

REAL ESTATE REGULATORY AUTHORITY, BIHAR
2nd Floor, BSNL Telephone Exchange Building, Patel Nagar, Patna-800014.

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

Case Nos. CC/1065/2020

Kiran AroraComplainant

Vs

M/s Sri Anuanand Construction Pvt Ltd..... Respondent

Projects: Mohinder Villa

Present: For Complainants: In Person
Mr Mohd Isa, Advocate
For Respondent: Mr Rakesh Roshan Singh, Advocate

19/11/2021

O R D E R

1. Mr Kiran Arora, s/o Late Kulbir kumar, a resident of 4/61/1, Baluganj, Agra-282001, UP has filed a complaint petition on 12.02.2020 against the respondent company M/s Sri Anuanand Construction Pvt Ltd through their director Mr Bimal Kumar under section 31 of the Real Estate (Regulation and Development) Act 2016 for possession of two flats with car parking spaces, compensation as per paragraph 28 of the registered development agreement and no objection certificate (NOC) of Canara Bank by the respondent as per paragraph 29 of the registered agreement.
2. The Complainant has submitted copies of the registered development agreement dated 29.07.2010, supplementary agreement for share division dated 18.09.2014, legal notice etc.

Case of the Complainants:

3. In his complaint petition, the complainant has stated that a registered development agreement was signed on 29/07/2010 between the complainant along with two other cousins/relatives and the respondent company for development of the land measuring 5716 sqft (4.2 Kathas) to construct a multi-storied building namely Mohinder Villa, which was to be completed within three years (including a grace period of six months) from the date of agreement. As per paragraph 28 of the registered development agreement, in case of delay in construction and handing over the possession of flats, the developer will pay Rs

4000 per month to the complainant for next six months, Rs 8000 per month for additional six months of delay. If the construction is incomplete even thereafter, the landowners were free to terminate the agreement or settle the matter with the help of the Arbitrator. As per paragraph 29 of the said agreement, the Developer had also agreed to pay the loan amount along with interest to the Canara Bank, which had a mortgage on the said property.

4. According to the registered development agreement, the complainant was to get two flats along with a car parking space with each flat. As per the supplementary agreement executed between the landowners and the developer on 18.09.2014, the project Mohinder Villa was to be built on sanctioned plan vide plan case no CKA/PMC/Mauza-Mainpura/PRN/B+G+4/59/2011 dated 06.06.2011 approved by the Certified Architect Manoj Kumar and the complainant was allotted the flat numbers 405 and 503 with super built up areas of 1250 sqft and 1000 sqft respectively in the project but the respondent company have failed to hand over possession of his share of the flats with car parking spaces till date.
5. The Authority has issued a notice on 16/06/2020 under Section 31 of the Real Estate (Regulation & Development) Act 2016 to the respondent company to submit its reply by 07/07/2020.

Response of the Respondent Company:

6. The respondent company did not file any reply to the aforesaid notice. Hence the case was fixed for hearing.

Hearings:

7. Hearings were held on 10/02/2021, 16/03/2021, 05/04/2021, 11/06/2021 and 27/07/2021.
8. In course of hearing, the Director of the respondent company submitted that the flat is ready and allottees are living since 5 years. He claimed that the complainant has given Power of Attorney to the respondent for selling the flat on his behalf and to return the sale proceeds to him.
9. On 05/04/2021 learned counsel of the respondent company filed a counter reply in which it has been stated that development agreement with the land owners was signed on 29/07/2010 and the project was completed much earlier than the existence of RERA and allottees are

living there since 2015 and that completion certificate of the competent authority has also been obtained. He further submitted that as per development agreement, three landowners were to get 6 flats of 800 sq ft super built up area with one car parking and that the complainant has got his share of flats.

