

REAL ESTATE REGULATORY AUTHORITY, BIHAR, PATNA

**Before the Bench of Mr R.B.Sinha & Mr S.K. Sinha,
Members of the Authority**

Case Nos.CC/128/2018

Shabbir Ahmad.....Complainant

Vs

M/s Saeban Constructions Pvt Ltd..... Respondent

**Present: For the Complainant: In person,
Mr Mukul Sinha, Adv**

**For the Respondents: Mr Shahjad Ahmad, MD
Mr Wasimul Haq, Adv**

30/12/2020

O R D E R

1. Shabbir Ahmed S/o Late Bashiruddin, resident of Bihari Sao Lane, Ashok Rajpath, Patna- 800001 has filed a complaint petition on 20th November 2018 against M/s Saeban Construction Private Limited under Section 31 of the Real Estate (Regulation and Development) Act 2016 for restoration of his booking of Flat, illegally cancelled by the developer and possession of the flat he had booked with the developer in March 2016. He has agreed to pay all remaining amount.

2. In his complaint petition, the petitioner has stated that he along with his wife Ms Afsana Khatoon had booked a 3 BHK flat admeasuring super built up area of 1634 sqft (flat number 202) in the Project Saeban Residency located at Phulwari Sharif, Patna on 17th March 2016 at the total cost of Rs 26,50,000 (Rupees twenty six lakhs fifty thosand only). As per the agreement for sale dated 17th March 2016 executed between Developer and allottee, the promoter had received advance of Rs 9.00 lakhs in November 2014 through various cheques from the complainants and balance amount of Rs 17.50 lakhs was required to be paid by the allottee before completion of the project and registration of the conveyance deed of the flat. As per registered agreement for sale, the developer had agreed to give the possession of the flat within a year of the date of agreement but they have not yet given the possession of the apartment to the Petitioner.

3. The Complainant has also claimed that he had paid Rs 4.00 lakh to the promoter in several installments between August 2017 and May 2018. He further stated that when he had gone on 6th June 2018 to the Promoter's office to ascertain the progress of the project and submit a demand draft of Rs 4,37,500, the promoter refused to take the draft. Further, when he requested the promoter to register project with RERA, the promoter got very angry and asked them to leave and forget about their booking. Thereafter, he has received a legal notice from the promoter which he has responded to. In his complaint the petitioner has claimed that he has paid Rs 19,50,000 in all till date. He claimed that as he had demanded registration of the project with

the Authority, the promoter has cancelled his flat booking and transferred Rs 4.00 lakhs each to his and his wife's account (Rs 8.00 lakhs in all) without their knowledge and concurrence.

4. In the petition, the petitioner has sought relief by way of restoration of his booking, illegally cancelled by the developer and possession of the flat he had booked with the developer in March 2016. He has agreed to pay all remaining amount.

5. In pursuance to the receipt of complaint petition, the Authority issued a Notice to the respondent company through their director Mr Shahzad Ahmed requesting their response within two weeks. The respondent company responded through the director Mr Shahzad Ahmed on 29th December 2018 stating that the case filed by the complainant was mis-conceived and not tenable either on fact or on law. The Respondent company claimed that the complainants were at fault and have misrepresented the facts before the Authority. They stated that a registered development agreement was executed by the promoter on 21st November 2011 with the landowner and they commenced the construction of the building after map was approved on 24th January 2014. The Respondent company claimed that the construction of building was started in July 2014 and presently whitewashing work was going on. They claimed that construction work was hampered for considerable time on account of non availability of building materials particularly sand, stone-chips etc and also due to heavy rainy season.

6. They further informed that an unregistered agreement for sale for flat number 202 was executed on 21st November 2014 by them with the complainants after receipt of Rs 9.00 lakhs in form of 3 cheques and Rs 4.00 lakhs in cash (Rs 13 lakhs in total) against the total cost of Rs 38.72 lakhs.
7. The respondent company claimed that the complainant had also paid them Rs.6 lakhs during 2015 to 2018 leading to total payment Rs.19 lakhs till 6 May 2018 out of the total cost of Rs. 38,72,580 provided in the unregistered agreement for sale. The respondent company claimed that in 2015 the complainant requested for the promoter's assistance in getting a home loan sanctioned for making payment to the respondent. Accordingly the promoter executed a registered agreement for sale with the complainant on 17 March 2016 for the flat number 202 in their project Saeban residency. The registered agreement for sale however showed the total cost of the flat as Rs.26,50,000 only. The respondent company stated that the reduction in the total cost of the flat was done to enable the complainant to get a loan of Rs.19 lakhs i.e. remaining amount to be paid to the promoter. Accordingly based on the registered agreement for sale, the complainant applied for loan before the State bank of India Patna and a loan for Rs.18,69,050 was sanctioned to the complainant.
8. The respondent company claimed that as the complainant's were not making payment of the consideration amount timely, they issued a legal notice in June 2018 requesting them to make payment of the balance amount of Rs.19,72,580 and take possession of the flat.

