

**REAL ESTATE REGULATORY AUTHORITY, BIHAR**

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

**Case No.CC/101/2018**

**Sudhir Kumar Dubey.....Complainant**

**Vrs**

**M/s Sambhavi Buildcon Pvt Ltd.....Respondent**

**Present: For Complainant : In person**

**For Respondent : Mr Yashwant Kr Singh, Dir**

**29/04/2021**

**O R D E R**

Sudhir Kumar Dubey a resident of Basanti Apartment, Shivpuri, Anisabad, Patna- 800002 has filed a complaint petition under section 31 of the Real Estate (Regulation and Development) Act 2016 on 12 October 2018 against against M/s Sambhavi Buildcon Pvt Ltd through their director Mr Yashwant Kumar Singh for completion of the project Basanti Apartment located at Shivpuri, anisabad, Patna as per the sanctioned plan and providing all facilities as committed in the agreement.

In his application, the Petitioner has stated that he had booked a flat ( No- 301) in the Project Basanti Apartments in August 2013 at the total cost of Rs 20.00 lakhs. The Flat was to be delivered in April 2014. He stated that the development agreement was executed between the promoter and land-owner in December 2012 for development of a multi storied building

namely Basanti Apartment consisting of 16 flats on a plot of land admeasuring 5648 sqft and project was to be completed within a period of two years with the grace period of six months. The complainant stated that the promoter had informed that the plan for the building was got sanctioned in October 2011 by the landowner. The promoter had claimed that claimed that the project would be completed within two and half years from the date of sanction of plan. However the project has not yet been completed. He claimed that in many flats, flooring work has not been done and doors, windows etc have not been installed. The lift and generator have not been installed. Roof treatment has not been done. The flooring work off the parking area has also not been done. In many flats washrooms have not been completed. There have not got any work done regarding firefighting facilities. In many flats, electrification work has also not been completed. The complainant claimed that at the prodding of the promoter, he booked the flat in the project but the project has still not been completed. When they tried to pursue, the promoter refused to do anything and stated that whatever be the case, he wouldn't be able to do anything.

In pursuance to the receipt of complaint petition, the Authority issued a notice on 31 October 2018 to the respondent company to furnish their response by 19 November 2018. As no reply was received from the respondent company, the Authority directed both parties on 4<sup>th</sup> February 2019 for hearing on 11 March 2019.

### **Hearing**

Hearings were held on 11.03.2019, 04.04.2019, 15.5.2019, 20.8.2019, 18.10.2019, 11.12.2019, 16.1.2020, 3.2.2020, 4.3.2020, 12.11.2020 and 1.2.2021. In course of hearing, the respondent company submitted their

response to the notice issued by the Authority. In their response, the respondent company stated that a development agreement was executed between the promoter and the landowner on 21.12. 2012 vide deed number 31840 at the Registration office, Patna. As per the terms and conditions of the development agreement, the project was required to be completed within two years with a grace period of six months. In the agreement it was agreed to date developer would handover 44% of the total built-up area to the landowner in shape of residential flats along with car parking spaces in consideration of the cost of the land and the remaining 56% of the total super built up area would be retained by the developer in consideration of the cost of construction and both parties would have absolute right title and interest over their respective shares. It was just also stated in the development agreement that prior to the decision of the development agreement landowner had got the building plan approved on 10<sup>th</sup> October 2011 from the PMC and handed over the same to the respondent company for execution. The respondent also claimed that that in pursuance to the execution of the development agreement, the respondent company started the construction work in right earnest and was going on till 15 June 2013 but on the same day, the Executive officer of PMC sent a letter to the respondent vide no.- 1012 dated 15.06.2013 directing them to stop construction work in the light of order passed in CWJC number 8152 of 2013 dated 10.05.2013. A vigilance officer of the PMC further summoned the promoter along with all documents related to the construction work and after due examination, the vigilance officer PMC did not permit him to start the construction work and directions also filed a vigilance case against the respondent company vide

case no 49B of 2013. In August 2013, SHO, Gardanibagh Police Station directed him to stop the construction work and he complied.

The Respondent further informed that meanwhile the respondent had completed the major work in the project.. However, they admitted that due to restrained order/stoppage of work, lift, generator, fire-fighting facilities etc have not been installed and partial civil work was also pending.

The Respondent claimed that he wrote to the Executive officer, PMC in August 2013 and sought permission to complete the work but he claimed that no permission has been received till date. As a result, he was unable to complete the work.

