

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/290/308/322/605 of 2018/2019

**Ragini Ranjan, Shruti, Sunita Kumari & Anand Mohan And Ritwik
Prasanna Complainants**

Vs

M/s Realize Realcon Pvt. Ltd. And Others Respondents

Present: For the Complainants: In persons

**For the Respondents: Mr Shailendra Giri, MD
Late Durga Narayan, Advocate
Mr Mohit Raj, Advocate
Mr Ankit Kumar, Advocate**

30/12/2020

ORDER

1. The complainants – Ragini Ranjan, Shruti, Sunita Kumari & Anand Mohan and Ritwik Prasanna – in their respective complaint petitions filed between March 2019 and September 2019 under section 31 of the Real Estate (Regulation & Development) Act, 2016 against M/s Realize Realcon Pvt Ltd, 601, Ganga – 6, Jalalpur City, Ramjaipal Nagar, Bailey Road, Patna – 801503 through the Director Mr Shailendra Kumar Giri, sought refund of their principal amount along with interest as the promoter failed to honour the terms of the Agreement, committed repeated breach of trust and made inordinate delay in construction of the project with negligible improvement in the progress of the project inspit

of repeated reminders. The complainants have submitted copies of the registered agreements for sale along with documentary evidences of payments (Money receipts etc) made to the Respondent company, booking applications etc.

2. The Complainants have stated that they have booked flats (Shruti-Flat No-606, Ragini Ranjan-Flat No- 608, Sunita Kumari & Anand Mohan-Flat No-1003 and Ritwik Prasanna- Flat No-101 during 2016-17 in the G + 12 Project Realize Green Exotica, proposed to be developed at Bhusala, near AIIMS Bihta, Patna, The allottees were to be given the possession of the flats by December 2018.

3. The Respondent company have however failed to deliver the flats as committed in the registered agreements for sale executed with each of the complainants, bookings for which were made and advance payments were received by the promoter. Ragini Ranjan made a payment of Rs 16,14, 570 (Rs. Sixteen Lakh, Fourteen Thousand, Five Hundred and Seventy only-) between February 2016 and February 2018, Shruti made a payment of Rs. 30,91,555 (Thirty Lakh, Ninety-One thousand, five hundred and fifty-five only-) between September 2016 and March 2019, Sunita Kumari and Anand Mohan made a payment of Rs 15,00,000 (Rs Fifteen Lakh only-) during August-September 2017 and Ritwik Prasanna made a payment of Rs. 9,00,000 (Rs. Nine lakhs only-) to the respondent company during August 2016 to April 2018.

4. In their respective petitions the complainants claimed that the respondent company kept on taking payments but it did not execute the project properly and construction work was done at a very slow pace. The complainants requested that their respective principal amount along with interest should be paid back and also sought compensation from

the respondent for its failure to honour the promises made in the agreement of sale.

5. Further, one of the complainants Shruti has alleged that the respondent company in collusion with the State Bank of India have altered her application for release of installment amount from Rs 6.00 lakhs to Rs 16 lakhs without her knowledge and concurrence, so as to get excessive funds released to the promoter.

6. Another complainant Ragini Ranjan has stated that though she had done the booking for flat no- 407 on 4th floor in February 2016 and had made payments for several installments till 2018 against the same booking, her flat number was changed to 608 in February 2018 at the time of execution of registered agreement for sale without her concurrence.

7. Sunita Kumari and Anand Mohan have stated that though they had made payment of Rs 15.00 lakhs through three cheques of Rs 5.00 lakh each, the Respondent company has confirmed the receipt of Rs 13,39,286.00 only in the registered agreement for sale without disclosing any reasons.

8. As one of the complainants, Shruti also submitted a petition that since the State Bank of India, RACPC, Patna released loan amount to the Respondent without her consent, they may also be made a party in this case. Further, she also made SBI General Insurance Company Ltd. a party in this case claiming that insurance premium was charged by them for her flat at sixth floor despite the fact that the flat had not yet been constructed by the Respondent company as the construction work was still going at the roof level of the ground floor of the project.

9. In pursuance of the receipt of complaint petitions, notice was issued to the respondent company seeking their comments within two weeks.

Response of the Respondents

10. The Respondent company never denied that it had received payments from the complainants and accepted that it would return the money of the complainants as the project execution had not taken place on expected line.

