

REAL ESTATE REGULATORY AUTHORITY, BIHAR

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

Complaint Case No.: CC/63/2018

Shri Upendra Nath Singh.....Complainant

Vs.

M/s R.D. Eco Developers Pvt. Ltd. & Others.....Respondent

Present: For Complainant: Mr. Raushan, Advocate

For Respondent: Mr. Pramod Kumar, Director

Mr N P Singh, Advocate

04/01/2021

O R D E R

1. The complainant- Mr. Upendra Nath Singh, C/o Late M.P.Singh, South of T.K.Ghosh Academy, Puranderpur, B.M. Das Road, Patna- 04, Mob No.: 9934719016 has filed a complaint against M/s R.D. Eco Developers Pvt. Ltd. for the Project "Kaushalaya Enclave" through its Director, Mr. Pramod Kumar Singh & Smt. Silu Devi, R.D. Green Resort, Gosain Tola, P.O- Sadakat Ashram, P.S.- Patliputra, Patna- 800010 & Janshakti Colony, Road No. 24 E, P.O. & P.S.- Rajiv Nagar, Patna 800013, Mob. No. : 9709999995/7280062085 under Section 31 of the Real Estate Regulatory (Regulation and Development) Act, 2016 for payment of damages/compensation due to breach of Breach registered Development agreement on account of delay in handing over the possession of flats, poor quality of work done, remaining amount out of sale proceeds of two flats etc.

2. The complainant, Mr. Upendra Nath Singh, have submitted copies of the Registered Development Agreement, Agreements of Sale for two flats, Legal Notices issued by them and response of the promoter etc.

FACTS OF THE CASE

3. A registered Development Agreement dated 23/07/2012 was executed between the complainant and respondent for construction of a multi-storeyed building Kaushalya Enclave comprising of **38 apartments** on land (as mentioned in clause 3 of the development agreement) measuring 29.50 decimals, bearing thana no. 9, Tauji no. 5755, khata no. 204, survey ploy no. 290, Mohalla- C D A Colony, Mauja- Sheikhpura, Survey thana no. Phulwarisharif, P.S- Shastrinagar, District – Patna and it was further mentioned that out of 29.50 decimals 14.75 decimals was the share of the present complainant and remaining 14.75 decimals was the share of the brother of the complainant. As per clause 5 of the Development agreement, the share of the said constructed building was to be allocated in equal proportion, i.e. 50% to the complainant and his brother and the remaining 50% to the respondent, .i.e. 25% share will fall in the share of the present complainant. As per clause 9 of the said agreement, the materials which were to be used in construction have to be of good quality and standard. As per clause 12 of the agreement, the construction work was to be completed and give possession within a period of 2 years with a gestation period of 6 months, failing to which, compensation of Rs 80,000/- per month was to be given to the complainant for 6 months and after the lapse of six months the agreement will be deemed to be cancelled and the complainant

will take the possession over which construction is to be done but unfortunately the possession of the share was given on 13/10/2017. It is further mentioned that the possession was given after a long period of time and only after giving 3 legal notices dated 17/07/2017; 24/07/2017 and 13/10/2017.

4. Further, an agreement of sale was also executed on 24/02/2015, between the parties for flat no. 404 & flat no. 403 for a consideration amount of Rs. 24 Lakhs and Rs. 14 Lakhs respectively in Kaushalya Enclave. Rs. 22 Lakhs was paid by the respondent and 16 lakhs has not been paid till the date of the compliant petition and also the respondent sold both the flats to third party without paying the dues. As per Schedule II of the agreement, the structural provisions as depicted were not followed by the respondent and the complainant incurred around Rs. 20 Lakhs for rectifying the same. Respondent have violated the terms and condition of the agreement and also not complied with any of provisions mentioned in the legal notices given by the complainant.
5. The complainant prays for settlement of dispute, further prays that respondent must pay Rs. 16 Lakhs towards both the flats mentioned above which was sold without paying the entire amount as mentioned in the agreement of sale with an interest of @18%. The complainant further prays that respondent must pay Rs. 20 Lakh towards the cost incurred to rectify the structural differences and renovation of flats. Complainant further prays for compensation for giving late possession and cost of notices and litigation as incurred.
6. In pursuance to the receipt of Complaint petition, a notice was issued to the respondent company to furnish their reply.

