

**REAL ESTATE REGULATORY AUTHORITY (RERA),
BIHAR**

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

Case Nos.CC/14/2018

Kamlesh Kumar.....Complainant

Vs

M/s Kamini Dreams Pvt Ltd.....Respondent

02/01/2021

ORDER

1. Mr Kamlesh Kumar S/o Late Rameshwar Singh, resident of Flat No.103, Laxmi Palace, Arpana Bank Colony, Ram Jaipal Path, PS Rupaspur, Patna, has filed a petition dated 02/06/2018 against M/s Kamini Dreams Home Pvt Ltd through their director Mr Amarendra Narayan Sinha under Section 31 of the Real Estate (Regulation & Development) Act, 2016 for refund of Rs 10,60,000/- deposited by him, along with interest @ 24/% per annum and Rs 10,00,000/- as compensation.

Case of the complainant:

2. The complainant in his petition has stated that he entered into an agreement on 21/12/2013 for purchase of Flat No.103, "Kamini Villa", Arpana Bank Colony, Ram Jaipal Path, PS Rupaspur, Patna, being developed by M/s Kamini Dreams Pvt Ltd at the consideration amount of Rs 27,00,000/- and till date he has paid Rs 7,60,000/-. He claimed that he had supplied builder material to the respondent of Rs 3,00,000/- approx. He therefore

claimed that the total payment made by him was Rs 10,60,000/-. He stated that the respondent company had entered into a development agreement with the land owner which was registered on 18/04/2012 vide Deed No.14294 in the Registrar's Office, Patna. The applicant has prayed for direction to the respondent to receive the rest consideration money and execute the Sale Deed in favour of the applicant and hand over possession of the aforesaid flat to him failing which the Authority should execute the Sale Deed through process of law.

3. The applicant has further stated in his application that alternatively the Authority may direct the respondent company to refund Rs 10,60,000/- deposited by him, along with interest @ 24/% per annum and Rs 10,00,000/- as compensation.

4. In pursuance to the complaint petition, a notice was issued on 15/06/2018 to the respondent company i.e. M/s Kamini Dream Homes Pvt Ltd but no reply was received.

Hearing :

5. The matter was therefore, fixed for hearing. Hearings were held on 13/11/2018, 21.12.2018, 16.1.2019, 15/02/2019, 15/03/2019, 08/05/2019, 09/05/2019, 21/06/2019, 06/08/2019, 18/09/2019, 21/11/2019 and 13/01/2020. Notices were regularly sent to the two Directors at short intervals to appear but nobody appeared on behalf of the respondent company. On 21/12/2018, the Bench decided to issue a notice to the land-owners and present occupant/inhabitant of the flat along with MD of the

Respondent Company for their personal attendance on the next date of hearing on 16/01/2019. Accordingly, the notice was sent on 28/12/2018 to Mr Amarendra Narayan Sinha MD, Mrs Kumari Lalsa, Mrs Arti Devi and Mr Ajay Kumar Sinha.

Response of the Land-owners:

6. On 15/02/2019 one of the land-owners Mrs Arti Devi filed her petition in which she has stated that the land in question was purchased land of Mrs Arti Devi and Mrs Kumari Lalsa and under the provisions of the Bihar Apartment Ownership Act, 2006, they executed a Development Agreement dated 18/04/2013 with M/s Kamini Dream Homes Pvt Ltd through its Director Mr Amrendra Narayan Sinha for construction of a multi-storied building. As per development agreement the builder was to complete the building within three years and six month after approval of MAP from PRDA. The developer did not complete the building within the time and fled away from the scene. Thereafter, the land owners held a meeting with the allottees and decided that payments made by the allottees to the developer according to the agreement will be deducted and the rest agreed money of the allottees will be deposited in the name of land owners and a new developer will be appointed for completion of the remaining construction works. It was also decided in the said meeting that if the amount of construction work goes beyond agreed/collected amount, then the additional required amount will be equally paid by the allottees but the allottees didn't deposit their respective amount due to which construction work was not completed.

Some of the allottees are living unauthorisedly in the building without occupancy certificate. In this connection the land-owners have filed a petition dated 04/05/2018 before the Executive Officer, Nagar Parishad, Danapur.

7. The land owners have further submitted that they have not executed any development agreement in favour of Mr Kamlesh Kumar and if any agreement was executed by the builder/promoter with the applicant, they have no knowledge/information about it.

8. On 06/08/2019 the Bench also directed the complainant Mr Kamlesh Kumar to produce witness/evidence/documents to corroborate his complaint petition against the respondent company but till the last date of hearing, the complainant did not provide any witness/evidence/document before the Bench.

Issues for consideration :

9. The promoter of the respondent company is absconding and traceless. The Respondent company did neither give any response to the notices issued to them nor did the promoter attend any hearing of the Court. There is no doubt that the promoter has indulged in unfair practices and entered into multiple agreements for the same flat. However, as there exists a registered agreement for the same flat for which the complainant has an unregistered agreement only, the Bench is unable to interfere in the ownership of the flat, keeping in view the fact that

the complainant has not been able to produce any evidence or witness in support of his claim.

Order :

10. The Bench orders the respondent company to pay back the deposit of the complainant along with interest at the rate of Marginal Cost of lending rate (MCLR) plus two percent from the date of deposit to the date of refund, within sixty days of the issue of this order.

11. The Respondent Company should also be blacklisted forthwith by the Authority and the promoters are prohibited from doing any business in the real estate sector in the state of Bihar with immediate effect.

Sd
(S.K. Sinha)
Member

Sd
(R.B. Sinha)
Member