

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

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

**Complaint Case No- CC/80/2018**

**Umesh Prasad Gupta and others ..... Complainants**

**Vs**

**M/s Blue Heaven Agro-Industries Pvt Ltd.....Respondent**

**Present: For the Complainant: Mr Umesh Prasad Gupta  
Mr Pramod Kr Singh, Adv  
Mr Brajeshwar Kr Sinha, Adv  
Mr Arun Shrivastava, Adv**

**For the Respondent: Mr Pritam Kumar, Adv  
Mr S N Prasad, Adv**

**31/12/2020**

**ORDER**

1. Umesh Kumar Gupta S/o Late Badri Prasad, resident of village-NuraBazar, Masaurhi, Patna has filed a complaint petition on 17<sup>th</sup> September 2018 on behalf of himself and three others allottees – Ramesh Kumar Jha, Dheeraj Kumar Gupta and Kumari Sangita, against the Managing Director, Blue Heavens Agro- Industries Ltd and Mr Ajay Ram, Promoter, Blue Heavens Agro- Industries Ltd under section 31 of the Real Estate (Regulation and Development) Act 2016 for handing over the possession of their flats in the project Prabha Twin Towers located at Kankarbagh Patna, booked by them in 2007 and execution of sale deeds of their flats.

2. In his application, the Petitioner has stated that he along with other allottees had booked their flats in the project Prabha Twin Towers being developed by M/s Blue Heaven Agro-Industries Private Limited in 2007 after paying a sum of Rs.51,000 ( Rupees Fifty one thousand only). In 2013, when the building work was about to be completed, the promoter contacted them for making further payment. He claimed that they made payment ranging from Rs.5 lakhs to 10 lakhs in August-September 2013 to the respondent company. The Respondent company also executed registered agreement for sale with each complainant on 30<sup>th</sup>/31<sup>st</sup> August 2013. He claimed that they have not yet got the possession of their flats though the building is complete. The complainants claimed that they were living in rented flats and thus, they were in financial difficulties. They sought the relief of getting the possession of their flats and execution of the absolute sale deed in their favour.
3. The complainant has attached a photo copy each of the registered agreement of sale executed by the respondent company with four allottees, copies of the pass-books of the Banks showings payments to the respondent company etc.
4. In pursuance to the receipt of the complaint petition, a notice was issued by the Authority to the promoter Mr Ajay Kumar Ram Director of M/s Blue Heaven Agro- industries Ltd in September 2018 directing him to furnish his reply within two weeks.
5. In reply, Mr Puneet Jain Director of M/s Blue Heavens Agro- industries Ltd stated on at 10 October 2018 that Dr Ajay Ram had resigned from the company on 15 January 2013 and therefore had no concern with the company thereafter. He claimed that the possession

of the flats have already been handed over to the complainants on 13 September 2013 and a paper publication was also given in the newspaper Hindustan Times dated 17 July 2013 in this respect. The respondent company claimed that complainants had also filed a CWJC number 1035 of 2014 in Patna High Court in which they had accepted that they have got the possession of the flats. Further, the Honorable High Court in their order had also observed that the complainants were living in the flats. Further, on 29 November 2017 the complainant had filed a complaint in the Kankar Bagh police station stating that they had the possession of the flats and they were living along with their tenants. As regards the registration of the flat, the respondent company has stated that they have many times requested for registration of the flats but the complaints did not come forward. They were always ready to register the flats. The Complainants however refuted the claims of the respondent company that they had been given possession of the flats and stated that they were never informed about registration of the flats either in writing or verbally.

6. As there was divergence of opinion between the statement of respondent company and that of complainant's, both the parties were called for personal hearing on 18 December 2018.

#### Hearing

7. Hearings were held on 18<sup>th</sup> December, 2018, 20<sup>th</sup> February, 2019, 2<sup>nd</sup> May 2019, 20<sup>th</sup> June 2019, 29<sup>th</sup> July 2019, 21<sup>st</sup> October 2019 and 19<sup>th</sup> December 2019. In course of hearing, the Bench made the land

owners and M/s Friendlies estate and essentials Pvt Ltd, a company incorporated in 2007 by a few land-owners, as parties in the case so as to understand various dimensions of the case. The present occupants of all four flats in which the complainants had interest i.e. they have executed agreements for sale with the respondent company, were also made parties. The flat owners/land-owners appeared before the bench. The flat owners informed the bench that they had purchased their flats from another company namely M/s Friendlies estate and essentials Pvt Ltd. They claimed that the project was completed by M/s Friendlies estate and essentials Pvt Ltd and they have paid their money to that company and their apartments have been registered by them. They stated that they had no relationship with M/s Blue Heaven Agro-industry Pvt Ltd.

8. In course of hearing, the Bench directed the respondent company to submit audited annual accounts for the last ten years, bank account details, details of the funds taken from consumers of the Project. However, the respondent company submitted the annual accounts of only two years i.e. for the year 2007-08 and 2013-14 only.
9. The complainants filed a petition, in course of hearing, praying for modification of the reliefs they had sought in original application by adding two more reliefs: 1. Any other relief which the complainants are entitled for; 2. The complainant may also be refunded the amount paid along with interest at such rate as may be prescribed and compensation under section 19 of the RERA Act.

