

**REAL ESTATE REGULATORY AUTHORITY, BIHAR**

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

**Case Nos.CC/219/2019**

**Kumkum Singh.....Complainant**

**Vs**

**M/s Deonandan Construction Pvt Ltd.....Respondent**

**Present :- For the Complainant : In Person**

**For the Respondent : Mr Sharad Shekhar, Adv**

**30/12/2020**

**O R D E R**

1. Mrs Kumkum Singh W/o Late Kaushal Kishore, a resident of 401, Sharan Complex, Sadaqat Ashram, Patna-80001 has filed a complaint petition on 22<sup>nd</sup> January, 2019 against M/s Deonandan Construction Pvt Ltd through their Directors Mr Ashok Kumar and Mr Prashant Prasanna for non- installation of lift and generator in the Project and has also sought damages for the delay in completion of the project.

**Case of the Petitioner**

2. In her Petition, she has stated that she along with a few other relatives had entered into a Development Agreement with the Respondent Company on 01.12.2010 for development of a Multi-storied commercial cum residential building complex on their plot of land. According to the Development agreement, the project was to be completed within a period of thirty six months including a grace period of six months from the date of sanction of the building plan by the competent Authority or date of handing over of the possession of land by the land-owners, whichever was later. She stated that the respondent company delayed the project inordinately and after repeated

reminders, they handed over their share of constructed area in May 2017. In spite of the delayed handing over the possession of the flats, the respondent company has not installed the lift and generator in the project as yet. She has also claimed compensation for period of delay in handing over the possession of their share of properties.

3. She has attached a copy of the development agreement executed between the complainant and the respondent company, a copy of the distribution of flats amongst land-owners and developer, a copy of the possession letter along with her application.

4. In pursuance to the filing of the complaint petition, a notice was issued by the Authority to the Director of the Respondent Company, M/s Deonandan Construction Pvt Ltd to submit their reply by 28/02/2019.

**Reply of the Respondent Company :**

5. The respondent company through the Director Mr Ashok Kumar in its reply has submitted that RERA has no jurisdiction to entertain this matter since their project was completed much before RERA came into force. The respondent stated that the flats have been registered in the year 2017 itself and possession of the share of building has been handed over to the complainant on 05/05/2017 and that the delay in handing over of possession letter was due to delay in payment of the non-refundable amount to the land owners on the issue of measurement. The Respondent claimed that there was some delay in the construction primarily due to shortage of sand and stone-chips periodically due to the policies or restrictions imposed by the state government. Further, the respondent claimed that they have paid the compensation on account of delay in construction of the building to the complainant at the time of handing over the possession in May 2017.

6. The respondent has refuted the allegation regarding lift and generator, stating that such allegations were false and frivolous and all the amenities have been already been provided and were functioning to the satisfaction of the resident owners. The respondent claimed that this case be dismissed as not

maintainable and out of jurisdiction. As there was divergence in the statements made by both parties, the Authority called them for hearing to ascertain the facts.

**Hearing :**

7. The case was heard on 07/05/2019, 12/07/2019, 06/08/2019, 25/10/2019, 20/12/2019 and 28/01/2020. In course of hearing, the petitioner represented herself whereas the respondent company was represented by Mr Sharad Shekhar, Advocate and Mr Ashok Kumar, Director. When no one was present on the first date of hearing (07.05.2019), the Bench directed the directors of the respondent company to personally appear before the court on the next date. On 12.07.2019, the Director of the company Mr Ashok Kumar appeared along with Mr Sharad Shekhar, Adocate. The Bench requested both parties to settle the issues amicably between themselves. The promoter assured the Bench that all required remaining works would be completed by them within a month. On 28/01/2020 it was reported that all the remaining major works in the building have been completed.

**Issue for Consideration :**

8. The Respondent company has addressed the main grievances of the Complainant regarding installation of lift and generator in the complex. The Respondent has also sorted out the issues regarding roof treatment, fire – fighting facilities, pavements etc. Thus, the only issue left before the Bench is that of claim of the Petitioner for damages for the delay in completion of the project since all the remaining majors work have been completed by the developer.

9. The Respondent company in their response have claimed that the delay was partially due to periodic restrictions imposed by the state government on extraction of sand during raining season and supplies of stone-chips from time to time. They further claimed that they had also made payment of compensation to the complainant in May 2017, which was also accepted by the complainant. The Petitioner didn't contest the claims of the respondent

company in this respect. Hence it was evident that the delay in construction had happened largely due to reasons beyond the control of promoters. Further, the complainant had already been paid requisite compensation by the promoter at the time of handing over the possession of their share of the property nearly three years ago.

**Order :**

10. Since the remaining work like installation of lift and generator have been completed by the respondent company and possession of the flats handed over to the complainant more than three years ago, damages for the delay in construction of the building/complex as claimed by the complainant is disallowed, particularly in view of the fact they had already accepted the agreed amount of compensation at the time of taking over the possession of the flats in May 2017. The matter is therefore disposed of accordingly.

Sd  
(S.K. Sinha)  
Member

Sd  
(R.B. Sinha)  
Member