

REAL ESTATE REGULATORY AUTHORITY, BIHAR

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

Complaint Case No.: CC/134/2018

Lal Babu Choudhary and Ors.....Complainants

Vs.

M/s Agrani Homes Pvt. Ltd.....Respondent

Present: For Complainants: In Persons

Mr Ashwini Kr Gupta, Advocate

For Respondent : Mr Ankit Kumar, Advocate

Mr Shantanu Kumar, Advocate

Mrs Manisha Singh, Advocate

25/11/2021

O R D E R

1. The complainants- Lal Babu Choudhary along with Shyam Babu Choudhary, Arjun Choudhary, Subhash Choudhary and Anil Kr. Choudhary, all S/o Late Faujdari Choudhary, resident of Village- Ragonath Tola, P.O- Anishabad, P.S- Gardanibagh, Distrcit- Patna, 800002 has filed a complaint petition on 18.12.2018 against M/s Agrani Home Pvt. Ltd. (AHPL) through its MD, Mr. Alok Kumar, S/o Sri Padhum Singh, Resident of Alok Bhawan, Yogipur, Chitragupta Nagar, Kankarbagh, P.S. Patrakar Nagar, Patna under Section 31 of the Real Estate Regulatory (Regulation and Development) Act, 2016 and Rule 36 of the Bihar Real Estate (Regulation and Development) Rules 2017 for breach of agreement, non-provision of services of generator, transformer, lift, fire-fighting facilities, sewerage facilities etc in the Project "IOB Nagar, PHASE-1".

2. The complainants have submitted copies of the Development Agreement, Share Distribution between the land owners and respondent company, photographs of different parts of the building etc along with their complaint petition.

Case of the Petitioners

3. The complainants have submitted that they entered into a registered development agreement on 22nd December 2011 with the developer Sri Alok Kumar MD of AHPL for development of a multi-storied building namely- IOB Nagar Phase-1 and it was agreed that the best available construction material will be used. It was agreed by the parties that the land owners shall have 38% share in the constructed area in the project and rest 62% will fall in share of the developer. It was further agreed by the parties that the construction in question will not contain any adulterated construction material and the developer may maintain the highest degree of caution in construction material so that the construction may last longer.
4. As per paragraph 12 of the registered agreement, it was agreed that the time limit of the construction would be 5 years 6 months along with a grace period of 6 months meaning thereby the construction was supposed to be completed within 6 years of the deed of agreement, i.e. by December 2017. As per the Schedule 1 of registered deed of agreement, 24 flats were allotted to the landowner and 57 flats were allotted to the respondent/developer Mr. Alok Kumar.
5. The Complainants have claimed that despite all fair understanding, the respondent company have violated the terms of registered deed of agreement and have not completed the construction work of the Project. They alleged that the developer has cheated the complainants by selling the flats without fulfilling the agreement, by not using standard quality of

material, by not providing lift, generator, transformer etc and have also not constructed the boundary wall.

6. The complainants have also stated that they have also filed a complaint case (Case No. 325/2018) before the District Consumer Forum, Patna which is pending for consideration in which notice has been issued to the builder/developer.
7. The complainants have prayed for issue of the direction to the respondent to follow the Schedule 2 of the development agreement. They further prayed for providing the provision of parking, lift, fire fighting and railing on the stairs in the portion of each flats as per the agreement. They further prayed for proper measurement of the land owner's share and handover the possession of 23 flats (2 BHK-11 flats and 1 BHK- 12 flats) immediately after completing in all respect. They also prayed for rent amounting Rs. 6000/- for 11 flats (2 BHK) and Rs. 3500/- per month for 12 flat (1 BHK) w.e.f. January 2018 till actual possession of the flats.
8. In pursuance to the receipt of Complaint petition, a notice was issued to the respondent company on 18.12.2018 to furnish their reply within a fortnight.

RESPONSE OF THE RESPONDENT

9. In their response, the respondent counsel stated on 7th January 2019 that the aforesaid project was conceived by the company in pre-RERA period and therefore the claims of the complainants can be dealt under the general law of the land. It is further mentioned that the allegations made by the complainants who are the landlords are completely hoax and the complaint is fit to be rejected as the complainant is not an allottee and hence is not a person aggrieved who can file case under Section 31 of the RERA Act, 2016.

10. It is further mentioned that the complainants have also filed a complaint before the Consumer Forum and therefore the aforesaid complaint is not maintainable.
11. The Respondent further stated that the complainants have already sold 2 flats, 17 flats were on rent and remaining 5 flats were only vacant upon which they have their own locks and the complainants are demanding huge sum from the company.

HEARING

12. Hearings were held on 11/02/2019, 13/03/2019, 08/04/2019, 14/05/2019, 09/08/2019, 16/09/2019, 23/01/2020, 24/02/2020, 05/10/2020, 05/11/2020 & 09/02/2021
13. In course of hearing, the complainants were directed to withdraw their application from the consumer forum before their complaint could be considered by the Bench. The Complainants submitted a letter from the President District Consumer Forum, Patna dated 04.04.2019 through which the Forum had permitted the petitioners to withdraw their application from the District Consumer Forum. The Complainants further filed a petition on 14/05/2019, stating that the developer may be directed to get the aforesaid project registered under RERA, to install the fire extinguisher machine, lift, intercom connection, two new generators as well as transformers. It was further stated that the staircase of the building was unsafe; the developers must manage/complete the grill work as well, complete the plumbing work and make arrangements & allotment of parking area. It was also mentioned that the developer may make arrangements for issues related to water logging and construct boundary wall around the apartment. It is further mentioned to direct the respondent to clear the share of landowners i.e. 38% and developer share i.e. 62% after the measurement of the constructed area of apartment. The respondent repeatedly sought for time.