However the complainant did not make the payment. Further, the complainant did not raise the issue of unregistered agreement for sale dated 21 November 2014 in their response to the legal notice. The respondent also followed by issuing another legal notice dated 8 August 2018 giving counter reply to the response of the complainant to the earlier letter whereby a clear picture was conveyed to the complainant. They claimed that there was no alternative left for them but to cancel the agreement for sale dated 21 November 2014 and 17 March 2016, as no reply came from the side of the complainant. Further, the notice of cancellation was also published in daily newspapers.

9. The respondent company claimed that the complainant did not reply to the notice of the respondent. The respondent company claimed that their registered agreement for sale dated 17 March 2016 cannot be isolated from unregistered agreement for sale dated 21 November 2014 and registered agreement for sale dated 17 March 2016 was nothing but in continuation of the agreement dated 21 November 2014.

10. The respondent company also refuted the claim of the complainant that the construction of work was stopped. They claimed that the work of construction was never stopped but at times due to non-availability of building materials and heavy rainy season it was discontinued for sometime. The respondent company also stated that being a good citizen of India, they are ready to apply for registration of the project with the Authority, which is likely to be completed in

course of time. They however claimed that complainants have lost their right to get the flat as they have not made the payment of the requisite amount and they have defaulted. The respondent company have also stated that they have already refunded Rs.8 lakhs to the complainant and they would also refund the balance amount of Rs.9,36,600 after deducting brokerage charges.

11. As there were significant divergence in the response of the respondent company and complainant's claim, the Authority called both parties for personal hearing on 12 March 2019.

Hearing :

12. Hearings were held on 12 March 2019, 8 April 2019, 16 May 2019, 24 July 2019, 28 August 2019, 16 October 2019, 31 October 2019, 13 December 2019, 23 December 2019 and 15 January 2009. In course of hearing, the complainant was represented by the Learned Counsel Mr Mukul Sinha while the respondent company was represented by their learned counsel Mr Wasimul Haq and Mr Shahjad Ahmad, MD. In course of hearing, both parties reiterated their stand taken in written submissions. The Complainant stated that the main reason behind reduction in the total cost of the flat in registered agreement for sale was cash payment of Rs12 lakh to the builder during November 2015-March 2016 before getting the registration of agreement for sale done in March, 2016. On direction of the Bench, the Complainant submitted the bank statements of three years to show that they had withdrawn Rs13.50 lakh during this period for making payment to the respondent.

13. The respondent company stated that the registered agreement for sale was executed in March 2016 at the behest of complainant so as to enable him to get a home loan sanctioned from a bank to make payment of the remaining amount of Rs 19.82 lakhs to the respondent. They however couldn't explain as to why they mentioned the receipt of Rs 9.00 lakhs only in the registered agreement for sale excluding the cash payment of Rs 4.00 lakh in November 2014 and Rs 2.00 lakh by cheque in August 2015, the receipt of which they have been admitting later on in their legal notice and in their response to the Authority. Similarly, in their response, the complainant has not been to explain as to why they did not get the respondent to include payment of Rs 2.00 lakh made through cheque by him in August 2015 to the respondent in the registered agreement for sale executed in March 2016 when they had included the earlier payment of Rs 9.00 lakhs made in November 2014.

14. The Complainant further stated that he had paid Rs 4.00 lakh by cheque/cash during 2017-18 with last payment made in May 2018. Further, he along with his wife (Co-applicants) had gone to handover the demand draft of Rs 4.37 lakhs to the Respondent on 10th June 2018 but the same was not accepted by the respondent. He claimed that they were also insulted by the respondents and told in no uncertain terms that they should forget about the flat. Thereafter, the complainant stated that they received a legal notice from the respondent for making payment of the remaining amount of Rs 19.82 lakh, which was responded back by them. The respondent again sent

another legal notice, which was again replied back by them. But after a few days they got Rs 8.00 lakhs in their (both co-applicants) bank accounts. The respondent had however not paid the balanced amount of Rs11.72 lakh.

15. The Respondent stated that the complainant had also lodged a FIR with the police and in order to get an anticipatory bail, they have been directed by the court to pay the remaining amount in ten installments to the court. They claimed that they have started depositing the installments in the Court.

