

Real Estate Regulatory Authority (RERA), Bihar.

Before Dr. S.K. Sinha, Member of the Authority.

Case No.: CC/415/2019

Dr. Madhulika Nand Keolyor.....Complainant

(W/o Prashant Nand Keolyor)

(R/o Mohalla Purani Jail Khana, NK Lal Road, PS Kotwali, Gaya)

Vs

M/S Subh Saurya Infrastructure Pvt. Ltd.....Respondent

(R/o South Vihar, Tank Road, Gaya)

Present for the complainant: In Person

Present for the respondent: Mr. Sambhunath, Advocate.

Case No.: CC/851/2019

Mr. Nitin Kumar.....Complainant

Vs

Dr. Madhulika Nand Keolyor & other.....Respondents

ORDER

Dated: 30th Dec, 2020.

A registered development agreement was signed between Dr. Madhulika Nand Keolyor and M/S Subh Saurya Infrastructure Pvt. Ltd. on 16th Oct, 2012, for project named Subh Madhulika Palace. Earlier an unregistered agreement was signed on 4th May, 2010, for development of commercial cum residential complex on her land situated at 375 AP Colony, Gaya, and site plan was approved vide plan case number 61/09-10 dated 18th Dec, 2010. Share partition ratio between landowner and promoter was 38% and 62% respectively with some specific agreement clauses. Further, in counter case filed by complainant, Mr. Nitin Kumar of M/S Subh Saurya Infrastructure Pvt.

Ltd., submitted a negotiation with landowner Dr. Madhulika Nand Keolyor for sale of 600square feet commercial area of her share and Mr. Nitin Kumar claims that advance against that commercial area was paid to landowner. Similarly, Dr. Madhulika Nand Keolyor, complainant in her case, submitted that Mr. Nitin Kumar has let out some commercial portion and received rent for years on the same.

Time of completion of the project was 2.5 years and extension was allowed up to October, 2014. There was provision of penalty in the agreement of Rs. 2000 per month payable to landowner if work was not completed in time. Till date, promoter did not complete the project. Area of the landowner, flats in the share of landowner, parking area, common area, installation of lift, generator, etc., has not been completed by promoter as per agreement. Promoter has sold 62% of their share without obtaining occupancy and completion certificate. Dr. Madhulika Nand Keolyor sought relief for completion of remaining building construction work and asked for payment of penalty as per agreement. After filing of case of Dr. Madhulika Nand Keolyor, Mr. Nitin Kumar (Director of Subh Saurya Infrastructure Pvt. Ltd.) filed a counter case as above. The response of respondent (Mr. Nitin Kumar) was received in RERA office vide case number CC/851/2019, in which Mr. Nitin Kumar (Director of Subh Saurya Infrastructure Pvt. Ltd.) stated payment of 600 square meter commercial area made to Dr Madhulika Nana Keolyor. By March, 2014, the landowner let out the portion to green Island Pizza shop and husband of the Dr. Madhulika Nand Keolyor started clinic cum path lab. Learned counsel of Mr. Nitin Kumar is good that these are the proof of the completion of the project. In reply, Subh Saurya Infrastructure Pvt. Ltd. admitted that lift and generator has not been provided yet, and some finishing work of common area is still incomplete. Whereas, complainant (Dr. Madhulika Nand Keolyor) has submitted photographs which shows common area work and some portion of her share is not completed.

Hearing:

Hearing taken up on 11th Feb, 2020; 25th March, 2020; 16th Sept, 2020; 28th Sept, 2020; 20th October, 2020; 13th November, 2020; 25, November, 2020; 4th Dec, 2020

Reply of the Subh Saurya Infrastructure Pvt. Ltd.:

Promoter (Subh Saurya Infrastructure Pvt. Ltd.) agreed that they will provide lift and generator. Promoter has paid cost of the lift to the company and installation of lift will start soon. Promoter will submit receipt of payment of generator and will also complete some minor finishing works of landowner share and common area.

Issue of Consideration:

- (1) Whether work is completed in 2014, work of common area and landowner share are incomplete as per development agreement.
- (2) Whether claims of penalty at the rate of Rs. 2000 per month for late completion and other demand and grievances, money transferred, and balance amount is to be considered, including demand of promoter for some lesser area dispute.

With respect to issue number 1, it has been proved that some minor work of common area and owners share are still incomplete. Regarding installation of lift, promoter has started installation work and promoter has agreed to install generator soon and will show receipt of payment to RERA. Hence project may not be treated as complete, though in some portion commercial activities were started by landowner.

With respect to issue number 2, both landowner and promoter grievances arise out of development agreement, though it comes under jurisdiction of civil court for specific performance of contract and it is advisable that both parties should sit together and solve the problem amicably.

Order:

Promoter, Mr. Nitin Kumar, MD of Subh Saurya Infrastructure Pvt Ltd, is here by directed to complete installation of lift work and generator within two months' time in the interest of allottees residing in this G+4 multi storied residential and commercial complex. Promoter is also directed to complete left out common area work and remaining portion of landowner share to prove the completion of the project. Promoter and landowner should mutually solve the dispute of share, balance payment and grievances for penalty of late completion of the project within 15 days, as per agreement conditions. For other grievances related to development agreement, both landowner and promoter may seek relief from civil court respectively. Hence the matter is disposed of.

Sd/-
S.K. Sinha
(Member)