

REAL ESTATE REGULATORY AUTHORITY, BIHAR, PATNA

Before Mr R.B.Sinha & Mr S.K. Sinha, Members of the Authority

Case Nos.CC/05/2018

Atma Nand Jha.....Complainant

Vs

M/s Pahi Constructions Pvt Ltd & others.....Respondents

Present: For the Complainant: In person

**For the Respondents : Mr Ranjeet Kumar Mishra, MD
Mr Niranjan Pd Singh, Advocate**

**Mr Uday Kumar, Land-owner
Mr Rajen Sahay, Advocate**

09/10/2020

O R D E R

1. Mr Atma Nand Jha, S/o Late Sachchida Nand Jha, presently residing at Flat No -401, Sunrise Sangita Palace, CDA Colony, Shastri Nagar, Patna-800023 has filed a complaint petition on 14thMay 2018 under Section 31 of the Real Estate (Regulation & Development) Act, 2016 against M/s Pahi Constructions Pvt Ltd, Mr Ranjeet Kumar Mishra, Managing director, M/s Pahi Constructions Pvt Ltd, Mrs Kalpana Kumari, Director M/s Pahi Constructions Pvt Ltd and Mr Uday Kumar, Land-owner for having not given possession of Flat No.1B on First floor, Block-A, RSD Complex, CDA Colony, Shastri Nagar, Patna booked by him in October 2009 inspite of having taken more than full consideration amount agreed in the agreement for sale. He has enclosed a copy of the Agreement for sale along with details of the payments made.

2. As per the Agreement for sale signed by the Developer with him on 4thOctober 2009, the complainant had paid Rs1,51,000 (Rupees one lakh and fifty one thousand only) at the time of booking against the total consideration value of Rs13,68,500 (Rupees thirteen lakhs, sixty eight thousand and five hundred only). As per the agreement, the

promoter had committed to construct and hand over a 1190 sqft super built up area Flat No1B, First floor, Block-A in the Project RSD Complex, Patna within two years and six months (including grace period), failing which interest @24% per annum was to be paid to the allottee.

3. In his Petition, the complainant has stated that he had paid Rs15,73,000 (Rs fifteen lakhs seventy three thousand only) during October 2009 to March 2011 in several instalments to the Respondent Company, which was inclusive of Rs 2,04,500 for registration of the conveyance deed of the flat, after taking a loan of Rs 10.94 Lakh home loan from his employer- Steel authority of India Ltd (SAIL). He has also stated that when he went for registration of the flat in April 2012, the Promoter became traceless, forcing him to file a criminal case against him in Shastri Nagar police Station under section 406/420 of Indian Penal code against the Promoter.

4. The Complainant has stated that it was over eight and half years since agreement for sale was executed between the complainant and developer but the Respondent company has not yet handed over the flat to him.

5. The Complainant has sought following reliefs :

1. Delivery of possession of the flat No-1B on the first floor of the RSD Complex, CDA Colony, Shastri Nagar, Patna with NoC from land-owner;
2. Direction to the Respondent Company for execution of conveyance deed of the flat as per agreement for sale dated 4.10.2009
3. Payment of interest at the rate of 24 % per annum in terms of agreement for sale;
4. Restraining land-owner permanently from creating hindrance in peaceful possession of the flat;
5. Payment of cost of litigation and damages;

6. In pursuance to the receipt of the complaint petition, a notice was issued to the Respondent Company and others on 29th May 2018 for submitting their response within thirty days of receipt of the notice.

Response of the Respondent Company:

7. The Respondent Company however did not give any response to the notice issued to them. Accordingly they were called for hearing.