RESPONSE OF THE RESPONDENT

7. The respondent filed reply against the complainant petitions on 23/01/2019 stating that the complaint is not maintainable and is fit to be dismissed at once. The respondent in his reply submits that good quality materials were used in the construction of the apartment and due to unavoidable reasons there was delay in construction work. He further mentions that there is no merit in the case and flats were handed over as per the agreement and complainant has been paid entire dues amount by the respondent. He further submits that the respondent is ready to produce oral and documentary evidences as the complaint filed and the facts are completely wrong and baseless.

HEARING

Hearings were held on 07/02/2019; 04/04/2019; 10/05/2019; 21/06/2019; 23/07/2019; 26/08/2019;14/10/2019; 09/12/2019; 13/01/2020; 03/02/2020; 28/02/2020; 21/09/2020 and 01/10/2020.

8. In course of hearing, Mr. Raushan, Advocate represented the complainant and Respondent was represented by Mr. N.P Singh, Advocate. On 10/05/2019 the complainant filed rejoinder to the counter affidavit filed by the respondent dated 23/01/2019, stating that the respondent has not yet filed the following documents, i.e. copies of sale deeds of flat number 403 and 404; copy of possession letter and details of payment made to the complainant and tried to mislead the Bench as the respondent has not provided any evidentiary proof. The complainant further mentioned that the quality of the materials used was of very low and cheap quality and unfurnished flat was handed over to which the complainant has submitted photographs of the flats.

9. On 21/06/2019, reply was filed by the respondents to the rejoinder of the complainant dated 10/05/2019 stating about the non-maintainability of the complaint case and prays for disposal of the case. On 23/06/2019, the respondents again filed a supplementary petition with copies of Payment Details, Agreement of Sale, Copies of cheque etc. On 23/07/2019, Bench directed to issue notice on to the Directors of the respondent company for their personal appearance with their counsel.
10. On 26/08/2019, complainant filed interlocutory application for amendment in relief sought by adding penalty/compensation/interest under Section 61 of the Real Estate (Regulation and Development) Act, 2016 for violation of Section 14 and 15 of the aforesaid Act for delayed possession and construction not according to the specifications.
11. On 14/10/2019, respondent filed reply to the petition of the complainant dated 26/08/2019 stating that the complainant's interlocutory application was filed with bad intentions and Sections mentioned are not applicable and prays for rejection of the petition of the complainant with cost. On 13/01/2020, Complainant counsel filed a petition requesting for impleading Mr. Ashok Kumar Mishra and Mr. Jai Prakash Tiwari who are the owners of the two flats purportedly sold to them by the respondent company to which the respondent counsel objected to the same and prays for time to file his reply. However, Bench feels there was no harm in impleading these two flat owners in the case.
12. On 03/02/2020, respondent filed reply to the petition of the complainant dated 13/01/2020, stating that since Mr. Ashok Kr Mishra & Mr Jai Prakash Tiwary have neither filed any complaint nor have any dispute in respect of RERA, Act 2016, so impleading

them as party will be misuse of the valuable time and energy of this Hon'ble court and also there is no provision regarding the impleadment of any person by anyone in the pending case. Bench further directed the respondent company to submit the sale deed of the two flats which the landlord had sold out of his own share of flats. Bench further directed both the parties to submit the bank statements before the Bench to which the respondent failed to submit the same. On 28/2/2020, supplementary affidavit with the bank statement was filed by the complainant in pursuant to the hearing on 03/02/2020, stating that the complainant has received and deposited only two cheques on his account for Rs. 3 Lakhs each on 25/02/2020 following which no single cheque has been ever received. The complainant further states that Rs 16 Lakhs was received in cash and the same is mentioned and signed in the backside of the agreement executed for both the flats.

