

**REAL ESTATE REGULATORY AUTHORITY, BIHAR**  
2<sup>nd</sup> Floor, BSNL Telephone Exchange Building, Patel Nagar, Patna-800014

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

**Case Nos.CC/179/2018**

Kaushalya Devi.....Complainant

Vs

M/s Arunendra Developers Pvt. Ltd.....Respondent

Present: For Complainant: Mr. Punit Kumar, Adv  
For Respondent: Mr. Sumeet Kr Singh, Adv  
Mr. Pankaj Kumar, Director

**22/10/2021**

**Order**

1. Kaushalya Devi w/o Late Jag Narayan Singh, Nishant Kumar Singh and Prashant Kumar Singh, both sons of Late Jag Narayan Singh, all residents of Mohanpur Punaichak, Shastrinagar, Patna-800 023 have filed a complainant petition on 4<sup>th</sup> January, 2019 under section 31 of the Real Estate (Regulation and Development) Act 2016 against M/s Arunendra Developers Pvt. Ltd through their director Mr Pankaj Kumar for early handing over of possession of her share of flats and payment of rent at the rate, as agreed between the complainants and developers from the date of completion of three years from the date of sanction of the plan to the date of possession of the flats.

2. The Complainants have submitted copies of registered agreement for sale executed between husband/father of petitioners and developers dated 04.08.2012, sanctioned plan, agreements dated 15.06.2014, 14.09.2014, 03.01.2018 etc

**Case of the Complainants**

3. In their complaint petition, the complainants have stated that the husband of Kaushalya Devi, Late Jag Narayan Singh had executed a development agreement with the promoter on 4<sup>th</sup> August 2012 for development of a multi-storied building on his five kathas and nineteen dhurs of land (733.12 sq.metres) on 47.5 :52.5 share basis. As per the development agreement, the promoter was required to complete the project within three years (inclusive of

grace period of six months) of the sanction of the building plan. The building plan/Map of the project was approved in April 2014.

4. After the death of Mr Jag Narayan Singh in September 2012, at the instance of well wishers, the complainants entered into supplementary unregistered agreements with the promoter in June/September 2014 in which the share of the complainants and promoters was changed to 50: 50 ratio.

5. The Complainants have further submitted that after the death of her husband, who was father of other two complainants, the developer/promoter exploited the circumstances and developed his share of flats on priority basis whereas the complainant's share area was neglected. When her share of flats was not handed over after completion of three years from the date of sanction of plan, she contacted the developer and asked them to cancel the development agreement in 2017. Thereafter the promoters contacted them and after fresh negotiation, another supplementary agreement was entered into between them in January 2018, under which the promoter agreed to complete the project by December 2018 and pay Rs 2000 per flat per month rent with effect from May 2017.

6. They claimed that even thereafter, the promoter did not give priority to her share of flats and they were not given possession of flats by December 2018, as agreed. They claimed that the project was still incomplete and have prayed for early handing over of possession of their share of flats and payment of rent along with interest on delayed payment. They have also claimed compensation and reimbursement of legal cost.

7. The Authority issued a notice under various sections of the Real Estate (Regulation & Development) Act 2016 and Rule 36 of the Bihar Real Estate (Regulation & Development) Rules 2017 on 5<sup>th</sup> February 2019 to the respondent company through their Director Mr Pankaj Kumar to submit their reply.

#### **Response of the Respondent**

8. The Respondent company in their response dated 28/2/2019 admitted that they had executed a development agreement with Late Jag Narayan Singh on 4.8.2012 but they stated that they started the initial work immediately and got the approval of the competent Authority for a G + 4 Structure building Plan in April 2014. They further stated that due to various reasons like unavailability of sand, stone-chips etc, the work was badly affected. In 2017, introduction of RERA Act also delayed the construction work, which was followed by demonetisation and introduction of GST. All these major events delayed the project. The Respondent also challenged the veracity of other agreements

dated 15.6.2014, 14.9.2014, 3.1.2018 etc on the grounds that they were not registered and hence didn't carry any legal sanctity.

### **Rebuttal from the Complainants**

9. The complainants had rebutted the response from the promoter by stating that all agreements were valid and they were ancillaries and in continuance of the original development agreement executed on 4.8.2012, which was a registered document. They alleged that since the health of their father was not good, the promoters had bad intention since beginning and had put very favourable conditions for themselves in the development agreement. They claimed that they were able to restore some parity through these agreements which were agreed and signed by the promoter or his father, both directors of the respondent company. They prayed for early completion of the project and handing over of their share of flats along with rent from May 2017 till the date of handing over the possession of the flats.

