

**REAL ESTATE REGULATORY AUTHORITY, BIHAR**

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

**Complaint Case No.: CC/44/2018; CC/45/2018**

**Sudha Sinha/ Anamika Singh.....Complainants**

**Vs.**

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

**Present: For Complainants: Mr. Jairam Singh, Advocate**

**For Respondent : Mr Vijay Kumar Sinha, Advocate**

**04.01.2021**

**O R D E R**

1. The complainants- Mrs. Sudha Sinha, W/o Shri Laxman Prasad Singh, Resident of Mainpur. P.S- Patliputra, District Patna and Mrs. Anamika Singh, W/o Sri Umesh Singh, Resident of Bari Bazar, Munger, P.S. Kotwali, district- Munger, at present residing at Flat No. 204, B-Block, Super Market, Fraser Road, P.S- Gandhi Maidhan, District- Patna – in their respective complaint petitions filed in June 2018 against M/s Amina Construction Pvt. Ltd. through its Director M.D. Khalid Rashid, S/o Late Md. Yusuf, 102 first floor Jagat Trade Centre, Fraser Road, P.S. Kotwali, Patna- 800001 under Section 31 of the Real Estate (Regulation and Development) Act, 2016 for making inordinate delay in providing the flat to them.
2. The complainant, Mrs. Sudha Sinha, has submitted copies of the Development Agreement and sanctioned Map while the other

complainant, Mrs. Anamika Singh, has submitted copies of agreement for sale, legal notice and photographs.

### **FACTS OF THE CASE**

3. Mrs. Sudha Sinha, is a landowner whose land measuring area 8.79 decimal of survey plot no. 297 under khata no. 545, Touzi no.- 597 situated at Mauza Kumrar, P.S- Patarkar Nagar, Patna-20. The complainant has entered into a registered Development Agreement with respondent M/s Amina Construction Pvt. Ltd through its Director Md. Khalid Rashid for construction of Multi-storeyed Building over her said land. It was agreed that the Respondent was supposed to complete the construction work within 1 year and 6 months from the date of agreement with grace period of 6 months. It was also agreed that in case the respondent failed to complete the construction work and failed to give the possession of the flat, the respondent will be liable to pay Rs. 550/day compensation to the complainant. As per clause 12 of Development Agreement dated 31/03/2011, the share distribution and map of building was sanctioned (vide plan case no.- PMC/Kumhrar/ (C-R)- 6 325/11, dated 05/08/2011. It is further mentioned in the facts that every floor will have 3 constructed flats, (total 12 flats or area more than 500sq.m) but the proposed construction plan which was sanctioned went against the terms and conditions. It is further mentioned that the complainant, Mrs. Sudha Sinha, is entitled to 50% share of constructed area (inclusive of parking and common area). It is further mentioned that the respondent was supposed to handover the complainant share in the apartment i.e. Sudha Complex, before 29/03/2013. It is observed that the construction is still under process. As per

clause 8 of the concerned building bye-laws, the sanctioned map was valid for a period of 3 years. It is further observed that in the present case, the sanction map of building has not been revalidated and has extended the expiry period of 5 years. As per the Development Agreement, the respondent is duty bound to pay compensation amount @ 500/- per day till the date of completion since he failed to hand over the possession. It is also observed that the respondent has sold the flat of the complainant without the consent to the third party, Priyanka Kumari.

4. According to the Development Agreement, the respondent has a right to sell the flats of his share. Therefore, Mrs Anamika Singh, entered into a Registered Sale for agreement with the respondent on 22/06/2013 of Flat no. 101 and Flat no. 102 measuring super build up area 1075 & 1050 sq. ft respectively with one reserved parking of the in 'Sudha Complex' on consideration amount of Rs. 35,00,000/- for both the flats. The complainant paid Rs. 5,00,000/- through RTGS for both the flats. The respondent assured that within 3 years from the date of agreement, he will execute the sale deed and hand over the possession after executing a Deed of Agreement to sale on 22/06/2013. It was further observed that the complainant also paid Rs. 5,50,000/- by way of cheque (no.- 909331) dt: 22/06/2013 at the time of agreement. The complainant further paid Rs. 3,50,000/- when the work started of 3<sup>rd</sup> floor on 4/09/2013 through RTGS from Punjab National Bank and paid cash of Rs. 2,50,000/- on 20/02/2014. It was further observed that even after paying the amount as per schedule of payment mentioned in the agreement, the respondent has not complied with the terms and condition of the agreement and has not yet

completed the construction work for which the complainant has even attached photographs for the current status of the project. It was further observed that the complainant has sent a legal notice dated 11/06/2020 to the respondent for not completing the work in time. It was also observed by both the complaint petitions that the respondent has not yet applied for registration of his project before the Real Estate Regulatory Authority.