13. On 21/09/2020, again the Bench directed the respondent to submit his bank statements in support of having paid the full amount to the complainant. In accordance with the direction of the Bench on 21/09/2020, respondent submitted the copy of agreement of sale, journal voucher receiving 4 pcs and bank statement in RERA, Office on 22/09/2020.

14. On, 01/10/2020, respondent counsel submitted that on 23/07/2019, details pertaining to account statement have been made to the complainant and further claimed that the landlord has already been paid a sum of Rs. 38,00,000/- to the complainant through cheque/cash as per the agreement for sale of two flats. Observing that the case is a dispute on the amount of payment, bench further directed the respondent to submit the detail report of payment to confirm that the full amount as claimed has been paid

to the complainant within two weeks. On 9/10/2020, respondents filed their written arguments.

ISSUES OF CONSIDERATION

1. Firstly, This is a case of dispute between land-owner and Developer for specific performance of the provisions of Registered Development Agreement executed between them on 23rd July 2012 involving allegations and counter-allegations of bad quality or work, inordinate delay in completion of project, fraud, claims of payments and rebuttal, false signature and map approval on forged documents/signatures etc . Resolution and settlement of such disputes is outside the mandate of the Real Estate Regulatory Authority (RERA) as enshrined in the Real estate (Regulation and development) Act 2016.
2. Secondly, Section 2 (ZK) of the Real estate (Regulation and Development) Act 2016 defines the term “Promoter “ as under
(zk) "promoter" means,—
 - (i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or
 - (ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or
 - (iii) any development authority or any other public body in respect of allottees of—
 - (a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or

(b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or

(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or (

v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or

(vi) such other person who constructs any building or apartment for sale to the general public.

Explanation.—For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the persons who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder;

It is therefore evident that the term Promoter appears to include both developer as well as land-owner and hence they are together responsible for all the obligations cast upon under the Act.

3. Thirdly, the issue of sell of two flats by the complainant through an agreement for sale with the promoter is a dispute on a resale and is outside the ambit of the provisions of Real Estate (Regulation and Development) Act 2016.
4. Fourthly, it is apparent from the documents furnished by the Complainants that the project was completed in November 2017, when the possession of the share of the Land-owners was handed over. Thus the Project Kaushalya Enclave

comprising of 38 apartments was an ongoing project as on 01.05.2017, the date on which the provisions of Real Estate (Regulation and Development) Act 2016 came into operation in the state. Thus, Project Kaushalya Enclave was required to be registered with the Authority within three months, i.e. by 31st July 2017. Further, in their applications for registration of six other projects submitted to the Authority during 2018-2020, the Promoter has deliberately not mentioned the name of the Project Kaushalya Enclave under “Previous Project Details (Last 5 years only)”, thereby misled the Authority.

ORDER

15. The Bench holds that that the resolution and settlement of disputes between land-owner and the promoter including specific performance of contract on the various issues included in the Development agreement, involving allegations and counter-allegations of compensation on account of inordinate delay in completion of the project, fraud, false signature and map approval on forged documents/signatures etc is outside the mandate of the Real Estate Regulatory Authority (RERA) as enshrined in the Real Estate (Regulation and Development) Act 2016. Therefore, the Petitioner may approach the competent civil/criminal court for redressal of the grievances.

16. The Complainant may also approach, if he so wishes, the competent civil/criminal court for redressal of his grievances regarding sale of his two flats through agreement for sale as issues involving resale is not covered under the Real Estate (Regulation and Development) Act 2016.

17. As the Project Kaushalya Enclave was an ongoing project as 1st May 2017, the promoter is directed to get their project registered with the Authority within sixty days of issue of this order, failing which the Authority may initiate proceedings under Section 59 (1) of the Act 2016 which entails punishment up to ten percent of the estimated cost of the project.

R.B. SINHA
(Member)

S.K.SINHA
(Member)