### **Hearing**

10. Hearings were held on 27.3.2019, 8.4.2019, 29.4.2019, 16.5.2019, 24.7.2019, 16.9.2019, 20.12.2019, 3.2.2020, 4.3.2020, 29.1.2021, 23.3.2021, 5.4.2021, 8.7.2021 and 3.9.2021.

11. In course of hearing, Mr. Punit Kumar, Advocate represented the complainants and Mr. Sumeet Kumar Singh, Advocate and Mr Nishant Singh Advocate represented the respondent company.

12. The learned counsel of Petitioners reiterated the complaints mentioned in their petition and stated that though the promoters were required to start the work within three months of sanction of the plan and complete the project within three years and hand over the possession of the share of the flats to the Petitioners, they have not yet completed the project even after six years and have not yet handed over their share of flats to them. They also claimed that though the promoter had agreed to pay rent at the rate Rs2000 per flat monthly from May 2017, they have not yet paid any amount to them as their both cheques of Rs 120000 each given in October 2018 have since bounced on presentation in bank.

13. The Respondent counsel refuted the allegations that they have deliberately delayed the construction of the share of petitioners and stated that they were making all out efforts to complete the project. In June 2021, the complainant counsel submitted that possessions of flats have been handed over in June 2021. He further submitted that though the conditions of flats are not up to the mark but the complainants are somewhat satisfied. He further informed the Bench that they have not received the Completion Certificate as

yet and further submitted that the complainant has received delayed compensation till December 2019 only.

14. The respondent counsel submitted that on 1<sup>st</sup> September, 2021 the complainants gave a list of work to be completed i.e. installation of the generator, pillars to support the bridge in front of main gate, flooring of parking areas has been done partially, lighting in building and painting of building etc and committed to complete all pending works by Dussehra i.e. mid October 2021.

### **Issues for consideration**

15. Jagnarayan Enclave is a RERA registered project and its registration certificate was valid up to 31<sup>st</sup> October, 2019. Though the project was not yet completed till September 2021, the registration of the project has not yet been extended. The plan of the project was sanctioned on 24.04.2014. However, it was not extended in April 2017, on expiry of the validity of the sanctioned Plan.

17. There are two issues claimed by the Petitioners – 1. Early completion of the Project and handing over of their share of flats; 2. Payment of damages/rent with effect from May, 2017 until date of handing over the possession of the flats.

18. Though the promoter cited several reasons for delay in construction of the project like unavailability of sand, stone chips etc for several months, the development agreement provided a grace period of six months in the construction time for meeting such exigencies only.

19. The claims of petitioners for payment of damages/rent with effect from May, 2017 was justified as explained in the agreement between the promoter and complainants in their agreement dated 3.1.2018. However, on account of COVID-19, a reasonable period may be excluded.

20. In the inspection conducted by the RERA legal team on 25<sup>th</sup> March 2021, it was evident that the project was not yet complete and a lot of work remained to be completed. Even in September, 2021, the respondent counsel has committed to install the generator at the earliest. He also agreed to complete the remaining work – strengthening of the approach road in front of the main gate, boundary repair work, flooring of parking areas and painting of building etc for which the builder has promised to complete it by Dussehra.

## **Order**

21. The Bench orders the respondent company to complete the project and hand over the completion certificate to the complainants/allottees within a month, as required under section 17 of the Act. Further, they are required to obtain the extension of registration certificate from RERA until the date of completion i.e. October 2021. The Authority may initiate necessary proceedings under section 61 for contravening the provisions of section 17 if the promoter fails to comply them within the stipulated period.

22. The Respondent company is directed to pay the rent as agreed between the promoter and complainants in their agreement executed in January 2018, from May 2017 to June 2021 after excluding a period of 12 months on account of COVID-19/other issues and adjustment of payment already made till date.

23. As regards compensation due to physical and mental harassment, the complainants, if he so wishes, may approach the Adjudicating officer under section 31/71 of the Real Estate (Regulation and Development) Act 2016.

24. The Respondent company is also directed to pay legal cost of Rs 20,000 to the complainants.

**Sd/-  
R.B. Sinha  
Member**