

**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/986/2020**

**Priti Swaraj ..... Complainants**

**Vs**

**M/s Sri Anuanand Construction Pvt Ltd.....Respondent**

**Projects: Sai Enclave**

**Present: For Complainants: In person**  
**For Respondent: Mr Rakesh Roshan Singh, Advocate**

**18/10/2021**

**O R D E R**

1. Ms Priti Swaraj w/o Mr Saroj Kumar, a resident of B-103, Mundeshwari Enclave, Akashwani Road, Khajapura, Baily Road, Patna-800014 has filed a complaint petition on 27.01.2020 under section 31 of the Real Estate (Regulation and Development) Act 2016 against the respondent company M/s Sri Anuanand Construction Pvt Ltd through their director Mr Bimal Kumar for handing over the possession of the flat booked by her in the project Sai Enclave in September 2015 at the earliest, rent of Rs 20,000 per month till the date of possession, compensation on account of physical and mental harassment and for direction to the respondent company to execute agreement for sale as per RERA format.
2. The complainant has submitted copies of agreement for sale dated 9.9.2015, registered agreement for sale dated 15.2.2017, money receipts, demand letters, cancellation letter, complaint petition to the respondent etc along with his application.

**Case of the Complainants:**

3. In her complaint petition, the complainant Priti Swaraj has submitted that she had booked a 3 BHK flat of 1600 sq ft (Flat no -406) on 4<sup>th</sup> floor in L Block of the Project Sai Enclave along with one car parking space at the total consideration amount of Rs 28 lakhs and signed an agreement with the respondent company on payment of the booking amount of Rs one lakh besides GST. In the agreement for sale, the promoter has provided the details of 18 development agreements he has executed during November 2011 to November 2014 on which he

proposed to develop the project Sai Enclave and has claimed that he has got the building plan sanctioned for construction of multi-storied building on the aforesaid land vide plan number NPK/Mustafapur(R)/B + G + 9 -38/2012 dated 10-12-2012 under section 314 of Bihar Municipal Act 2007 from the authorities from Nagar Parishad, Khagaul. As per the agreement for sale, the project was to be completed in two years and six months with a grace period of six months from the date of agreement for sale. The Payment schedule as prescribed in schedule C of the agreement for sale was as follows :

- Rs 5,00,000 each on the casting of 1 slab,  
3<sup>rd</sup> slab, 5th slab and 7 slab :Rs 20,00,000;
- At the time of plaster :Rs 2,00,000;
- At the time of flooring ;Rs 2,00,000
- At the time of possession of Flat No 406 :Rs 1,00,000

<b>Total</b>	<b>:Rs 25,00,000</b>
Advance Paid in Sept/2014/Feb 2015	: Rs 3,00,000

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Grand Total :Rs 28,00,000

4. She has claimed that the project got delayed and on 15/02/2017, a registered agreement for sale was executed. The registered agreement for sale though executed about a year later, also provided for similar provisions, as regards the payment schedule i.e. the project was to be completed in two years and six months with a grace period of six months from the date of registered agreement for sale.
5. She has claimed that after the registered agreement also lapsed in August 2019, the respondent sent a notice to her on 20/09/2019 enclosing therewith a back dated letter AACPL/ADMIN/628 dated 20.02.2019 informing her of unilateral termination of the agreement of sale on account of non-payment of a demand notice for Rs 10 lakhs issued in May 2018. She has stated that she went to the office of the builder to meet and seek clarification but she was not allowed to meet the MD.
6. She said that she again got a demand notice on 12/11/2019 for Rs 15.75 lakhs against which she represented to the builder stating that the project has been inordinately delayed and it was not clear as to how much time the builder would take to complete the project and hence it would be appropriate that the entire schedule should be made known before further payment is made through bank loan, as the EMI of the bank loan will start thereafter. However, MD of the respondent

company ordered for cancellation of the allotment/ agreement for sale and assured to pay refund of the deposited money within 45 days. She has demanded possession of the flat at the earliest, rent of Rs 20,000 per month till the date of possession, compensation on account of physical and mental harassment and for direction to the respondent company to execute agreement for sale as per RERA format.

7. The Authority issued a notice dated 11/06/2020 under Section 31 of the Real Estate (Regulation & Development) Act 2016 and Rule 36 of the Bihar Real Estate (Regulation & Development) Act 2017 was issued to the respondent company to submit its reply by 08/07/2020.

**Response of the Respondent Company:**

8. The respondent company did not file any reply to the aforesaid notice. Hence the cases was fixed for hearing on 09/12/2020.

