

REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR

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

RERA Case Nos.CC/206/2019

Yadunandan Prasad Singh.....Complainant

Vs

M/s Adharshila Housing Buildcon Pvt Ltd.....Respondent

RERA Case No CC/207/2019

Anupam Kumar.....Complainant

Vs

M/s Adharshila Housing Buildcon Pvt Ltd.....Respondent

Present :

For the Complainants : Mr Shyam Nandan Thakur Adv

For the Respondents : Mr Akhileswar Pd Singh Adv

13/10/2020

O R D E R

1. Mr Yadu Nandan Singh S/o Mr Sundar Prasad Singh, and Mr Anupam Kumar S/o Mr Revati Raman Prasad Singh, both residents of Vill-Athri PS RunniSaidpur, District Sitamarhi have each filed an identical complaint petition on 18th January 2019 under Section 31 of the Real Estate (Regulation and Development) Act 2016 against M/s Adharshila Housing Buildcon Pvt Ltd, Yadunandan Complex, Ahiyapur, Muzaffarpur for handing over possession of 2 BHK Simplex Bungalows with all facilities as per assignment agreement and payment of arrears of the rent of bungalow at market rate with interest at the rate of 18 percent per annum from the day of agreed hand over of the possession i.e. since 18th January 2016.

2. Both complainants have submitted the copies of money receipts of the amount paid by them along with copy of the assignment agreement executed by them with the Developer/Contractor.

Case of the Complainants :

3. In identical Petitions, the complainants have stated that they each had booked a bungalow (2 BHK simplex) measuring super built up area of 1000 sq ft under “Central City” project run by M/s Adharshila Housing Buildcon Pvt Ltd, Yadunandan Complex, Ahiyapur, Muzaffarpur for which the complainants handed over their plots of land through sale deed dated 26/11/2013 and entered into an “Assignment Agreement” on 13/12/2013 for construction of simplex bungalow on a total cost of Rs 14,99,000/- (Rupees fourteen lakhs ninety nine thousand only) excluding Service Tax and legal expenses to be completed within 18 to 24 months from the date of execution of the Agreement for Sale Deed. The developer was to hand over the bungalow on 18/01/2016. The complainants further submitted that even after five years, the developer has only constructed the concrete structure of the said simplex bungalow. The complainants have claimed that they have paid sum of Rs 12,76,264/- in five installments through cheques including the service tax and legal expenses.
4. Since the respondent company did not fulfill its commitment within the stipulated period, the complainants sent legal notice to all Directors of the respondent company on 06/10/2018 which was replied by the respondent company on 22/10/2018 stating therein that the construction work would be completed and bungalows would be handed over to them within 120 days.
5. In pursuance to the filing of petitions, a notice was sent to the respondent company on 15/02/2019 under the provisions of the Real Estate (Regulation & Development) Act, 2016 and Rule 36 of the Bihar Real Estate (Regulation & Development) Rules, 2017 seeking their reply/response by 28/02/2019.

Response of the Respondent Company :

6. A reply on affidavit dated 15/05/2019 was filed on behalf of the respondent company in which the respondent company stated that they were committed to complete the construction of the bungalow but due to some land disputes and obstructions created by anti social elements, the project could not be completed on time. Moreover, some disputes cropped up among the management of the respondent company leading to criminal cases causing heavy financial losses to the company. Further, the complainants have not paid the due balance amount in time which resulted into delay in the project. The Respondent claimed that their management was in touch with the customers and they have been requested to see for themselves the completed structure and suggest any changes/modification in the finishing work for which they sought time which resulted in giving possession to them.
7. The respondent company has further submitted that almost 34 customers have booked 2 BHK bungalow but none of them have paid in full, the cost of the bungalow due to which the delay was caused in completion of this big project and the outer finishing may take some time. The respondent company was ready to submit all documents relating to picture and possession.

Rejoinder of the Complainants :

8. The complainants in their rejoinder filed on 21/08/2019 have submitted that they were always ready to take possession but the respondent company was not able to give possession till date due to the fact that the construction was not complete and bungalow was not ready for possession since they have not yet done any work relating to road, drainage, boundary, common area, electricity etc. They further submitted that they have paid the principal amount i.e. Rs 11,60,408/- in five installments from 21/08/2013 to 11/05/2014. Additionally, Rs 35,856/- as Service Tax and Rs 80,000/- being the legal cost were also paid. The complainants claimed interest on their deposited money and arrears of rent from 18/01/2016 till date @ Rs 10,000/- per month.

