

REAL ESTATE REGULATORY AUTHORITY, BIHAR
2nd Floor, BSNL Exchange Bldg, Patel Nagar, Patna-800 023

Before the Bench of Mr R.B. Sinha, Hon'ble Member

Case No.CC/500/2019

Manoj Kumar Mehta.....Complainant

Vs

M/s Universal Developers and Infrastructures.....Respondent

Present: For Complainant: In Person

Mr Pawan Kumar Sinha, Advocate

For Respondent : Mr Sharad Shekhar Pathak, Advocate

22/10/2021

O R D E R

1. Manoj Kumar Mehta, a resident of New Mehta Lodge, Kurjipur, Kurji, Patna has filed a complaint petition on 01.08.2019 under section 31 of the Real Estate (Regulation and Development) Act 2016 against M/s Universal Developers and Infrastructures, a partnership firm, located at F-30, Pushpanjali Enclave, Boring Road, Patna through its Partner Mr Gautam Kanodia for handing over possession of his share of flat along with his dues for the period of inordinate delay in handing over the possession of his share of flats.
2. He has submitted copies of the registered development agreement executed in July 2010, legal notices sent to the respondent firm, supplementary development agreement etc.

Case of the Complainants

3. In his complaint petition, the complainant has stated that he had entered into a development agreement with the promoter M/s Universal Developers and Infrastructures on 27th March 2010 for development of a

residential cum-commercial multistoried building on sharing basis. As per the development agreement, 47 percent of the constructed area was to be handed over to the landowner whereas 53 percent of the constructed area would be the share of the developer.

4. As per the registered development agreement, the project was to be completed within a period of three years with the grace period of six months from the date of approval of the sanctioned plan or date of handing over the possession of land to the promoter, whichever is later. He claimed that since the possession of the land was handed over in 2010 and building plan was approved by the empanelled architect of the Patna Municipal Corporation (PMC) on 10.11.2011, the project was therefore required to be completed by 09th May 2015.
5. In his application, the complainant has further stated that since the developer did not hand over his share of shops/flats within stipulated period, he sent a legal notice to the developers in January 2016 as to why the development agreement may not be cancelled as the developer had not given his share of constructed area to him in agreed time period. Thereafter, the developers requested for extension of the development agreement in March 2016 and accordingly a supplementary agreement was executed between the complainant/allottee and the developer extending the completion period up to September 2017 on payment of Rs 7.50 lakh in six quarterly installments. Thereafter, another supplementary agreement was executed between the complainant/allottee and the developer extending the completion period up to September 2018.
6. The Complainant has claimed that inspite of two extensions, the project has not been completed by the promoter and his share has not been allotted. He has requested for early completion of the project and handing over of possession of his share of flats/shops.
7. The complainant has stated that he is a 70 years old senior citizen and has undergone kidney transplant at Vellore and has to incur huge medical expenses every month. He claimed that there were two shops and several

rooms on the plot earlier from which he was earning Rs 6-7 lakhs every month. Now his entire source of income is lost. He prayed for early possession of his share of flats/shops and interest/rent/compensation for the period of inordinate delay in completion of the project.

8. The Authority issued a notice to the respondent firm under different sections of the Real Estate (Regulation & Development) Act 2016 and Rule 36 of the Bihar Real Estate (Regulation & Development) Rules 2017, directing the respondent to submit their reply/response.

Response of the Respondent Firm

9. The Respondent firm did not submit any response to the notice issued by the Authority. Accordingly, the Bench fixed the date for hearing.

Hearings

10. Hearings were held on 26.02.2020, 11.01.2021 and 1.2.2021. In course of hearing, Mr. Pawan Kr. Sinha Advocate represented the complainant and Mr. Sharad Shekhar Pathak was the respondent counsel. The respondent counsel submitted in February 2021 that an agreement between both parties was executed one and a half years ago wherein it was admitted that if there will be any delay in giving the possession, then in that case the compensation will be provided as a rent. He further submitted that the promoter was paying it throughout the year and as of now the possession has been given to the complainant and the complainant was living in his flat, to which the complainant counsel disagreed. The respondent counsel further submitted that the receipt of payment has been sent to RERA Legal Team and agreement will be submitted on affidavit by him as soon as possible.

11. In their petition dated 3rd March 2021, the respondent counsel claimed that the present complainant doesn't come under the definition of allottee under section 2 (d) of the Real Estate (Regulation and Development) Act 2016. They however didn't submit the purported agreement which they

claimed to have executed in late 2019 with complainant but enclosed copies of HDFC bank account statements to claim that they have paid Rs 1.50 lakh to the complainant in June-September 2020. They also claimed on affidavit that they have already given physical possession to the landowner/allottee as per the development agreement.

Issues for Consideration

12. The Project “Universal Tower” is a RERA registered project of Universal Homes LLP of which Mr Gautam Kanodia is one of the five partners. It was claimed to be an ongoing project as on the date of commencement of the RERA Act. The Development agreement for development of the land of the complainant was however executed by the developer-M/s Universal Developers and Infrastructures, a partnership firm. Mr Gautam Kanodia and Mr Ashok Kumar were partners in the M/s Universal Developers and Infrastructures, a partnership firm. **It was not clear as to how and when M/s Universal Developers and Infrastructures, the developer that had executed development agreement with the complainant got merged into or handed over the project to Universal Homes LLP without the specific written consent/approval of the complainants/allottees.**

13. There is however no dispute on the facts of the case. Both complainants and the developers had entered into a development agreement on 47 : 53 basis for development of a mixed residential cum-commercial multi-storied building complex. The Project was required to be completed within three years and six months from the date of sanction of the plan or handing over of the possession of the plot of land. Accordingly, the project was to be completed by May, 2015. However, as per the quarterly progress reports duly signed by the chartered accountant of the promoter and uploaded by the promoters on the website of RERA on 26th February 2021, the project was still under construction as on 31 December 2020.

14. In course of hearing, it was claimed by the Respondent counsel that they were paying the rent to the complainant until the date of handing over the possession to the complainant, which was however contested by the

complainant counsel. The respondent counsel submitted HDFC bank account statements to claim that they have paid Rs 1.50 lakh to the complainant in June-September 2020.

Order

15. The Bench orders the respondent firm/promoter to pay interest/rent at the already agreed rate between developer and complainant in the supplementary agreement with effect from 10th May 2015 to 31st December 2020 or date of handing over the physical possession (excluding a period of six months on account of Corona-19) to the complainant, whichever is earlier, after adjustment of the amount already paid..
16. The Respondent firm should also submit a copy of the completion certificate of the project from the competent authority to the complainant and the authority within a month of issue of the order.
17. The Respondent firm should also intimate the Authority the circumstances under which the development agreement dated 27.03.2010 executed by the M/s Universal Developers and Infrastructures, a partnership firm with the complainant Mr Manoj Kumar Mehta got into the control of Univeral Homes LLP, a limited liability company without any written consent of the complainant.
18. As regards compensation due to physical and mental harassment, the complainant, if he so wishes, may approach the Adjudicating officer under section 31/71 of the Real Estate (Regulation and Development) Act 2016.

Sd/-

R B Sinha
Member