- 10.** On 02/07/2021 learned counsel of the complainant filed counter reply petition in which he stated that as per agreement the total percentage for land owners will be 30% of the total constructed area and the builder's area will be 70% and all the six flats of landowners quota to be shared by three land owners including the complainant, was required to be handed over within a period of 2 ½ years with grace period of 6 months from the date of agreement but even after lapse of 11 years, the respondent company has failed to hand over the same. The complainant sent a legal notice on 27/11/2014 which was replied by the respondent on 20/12/2014. The respondent company executed a Supplementary Agreement (share division) on 18.9.2014 in favour of all the land owners in which Flat No.405 having an area of 1250 sq ft and Flat No.503 having an area of 1000 sq ft allotted to this complainant but the respondent have failed to hand over physical possession of the flats with car parking spaces.
- 11.** The complainants counsel claimed that the promoters/ builders have constructed 5th floor without sanctioned plan and mischievously allotted Flat No.503 on the 5th floor to the complainant. The complainant has also claimed compensation in full as per registered development agreement for violation of the same. He further states that the respondent has committed major deviation in the construction, contrary to the sanctioned plan such as not constructed basement floor and illegally constructed 5th floor for which Vigilance Cell of the PMC has filed Vigilance case before the Commissioner, PMC bearing No.75A/2015 against the respondent, the land owners and others. The Completion Certificate filed before RERA is false and obtained illegally as the same has not been issued by the Chief Municipal Officer who is the competent authority under Section 327 of the PMC Act. He further submits that the complainant never asked the respondent to sell his flats.
- 12.** On 23/07/2021 learned counsel of the respondent company filed another Supplementary Counter Affidavit in which it has been stated that the builder is always ready to hand over flat no.405 and 503 to the complainant and if the complainant has any problem regarding flat no.503, the respondent is ready to pay him the amount or value of the same at popular market rate or readjust to another one.

13. On 09/08/2021 the complainant filed another reply petition to the Supplementary Counter Affidavit filed by the respondent in which he has stated that he is ready to take possession of the flat No.405 with complete finished amenities and also ready to accept the value of flat No.503 at popular market rate. He further submitted that the project was still not complete and hence this project was covered under RERA. He again submitted that the Completion Certificate issued by an engineer was fake and not admitted in law which is under challenge before the Commissioner, PMC vide Vigilance Case No.75A/2015.

Issues for Consideration:

14. There are following issues for consideration :

Firstly whether the Project Mohinder Villa was an ongoing project as on 1.5.2017, the date the date on which the Real Estate (Regulation and Development) Act 2016 came into operation in the State of Bihar;

Secondly whether there has been inordinate delay in completion of the project and complainant's share of flats has not been handed over to the allottees;

15. As regards the first issue, the respondent company claimed that the project was completed prior to commencement of RERA and the completion certificate was issued by a civil engineer Er Sanjay Kumar Jha on 18.01.2017 regarding completion of the building on 2.7.2016. This was however contested by the complainant counsel stating that the said civil engineer was not authorized to issue such certificate as the Bihar Municipal Act and Bihar Building Byelaws required the empanelled structural engineer/certified Architect to submit such certificate to the concerned municipal authorities who in turn will verify the completion of the project to ensure that there was no deviation from the sanctioned plan and if there was any deviation, whether the same was within the permissible limits or not. The Respondent Counsel claimed that there was significant deviation in the construction of the project and a vigilance case was pending against the promoter in Patna Municipal Corporation (PMC). He produced evidence to show that a vigilance team of PMC had inspected the building on 24.03.2014 and given its report in which the construction of a G+5 building structure was found against the sanctioned plan of B+G+4 structure. He also produced the documents to show that a vigilance case no 75A/15 was going on in the PMC. Hence it is evident the completion certificate issued by the civil engineer Mr Jha was a fake one as no completion certificate can be issued when a vigilance case was

pending in PMC since March 2014. Further, the audited Balance-sheet of the respondent company for the 2017-18 & 2018-19 also indicated that there was work in progress in the project Mohinder Villa during these financial years. It is therefore established that the project Mohinder Villa was an ongoing project as on 1.5.2017, the date on which the Real Estate (Regulation and Development) Act 2016 came into operation in the State of Bihar.

16. In so far as 2nd issue is concerned, there is no doubt that the project was not completed within three years from the date of agreement. There is also no dispute on the fact that the share of two flats of the complainant/allottee has not been handed over to him till date

Order

17. The Bench orders the respondent company to register their project Mohinder Villa with the Real Estate Regulatory Authority within thirty days of issue of the order, failing which the Authority may initiate proceedings under section 59 (1) of the Act for contravention of section 3 of the Act.
18. The Bench orders the respondent company to hand over the possession of the flat number 405 in the Mohinder Villa to the complainant or his counsel with immediate effect. The Respondent company will also handover another flat of similar size in lieu of Flat no 503 to the complainant or his counsel within thirty days of issue of this order.
19. The Respondent company will also pay the damages provided in the paragraph 28 of the development agreement along interest at the rate of five percent per annum from July 2013 to the date of refund within sixty days of issue of the order.
20. As regards the compensation, the complainant may approach, if he so wishes, the Adjudicating officer of the Real estate Regulatory Authority under section 31/71 of the Real Estate (Regulation and Development) Act 2016.

R.B. Sinha
Member