Hearings :

9. Hearings were held on 07/05/2019, 15/05/2019, 21/08/2019, 19/09/2019, 25/10/2019, 14/11/2019 and 08/01/2019. In course of hearing, the promoter was directed to submit the application for registration of the Project with the Authority, which was done by them in May 2019. The Bench further directed the promoter to complete the construction of the building at the earliest and hand over the bungalows to the complainants without any further delay.
10. On 08/01/2020 the complainants filed supplementary affidavit stating therein that they have taken possession of the bungalow on 14/12/2019 but respondent company has not handed over them the original document of the sale deed, mutation and revenue receipt to them. They have further claimed that as per agreement, they were entitled to get arrears of rent and interest of Rs 10,23,712/- and legal expenses of Rs 45,000/- from the respondent company.

Issues for consideration :

11. Since possession of the bungalows has been handed over to the complainants, there are two issues now for consideration i.e. Firstly whether there was a registered Development agreement between both parties or only an unregistered assignment agreement done on Rs 1000 non-judicial stamp paper as a contractor/vendor. Secondly, it was to be examined whether the complainants were entitled to get compensation of arrear rent, interest and legal expenses as claimed by the complainants.
12. Records show that these are not cases of registered development agreement between a developer and land-owner but only an assignment of work between contractor/vendor or vendee based on unregistered agreement on Rs 1000 non-judicial stamp paper. As each such assignment agreement was in respect of construction of a separate building on a plot of land of 1000sqft with flexible building plans as per suitability of individual requirements, the Bench is of considered view that such individual contractual work was not covered under the ambit of the Real Estate (Regulation and development) act 2016.

13. In the Agreement executed between the complainants and developer, there was parity on the rate of interest payable by either complainant or developer if any of them delay in discharging their responsibility. The total cost of the 2 BHK Bunglow inclusive of land cost was Rs14.99 lakh. It is a matter of fact that land was registered in the name of complainants in 2013 itself. Therefore part of the contract was executed in 2013 itself when both complainants had paid Rs 5.98 lakhs only. The Complainants had thereafter paid a sum of Rs 6.00 lakhs in between December 2013 to January 2016. Had the Bldg been completed in January 2016, the Complainants would have paid Rs 3 lakh to the developer by then. As the Bldg was not complete, the developer didn't ask for payment for additional 3 lakh. Further it is an accepted fact that the structure of the Bldg was ready by January 2016, other finishing work like door, window, kitchen and washrooms fitting and fixtures, Paining, electrical, water connection, sewerage , road etc remained to be done. Thus it was evident that the payment of 12 lakh made by the complainants till January 2016 was utilized in procurement of land, execution of conveyance deed and construction of structure of the Bldg of the Bunglow.

14. The Developer has cited various reasons for delay including conflict amongst top management of the company. As the work has been primarily completed by the Developer and possession of the bunglow has been handed over to the complainants in December 2019, the complainants have already availed the benefits of keeping Rs 3 lakhs with them for nearly four years as this money was to be given in 2015-16 to the developer to enable him to complete the Bldg by January 2016. This requirement of money has been funded by the Developer from their own funds to complete the building.

Order :

15. The Bench noted that the possession of 2 BHK Bunglow has already been handed over to the complainants. The Bench also notes that the registration of the conveyance deed of the land to the complainants was done in November 2013 itself prior to the execution of Assignment agreement. Hence the complainants are directed to make payment of the balance amount of the cost to the developer/contractor within thirty days of the issue of this letter and the Developer/contractor is directed to hand

over all land related documents, sanctioned /lay out plans etc to the complainants at the time of receiving the balance amount.

16. As regards the claims of interest, arrears of rent at market rate etc from the Developer/contractor arising out of unregistered assignment agreement for the delay in handing over the bungalow, the complainants may approach the competent civil authorities/courts for relief.

Sd
(S.K. Sinha)
Member

Sd
(R.B. Sinha)
Member