

REAL ESTATE REGULATORY AUTHORITY, BIHAR

2 nd Floor, BSNL Telephone Exchange, North Patel Nagar, Road No. 10, Patna -800023

Hearing before the Double Bench of Hon'ble Chairman, Mr. Naveen Verma, &

Hon'ble Member, Mrs. Nupur Banerjee

Case No.:-RERA/CC/46/2018

Mr. Rajan Kumar Singh.....Complainant

Vs

M/s Sheba Welcon Builder Pvt. Ltd.....Respondent

Project: Rajeshwar Apartment

25.01.2022

ORDER

This matter was last heard before Double Bench along with the batch cases on 13.01.2022.

The case of the complainant is that he had entered into agreement for sale in respect of flat no.103 measuring super built up area 1100 sq. ft. along with one car parking area in ground floor of Rajeshwar Apartment situated at Mauja Shahzadpur, Danapur, Sainik Colony, Danapur, Patna, through registered deed vide no. 3866, Book No. 1 volume no. 93, C.D. No. 15/2021 on 30.04.2015.

The complainant has stated that he has paid consideration amount as agreed on different dates and the rest amount was supposed to be paid at the time of execution of absolute sale deed and that the respondent had assured to handover the flat by March 2016. The complainant stated that he has already paid the agreed amount 13,50,000 and is ready to fulfil all the terms and conditions mentioned in the agreement but the respondent has neither completed the flat nor completed the common area. A

legal notice was sent to the respondent on 26.07.2017 for completing the construction of the flat and handing over the possession. Hence, the complainant has filed the case seeking relief for directing the builder to complete the construction of the building as per sanction map and as per agreement for sale dated 30.04.2015 for flat no. 103 as well as to compensate him for payment of court fee and mental harassment due to non completion of the project in time. It is further mentioned that since the building is not completed, as per clause 8 of building by laws the respondent must obtain fresh revised sanction map and that the respondent has not applied for RERA registration of the aforesaid project till date.

The complainant has placed on record copy of agreement for sale dated 30.04.2015, copy of legal notice dated 26.07.2017 and photographs of the project.

The respondent filed a petition on 22.08.2019, along with the photographs of the flat by stating that the flat booked by the complainant was not handed over to him due to non payment of entire consideration amount within the stipulated period. It has been stated that the respondent is ready to refund the total money paid for which he contacted the complainant several times. It is further mentioned that the aforesaid project was constructed by the respondent way much earlier and possessions have been handed over to two person who are living therein peacefully with their family members, and hence the project does not come within the purview of RERA. On 5.11.2020, a supplementary written statement was filed on behalf of the respondent stating that Umesh Prasad Singh (brother in law of the complainant) lodged a criminal case against the respondent at Kotwali P.S.

Case no. 422/2018 stating that three flats were booked in the aforesaid project in the name of his wife Mrs. Anamika Singh and his two brothers in law Mr. Rajan Kumar Singh (complainant in the present case) and Mr. Sonu Kumar Singh on total consideration amount of Rs. 40,50,000/- as onetime payment and his brother in law paid Rs. 30,25,000/- between 02.12.2013 to 17.12.2013 but no registered agreement was made. Md. Khalid Rashid, MD of the respondent company sent letter and demanded the rest amount of Rs. 10,25,000/- for which the MD issued letter on 04.05.2014 for cancellation of agreement. Thereafter, Rs. 3,00,000/- on 11.06.2014 and Rs. 3,00,000/- on 14.06.2014 was deposited for which a registered agreement was made for flat no. 103 and 303. No registered agreement was made for flat no. 301 and it was settled at the time of booking that Rs. 1,65,000/- was to be paid at the time of registration and Rs. 4,25,000/- was still remaining to be paid. On 30.04.2015, an agreement for sale vide deed no. 3865 was signed by Md. Khalid Rashid and Mr. Satyendra Kr. Singh for flat no. 303. Further on 07.07.2017, a deed of absolute sale was executed with Mr. Rajeshwar Prasad and Mrs. Rashmi Sinha for flat no. 104. There after the respondent executed absolute sale deed in favour of Kiran Devi vide deed no. 7251 on 02.07.2018 for flat no. 301 due to which Umesh Prasad Singh lodged criminal case against the respondent. An anticipatory bail was filed by the respondent and thereafter the bail was granted to the respondent vide order dated 21.12.2018 and an amount of Rs. 5,00,000/- was received by Umesh Prasad Singh and rest Rs. 7,08,333/- was to be paid by the respondent but only Rs. 3,00,000/- was paid in April 2019. It is further mentioned that Umesh Prasad Singh was the defaulter

and agreement with Rajan Kr Singh and Sonu Kumar Singh became in fructuous.