5. The complainants pray for completion of construction and possession of the flat. They further pray for obtaining a revised sanctioned map from the competent authority before starting the further construction and direction to the respondent for obtaining RERA registration number. The complainant, Mrs Sudha Sinha, further prays for compensation amount @ 500/day as per terms and condition of the Development Agreement.
6. In pursuance to the receipt of Complaint petitions, a notice was issued to the respondent company to furnish their reply.

### **RESPONSE OF THE RESPONDENT**

7. The respondent filed written statement cum-objection against the complainant petitions on 3/04/2019 stating that the complaint is not maintainable and barred by law of limitations. In case CC/44/2018, the respondent stated that due to lack of some important documents, the objection-cum-written statement could not be prepared and hence prayed short adjournment.

8. Further in case CC/45/2018, the respondent stated that the complainant assured to pay the full amount within the scheduled period as framed by the builder but only a sum of Rs. 14,00,000/- was paid out of Rs. 35,00,000/- to which the respondent has sent several letters to the complainant and ultimately cancelled the agreement of sale dated 22-06-2013 which duly informed to the complainant.

### **HEARING**

Hearings were held on 05.02.2019; 28.02.2019; 03.04.2019; 29.04.2019; 14.05.2019; 10.07.2019; 22.08.2019; 18.09.2019; 21.11.2019; 13.01.2020; 06.02.2020; 07.09.2020; 22.09.2020 and 19.10.2020.

9. In course of hearing, Mr. Jairam Singh, Advocate represented both the complainants. It was observed during course of hearing that the respondent company has changed his advocate several times.

10. On 29/04/2019, respondent filed a petition with the photograph of the current status of the project in compliance of the order dated 03/04/2019. On 11/11/2019, another petition for grant of time was filed by the respondent company on the ground that the respondent counsel who was earlier dealing with the case has expired. On next occasion, the plea was taken that the wife of M.D. of the respondent company was suffering from acute liver ailment and further prayed for 45 days time to respond.

11. In subsequent hearings of the case, the respondent was abstaining in most of the hearing even after repeated directions. Observing the delaying tactics of the respondent, the Bench issued an interim order vide dated 06/02/2020 as well for personal

appearance of the Director of the respondent company. The complainant Ms Anamika Singh said that even after paying the amount, there was no progress in construction of the project and the respondent company was not even complying with the agreement. It was further observed that the respondent company has not even registered the project under RERA inspite of repeated directions.

12. On 22/01/2020, again a time petition was filed by the respondent stating that the M.D of the respondent company has also been made accused in Kotwali P.S. Case no. 540 of 2018 G.R. Case No. 5403 of 2018 and for this he has surrendered before the District Court and learned A.C.J.M, Patna directed him to surrender and he has been put into custody since 18/11/2019.

13. On 19/10/2020, again a new Counsel for respondent appeared and filed a time petition and stated that the M.D is Covid Positive but it was observed that Mr. Khalid Rashid was Covid positive three months back and thus, the Bench was not satisfied with the submission of respondent counsel and rejected the time petition.

### **ISSUES OF CONSIDERATION**

14. Firstly whether the project Sudha Complex was an ongoing project as on 1<sup>st</sup> May 2017, the day on which the provisions of Real Estate ( Regulation and Development) Act 2016 came into operation.

Photographs submitted by the Complainants in 2019 makes it clear that the G+4 building was still incomplete. Even the

Respondent Company has not disputed this fact. It is therefore established beyond any reasonable doubt that the Project Sudha Complex was an ongoing project as on 1<sup>st</sup> May 2017. Therefore, the promoter has violated the section 3 of the Real Estate (Regulation and Development) Act 2016.

