

**REAL ESTATE REGULATORY AUTHORITY, (RERA),
BIHAR, Patna**

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

Complaint Case No-CC/446/2019

Kumari Anju.....Complainants

Vs

Mr Arvind Kumar Singh, MD,

M/s Sheetal Engicon Pvt LtdRespondent

Present : For the Complainant : Mr Deepak Kumar, Adv

For the Respondent : Mr Sharad Shekhar, Adv

02/01/2021

O R D E R

1. Kumari Anju W/o Mr Vidya Bhushan Kumar, resident of Chota Bariyapur, Motihari, East Champaran-845401 has filed a complaint petition under section 31 of the Real Estate (Regulation and Development) Act 2016 against Mr Arvind Kumar Singh MD of the promoter company M/s Sheetal Engicon Private Limited, Dumraon Palace, Dak- Bungalow Road, Patna-800001 for committing fraud /breach of trust/ breach of contract and sought refund of the principal amount paid by her for booking a plot of land in the Project Sheetal Green City, Nayagaon, Sonapur, Patna. She has also sought interest and compensation for mental harassment.
2. In her application dated 26th June 2019, the complainant has stated that her husband had booked a plot of land

measuring 1200 sqft –Plot No-1538, Block A, in the Project Sheetal Green City at Nayagaon, Sonapur, Patna at the cost of Rs.5.25 lakhs with the promoter Mrs Sheetal Engicon Private Limited through the managing director Mr Arvind Kumar Singh in February 2017. She has stated that she had made payment of Rs 2.25 lakhs to the respondent, of which Rs.2,00,00 were paid by cheque on 2nd February 2017 and Rs.25,000 was paid in cash on 16 March 2017.

3. She has submitted a copy of the agreement executed between her and M/s Sheetal Engicon Private Limited, copies of the money receipts issued by the respondent company along with copy of the booking details etc. She claimed that the promoter had assured them that the possession of the plot would be handed over to her latest by 31st December 2018 after due development and if at any time, the complainant feels that the project was not moving at desired pace, they can be drop out/withdraw from the project and their deposit will be refunded back along with interest.
4. As per the Agreement for sale dated 17th March 2017, the piece of the plot of land would be along with street- light facilities, underground electric with system, grand gate at entrance, garden, playing area, 45% of open space, school, health clinic and jogging track. The allottees would also be given access to common space and right to use the facilities in the common area.

The Complaint petition was earlier considered by the Adjudicating officer of the Authority. However, as the notices

sent to the Respondent company returned undelivered and the project was not registered with the Authority, the complaint was sent to the Bench of the Authority in December 2019 for consideration with the approval of Hon'ble Chairman of the Authority.

Hearing:

5. Hearings were held on 22.01.2020, 04.02.2020, 19.02.2020, 24.02.2020, 10.09.2020, 25.09.2020 and 16.10.2020. In course of hearing, Learned counsel of the Petitioner filed a detailed petition dated 21.01.2020 in which he claimed that the respondent company has neither given the plot of land booked by the Petitioner nor has refunded the principal amount along with interest. Learned counsel also claimed that the promoter has closed his corporate office at Dumraon Palace, Dak Bungalow Road and shifted to some unknown place. Even, notices sent at his residential address is not being delivered. As no one turned on the first two dates of hearing even when the notice was served through senior superintendent of Police, Patna, the Learned counsel of the Petitioner showed the photograph of the promoter Mr Arvind Kumar Singh from his facebook account, the Bench immediately identified the person as the MD of another company M/s Bhootesh Construction Pvt Ltd as many complaints have been filed against that company on similar charges. Thereafter, the Bench directed the learned counsel of M/s Bhootesh Construction Pvt Ltd to receive the notices meant for Mr Arvind Kumar Singh, MH. Thereafter, the respondent company was represented by the learned Counsel Mr Sharad Sekhar.

In course of hearing the Learned Counsel of respondent company agreed that the project Sheetal Green City of M/s Sheetal Engicon Pvt Ltd was started by the MD of Mr Bhootesh Construction Pvt Ltd only. They agreed to refund the deposit paid by the complainant. However, the respondent was arrested by the Hajipur Police in another case and he continued to be in jail till the last date of hearing i.e.16.10.2020.

Issues for consideration:

There are following issues for consideration before the Bench:

1. firstly whether the project Sheetal Green city was an ongoing project as on 1 May 2017, the date on which the Real Estate (Regulation and Development) Act 2016 came into operation in the State of Bihar;
2. Secondly, As the promoter had shifted his office without informing the customers/allottees and either refunding the deposits with interest or handing over the possession of the plot of land to the allottees, what action should be taken to prevent recurrence of such incidence ?

As regards the first issue, it is evident that the promoter booked the plot of land in the Project Sheetal Green city in February 2017 and entered into agreement for sale on 17th March 2017 with date of possession in December 2018. Therefore, it is established without any doubt that the Project Sheetal Green city was was an ongoing project as on 1 May 2017, the date on which the Real Estate (Regulation and Development) Act 2016 came into operation in the State of Bihar.

So far 2nd issue is concerned, it is established beyond any doubt that the promoter has indulged in unfair trade practices and committed breach of trust. It is therefore felt that drastic punitive action should be taken against the promoter to prevent recurrence of such incidence in the sector in state of Bihar.

6. Order

The Bench directs the Respondent company to refund the amount of deposit along with 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 within 60 days of issue of this order.

As the Project was an ongoing project as on 1.5.2017, the promoter is directed to apply for registration of the project Sheetal Green city with the Real Estate Regulatory Authority, Bihar within thirty days of issue of this order.

The Authority should initiate proceedings against the promoter and the respondent company under section 59 (2) of the Real Estate (Regulation and Development) Act 2016 and take necessary orders.

The Authority should also blacklist the promoter and all his companies with immediate effect.

Sd
R B Sinha
Member

Sd
S K Sinha
Member