

REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR

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

RERA Case Nos.CC/36/2018

Mukesh Kumar SunnyComplainants

Vs

M/s S D Construction & DevelopersRespondent

RERA Case No-CC/37/2018

Sheela Devi.....Complainant

Vs

M/s S D Construction & DevelopersRespondent

RERA Case No-CC/38/2018

Manish Prakash.....Complainant

Vs

M/s S D Construction & DevelopersRespondent

RERA Case No-CC/42/2018

Suman Chaturvedi.....Complainant

Vs

M/s S D Construction & DevelopersRespondent

RERA Case No-CC/93/2018

Sandeep Parashar.....Complainant

Vs

M/s S D Construction & DevelopersRespondent

Present :

For the Complainants :..... In Person

For the Respondent :Mr Laliteshwar Pd Singh Advocate

Mr Rajesh Kumar,Advocate

Mr Sanjeev Raj, Partner

05/03/2020

ORDER

1. The complainants (1) Mukesh Kumar Sunny S/o Kashi Nath, a resident of East Bhikhachak, Anisabad, Patna (2) Sheela Devi W/o Arbind Nath Singh, a resident of Vill-AwadaniBagha PO Parsar PS Karakat Dist Rohtas (3) Manish Prakash S/o Sarwan Kumar, a resident of Flat No.145, Brahamdeo Palace, Adarsh Colony, Khemnichak, Patna (4) Suman Chaturvedi w/o Hari Prakash Chaturvedi, a resident of Flat No.103 Lalita Residency, Rupaspur, Bailey Road, Patna and (5) Sandeep Parashar S/o Arun Kumar Sinha, a resident of Flat No.301, Vishal Plaza, Maurya Path, Khajpura, Bailey Road, Patna have filed separate complaint petitions under Section 31 of the Real Estate (Regulation and Development) Act 2016 against M/s S.D. Constructions & Developers, a partnership firm, through their Partners Mr Sanjeev Raj, s/o Mr Rajendra Pd Sinha and Mr Rajendra Pd Sinha, s/o Late Rameshwar Pd Sinha for refund of their booking deposit money in the project “Shri Ganesh Township” with interest and compensation.

Case of the Complainants :

2. The complainants Mukesh Kumar Sunny, Sheela Devi, Manish Prakash, Suman Chaturvedi and Sandeep Parashar in their separate complaint petitions have stated that they each booked a duplex bungalow on 15/11/2015, 18/07/2016, 21/03/2016, 16/05/2015, and 15/03/2015 respectively, in the project “Shri Ganesh Township” located near East & West School, Bela, Danapur-Bihta Road, Patna being developed by M/s S.D. Construction & Developers for an aggregate consideration of Rs 30 lakh, Rs 26.55 lakh, Rs 31 lakh, Rs 35/- lakhs and Rs 28 lakhs respectively. They claimed that till date they have paid Rs 6,00,000/- Rs7,26,500/-, Rs 7,75,000/- Rs 9,06,725/- and Rs 4,20,000/- respectively, the details of which have been given in their petitions. As per registered agreement for sale executed by the complainants with the Developer, the developer/respondent firm had to complete the project in 18 months

but they did not start the project till date and gave mere assurances and lame excuses. The complainants have, therefore, prayed for refund of their deposited money with interest and compensation.

Response of the Respondent Company :

3. In response to the show cause notice issued by the Authority under the Real Estate (Regulation & Development) Act, 2016, Mr Sanjeev Raj, partner of the respondent firm submitted in October 2018 that due to some legal dispute the project could not be taken up and he had filed a Dispute Case No.4614 (C)/2017 which was still lying pending in the Civil Court, Patna. Learned counsel of the respondent firm submitted that they were looking for some other plot of land to start the project and they were ready to construct and provide flats to the depositors or willing to refund the deposited amount to them.