11. The SBI, RACPC, Patna in its response claimed that it had released the loan amount to the promoter on the request of the client.

12.. The SBI General Insurance Co. Ltd. accepted that it had charged the insurance premium even though the flat had not yet been constructed and hence it returned the money to the bank account of the complainant.

Hearing

13. In the first hearing of the case on June 22, 2019 neither the respondent company nor the representatives of SBI and SBI General Insurance Company Ltd. turned up.

14. In subsequent hearings of the cases, which concluded on March 3, 2020, the respondents appeared before the bench and explained their stand.

15. The Respondent Company accepted to have taken money from the complainants and also accepted that it had failed to honour the terms of the agreement of sale. The company also accepted that it was willing to payback the advance taken from the complainants in installments.

16. The SBI RACPC Patna contested the claim of the complainant and submitted documents stating that the loan amount had been released to

the promoter on the basis of written requests made by the complainant and hence it was not at fault. They however didn't offer any comment on claim of the complainant that she had requested for release of Rs 6.00 lakh only and had also submitted copy of her request letter. Further, SBI didn't also investigate the serious lapses committed by their designated officer Mr Anup Kumar, Assistant Manager who certified that roof casting of ground floor of the Project Realize Green Exotica was completed on 30.12.2018 while photographs of construction work taken on 3rd March 2019 and submitted by the complainant indicated partial completion of the roof casting of ground floor only.

17. The SBI General Insurance Co. Ltd. informed the Bench that it had refunded the premium amount of Rs 33007 (Rs. Thirty-Three thousand and seven only-) to the complaint. They stated that the same was done on the basis of application of the complainant in which it had been stated that the flat had still not been constructed.

Issues for Consideration

18. There is no doubt that the promoter i.e. Realize Realcon Pvt. Ltd. has failed to implement the project properly and the construction work in this project is still in preliminary stage. The promoter summarily failed to meet the deadline of December 2018 as mentioned in agreement of sale on the basis of which payment was taken by it from the complainants since early 2016 from many consumers.

19. The SBI, RACPC, Patna has claimed that it had released the loan amount to the promoter on the basis of requests made by the applicant but couldn't explain as to why they didn't keep the borrower informed of the release of loan on the date of disbursement. Further, it is clear that the Bank did not use any independent machinery to crosscheck whether the project was being executed at desired pace or not before releasing

the loan amount. Such an act is a cause of concern because a Bank or financial institution is expected to have an independent mechanism along with video/ photographic evidences in place to find out whether the loan is being released for genuine work or not. Further the Bank didn't appear to do due-diligence at the time of sanction of home loan for such projects where payment schedule requires payment of 60 % of the estimated cost of a flat in a G+12 Project, at the Roof casting stage on ground floor stage only. Such projects are likely to be inordinately delayed as the promoters wouldn't have incentive/interest in timely completion of such projects as they would have received substantial sums at the initial stage of the construction itself.

20. The SBI General Insurance Co. Ltd. has accepted that it had charged property insurance premium amount from the complainant even though the property/ flat was not in existence. This shows a casual approach of the insurance company as it insured a property which was not even in existence.

Order

21. It is, therefore, ordered that the promoter i.e. Realize Realcon Pvt. Ltd. should payback the deposit along with the interest at the rate of 9.5 per cent (MCLR + 2%) from the date of deposit to the date of refund to each complainant, within sixty days of issue of this order. The Respondent Company should also adjust the amount already refunded back to the complainants.

22. The Bench is also of the opinion that SBI should develop a mechanism to keep tab on the procedure followed for releasing loan amount to any promoter on behalf of its client. Release of every installment to the promoter should be informed to the borrowers on the day of disbursal only. The bank should also crosscheck the progress of

the real estate projects through independent mechanism and have video/ photographic evidences before releasing money. The Bank should get this case investigated through an officer not lower in rank than General Manager of the Bank preferably from Vigilance Department of the Bank to ensure that such cases do not recur. The top management of SBI should be given a copy of this order so that it could keep tab on the functioning of its field offices/officials.

23. The Bench also takes strong exception to the act of SBI General Insurance Co. Ltd. for charging insurance premium of a non-existent property from the complainant. The top management of the Insurance Company must be informed about this act and steps should be taken to ensure that such mistakes are not done in future.

Sd/-

(R B Sinha)
Member

Sd/-

(S K Sinha)
Member