

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

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

Case No.CC/580/2019

Syed Asif Iqbal.....Complainant

Vs

M/s Jan Ekta Construction and Services India Pvt Ltd...Respondent

Present: For Complainant: In Person

Mr B K Sinha, Advocate

For Respondent : Mr Jairam Singh, Advocate

31/08/2021

ORDER

1. Mr Syed Asif Iqbal, a resident of Flat No.402, Ahad Apartment, Navgharva Road, Sultanganj, Patna has filed a complaint petition against M/s Jan Ekta Construction & Services India Pvt Ltd through its Managing Director Mr Krishna Yadav under section 31 of the Real Estate (Regulation and Development) Act 2016 for non-handing over possession of the booked flat in the Project Sri Hari Complex situated at Lekha Nagar, Patna even after 7 years of booking and payment of 75% of the total consideration amount of the flat..

2. The Complainant has submitted the copies of the agreement for sale, money receipts etc along with his application.

Case of the Complainants :

3. The complainant, in his petition has submitted that he had booked a 1000 sq ft flat no-201 on 2nd floor in the project Sri Hari Complex situated at

Lekha Nagar, Patna on a consideration amount of Rs 20 lakh and executed an Agreement for Sale on 15/09/2012 after payment of Rs 6.12 lakh by cheques on 29/07/2012. The complainant further paid Rs 9 lakhs to the respondent from 29/07/2012 to 13/11/2014 and thus paid Rs 15.12 lakhs i.e. about 75 percent amount of the cost of the flat. He further submitted that even after passage of 7 years, the flat has not been handed over to him nor the project has been completed by the respondent company. Whenever he approached the builder for handing over the flat, he evaded the direct response and avoided to hand over the flat. Therefore, the complainant asked the respondent to refund the total amount of Rs 15,12,000/-. The respondent however made a refund of only Rs 8.8 lakh only out of the total amount of Rs 15,12,000/- paid by him till date. The complainant has therefore requested for a direction to the respondent to refund the entire booking amount with interest and adequate compensation. Pending final decision in the matter, the complainant has sought interim relief of refund of the principal amount with 18% interest or handing over possession of the flat.

4. In pursuance to the receipt of the complaint petition, the Authority issued a notice under Sections of the Real Estate (Regulation & Development) Act 2016 and Rule 36 of the Real Estate (Regulation & Development) Rules 2017 to the respondent company M/s Jan Ekta Construction & Services India Pvt Ltd through its Managing Director Mr Krishna Yadav to submit reply/response by 21/10/2019. Since the respondent company did not submit any reply, the case was fixed for hearing.

Hearing :

5. Hearings were held on 02/03/2020, 18/09/2020, 13/10/2020, 12/11/2020 and 19/02/2021.

6. In course of hearing, learned counsel of the complainant submitted that around Rs 6.32 lakh still stands to be paid by the respondent as on date. Learned counsel of the respondent prayed for refund of the admitted dues in installments. The Bench directed for payment of Rs 3 lakh as a first installment within a fortnight failing which punitive action will be initiated against the respondent company.

7. Since notices were served on all the three Directors by this Authority and in view of the approach of the two Directors, the Bench felt it necessary to issue interim order under Section 36 read with Section 34(f) and 37 of the Real Estate (Regulation & Development) Act 2016 against the respondent company. It was directed that until further order, all bank accounts of the respondent company M/s Ekta Construction & Services India Ltd and its two Directors viz; Narayan Kumar (DIN No.02838149) and MohdArifHussain Khan (DIN No.06381457) and their bank accounts shall be frozen with immediate effect and IG (Registration) was also requested to issue directions to all DSRs/Sub-Registrar, Patna/Phulwari Sharif/Danapur not to register any apartment/plot of the project “ShriHari Complex” and any other project of M/s Jan Ekta Construction & Services IndiaPvt Ltd.

8. The Bench in its interim order also requested the Registrar of Companies (RoC), Patna to provide necessary detail like PAN, Bank Account and Aadhar details of the respondent company and its two Directors within two weeks so that the Authority may take necessary action against the respondent company. A copy of the order was also sent to the Sr SP, Patna to ensure physical presence of the two Directors on the next date of hearing i.e. 19/02/2021.