Hearings :

4. Hearings were held on 07/01/2019, 18/02/2019, 13/03/2019, 15/03/2019, 27/03/2019, 16/05/2019, 03/07/2019, 01/08/2019, 28/08/2019, 18/09/2019, 17/10/2019, 09/01/2020, 31/01/2020 and 03/02/2020.
5. Learned counsel of the respondent firm submitted on the very first day of hearing that the partner of the respondent firm intended to sell his own property to return the money of the buyers/complainants. On 15/03/2019 the respondent gave Rs one lakh each to the five complainants in the form of cash/cheque in court itself and further committed that the remaining proceeds of sale of his land which amounted to Rs 11.00 lakhs would be disbursed amongst the complainants on the next date of hearing. He further committed that he would sell another piece of land soon to pay back the full amount to the complainants. However the Partner of the Respondent firm did not attend the hearings on the ground of accident in next three months, forcing the Bench to issue a direction to the SSP, Patna on 3rd July 2019 to physically produce him on the

next date of hearing. Resultantly Mr Sanjeev Raj, partner of the Respondent firm attended the hearing on 1st August 2019 and once again assured the Bench that he would return the remaining amount to the complainants within a month.

6. On 28th August 2019, the Partner of the Respondent firm again sought a fortnight to pay the full amount to the complainants. However, the Respondent firm didn't attend the hearing on the next date of hearing, forcing the Bench to issue an interim order on 17/10/2019 under Section 36 read with Section 34(1) and 37 of the Real Estate (Regulation & Development) Act, 2016 freezing all bank accounts of the respondent firm and its partner namely Mr Sanjeev Raj for not complying with the previous orders of the Authority dated 01/08/2019 and 28/08/2019. The Bench also requested the IG, Registration to issue directions to all DSRs/ Sub-Registrars of Patna district to prevent registration of any property/plot of land/apartments of S D Constructions and Developers until further orders.
7. Again On 09/01/2019 an interim order was issued asking the respondent firm to show cause within a fortnight as to why proceedings under Section 59(2) of the Act be not be initiated against them for not complying with the orders, decisions and directions of the Authority/Bench.

Issues for consideration :

8. There is no dispute on the facts of the case. The Respondent firm has admitted that the firm has executed registered agreements for sale with the complainants and received the booking amounts for the Duplex Bungalows in the Project "Shri Ganesh Township" situated near East West School, Bela, Danapur-Bihta Road, Patna. As per the registered agreement for sale executed during 2014-15, 2015-16 & 2016-17, the project was to be completed within eighteen months, meaning thereby that the project was an ongoing project as

on 1.5.2017, the date on which the Real Estate (Regulation and Development) Act 2016 became operational. Thus, the Project “Shri Ganesh Township” was required to be registered with the Authority within three months of the commencement of the Act. The promoter has however failed to apply for registration of the Project with the Authority till date inspite of repeated directions of the Bench in course of hearing.

Order :

9. The Bench directs that proceedings under section 59 (1) of the Act be initiated against the Respondent firm and their two partners for non-registration of their ongoing project Shri Ganesh Township with the Authority thereby contravening the provision of the Section 3 of the Act 2016. The Bench also orders that proceedings under the Section 59 (2) of the Act be also initiated against the developer M/s S D Constructions and Developers and their two partners (Mr Sanjeev Raj and Mr Rajendra Prasad Sinha) for non-registration of their real estate project Shri Ganesh Township, inspite of repeated directions to do so.
10. The Bench orders the respondent firm M/s S D Constructions and Developers and their two partners to refund the remaining amount of the deposits to all complainants with interest at the rate MCLR of SBI plus two percent from the date of deposit to the date of refund, within sixty days of issue of this order.
11. The Bench also orders that the developer M/s S D Constructions and Developers and their two partners be black-listed with immediate effect and prohibited from acting as a developer or real estate agent in the state of Bihar with immediate effect. This communication should also be sent to the RERAs of all other states to impose similar bans on the respondent firm and their two partners.
12. M/s S D Constructions and Developers and their partners (Mr Sanjeev Raj and Mr Rajendra Prasad Sinha) are prevented from

selling any of their immoveable (plot of land, apartment or building) and moveable properties until further orders. IG Registration be requested to issue necessary orders in this respect to all DSRs to create lien of the Authority on all such immoveable and moveable properties of the M/s S D Constructions and Developers and their partners (Mr Sanjeev Raj and Mr Rajendra Prasad Sinha) until further orders.

Sd
(S.K. Sinha)
Member

Sd
(R.B. Sinha)
Member