It has been submitted by the respondent that the development agreement of the project was presented for registration on 14.11.2011 vide token no. 32496 of 2011 and further was registered before the Registrar Sadar Patna vide deed no. 26936 dated 14.11.2011 and thereafter permission was granted for construction of the building by Patna Municipal Corporation vide letter no. DAN 189/4015. It is further mentioned that the respondent has already sold two flats bearing nos. 104 and 301 in favour of Rajeshwar Prasad and Kiran Devi on 07.07.2017 and 02.07.2018 respectively and in such case there is no requirement of the registration of the apartment which has already been completed till 01.05.2017.

The respondent has placed on record copy of FIR, copy of letter dated 04.05.2014, copy of registered agreement dated 30.04.2015 made with Rajan Kr. Singh and Sonu Kumar Singh for flat no. 103 and another registered agreement dated 30.04.2015 made with Satyendra Kr. Singh for flat no. 303, copy of absolute sale deed dated 07.07.2017 for flat no. 104 and 02.07.2018 for flat no. 301, copy of order sheet of A.B.P. No-5387 of 2018 dated 25.07.2018, copy of petition filed by Mr. Umesh Prasad Singh filed before the court of CJM, Patna, copy of development agreement and building permit granted by Municipal Corporation and copies of letter dated 28.12.2018 issued by them.

The complainant has stated that payment for the flat in question along with other 2 flats have been made jointly by Mr.

Umesh Prasad Singh, Rajan Kr. Singh and Sonu Kumar Singh but they have not filed any supporting evidence.

During hearing on 31.3.2021, the learned counsel for the complainant submitted that he is in possession of the flat but it has not been registered in his favour. The Bench had directed both the parties to submit the evidences regarding the payment made to each other but the same has not been complied. On 19.08.2021, the complainant counsel filed reply with regards to the petition filed by the respondent and prayed for directing the respondent to complete the construction work as per sanction map and execute absolute sale deed as per registered sale for agreement dated 30.04.2015.

It is not clear from the oral submissions and written statements and the documents filed by the parties whether the complainant has paid the entire consideration amount to the respondent as mentioned in the agreement to sale. It has been admitted by the complainant that he is willing to make the remaining payment but it has been submitted during hearing that they are in possession of the flat. The Real Estate (Regulation and Development) Act, 2016 casts obligations on both the promoter and allottee. Bihar RERA Rules, 2017 provide for cancellation and the agreement to sale mentions about interest that may be charged if the allottee does not make the payment in time the promoter. It is for the allottee to explain as to how he has taken possession without making the full payment.

It is also not clear whether the allotment had been cancelled by the respondent and absolute deed of conveyance has been executed in favour of some other person in respect of flat

number 103 as the respondent has submitted that they are willing to refund the deposit made by the complainant. If, indeed, the flat in question has been sold by registered deed to some other person, then relief can only be granted after the registered deed already executed is cancelled by a court of competent civil jurisdiction.

Further, clarity is required about the particular flat in respect of which the respondent has already made some payment which he had taken for the flat as part of the condition for obtaining bail as during hearing it was stated that the complainant and his family members had booked three flats out of which two have been registered in their favour and refund is being made in respect of the third flat.

Under these circumstances the Bench cannot direct the respondent to execute the deed for conveyance unless the issues raised above are clarified .

However, having heard the submissions of both the parties, and taking into account the enquiry report, the Bench hereby directs the Respondent Company and its Directors to complete the project within three months.

The complainant is at liberty to approach the Adjudicating Officer for his claim of compensation.

Sd/-

Nupur Banerjee
(Member)

Sd/-

Naveen Verma
(Chairman)