Issues for consideration

16. There are following issues for consideration before the Bench :
1. Whether the project was an ongoing project as on 1.5.2017 and thereby covered under the provisions of the Real Estate (Regulation and Development) Act 2016;
 2. When there are two agreements- one unregistered and the second –registered on the same subject between the same parties, which one should have precedence ? Whether a Registered agreement for sale has precedence over unregistered agreement for sale? ;
 3. Whether there was an inordinate delay in making payment of installments by the complainant or whether there was considerable delay in completion of the project by the promoter
 4. Whether the promoter has a right to cancel the booking unilaterally particularly when they have executed a

registered agreement for sale and have received significant payment from the allottee;

17. As regards the first issue i.e. whether the project was an ongoing project as on 1st May 2017, the date of the commencement of the Real Estate (Regulation and Development) Act 2016, the Respondent Company have themselves admitted in their response dated 9th January 2019 to the show cause notice issued by the Authority that the project was not yet complete and was likely to be completed by August 2019. Hence, it is a fact that the project was an ongoing project as on 1st May 2017 and hence covered under the provisions of the Real Estate (Regulation and Development) Act 2016. The promoter has since applied for registration of the Project in January 2019 after a show cause notice was issued to them by the Authority. The Project was registered by the Authority since then.

18. So far as 2nd issue is concerned , both parties have admitted the existence of unregistered as well as registered agreements for sale and have given their own reasons for execution of the later agreement. Since both parties have agreed that they have executed the registered agreements for sale one and half year after the executing the unregistered agreement, the Bench thinks it reasonable and prudent to rely on the provisions of registered agreement for sale, which was executed later on i.e. 17th March 2016.

19. In so far as third issue is concerned, the promoter has stated that the building map was approved by the competent authority on

24th January 2014 and the construction of building was started in July 2014. As per the rules, the Project/building is required to be completed within a period of three years from the date of approval of the plan, subject to extension of two years on account of valid reasons. Though the registered agreement for sale executed on 17th March 2016 did not mention specific date of completion but stated that the project was likely to be completed in a year. It also provided that entire payment needs to be made by the allottee before the project is completed and conveyance deed is registered.

20. As per the application for registration of the project submitted by the Promoter to the Authority, the project appeared to have delayed and was to be completed by August 2019. Hence, it could be safely presumed that as per the provisions of the registered agreement for sale, the allottee was required to pay the remaining amount of cost initially with Rs 17.50 lakhs by August 2019. Though there was no payment schedule with dates of making payment of installments in the Agreement, the allottee had paid a sum of Rs 4.00 in several installments between August 2017 and May 2018 to the promoter. The Allottee had also submitted a copy of the Demand draft of Rs 4, 37,500 of state Bank of India to the Authority, which he had claimed to have carried to the office of the respondent for handing over on 6th June 2018. Thus it can be safely assumed that the allottee was in constant touch with the promoter and the promoter has been accepting the payments from allottees on regular basis till May 2018, though the project was still under construction. There was thus neither any inordinate delay in completion of the project nor the

allottee had made inordinate delay in making payment as he had already paid Rs 13 lakhs till May 2018 and was to submit another Rs4,37,500 on 6th June 2018 to the promoter.

21. So far as 4th issue is concerned, the promoter had not prescribed the payment plan linked with the stages of construction in the registered agreement for sale. Further the registered agreement for sale was not as prescribed under the RERA Rules which came under operation with effect from 1.5.2017. Thus, the promoter had no right to unilaterally cancel the booking of the flat against which they have been receiving payments till May 2018 even when the project was away from completion. Hence the unilateral action of the promoter to cancel the booking of the flat appears to be arbitrary and unjustified.

Order

22. The Bench therefore holds the cancellation of the booking of flat no -202 in Saeban Residency by the respondent company as hasty, arbitrary and illegal. Thus, the order for cancellation of booking of Flat no- 202 in Saeban Residency, issued by the respondent Company is declared as null and void. The Bench also declares unilateral transfer of Rs 8 lakhs to the bank accounts of the complainants without their knowledge and concurrence as illegal and uncalled for.
23. The Bench further directs the Respondent to hand over the possession of the flat to the complainants within sixty days on

payment of (Rs 26.50- Rs 13 lakhs = Rs 13 lakhs) Rs 13 lakhs. The complainant will ofcourse return the refunded amount of Rs 8.00 lakh to the Respondent company on the date of taking over the possession of the flat.

Sd
Dr S K Sinha
Member

Sd
R B Sinha
Member