2013	Nagendra Pd Yadav	19.4 Decimal
2	05.03.2013	Shashi Kumar	3.2 Decimal
3	05.03.2013	Bhupendra Kumar	3.2 Decimal
4	11.7.2013	Arvind Singh Shiv Kr Singh	15 Decimal
5	31.10.2013	SaritaKumari	3 Decimal
6	13.8.2014	Rajat& two othrs	17.5 Decimal
7	9.9.2014	Savitri Devi	10 Decimal
8	14.11.2014	Lali Devi	32.75 Decimal
9	11.9.2015	Kameshwar Singh	8.5 Decimal
10	27.12.2016	Umrawati Sinha	1.8744 Decimal
11	24.7.2017	Raj Kumar Singh	5.75 Decimal
12	3.2.2018	Arti Sinha & two othrs	14.768 Decimal
13	17.2.2018	Puja Kumari	3.5 Decimal
14	17.2.2018	Jyoti Mala	1.5 Decimal
15	21.3.2018	Rakesh Kr Singh	17.75 Decimal
16	19.4.2018	Ashok Kr Singh	16 Decimal
		Total	172.52 Decimal

23. Even after including 151 Decimal of land for which the promoter had executed 12 development agreements of land prior to sanction of the building Map/Plan as on 10.12.2012, the total land available with the promoter until May 2018, was 323.52 decimal only which was barely 53 percent of the land on which the project is proposed to be constructed. If the area of land available with the promoter (151 Decimal) as on date of sanction of the building plan/Map is compared with the proposed total built up area of 73653 square metres, it would result into an effective FAR of 12. Therefore the promoter was slow in the construction of the project as he kept on increasing the land of the project by entering into fresh development agreements with different landowners.
24. So far as third issue is concerned, Section 19 of the Real Estate (Regulation and Development) Act 2016 enjoins upon the allottees to make necessary payments in the manner and within time as specified in the agreement for sale. Further, allottees are liable to pay interest at such rate as may be prescribed for any delay in payment towards any amount or charges required to be paid. Hence it is evident that allottee will be required to pay interest upto the Rate of Marginal Cost of Lending Rate of the SBI plus two percent for the period of delay if a demand letter is received by the allottees stipulated in the payment schedule of the Agreement and not paid in time.
25. As regards the fourth issue, Section 11 (5) of the Act states that the promoter may cancel the allotment only in terms of the agreement for sale and such cancellation should not be unilateral and without any sufficient cause. In this case, the allottee has unequivocally stated that she had NOT received any written demand notice from the promoter and has not been given any show-cause notice for cancellation of the booking. On the other hand, she has claimed that she had sent several emails and whatsapp message to the promoter for assistance in getting the loan from the Bank but she didn't receive any assistance. As the promoter did not issue any demand letters to the allottee as per payment schedule prescribed in the Agreement for sale since execution of agreement, unilateral termination of the registered agreement for sale without giving any notice was arbitrary and illegal and hence liable to be set aside.
26. She has further stated that under the provisions of Paragraph 2. Mode Of Payment of the Agreement, she has to make payment only on written demand letter by the Promoter, which she has Not received till date, as provided in the Agreement. Under Schedule C, it is provided that customers will be intimated for payment 30 days

before start of the Activity and will be required to pay the demand within seven days of intimation of future start of activity/milestone. She has also claimed that the promoter has not followed the provisions of paragraphs 9.3 of the agreement and hence in turn violated the section 11 (5) of the Act. She has therefore requested for setting aside the cancellation order of the promoter.

27. The allottee has also invited the attention to Para 1.8 (iv) of the terms and conditions of the agreement and stated that she is only liable to pay interest at the rate prescribed in rules if there is any delay in making payment.
28. As regards the fifth issue regarding the present market value of the flat, it must be stated that the present market rate has no relevance in this case so far as allottees of the projects are concerned as the agreement for sale was executed in June 2019 and it was a fixed price contract with no price escalation clause. Further, the project is a RERA Registered Project and there was no provision for price escalation under the RERA Act. It is made abundantly clear in the paragraph 1.3 of the terms and conditions attached with the registered agreement for sale between allottee and the promoter.

Order:

29. The Bench holds the unilateral cancellation of the booking of the flat no H-603 in the Project Sai Enclave by the Promoter in October/November 2020 as arbitrary, irregular and not in order. As the promoter has not meticulously followed the provisions of the agreement/Act, the Cancellation letter/Termination order issued by the Promoter M/s Sri Anuanand Construction Pvt Ltd through their director Mr Bimal Kumar stands null and void and is set aside.
30. It is also held that as required in the agreement, the allottee may also be given reasonable opportunity to make payment after taking a bank loan from any scheduled bank. The Bench orders the respondent company to make available all necessary documents to the allottee so as to enable her to arrange the bank loan and make payment of all outstanding amount.
31. She will also pay interest at the rate of Marginal cost of lending rate (MCLR) of State Bank of India (SBI) as applicable for two years or more plus two percent on the payable amount from due date of payment to the actual date of payment.
32. The Promoter should get the building plan of the Project revalidated/re-approved from the competent authority, based on the land available as on the date of sanction of the original plan

(10.12.2012) within a month and submit to the Authority with a copy to all allottees of the project.

33. The Authority may make a reference to the EO, Khagaul Nagar Parishad to investigate the circumstances under which the certified Architect Raman Kumar approved the building plan with total built up area of 73653 square metres on 6113 sqmetres of available land (with 12 development agreements as on the date of sanction of plan i.e. 10.12.2012) with effective FAR of 12 as against the permissible FAR of 3. A copy of the reference should also be sent to the Vigilance Officer of the PMC/ Vigilance commissioner of the Govt of Bihar, Patna for information and appropriate action as deemed fit.
34. Pending completion of the investigation by the EO, Khagaul Nagar Parishad, IG registration of Government of Bihar is requested to issue necessary instructions to **DSR Patna, Sub DSR Khagaul/Danapur/Phulwarisharif** to stop registration of sale/ agreement of sale of any flats of the Project Sai Enclave of the promoter Sri Anuanand Constructions Pvt Ltd with immediate effect, until further orders.

Sd/-
R.B. Sinha
Member