

REAL ESTATE REGULATORY AUTHORITY, BIHAR
Telephone Bhavan, Patel Nagar, Patna-800023.

Before the Bench of Mrs. Nupur Banerjee, Member

Complaint Case No. RERA/CC/956/2021

Rajiv Ranjan.....Complainant

Vs

M/s Pery Vidya Construction Pvt. Ltd...Respondent

Project: Mohan Sadan Apartment

Present: For Complainants: In person

For Respondent: Mr. Jairam Singh, Advocate

ORDER

13-04-2022

The Matter was last heard on 10-01-2022.
Complaint was filed on 14-09-2021.

The complainant Rajiv Ranjan, a resident of East Boring Canal Road, Patna has filed complaint petition against the respondent company M/s Pery Vidya Construction Pvt. Ltd., led by Mr. Manoj Kumar against violation of the development agreement and construction of six floors instead of four floors and has requested for delivery of their share of flats.

The case of the complainant is that Mohan Sadan, a haveli which was in the name of his Grand Mother (Nani). He further submitted that upon her death, the heirs of late Smt. Mohan Sinha, owner of Mohan Sadan decided to built an apartment complex and accordingly entered into a development agreement

with the builder Mr. Manoj Kumar, Director of the respondent company of M/s Pery Vidya Construction Pvt. Ltd in September, 2009 for conversion of the building into an apartment named Mohan Sadan Apartment comprising basement garage and four floors with 50:50 share ratio. It has been submitted further that as per the development agreement, the respondent has promised to deliver the flats within three years i.e. by 2012 but in spite of lapse of nine years, the builder has not yet delivered their share of flats and is engaged in selling his own shares. Moreover, the builder has constructed six floors instead of four floors in violation of the development agreement. He has prayed for demolition of the illegally constructed additional two floors and award of compensation for the delay.

On 03-01-2022, complainant had filed a petition seeking relief to direct the respondent to hand over the possession as per the development agreement, stay on further sale of flat by respondent, restitution of complainant rights in the unauthorized construction of the 5th & 6th floors, handing over of documents as per section 19.

The complainant had filed petitions on 01-02-2022 and 17-03-2022. On 17-03-2022, complainant had filed petition seeking relief for delivery of the apartment as per the development agreement and

action against the construction of 5th and 6th floors constructed contrary to the development agreement.

On 25/10/2021, the respondent has filed its reply stating therein that all the land owners have been given possession of their respective shares as per share distribution-cum-declaration of possession dated 25/01/2013. It has been further submitted that grievances regarding share declaration deed or development agreement cannot be addressed before RERA but before proper forum that is competent i.e. civil court.

The complainant has placed on record development agreement dated 13-11-2009 & declaration of possession of the flats dated 25-01-2013.

During the last hearing on 10/01/2022 the complainant had submitted that the project is not registered with RERA and no completion certificate has been obtained and no updates/communication has been made by the respondent company to the complainant regarding status of the project. He reiterated what he has mentioned in the complaint petition and prayed that to put stay on further sale of the flats by the respondent and further submits that he is entitled to obtain the information under Section 19 of the Real Estate (Regulation & Development) Act 2016, since there was no intimation to the land owners

regarding unauthorized construction. He further stated that only one person has been handed over possession without the completion certificate and despite vigilance case, sales of flats are being made by the respondent to the third party.

Learned counsel of the respondent company during the last hearing had submitted that there are 12 land owners including the complainant with whom the development agreement was signed on 13/11/2009 and share distribution-cum-declaration of possession was made on 25/01/2013 and as per declaration, the entire share of land owners was delivered after completion of the project and all are in possession of their share and all the allottees have been handed over possession. He further submitted that the building was completed by 03/02/2020 but due to the pendency of the vigilance case, the respondent company could not obtain the completion certificate.

Learned counsel of the respondent company further submitted that as per Municipal Act, note 14 of clause 20, if the FAR is not achieved, then the builder can construct another floor and that the construction is within the byelaws.

Considering the submissions and documents filed by both the parties, the bench observed and directs the respondent to hand over the share of complainant as

per development agreement dt.13-11-2009 read with share agreement coined as Declaration of Possession of the Flats dated 25-01-2013 within 60 days from the issue of this order.

The Respondent is further directed to sell share of his flats only after delivery of possession of shares of flat to the complainant.

The registration wing is directed to issue notice to promoter that as under what circumstances, promoter has advertised, sold the flats of the project without registration in the Authority and why a penalty may not be imposed on them under the provisions of section 3/59 of the RERA Act, 2016.

The competent Authority is requested to enquire about the project and extension of two floors after the construction of G+4 including the sanctioned map and take appropriate action as per law.

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

Let a copy of order be sent to P.M.C., Patna.

Sd/-
Nupur Banerjee
Member