**Issues for consideration:**

10. There are following issues for consideration before the Bench :

**Firstly** whether the project Prabha Twin Towers claimed to have been developed by M/s Blue Heavens Agro-Industries Ltd is covered under the Real Estate (Regulation and Development) Act 2016;

**Secondly** whether there was a dispute between M/s Blue Heavens Agro-Industries Ltd and land-owners over cancellation of Development agreement executed in September 2005 and whether the respondent company has filed a title suit before competent civil court in 2009;

**Thirdly-** Whether the agreement for sale executed by the respondent company with the complainants in August 2013 are in order when the respondent company had itself filed a title suit in a civil court in 2009;

11. As regards the first issue, the Real Estate (Regulation and Development) Act 2016 was passed by the Parliament in March 2016 and its provisions came into operation on 1 May 2017. The complainant's had paid the booking amount of their flats in 2007 and the agreement for sale was executed in 2013 when the project was near completion. In course of hearing, the occupants of flats had claimed that the project was already completed by another promoter and most of them had already got their registration of flats done prior to 2016. Hence, based on the available information, it appears that the project Prabha Twin Tower was not covered under the Real estate (Regulation and Development) Act 2016.

12 As regards the second issue whether there was a dispute between M/s Blue Heavens Agro-Industries Ltd and land-owners over

cancellation of Development agreement and whether the respondent company has filed a title suit before competent civil court in 2009, it is proved beyond doubt by the complainants themselves, based on documents submitted by them to the Bench that the Blue Heavens Agro-Industries Ltd had disputed the claim of cancellation of the Registered development agreement by the land-owners and filed a title-suit bearing no 141/2009 for declaration of their right, title interest in the property against the land-owners.

13 So far as third issue is concerned i.e. whether the agreement for sale executed by the respondent company on 30<sup>th</sup> or 31<sup>st</sup> of August 2013 are in order, it is stated that since the title of the property itself was in dispute and the matter was sub-judice in a civil court, the execution of registration of agreement for sale by the respondent company was illegal and not in order.

14. Besides it must be noted that the complainant in his application had submitted copies of the registered agreements for sale of four allottees only. Three allottees had got their agreements registered on 30<sup>th</sup> August 2013 whereas one allottee had got his agreement registered on 31<sup>st</sup> August 2013. None of the allottees had made full payment of consideration amount of the flats. Two allottees have paid Rs 10.00 lakhs each while the other two had paid five lakhs only against the total cost of each flat of Rs 18.00 lakh. The agreement for sale had many shortcomings- it didn't specify the completion date of the project, neither did it show payment schedule. Even the balance amount payable was not indicated in any agreement for sale. Further

there were inconsistencies as regards to payment of cash amount in atleast agreement of sale of Ramesh kumar Jha and Kumari Sangeeta. In atleast two cases, the allottees had submitted post-dated cheques at the time of registration of agreement for sale. The Complainants have neither submitted the copies of application for booking of the flats, nor money receipts issued by the respondent company, though later on direction from the Bench, they submitted copies of pass-books of bank accounts showing the amounts paid to the respondent company.

15. It would therefore appear that these agreements for sale were executed in undue hurry and without proper due-diligence. The respondent company even claimed that the possession of the flats was given on 13<sup>th</sup> September 2013 to these four allottees apparently without getting full payment from them. The complainants have also not claimed that they have made full payment of the total costs of the flats. It raises doubt on the conduct of the respondent company and genuineness of the transactions.

## **Order**

16 In view of the documents submitted by the Complainant, it is established beyond doubt that there is a dispute over the cancellation of the Development agreement executed between the respondent company and land-owners and a title-suit filed by the respondent company is pending before the competent court. As the issue of settlement of dispute over the Development agreement involved is

outside the mandate of the Authority, the bench is unable to consider grant of any reliefs sought for, by the Complainants.

17. Moreover, inhabitants of the Prabha Twin Towers have confirmed that the Project Prabha Twin Tower has been constructed and deeds of absolute sale of the flats in their favour have been executed by another company- M/s Friendlies and Essential Pvt Ltd. Thus there is ab-initio doubt whether the respondent company is the promoter of the project Prabha Twin Tower. The Bench therefore feels that the Authority can not grant the reliefs sought by the complainant unless the title-suit is decided by the competent civil court.
18. Further, the project appears to have been completed prior to the commencement of the Real Estate (Regulation and Development) Act 2016 and hence, the complainant may, if he so wishes, approach competent court for reliefs he has sought for.
19. It is however ordered that any further construction in the Project Prabha Twin Tower can only be undertaken by either parties only after revalidation of the building plan/Maps by the competent Authority- Patna Municipal Corporation and registration of the Project under section 3 of the Real Estate (Regulation and Development) Act 2016 with the Authority.

Sd

**R. B. Sinha**  
**Member**

Sd

**S K Sinha**  
**Member**