

# **Real Estate Regulatory Authority, Bihar, Patna**

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

**Complaint Case Nos. CC/303/2019**

**Shakuntala Devi ... .....Complainant**

**Vs**

**Phenomenal Projects Pvt Ltd. ... Respondent**

**Present: For the Complainants: In person**

**For the Respondents: Mr. Rakesh Raushan Singh, Adv**

**Mr. Praveen, Advocate**

## **ORDER**

**02.01.2021**

1. The complainant – Shakuntala Devi W/o Sri S. P. Lal, resident of Rukanpura, Baily Road, Patna– in her complaint petition filed in March, 2019 under the section 31 of the Real Estate (Regulation & Development) Act, 2016 against Phenomenal Projects Pvt. Ltd., 404, Lalita Apartment, Ashiana Road, Patna – 800014, through its director Mr Sanjay Kumar, resident of Sampark House No-61A, Akashwani Road, Khajpura, Baily Road, Patna sought refund of her principal amount along with interest as the promoter failed to honour the terms of the Agreement and deliver the plots of land, booked by him. The complainant submitted copies of the agreement for sale along with documentary evidence of payments made to the Respondent.

2. According to the details of agreement of sale, the Respondent company failed to deliver desired number of plots, booking for which had been made and even advance payments were received by the promoter. The Complainant paid a sum of Rs 46.98 lakh (Rs. Forty-Six Lakh and Ninety-Eight Thousand only -/) to the respondent between October 2017 and July 2018 for six plots of land each measuring 1200 sq ft. While the respondent registered just two plots of land in the name of the complainant and the rest of the plots were neither handed over nor registered.

3. In her petition, the complainant claimed that the respondent company didn't pay heed to her repeated request to register all the plots and after much persuasion, registry of just two plots was done in June 2018. The complainant requested that the principal amount along with interest should be paid back.

4. The complainant also maintained that she failed to get the registered land mutation done in her name as the local circle officer rejected her application questioning the legality of the land sold to her. She demanded refund of Rs 23.02 lakh charged for registration of two plots and Rs 1 lakh which she paid as registration fee.

5. The complainant submitted that after trying for more than a year to settle the issue with the promoter amicably, she failed to get positive response from the opposite party and hence she filed the complainant with the Authority.

6. In pursuance of the receipt of complaint petitions, a notice was issued to the respondent company in March 2019 under various of Real Estate (Regulation & Development) Act, 2016 and Rule 36 of the Bihar Real

Estate (Regulation & Development) Rules, 2017 in March 2019. The hearing in the case commenced in July 2019.

### **Response of the Respondent**

7. The Respondent company never denied that it had received payments from the complainant but at the same time it also maintained that the complainant had failed to honour the terms of agreement for sale and its claim for refund with interest was unjustified.

### **Hearing**

8. In the first hearing of the case on July 10, 2019, the counsel of the respondent company appeared while the complainant appeared in person. The respondent company was asked to submit its reply. The Bench also directed the respondent company to file application for registration of its project with the Authority, as it was an ongoing project and according to the relevant provisions of Real Estate (Regulation & Development) Act, 2016, all the ongoing projects needed to register with Real Estate Regulatory Authority.

9. In subsequent hearings of the case, the Bench of the Authority was informed on August 8, 2019, by the counsel of the respondent company that altogether Rs 9 lakh had been paid back to the respondent and remaining amount too would be refunded soon.

10. While hearing the case on December 12, 2019, the Bench directed that the Managing Director of the respondent company should appear personally in the court during next date of hearing of the case. This directive, however, was not honoured by the respondent company following which the Bench, while hearing the case on December 26, 2019, imposed a cost of Rs 10000 on the respondent company.

11. The respondent company during hearing of the case on January 7, 2020, informed the Bench that the balance amount of Rs 14.96 lakh for which no land had been registered to the complainant would soon be refunded to the complainant.

12. During hearing of the case on March 3, 2020, no one appeared from the respondent company after which an interim order was passed in which the Bench observed that despite of several directions to the respondent company to refund the remaining consideration amount to the complainant and for personal appearance of the director of the company, the respondent company had not complied with the directions. In view of this the Bench had found it appropriate to issue interim order. The Bench directed that until further order all the bank accounts of the respondent company should be frozen with immediate effect. The Bench requested IG Registration to issue directions to all DSRs/Sub-Registrars of Patna district not to register any apartment/plot of land of the respondent company. The Bench requested the registrar of companies, Patna, to provide necessary details like PAN, Bank Account, DIN, Aadhaar and other relevant details of the company so that necessary action against the respondent company could be taken.

13. Once the hearing of the case commenced through video conferencing after hiatus caused by Covid 19 pandemic, the Bench while hearing the case on October 7, 2020, directed the respondent company to refund the money to the complainant and also directed the director of the respondent company to be personally present on the next date of hearing of the case.

14, During hearing of the case on November 9, 2020 the Bench observed that even though the counsel of the respondent company had referred to the term ***Audi Alteram Partem*** but the respondent had

always been allowed to present its side and Bench had been hearing the submission of the respondent at a great length. The Bench directed both the parties to submit their written brief on affidavit within 15 days.

15. Both the parties submitted their written brief in which they stuck to their respective stands taken earlier during course of hearing of the case.

### **Issues for Consideration**

16. Despite enactment of Real Estate (Regulation & Development) Act, 2016 and formulation of RERA Rules, 2017 by Bihar Government, the promoter has failed to register its ongoing project with the Authority even though the Authority had directed it to do so. Thus the Respondent company has contravened the provisions of the Section 3 of the Real Estate (Regulation & Development) Act, 2016.

17. There is no doubt that the promoter i.e. Phenomenal Projects Pvt. Ltd. has failed to implement the project properly. The respondent company also failed to come up with any justification for not complying with the directives of the Bench issued from time to time during course of the hearing of the case

### **Order**

18. It is, therefore, ordered that the promoter i.e. Phenomenal Projects Pvt. Ltd. should pay back the balance amount along with the interest at the rate of Marginal cost of lending rate (MCLR) of the State Bank of India plus two percent from the date of deposit to the date of refund to the complainant within sixty days of issue of this order.

19. The complainant is free to take legal recourse for the piece of land which had been registered by the promoter in her name in case the

mutation of the land is not done owing to legality of registration deed executed by the promote for the two plots.

20. As the promoter has not applied for registration of the project inspite of the directions given by the Bench, the Bench directs that the proceedings against the respondent company and its all directors under section 59 (2) of Real Estate (Regulation & Development) Act, 2016, be initiated forthwith.

21. The directives issued in the interim order, issued by this Bench on March 3, 2020, would continue to be in effect till the promoter would register its ongoing project with the Authority in accordance wit the provisions of Real Estate (Regulation & Development) Act, 2016.

22. The Bench also directs that the promoters of the Respondent company Mr Sanjay Kumar and Ms Namita Singh should be barred from undertaking any transactions in the real estate sector until further orders. The Registration Department may please ensure that these promoters are not able to do any real estate business in the state of Bihar until further orders.

Sd/-  
**(R B Sinha)**  
**Member**

Sd/-  
**(S K Sinha)**  
**Member**

