

# **REAL ESTATE REGULATORY AUTHORITY, BIHAR**

**2<sup>nd</sup> Floor, BSNL Telephone Exchange Building, Patel Nagar, Patna-800014**

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

**Case Nos. CC/1170/2020, CC/1171/2020, CC/1172/2020, CC/1181/2020, CC/1197/2020,  
CC/1264/2020, CC/1265/2020, CC/1287/2020 & CC/1411/2020**

**Pravin Kumar Jaiswal/Sunil Kumar Srivastava/Rakesh Singh/Dinesh Kumar/ Prabhu  
Dayal Sharma/Rohit Kumar Singh/Rohit Kumar//Ajay Kumar Pandey/ Hari Govind  
Rai.....Complainants**

**Vs**

**M/s Ghar Lakshmi Buildcon Pvt Ltd.....Respondent  
Projects: Income Tax Residency**

**Present: For Complainants: In persons  
For Respondent: Mr Ishteyaque Hussain, Advocate**

**22/10/2021**

## **ORDER**

1. Nine complainants 1.Pravin Kumar Jaiswal, a resident of Tripolia, Gulzarbgh, Patna 2.Sunil Kumar Srivastava, a resident of Village Bhar, PO PipariDih Dist Mau UP, 3. Rakesh Singh, a resident of Turkauliya Peepeeganj, Gorakhpur, UP 4.Dinesh Kumar, a resident of Gujaraulia, Malahit, East Champaran 5.Prabhu Dayal Sharma, a resident of Village & PO Dhanaut Dist Patna, 6. Rohit Kumar Singh and 7.Rohit Kumar, both residents of Chhoti Badalpura, Khagaul, Patna, 8. Ajay Kumar Pandey, a resident of Prakashdeep Enclave, Ashiana-Digha Road, Patna and 9. Hari Govind Rai, a resident of Officers' Colony, EC Railway, Samastipur have filed separate but similar complainant petitions between February to September 2020 against M/s Ghar Lakshmi Buildcon Pvt Ltd through their director Mr Rahul Kumar under section 31 of the Real Estate (Regulation and Development) Act 2016 for issuing necessary directions to the promoter for issuing demand letters for further installments as per MoU executed between the promoter and complainants against their booked flats in the project "Income Tax Residency" of the promoter situated at LakhaniBigha, Danapur, Patna because Builder/Promoter has not returned back their full booking amount on time and construction work was going on in the said project after approval of RERA, Bihar.
2. All complainants have submitted copies of the Memorandum of Association (MoU) executed by the them in August 2015 with the respondent company, money receipts, demand letter issued by the

promoter in March 2017, copies of correspondence done by them with the promoter during 2017-2019 etc.

### **Case of the Complainants**

3. In their complaint petitions, the complainants have stated that they had booked flats in Blocks B & C of the Project "Income Tax Residency" of the Respondent company M/s Ghar Lakshmi Buildcon Pvt Ltd in August 2015 by executing a Memorandum of Understanding (MoU) with the promoter and paying ten percent of the estimated cost of the flats. As per the MoU, the promoter was required to hand over the possession of the flats within three years including the period of grace period of six months, of approval of the building Plan/Map. The MoU further provided that that allottees will be required to pay interest at the rate of 18 percent if they make delay in payment of installments. Similarly, the promoter was also required to pay interest at the rate of 18 percent if they make delay in handing over the possession of the flats.
4. The complainants also stated that they were informed by the Promoter in March 2017 that the building Plan/Map of the project was approved in 2016 and hence, allottees were called upon to make payment of additional 10 percent of the cost of the flats in March/April 2017, which was paid by them.
5. The complainants have submitted that thereafter, promoter did neither inform them about the progress of work nor issue any demand letters to them in next two years. Accordingly they wrote collectively to the promoter in May 2019 that since they have not received any demand letters from him though more than two years have passed since they paid the second installment in March/April 2017, they requested the promoter to return /refund the deposited amount as per MoU as the project was not completed on time and they could not wait any further. In June 2019, the promoter agreed to cancel the booking and refund the deposited amount after 90 days, to which the complaints protested and directed him to return the booking amounts without any delay.
6. The Complainants have stated that the promoter has not refunded any amount till date, though he promptly agreed to cancel the bookings. They further stated that after registration of the project with RERA, construction work was going on but the respondent company is not issuing any demand letter for further payment. The Complainants have requested for issuing necessary directions to the promoter for issuing demand letters for further installments as per MoU against their booked flats in the project "Income Tax Residency" of the promoter because Builder/Promoter has not returned back their full booking amount on time and construction work was going on the said project after approval of RERA, Bihar.

## **Response of the Respondent Company**

7. In pursuance to receipt of the complainant petitions, the Authority issued separate notices under section 31 of the Real Estate (Regulation & Development) Act 2016 and Rule 36 of the Bihar Real Estate (Regulation & Development) Rules 2017 to the respondent company to submit their reply/response.
8. The respondent company, in its reply dated 27/08/2020 submitted that they are ready to refund the money but as they have to arrange money for refund to almost 23 persons on the one hand and on the other hand they are bound to complete the project within the stipulated time. In the present situation, it has become very difficult task for them. The respondent further stated that due to COVID19 and lockdown, the Govt of India has announced that various organisations such as finance, schools and other organisations to give relaxation in payment schedule and thus in absence of collection, it is very difficult task for them to refund the money right now. The respondent company further states that during the RERA Bihar & Jharkhand Summit held in Patna, it was observed that the builders are not bound to return the money of the booked flat in the middle of construction work and they may return the money after completion of the project. They however, committed that once the situation becomes normal and the buyers pay the EMI of flats, they will pay the entire due amount in installments after three months.

