

# **REAL ESTATE REGULATORY AUTHORITY, BIHAR**

2<sup>nd</sup> Floor, BSNL Telephone Exchange Building, Patel Nagar, Patna-800014

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

**Case No.CC/45/2021**

**Satyendra Kumar Gupta.....Complainants**

**Vs**

**M/s Ghar Lakshmi BuildconPvt Ltd.....Respondent**

**Projects: Income Tax Residency**

**Present: For Complainants: In person**

**For Respondent: Mr Ishteyaque Hussain, Advocate**

**18/10/2021**

## **ORDER**

1. Mr Satyendra Kumar Gupta, a resident of Vill& PO GanjBharsara, Dinara, Rohtas-802218 has filed a complaint petition under section 31 of the Real Estate (Regulation and Development) Act 2016 against M/s Ghar Lakshmi Buildcon Pvt Ltd through their director Mr Rahul Kumar for direction to the respondent company to execute a registered agreement for sale for the Flat No-808 on the eighth floor in A Block of the project Income Tax Residency, a RERA registered project of the promoter as he has already paid 80 percent of the cost of the flat in 2018.
2. He has submitted copies of the bank's RTGS/cash receipts for transfer and credit to the account of the respondent company along with document of the promoter duly signed by the MD of the company.

### **Case of the Complainant:**

3. The complainant Mr Satyendra Kumr Gupta, in his complaint petition filed on 14/01/2021 has submitted that he had booked a flat No. 808 of 1200 sq ft on the eighth floor of A Block in the project Income Tax Residency on the consideration amount of Rs 15 lakh out of which Rs 12 lakh has been paid to the respondent company. This RERA approved project was to be completed with the extended deadline of 30/10/2019 but the project is still incomplete. He further submitted that as per RERA conditions, a fresh agreement is required to be made and all future deposits has to be submitted into RERA linked account only which he is ready to pay as per RERA guidelines but Mr Rahul Kumar, Director of the respondent company is not entering into the agreement. He requested for stoppage of

further registration of the sale of agreement of remaining flats till his grievances are redressed and resolved.

4. The Authority issued a notice on 3/02/2021 under Section 31 of the Real Estate (Regulation & Development) Act 2016 and Rule 36 of the Bihar Real Estate (Regulation & Development) 2017 to the respondent company to submit reply by 19/02/2020.

**Response of the Respondent Company:**

5. The respondent company did not submit any reply in the stipulate time. Accordingly, both parties were called for hearing..

**Hearings:**

6. Hearings were held on 08/06/2021, 22/06/2021 and 06/08/2021. In course of hearing the complainant represented himself while the respondent company was represented by Mr Ishteyaque Hussain, Advocate and Mr Manoj Kumar, Director.
7. On 08/06/2021, the complainant submitted that he paid Rs 12 lakh for a 3 BHK flat on 8<sup>th</sup> floor in the project Income Tax Residency in 2017-18 but the respondent company has not yet executed the registered agreement. The Bench directed the respondent to execute the registered agreement before the next date of hearing and further directed to file their reply in the matter as they have not furnished any response to the notice sent earlier. On 22/06/2021 the complainant submitted that the respondent has not complied with the last order and the agreement has not yet been executed. The Bench directed the respondent to execute the agreement within a week.
8. On 06/08/2021 the complainant once again stated that the respondent has not yet executed the sale agreement in spite of orders of the Authority. Respondent company through their director submitted the response on 5.8.2021 in which they admitted the receipt of the payment of Rs 12 lakh from the complainant and stated that the complainant was a relative of one of the previous directors of the Company Mr Gautam kumar and he had done the booking for the flat. They further stated that the complainant was not very ready to take the same flat earlier and hence the then Director Mr Gautam Kumar had agreed to shift him to 5th floor as he had booked the flat without ascertaining the availability of the flat but after sometime, the said director left the company. Thereafter, the complainant approached the respondent company for cancellation of the booking of the flat and refund, to which the respondent readily agreed but that didn't materialize. Thereafter, at their instance, the complainant/allottee was offered another

flat ( Flat No-501 on 5<sup>th</sup> floor in B Block of another project namely Ghar Laxmi Milestone but this proposal also didn't fructify. The respondent company however didn't produce any convincing evidence in the favour of their statement. The respondent company has expressed its willingness to execute the registered agreement for sale for a fifth floor flat in the project. Ghar Lakshmi Milestone.

9. The complainant rebutted the arguments of the complainants and stated that it was immaterial whether the booking was made by one or the other director. So far as the booking was made by a Director of the company, it should be honored. He however produced the document in which the booking was accepted by the MD of the company rather than the other director, Mr Gautam Kumar. He insisted that he should be given a flat in the project Income Tax Residency only. He prayed for direction to the respondent company for execution of the registered agreement for sale of flat no-808 in the project Income Tax Residency without any delay.

**Issue for Consideration:**

10. Income Tax Residency is a RERA Registered Project. The cost of the project estimated by the promoter themselves is Rs 9.44 crore as is evident from the application of the project submitted by the promoter before the Authority. As per the application for registration of the project, the project was commenced on 2.4.2017. The registration certificate of the project was valid up to 31<sup>st</sup> December 2021.
11. As the Respondent company has admitted the receipt of the booking amount of Rs 12 lakhs, they are duty bound to execute the registered agreement for sale with the allottee, particularly when they have received 80 percent of the cost of the flat. Incidentally, section 13 of the Real Estate ( Regulation and Development) Act 2016 states that a promoter shall not accept a sum more than ten percent of the cost of the flat as an advance payment from a person without first entering into a written agreement for sale with such person and register the said agreement for sale under any law for the time being in force. The Respondent company has already contravened the section 13 of the Act and are liable for penalty under section 61 of the Act.

**Order:**

12. The Bench therefore orders the respondent company to execute a registered agreement for sale for the flat in the project Income Tax Residency with the allottee within 30 days of issue of this order, failing which the Authority may initiate proceedings under section 61 of the Act for contravention of the section 13 of the Act under which the promoter

may be liable to a penalty which may extend up to five percent of the estimated cost of the project.

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