14. On 16/09/2019, the Bench directed a multi-disciplinary team to inspect the site and submit the report before the Bench. The inquiry report along with the photos were submitted on 06/11/2019, mentioning that the Seven storied apartment was not fully completed and lot of major works i.e. installation of 2nd lift, covering of electric wires, flooring of parking space, water proofing, formation of Resident Welfare Association etc are still to be completed. The report also highlighted that the only lift which has been installed for 96 flats was also not operational, the installed generator was also not working and there was huge problem of sewerage connection as drainage pipes were leaking. Since the RWA has not yet been constituted, it was the responsibility of the promoter to ensure the functioning of the lift and generator under Section 11 (4) (d) of the Act. Due to outbreak of Covid-19 and National Lockdown, the case was next put up on 05/10/2020.
15. On 05/10/2020, the complainant submitted that neither the second lift was installed by then nor fire fighting system has been installed. The Bench directed the respondent to install the 2nd lift, produce relevant proof regarding the payment for installation of lift, and complete the grill work in the stairs area before the next date of hearing. The Bench further directed the respondent to register the project with the Authority
16. On 05/11/2020, the complainants reiterated that the transformer installed was of 200 kilowatt which was of no use for 96 families. They further submitted that lift has not been installed and old generator was installed due to which fire took place. Since no one appeared on behalf of the respondent, the Bench directed to issue show cause as to why proceedings under Section 63 of RERA Act, 2016 be not initiated against the respondent. As per the direction of the Bench, the notice was served to the respondent. On 09/02/2021, again no one appeared on behalf of the respondent. The Bench directed both the parties to file their written brief of submissions.

17. On 23/03/2021, the complainants have filed a petition, reiterating their allegation that the developer has not used standard construction materials in construction of the building, not constructed the boundary wall, no common area work has been done, lift, fire fighting, railing and generator have not been installed. The possession has also not been handed over as yet. The complainants further prayed to direct the respondent to complete the building and flat as per the agreement. They further request for direction to the respondent to compensate the complainants for delivering the incomplete flats, pay the cost with interest which was borne by the complainants to complete their own flats and pay the arrear rent with interest accrued during the period of complaint.

Issues of Consideration

18. There are following issues for consideration before the Bench :

Firstly whether the project IOB Nagar Phase-1 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 in the State of Bihar;

Secondly whether the project was still incomplete and the promoter was required to complete the project by installing 2nd lift, generator, transformer of requisite capacity, fire-fighting facilities etc .

Thirdly whether the complainants were entitled to the compensation as claimed by them due to delay in completion of the project.

19. In so far the first issue is concerned, the development agreement executed between landowners and developer envisaged completion of the project by December 2017. The complainants vehemently claimed repeatedly that the project was still incomplete, citing non-installation of 2nd lift in a seven storied project of 96 flats, transformer of requisite capacity, generator of sufficient capacity, fire fighting facilities etc which were also confirmed by the multi-disciplinary team of the Authority in their inspection conducted in November 2019. The Respondent however claimed in that the complainants have already sold 2 flats, 17 flats were on rent and remaining 5 flats were only vacant upon which they have their own locks, hinting that the project was already completed and possession

of the flats have already been handed over to the allottees. Though these facts were not contradicted by the complainants, the claim of the complainants regarding incomplete facilities has also not been contested by the respondent. The Respondent also did not furnish the completion certificate of the project till date. It is therefore established that the project was an ongoing project on 1.5.2021, the date on which the provisions of the Real Estate (Regulation and Development) Act 2016 came into operation in the State of Bihar and hence required to be registered with the Real Estate Regulatory Authority without further delay.

20. As regards the 2nd issue, the claim of the complainants that the project was still incomplete because of non-installation of 2nd lift in a seven storied project of 96 flats, transformer of requisite capacity, generator of sufficient capacity, fire fighting, sewerage facilities etc were also confirmed the multi-disciplinary team of the Authority in their inspection conducted in November 2019. The Respondent company have also not disputed specifically these shortcomings in the project. Therefore, there is no doubt that these facilities need to be completed and a completion certificate from the competent authority is required to be obtained under section 17 of the Real Estate (Regulation and Development) Act 2016.

21. In so far as third issue is concerned, the complainants have claimed for rent amounting Rs. 6000/- for 11 flats (2 BHK) and Rs. 3500/- per month for 12 flat (1 BHK) w.e.f. January 2018 till actual possession of the flats. It is however also a fact that the complainants were handed over the possession of the flats long ago as the Respondent claimed that the complainants have already sold 2 flats, 17 flats were on rent and remaining 5 flats were only vacant upon which they have their own locks and the complainants are demanding huge sum from the company were not contested by the complainants. However, under the Real Estate (Regulation and Development) Act 2016, the Adjudicating Officer is empowered to deal with the adjudication of compensation under section 71 of the Act.

ORDER

22. The Bench orders the promoter to apply for the registration of the ongoing project IOB Nagar Phase 1 with the Real Estate Regulatory Authority within thirty days of issue of the order, failing which, the Authority may initiate the proceedings under section 59 (1) of the Real Estate (Regulation and Development) Act 2016.

23. The Bench directs the respondent company /promoter to complete the project with assured supply of electricity, fire-fighting and sewerage facilities within three months and obtain the completion certificate of the project from the competent Authority and hand over the common areas of the project to the Association of allottees so that necessary maintenance of the facilities could be undertaken.
24. So far as the claim for compensation is concerned, the complainants may approach, if they so wish, the Adjudicating officer of the Real Estate Regulatory Authority under section 71 of the Real Estate (Regulation and Development) Act 2016.

Sd

**R.B. SINHA
(Member)**