

# REAL ESTATE REGULATORY AUTHORITY, BIHAR

BSNL Telephone Exchange Building, Patel Nagar, Patna-800014.

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

CC No.CC/427/2019

**Rajnish Kumar.....Complainant**

**Vs**

**M/s Adharshila Housing BuildconPvt Ltd.....Respondent**

**Project: Central City Phase I**

**Present: For Complainants: Mr S N Thakur, Advocate**  
**For Respondent : Mr A P Singh, Advocate**

25/11/2021

## ORDER

1. Mr Rajnish Kumar, a resident of Vill-MajoshDih, PS-Bachwara, Dist-Begusarai-851111 has filed a complaint petition on 27/06/2019 against the respondent company M/s Adharshila Housing BuildconPvt Ltd through their directors Mr Sanjay Kumar and Mr Anup Kumar under Section 31 of the Real Estate (Regulation and Development) Act 2016 for refund of the booking amount of Rs 14,24,500/- for a Bungalow in central city Project phase 1 located at Muzzaffarpur along with 18 percent interest, compensation and litigation cost.

### Case of the Complainant:

2. The complainant in his complaint petition has stated that he had executed an agreement on 30/09/2015 and booked a bungalow in the Central City Phase I Project of M/s Adharshila Housing Buildcon Pvt Ltd which was to be completed within 18 to 24 months i.e. by September 2017 and paid Rs 14,24,500/- in installments through housing loan but the project has not been completed and he was paying loan premium apart from managing rental shelter for his family. He claimed that whenever he makes enquiry about the project, he was given lame excuses for the delay in last two years. He has therefore requested for refund of the booking amount of Rs 14,24,500/- for a Bungalow in central city Project phase 1 located at Muzzaffarpur along with 18 percent interest, compensation and litigation cost.
3. As per the assignment agreement, the developer was to retain the possession of the land along with the building thereon till the realization of their entire dues including compensation @ 1.5 percent per month on the installments in arrears and if the assigned work is not completed within 24

months of the date of sale deed/assignment agreement i.e. 30.09.2015, developer was required to pay interest @ 1.5% per month of the total payment received from the complainant to the allottee.

4. The Complainant has submitted copies of absolute sale deed of land and assignment agreement dated 30<sup>th</sup> September 2015, money receipts issued by the respondent company, rental agreement, legal notice etc
5. The Authority issued a notice on 17/07/2019 under Section 03, 12, 18 and 19 of the Real Estate (Regulation & Development) Act 2016 and Rule 36 of the Bihar Real Estate (Regulation & Development) Rules 2017 to the respondent company to file its reply by 31/07/2019. However, the respondent company did not file its reply to the aforesaid notice. Hence, the matter was fixed for hearing on 30/10/2019.

**Hearing:**

6. Hearings were held in the case on 30/10/2019, 11/12/2019, 23/12/2019, 28/01/2020, 27/02/2020, 18/09/2020, 13/10/2020 and 05/11/2020.
7. In course of hearing, learned counsel of the respondent company filed their reply on 30/10/2019 in which it was stated that they were constructing 35 buildings in the project in which the complainant also booked a flat on a consideration amount of Rs 17,92,975/- which included the development charge of Rs 90,000/- plus service tax of Rs 48,502/-. The complainant has paid a total of Rs 14,24,797/- and Rs 3,68,178/- is still due. Since more money has been spent on construction of the bungalow than what the complainant had paid, the respondent issued a demand letter for payment of at least 50% of the due amount from the complainant to complete the work and give possession but the complainant refused payment of the due amount. The respondent company has further submitted that on demand of the complainant, the respondent company has refunded Rs 3,50,000/- out of bank loan on the condition that the complainant will deposit the same afterwards but the same has not yet been refunded by him.
8. The respondent company further states that as per agreement, the complainant was required to pay Rs 7,51,788/- after one month but after 16 months he could pay a sum of Rs 5,74,500/- only and Rs 1,54,780/- was still due but even after that the respondent company have executed the sale deed of the plot of land in favour of the complainant. The respondent company further submitted that the complainant being an army man, is continuously threatening the respondent company of forcibly occupying the bungalow and to fulfil his nefarious designs and vested interests and not intended to deposit the due amount in spite of several

requests and pursuance. Now since the bungalow has been constructed and work completed, the complainant be asked to pay the full amount.