**Hearings:**

9. Hearings were held on 10/02/2021, 16/03/2021, 05/04/2021, 11/06/2021, 06/07/2021 and 27/07/2021. In course of hearing, the complainant represented herself while the respondent company was represented by Mr Rakesh Roushan Singh, Advocate.
10. The complainant submitted on 10/02/2021 that she had booked a 3 BHK flat on 4<sup>th</sup> floor in L Block of the project Sai Enclave of the promoter and paid Rs 3 lakh in Sept.2015/ Feb 2016 and entered into an agreement for sale with the builder but there was no progress in the work until February 2017 when she got a registered agreement for sale executed. She claimed that she received a letter in September 2019 enclosing therewith a termination letter of February 2019 for her purported failure to pay the demand notice of May 2018. She however claimed that the work in L Block had not even commenced till then and she had not received those letters. She claimed that she went to the builder's office to seek clarification before making payment but was not allowed to meet the MD and no one was able to clarify. She again got another demand letter in November 2019 for payment of Rs 15 lakhs. Thereafter, she again tried to meet the MD of the respondent company but failed to do so as no one allowed her to meet the MD or any senior official. She has therefore sent a response to the promoter in January 2020 but the Respondent company has terminated her agreement and assured to refund the deposits within 45 days. They have however not refunded back the deposits to her in the last one year. She stated that

she was ready for making full payment provided the builder assures to hand over the flat within a time-bound time.

- 11.** On 05/04/2021, the Director of the respondent company submitted that demand letter was issued in November 2019, since fifth slab was complete as per construction linked plan. Hence, she was supposed to pay Rs 15 lakh apart from the booking amount but the complainant refused to pay. He further submitted that since the complainant did not pay further, the booking was cancelled in February 2020. The complainant again reiterated that the project was to be completed within two years and six months from the date of agreement, which was already long over. She claimed that she was ready to pay the money provided the builder gives a set date for completion of the project before the Authority. She claimed that the project was sanctioned in December 2012 and the project was still ongoing and incomplete. Therefore the builder has lost credibility. She also claimed that it was not even clear whether the sanctioned plan of the project was still valid under Bihar Building Byelaws 2014 as more than eight years have passed. The Bench directed that the respondent to ensure completion of the project and hand over the flat at the earliest. Similarly the Bench held that if the complainant/allottee has failed to make payment in time, she will have to pay the interest at the stipulated rate in RERA rules and if the builder fails to deliver in time, they will also have to pay the interest as per RERA Rules.
- 12.** The Bench observed that since the building is 40% complete and the complainant has paid only 10% in this construction linked plan, she has to pay the money in order to complete the project. The Bench observed that there has been delay in paying the remaining amount by the complainant and she has to pay a reasonable rate of interest to the respondent company. The Bench also observed that it appears from the photographs that only part of structure of the building is standing and directed the respondent to submit plan of work to complete the project within a time bound period.
- 13.** Learned counsel of the respondent company in its reply stated that in 2016 much time was lapsed due to ban on sand and in 2017 when the RERA came into existence, the respondent company stopped its activities due to restrictions by RERA for any further developmental activities without getting the projects registered with RERA. Moreover, at the time of inception of the project, NGT was not there but when it came into existence, NGT clearance certificate beyond 20,000 sq ft was made mandatory and the project Sai Enclave was of about 25,000 sq ft. This also delayed the project. In 2019 due to devastating flood,

the site of the project got inundated with water-logging for a long period and in whole of year 2020 due to COVID19 all the developmental activities were put on hold. Thus the delay was not intentional but due to force majeure. It is also stated that at the time of booking the rate was @Rs 1750/- per sq ft and today the rate has increased almost three times more to @ Rs 5000-5500/- per sq ft. Moreover, in spite of repeated reminders and demand notices regarding due payment, no positive action/gesture was shown by the complainant, then the builder had no choice but to cancel the aforesaid booking.

**14.** In course of hearing, the Bench directed both parties to sit together and try to sort the issues amicably as neither of the parties appeared to be totally at fault. The Promoter has himself admitted that due to various reasons, the project work was badly affected. On the Consumer side, since the consumer saw little progress in the construction work in the four years (2015-2019) she became skeptical and wanted a reassurance from the builder that the project will now be completed in a time-bound period.

