

REAL ESTATE REGULATORY AUTHORITY, BIHAR

2nd Floor, BSNL Telephone Exchange Building, Patel Nagar, Patna-800023.

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

Case No. CC/221/2019

Jagannath Mahto.....Complainants

Vs

M/s Varanya Construction Pvt Ltd.....Respondent

Projects: Sona Sanat Apartment

Present: For Complainants: Mr Ray Saurabh Nath, Advocate

For Respondent: Mr Sidhartha Prasad, Advocate

Ms Namita Kumari, Ex Director

Ms Ananya Bharti, Director

19/11/2021

O R D E R

1. Shri Jagannath Mahto, a resident of Yogia Tola, Yarpur, Gardanibagh, Patna-800002 has filed a complaint petition on 29/01/2019 against the respondent company M/s Varanya Construction Pvt Ltd through their director Mrs Namita Kumari under section 31 of the Real Estate (Regulation and Development) Act 2016 for handing over the possession of flat in Sona Sanat Apartment situated at Jakkanpur, Patna booked by him in May 2013 He has also submitted the copies of the money receipts issued by the respondent company, along with his application.

Case of the Complainants:

2. The complainant in his complaint petition has submitted that he had booked a flat on a consideration amount of Rs 35,26,000/- @ Rs 2725/- per sqft in the project Sona Sanat Apartment. He stated that at the time of execution of agreement for sale on 24/05/2013, he deposited Rs 8,85,151/- and later on Rs 65,000/- and thus made payment of total amount of Rs 9,50,000/-. As per the agreement, the flat was to be handed over within 14 months with parking area, transformer, generator, lift and intercom without any extra cost. He claimed that later on 18/01/2018, without constructing the said apartment, the respondent company sent a demand notice to deposit rest of the consideration money within a week otherwise the respondent would sell the flat to another buyer which was replied on 25/01/2018 and 08/02/2018 stating that the respondent company has already taken more than 4 years to start construction of the

apartment and requested the respondent to provide necessary documents to enable him to take a home loan from a bank for making further payment. The complainant further submitted that the respondent has not yet completed the apartment as the doors, windows, bath room fittings, kitchen, boundary wall, lift and water supply work have not been done. He requested for direction to the respondent company to hand over the said flat for which he is ready to pay the remaining amount after taking loan, to pay rent to the complainant @ Rs 8000/- per month since August, 2014, car parking rent @ Rs 700/- per month with interest under Section 18 of the RERA Act. He further requested for direction to the respondent company not to execute any agreement for sale for the flat till final decision of the case.

3. A notice dated 15/02/2019 under Section 3, 12, 13, 18 and 19 of the Real Estate (Regulation & Development) Act 2016 and Rules 36 of the Bihar Real Estate (Regulation & Development) Act 2017 was issued to the respondent company M/s Varanya Construction Pvt Ltd to submit its reply by 28/02/2019.

Response of the Respondent Company:

4. The respondent company did not file its reply and therefore, the matter was fixed for hearing on 07/05/2019

Hearings:

5. Hearings were held on 7.5.2019, 9.8.2019, 17.9.2019, 21.10.2019, 18.1.2021, 9.2.2021, 09.03.2021, 23.3.2021, 02/08/2021, 03/09/2021 and 10/09/2021.
6. In course of hearing, the complainant counsel submitted that earlier there was an agreement with the respondent for flat no. 301 but the builder sold the said flat to third party without the complainant's consent. Later the respondent agreed upon giving flat no. 201 to the complainant. The complainant counsel requested that his client has already made payment of more than 25 percent of the cost of the flat and intend to pay the remaining amount after taking a home loan. He requested the Bench to direct the respondent to make available the requisite documents relating to the flat so that he could take a loan from any bank. The Bench directed the respondent to provide the requisite documents to the complainant to enable him to obtain the home loan and make the payment. The Bench also directed both parties to settle the dispute between the parties amicably.
7. On 21/10/2019 the complainant filed an injunction petition praying therein for an interim order for restraining the respondent from

execution of any agreement/sale deed with another person for the booked flat, as the respondent was doing finishing work in the flat with intention to sale it, until the pendency of the proceedings. On 31/10/2019, after hearing the parties, the Bench deemed it necessary to issue an interim order under Section 36 to be read with Section 34(f) and Section 37 of the RERA Act restraining the respondent company and its Directors from entering into any conveyance deed/sale deed etc of the booked flat with any third person until further orders. The IG Registration was also requested to direct all DSRs/Sub-Registrar, Patna not to register any property/ house/ apartment etc of the respondent company until further orders.

8. On 06/12/2019 Mrs Namita Kumar, Director of the respondent company filed a written statement stating therein that initially the complainant booked flat No.401 vide agreement dated 17/04/2012 at total cost of Rs 35,33,000/- for which he made initial payment of Rs 3,00,151/- but later changed his mind for Flat No.301 for which agreement was signed on 24/05/2013 towards total cost of Rs 35,26,000/- and paid Rs 4,85,000/- but inadvertently the payment receipts were issued against Flat No.401. The complainant again changed his mind for Flat No.201 and entered into another agreement on 18/11/2013 and therefore, the entire payment of Rs 8,85,151/- was treated as advance against Flat No.201 and thus all earlier agreements were superseded. Although the complainant is disputing the existence of first and third agreement for Flat No.401 and 201 but at best the complainant can dispute the third agreement because after signing the first agreement, the complainant himself has accepted the payment receipt for Flat No.401 without any demur.
9. The respondent further stated that the complainant has paid only two installments due to which the construction was delayed and in spite of verbal requests and notice dated 18/01/2018 the remaining installments were not paid by the complainant after signing the second agreement on 24/05/2013 and desired possession of the flat without paying any more amount which is clear violation of the terms and conditions of the agreement as also violation of section 19(6) of the RERA Act. Since the complainant failed to make any payment after the second installment, the respondent was left with no option but to invoke the clause for default and take possession of the flat and return the advance money.
10. On the direction of the Bench, an agreement for sale was executed in February 2021 and the complainant made full payment for the flat in March 2021. In November 2021, the promoter informed the Bench that she had executed the registration of the conveyance

deed of the flat no-201 and handed over the possession of the flat to the complainant. She further admitted that she has received the payment on account of GST and now there were no dues against the complainant.

Issue for Consideration:

11. Sona Sanat Apartment is a RERA Registered project. The registration certificate was valid up to 30.04.2019. In November 2021, the director of the company has informed the Authority that she has handed over the keys of the flat no 201 in the project to the complainant/allottee after registration of the conveyance deeds of the flat. She has also confirmed that the allottee has made full payment of consideration amount of the flat along with GST to the respondent company and there were no dues remaining with the complainant/allottee.

Order:

12. As the possession of the flat has already been handed over to the complainant/allottee, the Bench directs the promoter to submit the completion certificate (CC)/Occupancy Certificate (OC) of the project from the competent authority to the Real Estate Regulatory Authority within thirty days of issue of this order.
13. The Bench also directs the promoter to deposit a copy of the receipt of GST deposited by the respondent company with the Government authorities within thirty days of issue of the order.
14. As regards the compensation, the complainant may, if he so wishes, approach the Adjudicating officer of the Authority under section 31/71 of the Real Estate (Regulation and Development) Act, 2016.

(R.B. Sinha)
Member