Hearing

8. Hearings were held on 28.09.2018, 8.10.2018, 24.10.2018, 16.11.2018, 6.12.2018, 11.1.2019, 20.1.2019, 26.2.2019, 15.3.2019, 27.3.2019, 03.5.2019, 8.5.2019, 9.5.2019, 14.5.2019, 9.7.2019, 23.7.2019, 26.8.2019, 29.8.2019, 5.9.2019, 15.10.2019, 31.10.2019, 15.11.2009 and 9.12.2019

9. In response to the notice, the Respondent No-3 Mr Uday Kumar stated that he was the land-owner on which the project RSD Complex of two Blocks having 32 flats was developed in pursuance to the development agreement executed by him with the developer M/s Pahi Construction Pvt Ltd on 18.9.2009. He stated that as per the development agreement, one 3 BHK flat on the first floor of Block A was to be given as security to him by the promoter/builder so as to ensure timely completion of the project. Since the project was not completed in time and there were a lot of work still required to be done, he had taken the possession of the flat as the promoter/builder had cunningly sold both 3 BHK flats on the first floor in A block to the customers. The contention of the Respondent No-3 was however refuted by the Complainant, stating that the original development agreement was executed by the developer and land-owner in April 2009 and since the third party interests had already been created through booking of the flats, neither promoter nor land-owner had any right to alter the provisions of the development agreement unilaterally subsequently to the detriment of the interests of the allottees. He further claimed that

even in the development agreement dated 18.9.2009, there was no mention of his flat 1B, Block A of the RSD complex and therefore the land-owner had illegally taken possession of the flat forcefully after evicting him.

10. Before the next date of hearing on 8.10.2018, the Respondent No1-3 filed their response to the notice, admitting that the development agreement was executed on 13.04.2009 between the respondent company and land-owner Mr Uday Kumar. As per development agreement, 45 % share was to be handed over to the land owner and 55 % share was to be given to the promoter. He claimed that the Map/plan of the building was got approved by the land-owner and thereafter construction was done by the respondent company. They further claimed that keys of the flat were also handed over to the complainant i.e. the possession of the flat was handed over to him. He further stated that he was ready to execute the registration of the conveyance deed of the flat and it was only complainant who had delayed the registration as he has not deposited the stamp duties and other taxes with him. He said that he was not aware of the events which have happened after he had handed over the possession of the flat to the complainant.

11. In his response to the reply filed by the Respondent No.1-3, the petitioner has stated on 08/10/18 that the Respondent No-2 had deliberately created encumbrances on his flat and did not even bother to inform him about it. Even while in Jail due to the FIR lodged by him, the Respondent No.2 did not come out cleanly and agreed for registration of the flat only to get out of the jail. The complainant reiterated that he had already paid excess money than the cost of the flat whereas the builder has not yet completed the flat. The complainant demanded interest for the inordinate delay in handing over possession of the flat at 24% per annum as provided in the Agreement for sale. He stated that he was ready to deposit the cost of Stamp Duty in RERA itself if all the Respondents submit in writing that they would hand over the possession of the flat to the complainant and get the registration of the flat done.

12. In course of hearing on 08/10/18, learned counsel of the Respondent No.3 Mr Rajen Sahay submitted that the building in Block A & B are still incomplete as the lift, fire fighting equipments and generator have not yet been installed. He further claimed that in order to protect the interest of the land owner and other consumers, a provision was made in the Development Agreement dated 18/09/2009 to hand over a 3 BHK flat on the first floor as security to the land owner so that the construction of the building is completed in time. He also claimed that the complainant was in full knowledge of the agreement dated 18/09/2009.

13. On 24/10/18, the Respondent No.2 Mr Ranjeet Kumar Mishra personally appeared under the direction of the Bench. In course of hearing, both parties agreed for conciliation to settle the issue through mutual agreement. Respondent No.2 and the Promoter of the project agreed to get all the five running real estate projects at Patna registered with the Authority as soon as he gets his dues from the Govt of Jharkhand which, he claimed, as likely to happen very soon. The Bench also directed the Secretary of Association of Allottees of the apartment and the Respondent no 3 to file affidavits with regard to the remaining works in the apartments on the next date. The Bench also ordered both the Directors of the company to remain present on the next date of hearing. However, on the next date of hearing, none of the Directors of the Respondents of the company appeared.

