

REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR
Before the Bench of Mr R.B.Sinha & Mr S.K. Sinha, Members

Case Nos. CC/107/2018

Narendra Prasad Gupta.....Complainant

Vs

M/s Bihar Homes Developers & Builders.....Respondent

04/01/2021

O R D E R

1. Mr Narendra Prasad Gupta S/o Late Ram Dhani Sao, a resident of Mohalla Garikhana, Cantt Road, PO Khagaul, Dist Patna has filed a complaint petition on 23/10/2018 under Section 31 of the Real Estate (Regulation & Development) Act, 2016 against Mr Rajiv Ranjan Kumar, partner of M/s Bihar Homes Developers & Builders, Patna, a partnership firm for committing criminal breach of trust along with breach of contract and requesting therein for non-registration of their project Vasundhara Garden with the Authority.

Case of the Complainant :

2. The complainant in his complaint petition has submitted that the respondent has fraudulently got his signature on the development agreement dated 15/11/2016 for development of his land for construction of a multi storied building over his land as approved by the Nagar Parishad, Danapur Nizamat dated 26/06/2018. He has submitted that he intends to cancel the development agreement since the respondent firm has committed criminal breach of trust and breach of contract and has requested the Authority not to register the project as submitted by the respondent firm.

3. In pursuance thereto, the Authority issued a notice to Mr Rajeev Ranjan Kumar, partner of the respondent company to submit his response to the issues raised in the complaint petition by 19/11/2018.

Reply of the Respondent Company :

4. The respondent firm in its reply dated 05/12/2018 has submitted that the present complaint petition is based on concocted and misleading facts and is contrary to the documentary evidences available. The respondent has further submitted that despite receiving the payments to his satisfaction, the complainant has filed a false, frivolous and baseless complaint with sole motive to wriggle out of his contractual obligation and to pressurise us and despite being allegedly deceived in the registration of the agreement dated 15/11/2016 the complainant kept on receiving payment of crores as per his demand. The present complaint is nothing but to escape from his contractual obligation, which shows dishonesty on his part. The complainant is placing false, frivolous and baseless facts with the sole motive to extort money from us. The respondent has further submitted that we have procured all the requisite clearance from civic agencies. The complainant lodged an FIR against the respondent for forgery and cheating and despite there being a direction of the ADM (Law & Revenue) to file the original documents of the property so that his signature can be verified, the same has not been filed till date which clearly exhibits his dishonest conduct and willful violation of the law going contrary to his own statement made in the complaint before RERA.

5. The respondent firm while citing brief facts of the case has submitted that in January, 2015 the complainant had authorized partner Mr Bhim Prasad Singh for negotiation on construction of a residential project on their property situated at Mauza Mainpur Shankar PS Danapur Dist Patna and in pursuant to

the mutual discussion between the parties, formal agreement was entered into between the parties and terms and conditions were drawn mutually. The complainant inspite of receiving money and multiple requests, avoided the registration of the documents and asked the firm to get new agreement done as per new terms and conditions. The authorized partner while looking at the huge investment already done and a big sum of money being already blocked in the said project was left with no other choice but to agree to this fanciful and baseless request of the complaint, agreed to the same. As agreed mutually by both the parties, the earlier agreement was destroyed and a fresh agreement was signed by both the parties. Again on 02/04/2016 a fresh agreement was entered into with M/s Trimurti Construction, Developer & Builder, a partnership firm of Kolkata represented by the authorized partner Mr Rajiv Ranjan Kumar by the parties and we continued making the payments. When we requested for getting the documents registered, the complainant kept on getting time on one pretext or the other and after rigorous follow up, he finally agreed for registration but insisted on a fresh agreement to be made with new terms and conditions. Having no option left, a new agreement was executed finally on 15/11/2016. The respondent firm got the map sanctioned as per agreement dated 15/11/2017 and applied for registration with RERA but the complainant only focused on receiving large payments on regular intervals from the firm and till now payment of approx. Rs 1.5 crore was already made to the complainant against valid receipts.

6. The respondent has further submitted that as per development agreement in para 6, the owner is having rights restricted to 25% of the constructed area but at the same time this 25% share of area allocated to the owner was sold to the developer firm in consideration of Rs 2,87,98,700/- and received crores of

rupees against execution of this instrument, therefore, there is no question of allotment of any floor or part of the building.

7. The respondent has further submitted that the complainant has filed the present complaint with sole motive to wriggle out of his contractual obligation and to pressurize us to gain wrongfully and to satisfy his illegal, arbitrary, dishonest and malafide intentions. He has further requested to impose a heavy cost on the complainant.