9. Learned counsel of the complainant filed a petition on 11/12/2019 stating therein that he booked the bungalow on an agreed sum of Rs 16,54,470/- which was to be paid in 5 installments. The complainant further stated that he took housing loan of Rs 14,60,000/- from LIC Housing Finance Co. and till 06/07/2016 he paid Rs 17,74,500/- to the respondent. Later on, on two occasions the respondent refunded the excess amount of Rs 3,50,000/- to the complainant and the rest amount of Rs 14,24,500/- was adjusted towards the assignment cost of Rs 16,54,470/- fixed as per the agreement. He further stated that due to delay in completion of the project, he was living in a rented house @ Rs 11,500/- per month besides LIC Housing Finance Co. was also charging interest on the disputed loan amount. He further stated that the respondent is bound to pay compensation @ 1.5% per month on total amount paid with respect to the simplex in question as the assignment agreement clearly states that if the assigned work is not completed within 24 months of the date of sale deed/assignment agreement, developer is bound to pay @ 1.5% per month of the total payment received from the complainant. He further submitted that the respondent in their counter replies is claiming Rs 98,000/- as development charge which was not part of the assignment agreement, so the complainant is not bound to pay the same. He pointed out that only Rs 2,78,475/- is due which is still in the loan account of the complainant, which has to be disbursed by LIC Housing Finance Co. on production of progress report by the respondent.
10. On 27/02/2020 learned counsel of the respondent company stated that work on the simplex bungalow of the complainant has been completed on which the Bench directed the complainant to take possession and pay the remaining amount to the respondent. On 19/03/2020 the respondent filed a petition requesting therein that complainant may be directed to pay the due amount of Rs 4,01,175/- as the possession of the building has been handed over to him.
11. On 17/09/2020 the complainant filed supplementary affidavit stating therein that there are several works yet to be completed by the respondent. He further claimed interest and compensation. On 18/09/2020 the Bench directed the respondent to file rejoinder to the supplementary affidavit filed by the complainant.
12. On 13/10/2020 the Bench directed both the parties to submit their written notes arguments. On 05/11/2020 learned counsel of the respondent

company submitted that the complainant is getting greedy and has not even refunded the money which paid to him by mistake.

### **Issue for Consideration**

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

Firstly whether the project 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 inordinately delayed and the promoter was required to pay compensation for inordinate delay in completion of the project.

Thirdly whether the complainant was entitled to the compensation as claimed by him due to delay in completion of the project.

14. As regards the first issue, it is an established fact that the project was an ongoing project as on 1.5.2017. In their application for registration of the project Central City Phase I, Muzaffarpur, the respondent company has applied for registration of the project as an ongoing project. The Promoter has claimed that the project was commenced on 21.03.2013 and expected to be completed on 27.12.2023. Thus it is proved beyond doubt that the project was an ongoing project as 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. The Project has however not been registered as yet.

15. So far as 2<sup>nd</sup> issue is concerned, the promoter has claimed in their application for registration submitted in 2019 that the project was estimated to be completed in December 2023, yet in the assignment agreement executed on 30<sup>th</sup> September 2015, the promoter had agreed to complete the building within 18 to 24 months of the date of agreement. However, the bungalow was handed over to the complainant/allottee in March 2020.

16. The Respondent Company claimed that the delay happened because the complainant didn't make the payment against the demand letter issued to him whereas the complainant claimed that since there was delay in handing over of the bungalow to him, he had been incurring loss on account of payment of EMI and rent for hired accommodation. As per section 19 of the Act, every allottee is duty bound to make payment of the installments in time. Since the complainant/allottee has not made the payment of the full cost of the flat/bungalow, he is required to make

payment of balance amount of the consideration amount without any further delay.

17. As regards the third issue, the Adjudicating officer of the Real Estate Regulatory Authority is empowered to adjudicate and adjudge the amount of compensation under section 71 of the Act.

**Order :**

18. As under the direction of the Bench, the respondent company has handed over the possession of the bungalow to the complainant in March 2020, the Bench orders the complainant/allottee to make the payment of remaining consideration amount of the flat/bungalow as per the agreement, along with interest at the rate of Marginal Cost of Lending Rates (MCLR) of the State Bank of India as on the date of issue of the order, from the date of issue of the demand letter to the date of payment, within sixty days of issue of the order.
19. After receipt of the full consideration amount, the respondent company will ensure that all structural defects, any other defect in workmanship, quality or provision of service etc pointed out by the complainant will be rectified within a month.
20. So far as the claim for compensation is concerned, the complainant may approach, if he so wishes, 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**