14. Though the Bench had directed the Directors of the respondent company to be physically present in course of hearing, the Directors did not attend the hearing consecutively on 11/01/2019, 26/02/2019 and 15/03/2019. As the Director of the company (Respondent No.2) Mr Ranjeet Kumar Mishra had not been appearing since December, 2018 and had not appeared in the first four hearings in the calendar year 2019, the Bench decided to issue an interim order under Section 36 of the Real Estate (Regulation & Development) Act, 2016 freezing the bank account of the respondent company and both the Directors with immediate effect. Since the land owner had also not appeared on the last two occasions, the Bench ordered for freezure of accounts of the

land owner as well. Further, since the Director of the respondent company has not applied for registration of all the five projects with the Authority which he had committed to register six months back in course of hearing on 24/10/18, the respondent company and the Directors were prohibited from doing any real estate work/activity in the State of Bihar forthwith until further orders. Further, IG Registration was also informed with a request to issue direction to all the DSRs not to register any apartment/flat of the respondent company. The Govt of Jharkhand was also informed regarding pending claim of Mr Ranjit Kumar Mishra with them.

15. In course of hearing on 09/05/2019, learned counsel for the Respondent No.3 agreed to hand over the keys of the flat no.1/B of RSD Complex to the complainant on the next date of hearing and accordingly submitted the keys in the Court of the Authority on 10/05/2019. As the Respondent No.2 Mr Ranjeet Kumar Mishra had not again been appearing on 03/05/19, 08/05/19 and 09/05/19 in the proceedings of the court, the Bench ordered on 14.05.2019 that his properties (Flat Nos.201 and 202) at Gargi Complex in Shastri Nagar be brought under the lien of the Authority until further orders so as to enforce attendance of the Respondents. The IG Registration was also requested to issue direction to all the DSRs not to let any further conveyance of the aforementioned flats of the Respondent No.1. The Sr S.P. Patna was also requested to enforce Mr Mishra's attendance through local PS before the Authority on 09/07/19 and in the meanwhile, the previous interim order regarding freezing of the bank account of Respondent No.3 was withdrawn as he had already handed over the keys of the flat No.1/B, first floor, RSD Complex in the Court.

16. On 09/07/2019 learned counsel for the Respondent No.1 appeared along with Mr Ranjit Kumar Mishra, MD with a direction from the Hon'ble Patna High Court to the Sr S.P. Patna to not enforce any coercive measure to bring Mr Mishra to the Court as he had volunteered himself to appear before the Court. On 26/08/19, the keys of the flat which was deposited with RERA by land owner was handed over to the

complainant Mr Atma Nand Jha. Learned counsel of the Respondent No-2 also filed a petition regarding the dues requesting therein that the land lord who got passed the map by PMC should be asked to obtain completion certificate. He also filed a copy of a compromise petition to settle the dispute stating therein the dues from the buyers.

17. The Bench constituted a two man Committee for inspection of the aforesaid flat in question and report regarding the present status of the flat on the request of the complainant that he should be handed over the possession of keys/flat only after an independent verification by the Authority. The Committee visited the site on 22/08/2019 and submitted its report on 29/08/19 which stated that the flat in question was not complete in any perspective and major finishing works were still pending.

17. On 05/09/19 the complainant filed another petition stating therein that he was ready for a compromise, provided the Sale Deed of the flat was executed and registered by Developer/landlord before 30/09/2019 after completing the remaining works in the flat and the promoter pays the house rent of approx. six lakhs which had been paid by the complainant during the last five years. He expressed his willingness to withdraw the criminal case filed by him against the respondents.

18. On a petition from the complainant dated 26/10/2019 stating therein that the builder's son has forcibly locked the flat and the matter has been reported to the Shastri Nagar PS, during the course of hearing on 31/10/19 the Bench ordered the SHO, Shastri Nagar PS to get peaceful possession of the flat restored to the complainant Atma Nand Jha.