## **Hearings:**

9. Hearings were held on 08/02/2021, 08/03/2021, 26/03/2021, 08/06/2021, 22/06/2021, 06/08/2021 and 07/09/2021.
10. In course of hearing, the complainants submitted that they are all employees of Indian Railways and had booked flats in 2015 when the respondent company was promoting and advertising the project in the Railways premises/campus and paid Rs 3 lakh each to the respondent company. They claimed that they had made payment to the demand letters sent to them in March 2017 and didn't receive any demand letter thereafter, even when the stipulated construction period of three years from the date of sanction of plan was over. However, the company cancelled the booking of their own on 10/06/2019 and refunded Rs one lakh to some of the complainants. The Bench directed the respondent company to explain the circumstances under which the bookings were cancelled without any reason.
11. On 08/03/2021 learned counsel of the respondent company submitted that originally there was a plan for construction of two blocks – Block A and

Block B but the idea of construction of Block B was dropped due to land dispute. In the circumstances, it would not be possible for them to hand over flats to the complainants. The Bench directed the respondent to refund the amount in installments and first installment must be paid within a week and complete the refund by April, 2021.

12. The Respondent company have refunded the deposited amount to each complainants in installments during March-September 2021. On 7/9/2021 and 24/09/2021, all complainants confirmed that they have received the principal amount paid by them to the promoter but claimed the interest at the rate of 18 percent per annum as provided in the MoU executed by the promoter with the allottees in 2015.

**Issue for Consideration:**

13. It was however observed from the records filed by the promoter with the Authority for registration of the project Income Tax Residency that the development agreements were executed with three landowners by the promoter in 2016 and the building plan of the project was approved in August 2016. The Promoter had sought additional sum from the complainants in March 2017 when they were aware that they would not be able to proceed with the construction of Blocks B & C in the Project. Therefore, this appears to be prima-facie case of breach of trust and fraudulent practices.
14. There is no dispute on the facts of the case. The Respondent company has admitted the execution of MoU in August 2015 and receipt of booking payment from each complainant. They also admitted that due to unavoidable circumstances, there could not proceed with the construction of the Block B & C and as such, they were not able to provide the flats to the complainants. They also accepted that they had not refunded any money to the complainants before they came to the RERA.
15. Income Tax Residency is a RERA Registered project. The promoter applied for registration of the project in May 2018. In their application, they had submitted three development agreements executed with the landowners between January 2016 to April 2016. Their plan was approved in March 2016. As per their application, the project was started in April 2017. The promoter claimed in course of hearing that they had applied for Block A in the project before the Authority. However, they didn't inform their allottees/complainants about these facts that they were not able to construct other Blocks due to dispute on land in March 2017. Instead they issued demand letters to complainants/allottees for payment upto 20 % of the cost in March 2017. It is therefore evident that the promoter had treated the complainants/allottees unfairly and taken the second

installments in March/April 2017 from them knowingly fully well that they wouldn't be able to provide flats to them. Thus, the promoter indulged in unfair practices and used fraudulent means to deceive the allottees. They didn't inform the allottees even in March 2018 when the allottees wrote to them regarding non-receipt of further demand letters, as they were required to take home loans from the banks for making further payments to the promoters.

16. It is also evident that the allottees were alert customers and kept reminding the promoter for issuing demand letters. Further, when they didn't receive any demand letters upto stipulated period of completion of the project as provided in MoU i.e. April 2019, they requested for refund of their deposits. It is therefore evident that allottees were justified in demanding refund in May 2019.

17. On the directions of the Bench, the respondent company have refunded the entire amount of deposit to the complainant in several installments during March- August 2021. The Bench however noted that the respondent company have availed the economic benefits of the deposits of these allottees for about four to six years.

**Order:**

18. The Registration wing of the Authority may consider issuing a show-cause notice for revocation of the registration of the project as the promoter had not got the extension of the sanctioned plan of the project on expiry of validity of the sanctioned plan in 2019, as mandated in the registration certificate issued for the project Income Tax Residency.

19. As the Promoter has availed the economic benefits of the deposits of the complainants for nearly six years, the Bench orders the Respondent company to pay interest at the rate of Marginal cost of Lending Rate (MCLR) of the State Bank of India (SBI) as applicable for three years or more plus two percent to the complainants from the date of deposit to the date of refund within sixty days of the issue of the order, failing which they will have to pay penalty at the rate of Rs 1000 per day for everyday delay under section 63 of the Real Estate (Regulation and Development) Act 2016.

20. The respondent company have admitted that that they had entered into MoU with 23 persons in August 2015 and have not given them their booked flats or refunded the deposits along with interest back to them. The Bench therefore directs the Registration wing of the Authority to not register any new project of the promoter until they refund the deposits along with interest to all consumers from whom they have taken booking

amounts for the flats in the project Income Tax Residency but not given them the booked flats.

21. The promoter will also not sell any flat or make new/fresh booking in the Project Income Tax Residency unless they refund the booking deposits along with interest to all consumers from whom they have taken booking amounts but not given them the booked flats. IG Registration is requested to issue necessary instructions to DSR, Patna, Sub DSR, Danapur, Khagaul, Phulwarisharif etc in this regard.
22. In so far the claim for compensation is concerned, the complainants are at liberty to approach the Adjudicating officer under the section 31/71 of the Real Estate (Regulation and Development) Act 2016.
23. As regards resolution of fraudulent activities/unfair practices of the respondent company is concerned, the complainant may file if they wish so, a criminal case/FIR under relevant sections of IPC and approach competent civil court.

Sd/-

**R.B. Sinha**  
**Member**