

**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 Nos.CC/815/2019**

**Nirmala Kumari.....Complainants**

**Vs**

**M/s Technoculture Building Centre Pvt Ltd.....Respondent**

**Projects: Vastu Vihar Phase I, Hajipur**

**Present: For Complainants: In person**

**For Respondent: Mr D K Roy, Advocate**

**Mr Vinay Kumar Tiwari, MD**

**22/10/2021**

**O R D E R**

1. Mrs Nirmala Kumari, a resident of Salempur Dumra, Raja Bazar, Patna has filed a complaint petition on 10/12/2019 against M/s Technoculture Building Centre Pvt Ltd under section 31 of the Real Estate (Regulation and Development) Act 2016 for possession of the flats booked by her in 2011 in the Vastu Vihar Phase I, Hajipur of the promoter.
2. She has enclosed the copies of the agreement for sale of flats /Bungalows along with fittings dated 18.4.2011, money receipts dated 25<sup>th</sup> February 2011 and 17.4.2011 along with her application.

**Case of the Complainants:**

3. In her Petition, the complainant has stated that she had booked two flats (No – G-06 & G-07 ) each measuring 700 sq ft in the project Vastu Vihar Phase 1, Hajipur of the respondent company M/s Technoculture Building Centre Pvt Ltd on a total consideration amount of Rs 13.90 lakh to be paid as per payment schedule and entered into an agreement for sale for Bungalows on 18/04/2011 and paid Rs 3,47,000/- plus Rs 50,000/- in cash which was to be handed over within a period of 18-24 months but even after lapse of eight and half years, the respondent company has not handed over the allotment letter and possession of the flats. The complainant prayed for direction to the respondent for handing over possession of the flats and compensation for the delay.

4. The Payment schedule prescribed in the agreement for sale was as follows :

1. Booking amount- : Rs 3,47,000
2. At Plinth level start : Rs 2,08,500
3. At Ground Floor Start:Rs 2,08,500
4. At First Floor Start : Rs 2,08,500
5. At second Floor Start- Rs 2,08,500
6. At Floor Finishing level:Rs2,08,500

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Total Cost : Rs 13,90,000

5. Registry cost was to be charged on actual basis. As per the terms and conditions of the deed of agreement, if the allottee/purchaser makes a delay in making payment, he will have to pay interest at the rate of 18 percent per annum. Similarly, if the promoter fails to complete the project in time, he shall also pay interest @ 18 percent per annum to the allottee/purchaser. As per terms and conditions 2 (b) of the agreement, the cost of the flats/bungalows was fixed and there was no provision for price escalation i.e. the cost of construction shall not be affected with increase in market rate.
6. The Authority issued a notice on 02/03/2020 under Section 31 of the Real Estate (Regulation & Development) Act 2016 and Rule 36 of the Bihar Real Estate (Regulation & Development) Rules 2017 to the respondent company M/s Technoculture Building Centre) Pvt Ltd to submit their reply by 20/03/2020.

**Response of the Respondent Company:**

7. The respondent company did not file any reply to the aforesaid notice. Hence the both parties were called for hearing.

**Hearings:**

8. Hearings were held on 10/11/2020, 12/03/2021, 25/03/2021, 08/06/2021, 23/06/2021, 02/07/2021 and 09/07/2021. In course of hearing the complainant represented herself while the respondent company was represented by Mr Dheeraj Kumar Roy, Advocate.
9. In course of hearing, the complainant stated that she had booked two flats/Bungalows (no G 06 & G 07) measuring 700 sq ft in February 2011 in the project Vastu Vihar Phase 1, Hajipur but the respondent company did not inform her that flat measuring 700 sq ft has not been

constructed and that flats of 1000 sq ft only have been constructed and sold out. She prayed for handing over of the flats measuring 650/1000 sq ft. in the Phase 1 of the Hajipur project of the Respondent Company.

