

# REAL ESTATE REGULATORY AUTHORITY, BIHAR

BSNL Telephone Exchange Building, Patel Nagar, Patna-800014.

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

CC No.CC/835/2019

Mehar Haider @ Madhuri Kumari.....Complainant

Vs

M/s Meridian Construction India Ltd.....Respondent

Project: Meridian Enclave

Present: For Complainants: In person

For Respondent : Mr BK Sinha, Advocate

3/12/2021

**O R D E R**

1. Mrs Mehar Haider alias Madhuri Kumari, a resident of 402, Dowadhash Dham Apartment, Gorakhnath Lane, Bankipore, Patna has filed a complaint petition on 23/12/2019 against M/s Meridian Construction India Ltd under Section 31 of the Real Estate (Regulation & Development) Act 2016 for allotment of commercial place in the Project Meridian Enclave of respondent company and compensation for mental agony and harassment and cost of litigation.
2. Along with the application, the complainant has also submitted the copies of agreement for sale, money receipts issued by the respondent company, bills of interior decoration etc.

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

3. In her complaint petition, the complainant has stated that she had executed an agreement for sale on 08/08/2016 with the respondent company M/s Meridian Construction India Ltd for a commercial space in the residential complex "Meridian Enclave" being developed by the respondent and paid Rs 25.00 lakh and done interior work of around Rs 15 lakhs. She has stated that the promoter had entered into a development agreement on 11<sup>th</sup> October 2012 with the landowner Mr Harsh Narayan Singh for the development of 35.424 decimal (15431 sqft) of land located at Mauza Rajapur, PS - S K Puri, Patna. She claimed that the project was to be completed within two years and thereafter the builder was required to execute the final sale deed with the complainant but the builder failed to complete the project within the stipulated time and the building is not yet complete till date.

4. The complainant has requested for allotment of the commercial space and compensation of Rs 5 lakh for mental agony and harassment and Rs one lakh as cost of litigation.
5. The Authority issued a notice on 2nd March 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 to file its reply by 23/03/2020. However, the respondent company did not file its reply. The matter was accordingly fixed for hearing on 24/11/2020.

**Hearing:**

6. Hearings were held in the case on 18/01/2021, 01/03/2021, 05/03/2021, 24/03/2021, 29.9.2021.
7. In course of the hearing, the complainant submitted that the respondent company has provided wrong/insufficient documents/papers due to which her bank loan could not be approved. Resultantly, she could not make payment of full amount. She has further submitted that she has paid Rs 25 lakhs to the respondent and spent another Rs 15 lakh on internal furnishing of the commercial space.
8. The Director of the respondent company submitted that home loan from LIC Housing Finance has already been sanctioned in the name of husband of the complainant. Learned counsel of the respondent company submitted that the total cost of the commercial space was Rs 1.17 crore as agreed between the parties and only an amount of Rs 35 lakh has been paid to the respondent.
9. On 01/03/2021 learned counsel of the respondent company submitted that Rs 10 lakhs has been paid in cash to the complainant's husband on 19/02/2021 whereas the complainant denied to have received the money nor has signed any paper. The Bench directed the respondent company that if her husband has received the aforesaid amount, her husband should give that money to her, obtain a receipt from her and give it back to the respondent company.
10. On 05/03/2021 the complainant submitted that since the project is not registered with the RERA office, due to which bank denied to provide loan. She further requested for registry of the commercial space or refund of the money with interest.
11. The Bench observed that the respondent company is trying to linger the matter as the reply which was supposed to be filed today has not been filed. The Bench strictly directed the respondent company to file their reply on affidavit failing which heavy penalty will be imposed.

12. On 24/03/2021 learned counsel of the respondent company submitted that the total deposited amount has been refunded to the complainant and cheque for Rs 15/- lakhs has been submitted in RERA Office which the complainant refused to receive. The complainant submitted that in 2009 there was a property distribution in her family and the property in question belongs to her against which she has submitted the relevant documents/papers according to which the flat lies under her share and therefore, all the dealings should be dealt with her. She prayed for handing over all the required documents which can be submitted in the bank for sanction of the loan and the possession of her flats/commercial space or refund of money with interest calculated since 2016.
13. Learned counsel of the respondent company submitted that all the receipts have been signed by the complainant's husband and that the receipts of interior decoration must be verified as to whether these are genuine or not. The Bench directed both the parties to file their final brief of written submission with relevant documents by 15<sup>th</sup> April, 2021.

**Issue for Consideration:**

14. The project Meridian Enclave was an ongoing project as on 1.5.2017, the date on which the Real Estate (Regulation and Development) Act 2016 came into operation in the state of Bihar and hence the application for registration of the project was submitted on 30<sup>th</sup> June 2018. The registration of the project was further extended up to 31<sup>st</sup> December 2020. There are following issues for consideration:

Firstly whether the promoter was duty bound to provide assistance to the allottee in obtaining the home loan so as to make payment of the cost of the flats/commercial space

Secondly whether the project Meridian Enclave' was delayed as alleged by the complainant;

Thirdly whether the complainant was entitled to compensation under the relevant provisions of the Act;

15. In so far as the first issue was concerned, the agreement for sale between allottee and developer for Flat nos- 303/304 in C Block of Project Meridian Enclave' was executed on 8<sup>th</sup> August 2016. However after commencement of the RERA Act and registration of the project with RERA, the standard agreement for sale prescribed under the RERA Rules would have precedence over the agreement for sale executed between allottee and developer. Paragraph 27 of the terms and conditions of the agreement for sale binds the promoter to execute, acknowledge and deliver to the allottee other such instruments and take such action to effectuate the provisions of the Agreement. Thus, there is no doubt that the promoter has to provide general assistance and furnish requisite documents to enable the allottees in obtaining the loans from banks.

16. As regards the 2<sup>nd</sup> issue is concerned, the project was to be completed by August 2018 but the project was not yet completed by 2021. Further, the project was claimed to be incomplete as of date in November 2021
17. In so far as the claim for compensation is concerned, the Adjudication officer has been empowered to adjudge the amount of compensation under the section 71 of the Real Estate (Regulation and Development) Act 2016.

**Order :**

18. The Bench directs the promoter to either make available all necessary documents to enable the allottee to obtain the loan from a scheduled bank or refund the full amount of booking deposits to the complainants along with interest at the rate of Marginal cost of lending Rate of State Bank of India as applicable for three years or more, plus Two percent from the date of deposit to the date of refund within sixty days of issue of the order.
19. The Promoter is also required to refund the amount of money spent on interior decoration of the commercial space by the allottee as determined by a Government approved valuer along with interest at the rate of Marginal cost of lending Rate of State Bank of India as applicable for three years or more, plus Two percent from the date of deposit to the date of refund within sixty days of issue of the order.
20. The Promoter shall not sell the commercial space to any third party unless the full amount of booking deposits and expenses on interior decoration along with the interest amount as determined at the rates directed in the aforesaid paragraphs is refunded back to the allottee.
21. A cost of Rs 25000 is allowed to the allottee.
22. As regards the claim of compensation, the complainant may approach, if she wishes, the Adjudicating officer of the Real Estate Regulatory Authority under the sections 31/71 of the Real Estate (Regulation and Development) Act 2016.

**Sd/-**

**R.B. Sinha  
Member**