### **Rejoinder of Complainant**

The Complainant however contested the claim of the Respondent company, stating that respondent had signed the agreement for sale for the flat no 301 in Basanti Apartment with the complainant on 3.8.2013. If the construction work would have been stopped after 15.6.2013 based on the direction from EO, PMC, the complainant wouldn't have booked the flat in August 2013. Further, the complainant submitted atleast three demand letters (dated 5.7.2014, 9.12.2014 and 14.7.2015) issued by the Respondent company in 2014 and 2015 making claims for payment of construction-linked installments. It was evident from the these demand letters that in each demand letter, the respondent company was making claims for progress in construction work of the project and demanding payment of additional sum. Further, the complainant has also submitted a copy of the response dated 2.5.2014 submitted by Mr Sanjeev Kumar, Advocate on behalf of the respondent company to the legal notice issued

by him in which the Advocate of the respondent company has conclusively admitted that roof casting of third floor was completed in March 2014 and columns of fourth floor have been raised and roof casting of 4<sup>th</sup> floor would be completed by the end of May 2014.

In course of hearing, the respondent company admitted that the major work of the project has been completed but lift, generator, fire-fighting facilities etc have not been installed. The Respondent Company also admitted that part of the civil work has not yet been done. In spite of repeated directions from the Bench, the respondent company didn't apply for registration of the project with the Authority. Further, in spite of repeated directions from the Bench, the lift, generator, fire fighting facilities were not installed by the promoter, though they produced money receipts of the advance money paid to the lift supplier in January 2020.

### **Issues for Consideration**

There are following issues for consideration before the Bench:

1. Whether the Project Basanti Apartment was an ongoing project as on 1.5.2017, the date on which the provisions of the Real Estate (Regulation and Development) Act 2016 came into operation;
2. Whether there was any valid justification given in the reasons cited by the respondent company for inordinate delay in completion of the project;

So far as first issue is concerned, it is noted that the Project was started based on the plan sanctioned in October 2011 and was required to be completed in April 2014. The Respondent company has admitted that the lift, generator, fire fighting facilities etc have not yet been installed. The

Complainant has also claimed that in many flats, doors, windows, grills, kitchens, washrooms etc have not been installed. The Respondent has also admitted that part civil works in the project have not yet been completed. The Respondent has also not obtained CC/OC from the PMC as yet. It is therefore established that the project was an ongoing project as on 1.5.2017, the date on which the provisions of the Real Estate (Regulation and Development) Act 2016 came into operation. Thus, the project was required to be registered as ongoing project with the RERA, Bihar.

As regards the 2<sup>nd</sup> issue, the promoter claimed that construction work in the project was going on in full swing until June 2013 when they were forced to stop work due to the directions of Patna High Court given in CWJC 8152 of 2013 communicated by EO, PMC vide his letter dated 15.6.2013. The respondent claimed that till that time, major works in the project was completed but many other works were not completed. The Complainant has however produced several demand letters issued by the respondent in 2014 and 2015 which indicated that roof casting work on third and fourth floor, brick works on 3<sup>rd</sup> and 4<sup>th</sup> floor etc were completed in 2014 and 2015. It was therefore evident that the construction work in the project continued even after June 2013 and major works like roof casting work, brick work etc were completed in 2014-15. This was further admitted by the Advocate of the Respondent in his response dated 2.5.2014 to the legal notice given by the complainant. Moreover, the case number CWJC 8152 of 2013 was finalized in June 2015 and all stay orders were vacated. Thus there was no reason to stop the work thereafter. It is therefore evident that the promoter

has not given any cogent reasons for inordinate delay in the completion of the project.

## **Order**

The Bench orders

1. the Respondent company to register their ongoing project Basanti Apartments with the Real Estate Regulatory Authority, Bihar within 30 days of issue of this order, failing which, the Authority may initiate proceedings under the Section 59 (2) of Real Estate ( Regulation and Development) Act 2016;
2. the Promoter to complete the project as per sanctioned plan within three months of issue of the order and obtain Completion certificate from the PMC within thirty days of the completion of the project and hand over the common areas of the project to the Association of allottees.
3. the Promoter to pay interest at the rate of saving bank account of the State Bank of India on the amount deposited by the complainant from the stipulated date of handing over the flat i.e. 9.4. 2014 to the date of issue of the completion certificate of the project by the PMC.

**Date: 29.04.2021**

**Sd/-**

**R. B. Sinha  
Member**