15. Secondly whether proceedings under section 59 (2) of of Real Estate (Regulation and Development) Act 2016 need to be initiated keeping in view the violation of repeated directions of the Bench to register the project with the Authority.

It is amn established fact that the promoter has not applied for registration of the project inspite of repeated directions by the Bench in course of hearing. It is therefore necessary proceedings under section 59 (2) of of Real Estate (Regulation and Development) Act 2016 need to be initiated.

16. Thirdly, whether the interim order passed by the Authority in February 2020, requesting the IG Registration to issue necessary instructions to NOT register any flat/Apartment in Sudha Complex and any other project of the promoter Md Rashid and his companies M/s Amina Constructions Pvt Ltd and M/s Sheba Welcome Builders Pvt Ltd, should continue until further orders;

As the conduct of the promoter left much to be desired during the course of hearing and the promoter has not applied for registration of his ongoing project till date, it is necessary that interim orders should continue.

17. Fourthly, whether the Promoter along with all other directors and their company M/s Amina Construction Pvt Ltd need to stop construction of the Project Sudha Complex forthwith, as the

building plan sanctioned in 2011 has since expired. The Plan needs to be revalidated by the Patna Municipal Corporation (PMC) or a new plan should be prepared in agreement with the landlady and got sanctioned by the PMC.

**18. Fifth**, whether the purported unilateral cancellation of booking of flat no-101 & 102 by Mrs Anamika Singh in Sudha Complex by the promoter is in order under section 11 (5) of the Act.

The complainant Anamika Singh has claimed that she has made payment of Rs16.50 lakh till February 2014, well after scheduled date of completion. She has claimed that since the promoter stopped the construction work thereafter, she also stopped making payment. She said when she sent the legal notice in 2018, she was informed that her booking was cancelled in 2013 itself, which was factually incorrect. The Complainant has claimed that she had made payment of Rs 2.50 lakh in February 2014 also and the promoter had accepted it. She said that the project was not yet complete as on date. Hence, unilateral cancellation of booking by the promoter with ante-dated effect without giving an opportunity and refunding the deposit made is arbitrary and not in order.

## **ORDER**

19. The Bench holds that the Project Sudha Complex was an ongoing project as on 1<sup>st</sup> May 2017, the day on which the provisions of Real Estate (Regulation and Development) Act 2016 came into operation. It is therefore established that the promoter has violated the section 3 of the Real Estate (Regulation and Development) Act 2016. The Authority is therefore directed to



initiate proceedings against the promoter under the Section 59 (1) of the Real Estate ( Regulation and Development) Act 2016.

20. Keeping in view the flagrant violation of repeated directions of the Bench to register the project with the Authority, the Bench orders that the proceedings under section 59 (2) of Real Estate (Regulation and Development) Act 2016 need to be initiated.

21. Interim order passed by the Authority in February 2020, requesting the IG Registration to issue necessary instructions to District Registrar/Sub- Registrars to NOT register any flat/Apartment in Sudha Complex and any other projects of the promoter Md Khalid Rashid S/o Late Md Yusuf and his companies M/s Amina Constructions Pvt Ltd and M/s Sheba Welcome Builders Pvt Ltd, should continue until further orders.

22. The Promoter along with all other directors and their company M/s Amina Construction Pvt Ltd need to stop construction of the Project Sudha Complex forthwith, as the building plan sanctioned in 2011 has already expired. The Promoter should either get the plan revalidated by the Patna Municipal Corporation (PMC) or get a new plan prepared in agreement with the landlady and get it sanctioned by the PMC within sixty days of issue of this order. Thereafter, the promoter shall submit the application for registration of the Project with the Authority within thirty days of the revalidation/sanction of the Plan by PMC.

23. The Bench holds the purported unilateral cancellation of booking of flat no-101 & 102 of the complainant Ms Anamika Singh in Sudha Complex by the promoter with ante-dated effect without refunding the deposits of the complainant as arbitrary, whimsical

and illegal. Hence the Cancellation order is declared null and void and set aside. The Promoter shall submit a fresh construction stage wise linked payment schedule within thirty days of revalidation of plan/sanction of new plan by the PMC and the complainant shall make payment accordingly.

**Sd**

**R.B.SINHA  
MEMBER**

**Sd**

**S. K.SINHA  
MEMBER**