A supplementary petition was filed by the complainant on 21/11/2019 .

Issue for consideration:

19. There are following issues for consideration of the Bench :

Firstly, whether the project RSD Complex was an incomplete and ongoing project as on 01.05. 2017, i.e. on the date of commencement of

the provisions of the Real Estate (Regulation and Development) Act 2016 in state of Bihar;

Secondly, whether the complainant had executed a valid agreement for sale with the promoter and paid full consideration amount to the developer;

Thirdly, Whether, the promoter was liable to execute registration of conveyance deed of the flat after receipt of the full consideration amount as per agreement of sale executed with the complainant; if yes, then whether he was liable to pay interest for delay in handing over the possession of the flat, as per the agreement for sale.

20. As regards the first issue, the Complainant as well as the Respondent No-3 have stated that the project RSD Complex was still incomplete as lift, fire-fighting facilities, Generator etc have not yet been installed and neither completion nor occupancy certificate has been obtained from the competent authority. The Inspection team sent by the Authority have also confirmed (August 2019) that the flat under question has no window shutter and doors, no tap water connection, no electric connection, kitchen and washrooms are incomplete etc. Thus it is confirmed that the Project is still an ongoing project. Therefore the Project is required to be registered with the Authority under section 3 of the Act.

21. As regards the second issue, the Complainant has submitted a copy of the agreement for sale dated 4.10.2009 which was executed between him and the developer. The Developer has also admitted having executed the agreement for sale. The Complainant has submitted the details of payment of Rs 15,73,000 made by him to the Developer during October 2009 to March 2011 and the same has not been disputed by the Respondent No 1 & 2. Hence, it is confirmed that the obligation cast upon the complainant in the agreement for sale had been fulfilled by him timely.

22. As per the agreement for sale executed between the complainant and the developer on 4.10.2009, the project was to be completed in two and half years including the grace period. However, the Promoter/ Respondent Company did not execute the registration of the conveyance deed of the flat 1B of the Block A of the RSD complex on completion of stipulated period, in favour of the complainant although he had made full payment of the consideration amount. Therefore the developer was liable to pay interest at the prescribed rate (24% p.a.) from the due date (4.4.2012) till the date of handing over possession of the flat to the complainant.

23. Thus, there has been inordinate delay of more than ninety months till now. The promoter has not obtained the completion/occupancy certificate from the competent authority even now. He has not yet even filed the papers for issue of completion/occupancy certificate. However, the promoter has also claimed in course of hearing that he was prevented from working in the complex by the land-owner. Hence, some consideration and leniency should be shown to him while determining the rate of interest.

Order:

24. The Bench directs the Respondent Company M/s Pahi Constructions Pvt Ltd and their two directors (Mr Ranjeet Kumar Mishra and Smt Kalpana Kumari) to register their ongoing project RSD complex with the Authority within 30 days of issue of this order. If they fail to do so, the Authority may initiate the proceedings under Section 59 of the Act for contravening the provision of the Section 3 of the Act 2016.

25. The Bench orders that the Promoter should complete the construction of the project, obtain completion/occupancy certificate from the competent authority and register the conveyance deed of the Flat (No-1B, First Floor, Block A, RSD Complex, CDA Colony, Shastri Nagar, Patna) of the complainant within three months of issue of this order. The Complainant should be given interest at the rate of seven percent per

annum on the amount paid by him from 4.4.2012 till the date of possession by the Respondent Company.

26. All contributions made by the allottee in excess of amount payable under the agreement for sale for completion of the Project, need to be refunded back along with interest at the rate of seven percent by the Respondent Company or alternatively adjusted against Registration fees by the Promoter.

27. As regards the compensation for mental and physical harassment, the complainants may approach, if they wish so, the Adjudicating officer under the section 71 of the Real Estate (Regulation and Development) Act 2016.

Sd

(R.B. Sinha)
Member

Sd

(S.K. Sinha)
Member