

REAL ESTATE REGULATORY AUTHORITY, BIHAR

Telephone Bhavan, Patel Nagar, Patna-800023.

Before the Bench of Mrs. Nupur Banerjee, Member

Complaint Case Nos. CC/1232/2020

Bimal Bihar AgarwalComplainant

Vs

M/s City Makers Pvt. Ltd.....Respondent

Project: Banke Bihari Kunj

For Complainant: Mr. Shailesh Kumar, Advocate

For Respondent: Mr. Sumit Kumar, Advocate

30/06/2022

ORDER

The present complainant had been filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 by the complainant on 03-06-2020, seeking relief to direct the respondent to pay compensation of Rs.2,57,90,000/-.

The matter was last heard on 23-05-2022 and the order was kept reserved for the issue regarding the completion of project and for providing the copy of occupancy certificate.

Perused the record of the case. The present complainant has been filed by the complainant stating therein that complainant along with his other brothers provided their respective land to respondent to develop it in a residential complex through a registered development agreement bearing Deed No.25946 dated

25/10/2011. It has been further stated that the development agreement mentions in its paragraph no.5 that the flats will be handed over to the land owners by 24/07/2015 but on certain terms and conditions the period for completion was extended till April, 2017, but till date formal Completion Certificate has not been provided to the landowners even after repeated requests. It has also been submitted that even respondent has not obtained and provide Occupancy Certificate and Possession Letter to complainant. It has also been submitted that the building is still under construction and is devoid of basic conditions and facilities mentioned in the agreement. He further submitted that the materials used and promised are in contrast to each other and it will be evident from bare eyes that the developer has defrauded the landowners as well as his consumers It has further been submitted that the builder has played fraud with the landowners which is going to affect the building in the coming future because he has got the map approved from the concerned authority by putting in false signature of the landowners whose consent for the map of the building is mandatory . It is also submitted that apart from poor construction, fraudulently obtaining the map, excess delay in completion of the project, breach of development and supplementary agreement the builder is reluctant and adamant not to pay heed to our continuous prayer to mend his wrongs, regarding the building so that the future of the building could be safe and secure from the law and natural calamities.

Accordingly, a notice dated 03-07-2020 was sent to the respondent company through under Section 31 of the RERA Act and Rule 36 of the RERA Rules 2017 to appear and file their reply.

The respondent has filed its reply on 14-09-2020, stating therein that regarding the contention made for the Non-Compliance of the terms and condition mentioned in the Para 5 of the Development Agreement dated 25.10.2011, it is submitted that inclusion of this Complainant, one Sanjeev Agrawal the son of the Co-Sharers Binod Bihari Agrawal had file a Civil Suit over the land under Development Agreement against his father and other family member and tried to disturb the construction with only intention to blackmail the Builder/Respondent, despite of disturbing attitude of Sanjeev Agrawal and Complainant and his other co-sharers, development work have been completed by the Builder within the extended period till April 2017 and flats have been handed over to the respective purchasers/allottees and Possession Certificates have been given to all the co-Sharers complainant and this Complainant has also requested several times to collect the Possession Letters of the flats of his share, not only orally but in written and telephonic calls also but due to malafide intention to take illegal benefit from the contents of the Supplementary Agreement executed between this complainant and the Builder, did not take Possession Letters of flats even when he took physical possession over the flats of his share. It has further submitted that the sign of the respondent over the said Supplementary Agreement was also taken in blackmailing situation and pressure. It has been further submitted that regarding the allegation made that map approved from PRDA by putting false signature of the landowner for which it is submitted that the signature of related persons are to be taken before the authority concern in PRDA. The signatures were taken before the authority concern attending physically in PRDA. It is also submitted that if the signatures were not correct, the Complainant would have raised query during the

construction stage and not after the completion of the project. It has been further submitted that the respondent has already applied for the Occupancy Certificate in Patna Municipal Corporation, but till date no Occupancy Certificate has been issued by the concerned authority and the same will be given to the allottee just after receiving the same from PMC. It has also been submitted that the allegation made regarding the Builder/respondent being liable to pay any penalty is again a dirty trick of the Complainant to harass the Builder/respondent to extract money from him; rather the Complainant will have to pay the Builder/respondent for having taken extra built-up area (more than his actual share) while the Complainant handed over too less land compared to what he had promised in the registered Development Agreement and also he has kept illegally occupied the North-West corner of the Project for his commercial purposes. It has been further submitted that the Complainant is only a landowner of the land over which Builder/respondent developed Multi storied building; he is not a buyer or allottee, so this complaint is not maintainable in this Forum under section 31 of RERA Act and section 36 of Bihar RERA Rule 2017.

The complainant has placed on record Development Agreement dated 24-10-2011 and Supplementary Agreement dated 29-04-2014.

On the other hand the respondent has placed on record possession letters of different dates, duly issued to complainant and others letters dated 16-08-16, 03-05-18 and 06-02-16

Several hearing has taken place in the present matter.

During the last hearing on 11-04-2022, learned counsel for the complainant has submitted that

complainant is land owner and the development agreement has been made on 24.10.2011 and the supplementary agreement on 29.7.2014. He further submitted that possession of the flats has been handed over but work has not been fully completed. The project had to be completed within three years. He further submitted that in the agreement clause, it is made clear that if the respondent violated the development agreement, a penalty will be imposed. Occupancy certificate has not been provided. So, he may be declared as defaulter. The building is completed half heartedly. He further submitted that the building has not been completed within the stipulated time. He further submitted that the respondent has cheated the land owner. He further has prayed for the enforcement of the clause of the Supplementary Agreement dated 29-04-2014. He has prayed for compensation for not completing the whole project within stipulated time.

Learned counsel for the respondent has prayed time to file reply but bench observes that in context to last prayer of respondent no reply has been filed.

The Bench observes that landowners are allottees as per Regulation no. 6(3) of the Bihar Real Estate Regulatory Authority (General) Regulations, 2021 and hence the matter is maintainable.

The Bench on the last hearing has observed that the possession of flats has already handed over to the complainant as per the development and share distribution agreement and the complainant has approached before the authority for the enforcement of the clause of the Supplementary Agreement dated 29-07-2014. Upon that issue, the Bench is in view that Authority has no jurisdiction to entertain upon the enforcement of the Supplementary Agreement and Bench advise complainant to approach competent court

who can have jurisdiction to adjudicate upon such issue.

So far the issue of providing occupancy certificate is concerned, the Bench takes notes of the submissions of respondent that they had applied before Patna Municipal Corporation for obtaining Occupancy Certificate, hence, Bench directs respondent to provide a copy of receipt, applied for obtaining occupancy certificate, to complainant immediately and further directs to provide occupancy certificate to complainant as well as to allottees soon after obtaining from the competent Authority.

As regard the issue rose by the complainant regarding completion of remaining work and providing of facilities is concerned, the Bench directs respondent to complete all the pending works in building and provide all the amenities and facilities as per the Development Agreement within 3 months. If the respondent fails to complete the works in 3 months, then a fine of Rs.1,000/- for each day of delay would be imposed. Regarding the issue of taking false signature upon map is concerned, the Bench advise the complainant to raise this issue before the Competent Authority who had approved the map and this issue has been raised earlier at the time of initial stage when construction of project has started.

So far the issue rose regarding happening of any structural defect of building in future is concerned, the Bench observes that duty cast upon promoter under section 11(4) (a) and 14(3) to cure such defects if arise within 5 years from the date of handing over the possession, hence, complainant is at liberty to bring such issue if it comes to knowledge of complainant within that period.

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

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

Sd/-

Nupur Banerjee
Member