Rejoinder by the Complainant :

8. In his rejoinder filed on 01/04/2019 the complainant has submitted that the respondent Mr Rajiv Ranjan Kumar fraudulently and tactfully and keeping the complainant in dark got the alleged development agreement dated 15/11/2016 illegally registered by manipulating the contents of the said agreement with malafide intention and falsely claiming that they had made payment to the tune of Rs 1.5 crore in favour of the complainant in terms of the alleged development agreement dated 15/11/2016 whereas not a single farthing has been paid to the complainant by the respondent. He further submitted that the said development agreement dated 15/11/2016 has been fraudulently registered by the respondent which is illegal, ab-initio void and not binding on the complainant and hence, he is not under obligation to perform any part of the said concocted agreement which was thatched up to grab the most valuable property of the complainant in the garb of the said development agreement dated 15/11/2016 and that the alleged map had been got fraudulently and illegally passed antedated by making forged signature of the complainant which can be verified from the certified copy of the map and order sheet. Moreover, he has already filed objection petition under proper receipt to the Executive Officer, Nagar Parishad, DanapurNizamat for cancellation of the said map in question which is under process. The

respondents have not yet submitted any documents/paper with regard to receipt of the said alleged payment of Rs 1.5 crore allegedly made in cash as well as by cheques in favour of the complainant by the respondent. He has submitted that six account payee cheques amounting to Rs 60 lakhs were voluntary issued to the complainant by the respondent Mr Rajiv Ranjan Kumar on different date prior to 15/11/2016 which were bounced back and not a single cheque was encashed in favour of the complainant due to insufficient fund. It is absolutely false that the said sum of Rs 60 lakhs has even been paid in cash to the complainant by the respondent and hence, he has already filed petitions for initiating criminal proceedings under Sections 406, 420, 467, 468, 471 and 120(B) etc of the IPC and under Section 138 of the N.I. Act against the respondent before the police authorities including the Vigilance Department and the same are under enquiry.

9. The complainant has further alleged that a proceeding had also been initiated by the Public Grievance Resolution Officer, Patna against the respondent which has been transferred to the Public Grievance Resolution Officer, Danapur for proper action.

10. The complainant has further submitted that the application for registration of the alleged project submitted on 01/11/2018 before the Authority is not in proper form and order nor the same is in accordance with the provisions as laid down under Bihar Real Estate (Regulation & Development) Rules, 2017 for non-furnishing of proper, true and correct information for registration of the project with the Authority as specified under Section 4 of the Real Estate (Regulation & Development) Act, 2016.

Hearing :

11. The case was heard on 11/01/2019, 30/01/2019, 27/02/2019, 01/04/2019 and 10/05/2019. On 20/01/2020, the complainant filed a petition informing

that a title suit case no.397/2019 for cancellation of development agreement has been filed in the court of learned Sub Judge I, Danapur and the captioned case has already been admitted by the court. Another complaint case no.1865/2019 has also been filed before the learned Judicial Magistrate and the learned Magistrate has been pleased to take cognizance under Section 417 and 468 of IPC vide order dated 06/01/2020 against the respondent Mr Rajiv Ranjan Kumar. He has annexed the said order with the petition. It was however observed that the Complainant has not submitted any stay/restraint order on the construction of the Project from any Competent civil/criminal court till date.

Issues for Consideration :

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

1. Firstly, There is no doubt that there is a serious dispute between land-owner and the promoter on the various issues included in the Development agreements executed by them, involving allegations and counter-allegations of fraud, false signature and map approval on forged documents/signatures etc . Resolution and settlement of such disputes on Development agreements is outside the mandate of the Real Estate Regulatory Authority (RERA) as enshrined in the Real estate (Regulation and development) Act 2016.
2. Secondly, the Complainant has not submitted any stay order on the construction of the Project from any competent civil/criminal Court.
3. Thirdly, There is a provision for revocation of registration under section 7 (1) of the Real Estate (Registration and Development) Act 2016 as under :

The Authority may, on receipt of a complaint or suomotu in this behalf or on the recommendation of the competent authority, revoke the registration granted under section 5, after being satisfied that—

- (a) the promoter makes default in doing anything required by or under this Act or the rules or the regulations made thereunder;
- (b) the promoter violates any of the terms or conditions of the approval given by the competent authority;
- (c) the promoter is involved in any kind of unfair practice or irregularities.

Explanation.—For the purposes of this clause, the term "unfair practice means" a practice which, for the purpose of promoting the sale or development of any real estate project adopts any unfair method or unfair or deceptive practice **including** any of the following practices, namely:—
(A) the practice of making any statement, whether in writing or by visible representation which,—

- (i) falsely represents that the services are of a particular standard or grade;
- (ii) represents that the promoter has approval or affiliation which such promoter does not have;
- (iii) makes a false or misleading representation concerning the services;

(B) the promoter permits the publication of any advertisement or prospectus whether in any newspaper or otherwise of services that are not intended to be offered;

- (d) the promoter indulges in any fraudulent practices.

13. It is therefore evident that there is a provision for revocation of registration even after registration of a project is done, provided the criterion prescribed are met. Hence, there is no reason for the Authority to intervene at this juncture.

Order :

14. The Bench therefore holds that the resolution and settlement of disputes between land-owner and the promoter on the various issues included in the Development agreement, involving allegations and counter-allegations of fraud, false signature and map approval on forged documents/signatures etc is outside the mandate of the Real Estate Regulatory Authority (RERA) as enshrined in the Real estate (Regulation and development) Act 2016. Therefore, the Petitioner may approach the competent civil/criminal court for redressal of their grievances.

15.The Authority may obtain an indemnity bond/Bank guarantee from the promoter to protect the interests of the allottees, should the occasion arise as a result of adverse order/judgement of the competent civil/criminat court.

16.The complainant may approach the Authority under Section- 7 of the Act , if he so desires, for revocation of the registration of the project of the promoter, provided the conditions prescribed therein appear to have been met.

With the aforesaid observations and directions, the present complaint case stands disposed off.

(S.K. Sinha)
Member

(R.B. Sinha)
Member