**15.** On 11/06/2021 the complainant submitted that the respondent company has increased the cost of the flat for which registered agreement was executed for Rs 28 lakh and he was now demanding Rs 64 lakh. The Bench directed the respondent company to take a fair and reasonable approach towards the consumer/allottee as there is no provision for cost escalation in the agreement. The Bench observed that the complainant has made only 10% payment and the respondent has done only 30-40% work in the project. Since the complainant is ready to pay the interest for the period of delay, there should not be any difficulty in sorting out the matter by charging a reasonable amount of interest from the date of the demand till date. The Bench directed both the parties to settle the matter amicably by determining the probable cost of the flat payable by the allottee after taking into the amount paid and remaining amount payable at rate of the interest to reach a reasonable cost and that both the parties will have to pay the same rate of interest.

**16.** On 09/07/2021, both parties informed the Bench that they couldn't reconcile the difference and requested the court to take a decision in the case on merit. The Bench directed both parties to file their written brief. The complainant has filed an application wherein she has offered two options : (1) that she was ready to pay the due amount if interest @ 10 percent per annum is charged to both parties for their period of delays and claimed Rs 20,000/- per month as rent from the respondent from the date of final decision till possession of the flat and (2) final money refund with value of money paid in 2021, interest, rent,

compensation on account of mental and physical harassment charges and registered agreement charge.

17. In their supplementary counter petition, Learned counsel of the respondent company submitted that the builder is ready to hand over the flat if Rs 50 lakh is paid by the complainant or to compensate her by paying Rs 6 lakh in total for cancellation of her booked flat.

**Issues for Consideration:**

18. There are following issues for consideration :

Firstly whether the project was an ongoing project as on the date of commencement of the RERA Act i.e. 1.5.2017;

Secondly whether there was an inordinate delay in completion of the project;

Thirdly whether an allottee is duty bound to make payment of the installment as per payment schedule prescribed in the agreement for sale;

Fourthly whether the promoter has the right to unilaterally cancel the booking and terminate the registered agreement for sale of an allottee;

Fifthly whether the promoter has right to escalate the price of the flat in course of completion of the project

19. As regards the first issue, it may be stated that Sai Enclave is a RERA registered ongoing residential project consisting of 14 Blocks with 750 flats of which A to D Blocks are a B + G +7 structure and E to N Blocks of B + G +9 structure. The building plan/Map of the residential Project with a validity period of three years was approved on 10.12.2012 to be developed on 24633 sq.metres (608.75 decimal) by a Certified Architect Raman Kumar.

20. So far as 2<sup>nd</sup> issue is concerned, there is no doubt that the project Sai Enclave has been badly delayed and not been completed in the last eight years and nine months after sanction of the building Map/Plan in December 2012. One of the prime reasons for the delay in construction work appeared to be the unavailability of land with the promoter, which was not mentioned by the Learned Counsel of respondent company as the reasons for delay. In the Application for registration of the project, the promoter sought approval of total built up area of 73653 square metres on 24633.43 sq metres of land with permissible FAR of 3. However as the promoter/builder had only 151

decimal of land from 12 development agreements available with them as on date of sanction of the plan/Map, the permissible built up area with allowable FAR of 3 should have been 18338 sq. metres only. Further Bihar Building Byelaws as applicable on the date of sanction of the plan and new Bihar Building Byelaws 2014 mandates the promoter to obtain the revalidation/extension of the validity period of the sanction up to two years if the project has not been completed within three years. On lapse of five years, the building plan will have to reappraised afresh from the competent authority, if the project is not completed within five years.

21. It is evident that the complainant was an allottee of the respondent company since September 2015 when she made the first payment to the promoter for her booking in L Block of Sai Enclave. However it is observed that the promoter did not have the entire land of 608.75 decimal on the date of approval of the plan. It is evident from the agreement for sale that the promoter had only about 151 decimal of land as on the date of approval of the plan and following 16 development agreements have been executed by the promoter during 2013- 2018 as provided to the authority along with application for registration of the project:

Sr No	Date of Development Agreement	Name of the Land Owners	Area of Land given for development in Decimal
1	26.02.2013	Nagendra Pd Yadav	19.4 Decimal
2	05.03.2013	Shashi Kumar	3.2 Decimal
3	05.03.2013	Bhupendra Kumar	3.2 Decimal
4	11.7.2013	Arvind Singh Shiv Kr Singh	15 Decimal
5	31.10.2013	SaritaKumari	3 Decimal
6	13.8.2014	Rajat& two othrs	17.5 Decimal
7	9.9.2014	Savitri Devi	10 Decimal
8	14.11.2014	Lali Devi	32.75 Decimal
9	11.9.2015	Kameshwar Singh	8.5 Decimal
10	27.12.2016	Umrawati Sinha	1.8744 Decimal

