

REAL ESTATE REGULATORY AUTHORITY, BIHAR,

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

Complaint Case Nos. CC/150/2018

Utpal Kumar Mukharjee.....Complainant

Vs

M/s Gayatri Homes India Ltd.....Respondent

Present : For the Complainant : Ms Sharad Sekhar, Advocate

For the Respondent : Mr Rakesh Roushan Singh, Adv

02.01.2021

O R D E R

1. Utpal Kumar Mukharjee S/o Late Sri Bhola Nath Mukharjee, resident of Bhatta Durgabari, Purnea- 854301 has filed complaint petition against Mrs Gayathri Homes India Ltd, Bhagalpur under section 31 of the Real Estate (Regulation and Development) Act 2016 for not handing over the possession of his share of flats, as agreed in the unregistered development agreement executed by him with the respondent company in August 2010 followed by a registered development agreement executed between the same parties on 29 April 2012.

Case of the Complainant

2. In his petition, the complainant had stated that he was a 76 year old senior citizen. He along with his nephew Mr Samant Kumar are the joint

owners of land measuring 6671 sqft at the Bikhampur, Bhagalpur. He claimed that both of them had executed an unregistered development agreement on 16 August 2010 with M/s Gayatri homes India Ltd, Bhagalpur represented by their three directors Mr Asit Kumar Das, Mr Kaushal Kishore Sinha and Mr Sanjay Ranjan for development of a multistoried building in the name of Sampriti Apartments. Thereafter another registered development agreement was executed between the land-owners and M/s Gayatri Homes India Ltd on 29 February 2012. According to the registered development agreement dated 29 February 2012, the 40% of the total constructed area along with parking space were to be handed over to the land owners within a period of three years inclusive of six months of grace period from the date of vacation of land or date of sanction of the MAP by the BMC whichever is later. He claimed that he vacated the land in December 2010 and the plan of the project approved by the BMC on 05.09.2011. According to the said development agreement, thus the due date of handover of possession of the flats of land-owner's share was 4th September 2014.

3. The complainant claimed that even after passage of seven years, neither the construction work of his two flats out of total share of 40% constructed area were completed, nor he had been handed over the possession of two flats (one at the ground floor flat number G2 and another on second floor flat number 202). He claimed that though he had given numerous reminders to the developer after September 2014 for handing over the possession of the two flats, he has only been given false assurances that he would be given his share within next few months. He claimed that till date, electrical wiring and switches work,

door and windows except main door, plumbing, bathroom fittings, kitchen fittings and wall tiles in kitchen and bathroom works were pending in those two flats. He claimed that presently the developers were using these two flats to keep/stock their materials.

4. The complainant claimed that when he visited the site couple of months ago, he found that except his two flats, all other flats in the apartment have already been handed over to the allottees and also to Shri Samant Kumar, the other landlord. Therefore he demanded immediate completion of flats and handing over the possession of his two flats along with completion certificate issued by the BMC. In response, he claimed that he was told by the respondent that unless he deposits service tax dues of Rs.5.49 lakhs, the flats could not be completed and delivered to him. Interestingly the development agreement executed in the month of February 2012 made no mention of payment of service tax in the agreement. Therefore he felt that being a senior citizen the developers were trying to blackmail him. He also accused that the developers were showing the project i.e. Sampriti apartment as completed on 31st December 2017 on the website but it was not actually so. He claimed that developer had mentally harassed him in such a way that he has become mentally and physically sick. He claimed that if anything happened to him due to this mental, physical or financial tension and torture, then Developer will be held liable for the same. He also demanded a compensation of Rs.50,00,000 against the mental and physical torture to a senior citizen like him. He also claimed that he was incurring huge financial loss and he would have been getting 15,000 per month rent for each of his flats for last four years.

In pursuance to the receipt of complaint petition, a notice was issued by the Authority to the respondent company to furnish their reply within two weeks of the receipt of the notice.

Response of the Respondent Company

5. In their reply, the respondent company stated on 19 March 2019 that the complainant has not paid the extra works dues and service tax dues to the company. As the result thereof, they were not able to handover the flats. They stated that as soon as the service tax dues are paid they would be able to hand over the flat.

6. The respondent company claimed that they are a reputed and prestigious construction company which has been doing tremendous service to the society and the complainant was trying to bring bad name to them.

Hearing

7. As there were significant differences between the complainant's claim and respondents stand, the Authority called them for hearing. Hearings were held on 1 April 2019, 6 May 2019, 8 July 2019, 26 August 2019, 14 October 2009, 11 December 2019, 10 January 2020, 21 January 2020, 19 February 2020, 17 September 2020 and 16 October 2020.

8. In course of hearing, the learned counsels of the complainant and respondent company reiterated their stand submitted in their written statement. The respondent company submitted the details of expenses incurred by them on transformer and Generator and stated that share of

the two flats of the complainant amounted to Rs.2,49,056. In response to the learned counsel of the complainant made a counter claim. The complainant finally agreed to pay the dues and the Respondent Company handed over the possession of two flats to the Complainant in October 2020.

Issues for Consideration

9. There are following issues for consideration before the Bench:-

1. Whether the Project Sampriti Apartment was an ongoing project as on 1st May 2017, the date on which all provisions of the Real Estate (Regulation and Development) Act 2016 came into operation in the state of Bihar;
2. Whether there was an inordinate delay in completion of the project Sampriti Apartments or the project was completed and only two flats of the complainants held by the developers for getting their dues; Whether those two flats of the complainants were used by the Respondent/developer as store room to keep their materials;

10. As regards the first issue, the complainant in his application had stated that the promoter has registered his five projects with the the Authority. In their applications for registration of their projects, the promoter had themselves stated that the project Sampriti Apartment was completed on 31st December 2017. In their audited annual accounts for 2017-18 also, the company has depicted that the project Sampriti Apartment was completed during the financial year 2017-18. It is thus established beyond doubt that the Project Sampriti apartment was an ongoing project on 1st May 2017, the

the date on which all provisions of the Real Estate (Regulation and Development) Act 2016 came into operation in the state of Bihar;

11. So far as second issue was concerned, the Respondent company has itself admitted that the project was completed on 31st December 2017 as against the stipulated date of 4th September 2014. Thus, it is apparent that there was a delay of three years and four months in completion of the project. In their response, the respondent company didn't give any satisfactory reasons for delay. The Complainant is therefore justified in demanding rent for the period of delay.

Order

12. The Bench orders the respondent company to register their project Sampriti Apartment with the Authority without any further delay, as per their own admission, the project was an ongoing project as on 1.5.2017, the date on which all provisions of the Real Estate (Regulation and Development) Act 2016 came into operation in the state of Bihar;

13. As there was a delay of three years and four months in completion of the project and developer has taken economic benefits of the two flats of the complainants without completing and handing over to the complainant by using the flats as store rooms, the respondent company is directed to pay a rental of Rs 5000 per month per flat for the period of delay i.e. from 5th September 2014 till 31st December, 2017, the date on which the project was completed.

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**R B Sinha
Member**

**S K Sinha
Member**