9. On 19/02/2021 learned counsel of the complainant submitted that the respondents have not complied with the last order of the Bench and that refund has not yet been made to the complainant. He further submitted that out of the total consideration amount of Rs 20 lakh, the complainant had already paid Rs 15.12 lakh and only Rs 4.88 lakh was supposed to be paid and requested for refund of the principal amount.

10. Learned counsel of the respondent company submitted that he was unable to communicate with the respondent and stated that this is a fit case to be transferred to the Adjudicating Officer, RERA as the complainant was seeking compensation as well.

11. The Bench issued strict direction to the respondent that the payment must be done to the complainant within two weeks under intimation to the Bench.

Response of the Respondent :

12. Learned counsel of the respondent company in his show cause submitted on 12/10/2020 has stated that since the complainant did not pay the entire consideration amount, the said flat was sold to some other person and a sale deed was executed between the parties in 2019. He further submitted that the complainant had paid Rs 13,62,000/- only for which receipt was given to him. He stated that there were six Directors of the respondent company and at present there are three Directors who are ready to pay their share in installments but prayed for time due to paucity of fund.

13. He further submitted that the project was completed and 80% of the flats were handed over to flat owners before May, 2017 i.e. before the RERA Rules 2017 came into force and that this case is not maintainable under

Section 31 of the RERA Act 2016 because the respondent has not violated any provision of the Act. He further claimed that other two Directors were not cooperating and evading payment of dues to the complainant.

Issues for Consideration :

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

1. 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;
2. Secondly whether it was open for the promoter to unilaterally cancel the booking of an allottee executed through an agreement for sale and who had paid more than 75 percent of the estimated cost of the flat without giving any notice or opportunity to pay the remaining amount and sell it to other party surreptitiously;
3. Thirdly whether there was an inordinate delay in completion of the project and balance principal amount should be refunded with penal rate of interest;

15 In so far as the first issue is concerned, the respondent company failed to provide the completion certificate from the competent authority to claim that the project was completed prior to 1.5.2017. The Complainant claimed that the project was not yet complete. In absence of any concrete evidence like CC/OC of the project, it is established beyond doubt that the Project was an ongoing project as on 01.05.2017, the date on which the provisions of the Real Estate (Regulation and Development) Act 2016 came into operation in the state of Bihar.

16. As regards the second issue, the promoter failed to produce any evidence to claim that the complainant did not pay against any demand letters issued to him. The Complainant has produced the money receipts of Rs 13.62 lakhs issued by the Respondent company. However, the complainant claimed to have paid Rs 15.12 lakh whereas it has been submitted on behalf of the respondent company that only Rs 13.62 lakh had been deposited by the complainant for which proper receipts were issued. It is therefore felt that in absence of money receipts of Rs 1.50 lakhs, the payment of Rs 13.62 lakh was established. As the respondent company has refunded Rs 8.8 lakh, the remaining principal amount of Rs 4.82 lakhs with due interest needed to be refunded to the complainant, which has not yet been made.

17. As regards third issue, there is no doubt that there has been inordinate delay in handing over the possession of the flats as agreement for sale was executed in 2012 and the flat has neither been handed over to the complainant nor full deposit has been refunded back to him. The Complainant claimed that he was paying heavy house rent every month. He needs to be refunded the balance amount with due amount of interest.

Order :

18. The Bench directs the respondent company

1. to register the project Sri Hari Complex, as it was an ongoing project as on 01.05.2017, the date on which the provisions of the Real Estate (Regulation and Development) Act 2016 came into operation in the state of Bihar, within thirty days of issue of this order, failing which the Authority may initiate proceedings under section 59 (1) of the Act against the respondent company and their directors.

2. to refund the remaining principal amount of Rs 4.82 lakh to the complainant without any further delay.
3. to pay an interest at the rate of Marginal Cost of Lending Rate (MCLR) of the State Bank of India as applicable for three years or more plus two percent from the date of deposit to date of actual refund within sixty days of issue of this order.
4. To also pay a damages of Rs 3 lakh for selling the flat to another buyer without refunding the full deposit of the complainant.
5. The interim order passed earlier under section 36 of the Real Estate (Regulation and Development) Act 2016 stands inoperative with issue of this order.

R.B. Sinha
Member