10. Learned counsel of the respondent company submitted that the complainant has paid Rs 3,47,000 for two ground floor units in Phase 1 but the project didn't take off and flats of 1000 sq ft were constructed. The complaint was offered some other flat in other phase, to which she did not agree. Alternatively, she was also offered refund of the deposited money along with interest but she didn't agree. The complainant submitted that she has been pursuing the matter with the respondent company for several years but the respondent is handing over possession of the flats to other allottees but till now she is denied possession of the flats.
11. Learned counsel of the Respondent sought time from the Bench to sit with the respondent and settle the matter amicably. Accordingly, the Bench directed both the parties to settle the matter amicably through negotiation/conciliation/mediation.
12. As the complainant and respondent didn't agree inspite of several meetings, the Bench directed the MD of of the Respondent Company to appear before the Bench for resolution of the issue. On 09/07/2021 the complainant submitted that she booked plots measuring 700 sq ft in 2011. The MD of the respondent company submitted that in Phase III flats of 1000 sq ft are being constructed which will take another one year which can be allotted to the complainant without any further charges to pay otherwise they are willing to refund money with interest. The complainant insisted that being one of the oldest customers in Phase I, she be allotted flats in Phase I itself to which the MD assured to look into the grievances of the complainant and settle the matter within 15 days.
13. On the next date of hearing, learned counsel of the respondent company stated that the Respondent had offered two flats of 650 sqft of the complainants' liking on 5<sup>th</sup> floor (E/504 & E/505) in Phase 1 at the cost of about Rs 25.70 lakhs and the complainant was offered 25 percent discount on the price. The Complainant's payment of Rs 3.47 lakhs was increased on account of interest. However, the complainant declined the offer stating that the cost of the flats was very high and exorbitant.

**Issue for Consideration:**

14. There are following issues for consideration :

1. The Project Vastu Vihar Phase 1 Extension 1 is a RERA registered project.
2. In the agreement for sale of flats/Bungalows, it is stated that the respondent had already purchased the land ( Plot No 4638,4639 & 4640 measuring an area of 162 decimal, Thana no-105 , Mouza- Digghikala, Hajipur, Vaisali) through registered sale deed no 2256 and offered flats on the landed property and all common services on “ownership basis”.
3. It appeared that though the promoter changed the Building Plan unilaterally and constructed Parking space on the ground floor without offering any options to the consumers who had booked the Bungalows/flats on ground floor on ownership basis.
4. The Agreement for sale was a fixed cost/ price contract and there was no provision for price escalation. The allottee had made all the payments as per payment schedule and no demand letters were issued to her as no work was done on the said land as per the plan enclosed with the agreement.
5. In spite of several opportunities given, both parties didn't agree on any resolution of the issue.

**Order:**

15. The Respondent company is the largest real estate company in the state and operates several dozen real estate projects in the state. It is disheartening to note that they have not been able to honor their own commitment and provide homes to their own consumers in more than ten years.
16. The Bench expresses its displeasure on the conduct of the promoter for making unilateral changes in plan, without taking written consent from its allottees and for not protecting their interests.
17. The Bench therefore orders the respondent company to honor its commitment, given in the agreement for sale of flats/bungalows executed with the allottee in April 2011 and provide her two flats(i.e. E-504 and E-505) of 650 sqft in the same project (Hajipur Phase 1) which was shown to the petitioner by the respondent and agreed by her, at the same cost (Rs 13.90 Lakh) mentioned in the agreement as it was specified in the agreement that it was a fixed cost/price contract and there was no price escalation clause.
18. Further, the respondent company will adjust the deposited amount of allottee (Rs 3.47 lakhs) after adding the interest at the rate of MCLR of

the SBI as applicable for three years or more plus two percent per annum, from the date of deposit to the date of handing over the possession of the flat from the total consideration amount of Rs 13.90 lakhs of the two flats.

Sd/-

**R.B. Sinha**  
**Member**