11	24.7.2017	Raj Kumar Singh	5.75 Decimal
12	3.2.2018	Arti Sinha & two othrs	14.768 Decimal
13	17.2.2018	Puja Kumari	3.5 Decimal
14	17.2.2018	Jyoti Mala	1.5 Decimal
15	21.3.2018	Rakesh Kr Singh	17.75 Decimal
16	19.4.2018	Ashok Kr Singh	16 Decimal
		<b>Total</b>	<b>172.52 Decimal</b>

22. Even after including 151 Decimal of land for which the promoter had executed 12 development agreements of land prior to sanction of the building Map/Plan as on 10.12.2012, the total land available with the promoter until May 2018, was 323.52 decimal only which was barely 53 percent of the land on which the project was sanctioned to be constructed. Therefore the promoter was slow in the construction of the project. Further, the promoter did not issue the demand letters to the allottee as per payment schedule prescribed in the Agreement for sale during the validity period of agreement. The first demand letter received by the allottee was in November 2019 when the promoter sent a demand letter dated - NIL demanding payment of Rs 15.75 lakhs without mentioning the stage of construction mentioned in the Payment Schedule. Further as the normal construction period of two years and six months expired in August 2019, the promoter was duty bound to explain the reasons for delay in the project to the allottee and seek her approval for the new completion schedule. Hence the complainant was justified in seeking clarifications before making payment.

23. Further the arguments given for the inordinate delay viz non-availability of sand/stone-chips, introduction of RERA Rules, NGT clearance etc in the project by the builder/promoter was not justified as it is not correct to say that no work was done during the entire period from 2015 to 2019 in any other project, The Authority has records to show that large number of projects have been completed during this period. Further RERA did not issue any instructions for stopping the work of construction in any ongoing project, pending registration of projects. Promoters of ongoing projects were given eleven months time without any late fee to register their projects with the Authority. It is a fact that work was



affected due to shortage of sands and stone chips for a few months but it was a temporary affair, which was sorted out in months.

24. So far as third issue is concerned, Section 19 of the Real Estate (Regulation and Development) Act 2016 enjoins upon the allottees to make necessary payments in the manner and within time as specified in the agreement for sale. Further, allottees are liable to pay interest at such rate as may be prescribed for any delay in payment towards any amount or charges required to be paid. Hence it is evident that allottee will be required to pay interest upto the Rate of MCLR of the SBI plus two percent for the period of delay if a demand letter is received as stipulated in the payment schedule of the Agreement.
25. As regards fourth issue, Section 11 (5) of the Act states that the promoter may cancel the allotment only in terms of the agreement for sale and such cancellation should not be unilateral and without any sufficient cause. In this case, the allottee has unequivocally stated that she had NOT received any demand notice from the promoter during the currency of the normal delivery period and has not been given any show-cause notice before cancellation of the booking/termination of the registered agreement. On the other hand, she has claimed that she went several times to the promoter's office but was not allowed to meet MD/any senior functionary and she didn't receive any assistance. The allottee has invited the attention to Para 1.8 (iv) of the terms and conditions of the agreement and stated that she is only liable to pay interest at the rate prescribed in rules if there is any delay in making payment. It is therefore felt that the unilateral termination of the registered agreement for sale after completion of normal period of construction was arbitrary and illegal and hence liable to be set aside.
26. As regards the fifth issue, the present market rate has no relevance so far as allottees of the RERA registered projects are concerned as the agreement for sale was first executed in 2015-16, followed by registered agreement for sale in February 2017 and both agreements were fixed price contracts with no price escalation clause. Further, the project is a RERA Registered Project and there was no provision for price escalation under the RERA Act.

**Order:**

27. The Bench holds the cancellation of the booking of the flat no L-406 of the complainant/allottee in the Project Sai Enclave by the Promoter through undated letter in February 2020 as arbitrary, unilateral and illegal. Hence, the cancellation letter/termination order is set aside.
28. The Bench also directs the promoter to modify the agreement for sale as per RERA format with a probable date of completion based on present stage of construction and execute it to enable the allottee to make construction-linked payments.
29. She will pay interest at the rate of Marginal cost of lending rate (MCLR) of State Bank of India (SBI) as applicable for three years plus two percent on the payable amount from due date of payment to the actual date of payment.
30. The Promoter should get the building plan of the Project revalidated/re-approved from the competent authority, based on the land available as on the date of sanction of the original plan (10.12.2012) within a month and submit to the Authority with a copy to all allottees of the project.
31. In so far the claim for compensation is concerned, the Complainant if she so wishes, may approach the Adjudicating officer under the section 31/71 of the Real Estate (Regulation and Development) Act 2016.

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