

REAL ESTATE REGULATORY AUTHORITY, BIHAR

Before the Full Bench of Mr. Naveen Verma, Chairman,
Mrs. Nupur Banerjee & Mr. S.D. Jha, Members (RERA), Bihar.

Case No. RERA/CC/12/2022

Ashutosh Kumar Singh (Association of Allottees)Complainant

Vs.

M/s Agrani Homes Pvt. Ltd.Respondent

PROJECT: IOB NAGAR, BLOCK -I

ORDER

22.11.2022 This matter was last heard on 17.11.2022 and fixed for orders.

The case of the complainant is that he booked Flat no:- 606 in I.O.B. Nagar, I-Block and entered into an agreement for sale on 22.10.2013 for a total consideration of Rs. 21,13,345/- out of which he had paid an amount of Rs. 15,04,586/- . The matter was filed to seek possession of the completed flat.

The matter was referred to Conciliation Forum on 04.05.2022 in an attempt to settle the dispute amicably. However, the Conciliation failed and matter was referred to the Authority for deciding the case on merit.

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The Authority recalls its directions in other cases of I-Block on 16.09.2022 on the intervention petition filed to implead IOB Nagar, Block-I Association of Allottees in this case. This was mentioned by the learned counsel in the proceeding dated 16.9.2022 and the respondent had not filed any objection. The intervention petition was allowed and the Association of Allottees of IOB Nagar Block-I was impleaded as a complainant in this matter. The Bench vide order dated 11.10.2022 has directed that all cases pertaining to I-Block be clubbed together and numbered as **Association of Allottees Vs. M/s Agrani Homes Pvt. Ltd.**

Learned counsel for the complainant had submitted that copy of the intervention petition had been sent to the respondent by email on 6th October, 2022. Learned counsel had also filed an application under Section 8 of the Real Estate (Regulation and Development) Act, 2016 for carrying out the remaining works of IOB Nagar Block-I through the Association. A copy of the said application was also sent to the respondent company. The respondent was directed to file reply as to why the application should not be allowed.

Mr. Arvind Kumar, Director and authorized signatory of the Association of Allottees had submitted that more than 40% work remains to be completed which is expected to cost Rs. 2.6 Crore (approx). He also submits that this amount is due from the allottees and additional cost for completion of project if any, will be borne by the Association of Allottees. He also assured that the remaining development works would be completed within 6 months after the project is handed over to the Association of Allottees.

In the hearing dated 09.11.2022, the respondent was directed to file reply. The respondent filed their reply wherein they have mentioned that they have cancelled booking of 11 allottees on 11.11.2022. The allottees present during hearing, the Association of Allottees and their learned counsel objected to this unilateral cancellation after the last date of hearing and stated that it was without notice, mala fide just to thwart the proceedings under Section 8 of the Act.

The Authority finds merit in the contention of the complainant and their association that the cancellation during the adjudication of the present case was unilateral, without justification and with mala fide intent. The Authority directs that **the cancellation letters attached with Annexure- 1-series of the reply are set aside and the flats of the allottees are restored.**

The respondent in para- 5 of reply has further stated that the Association has not been registered and there is no existence of Association. The learned counsel for the Association stated that the Allottees of Association have been duly formed. The Authority takes note of the fact that the

registration of the present project is lapsed and the Association of Allottees have also been formed and they have prayed to carry out the remaining development work at their level.

The Authority is of the opinion that RERA Act does not make the registration of association of allottees mandatory before filing a petition under Section 8 of the Act. Nevertheless it directs the Association of allottees to get themselves registered either as a company or as a cooperative society in order to operate a separate bank account etc.

The respondent has referred to previous orders of the Authority by which the allottees were directed to make payment to the promoter who would then complete the flat and handover the possession but, both the parties have failed to comply the said part of the order.

The Authority notes that in other cases of I-Block, the allottees were directed to deposit consideration amount and the respondent in turn would complete the said project and the amount will be disbursed as per work done by them but, none of the allottees have deposited the said amount.

The learned counsel appearing on behalf of the association of allottees submitted that since the registration of the project has lapsed, the respondent has no locus standi and as per Section 8 of the Act, the association of allottees may be considered among the alternatives to complete the project.

The respondent has submitted that Blocks G-J of IOB Nagar is a single project and hence the Authority should not consider I Block as a separate project. The learned counsel for the promoter submits that an application for extension of registration was filed before the Authority.

The Authority observes that the real estate project IOB Nagar (G to J) was registered as an ongoing project upon Khesra No./Plot No.1410,1411,1412,1413,1376,1422,1423, Khata No.126,129,134, 135,145 and 158, Thana No. 44, situated at Mauza Sarari, bearing Registration no. – BRERAP00011-11/192/R305/2018. The registration was initially valid till 31.12.2019. Promoter filed an application in Form E, for extension of registration of real estate project on

13.03.2020, i.e. after lapse of three months of Registration of the real estate project. However, Rule 6(1) of the Bihar Real Estate (Regulation and Development) Rules, 2017, provides that “The registration granted under Section 5 of the Act, may be extended by the Authority, on an application made by the promoter in Form E, in triplicate, until the application procedure is made web based, within three months prior to the expiry of the registration granted”. It is apparent that the application for extension of registration was submitted after the project had lapsed.

The Authority observes that all the blocks are being treated as separate projects keeping the interests of allottees on the basis of powers given to the Authority to issue directions as given under section 37 of the Real Estate (Regulation and Development Act, 2016) which provides that “Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.”

The Authority notes that in the interest of allottees, particularly those who have filed complaint cases, the promoter has been given time to complete the project in respect of different blocks. The Director of the respondent company had assured to complete the project by 27.07.2022 . While disposing complaint cases, time was allowed to the respondent with the consent of the complainants to complete the remaining works in I Block, IOB Nagar . The promoter was also directed to pay penalty for each day of default thereafter. However , the promoter has not been able to complete the project and hence the allottees have formed an association and seek to complete the remaining development works.

As the registration of real estate project IOB Nagar Block I has lapsed and since more than 2/3rd allottees of I block has filed an affidavit stating therein that they want to construct the remaining work of the project on their own and press to pass an order under section 8 of the RERA Act, 2016, the Authority

is of the view that the promoter's right to construct remaining development works in the project has ceased to exist as per the provision of section 8 of the RERA Act, 2016.

The Authority is also informed that Mr Alok Kumar, the Director of the company against whom a number of FIRs have been lodged in respect of other projects and allegations have been levelled regarding diversion of funds is presently in judicial custody. The Authority recalls that the promoter has not completed various projects neither they have given refund of the amount after cancellation of flat and even after the direction of the Authority.

The Authority notes the objection of the allottees and their association to allow the remaining work be completed by by the respondent promoter and endorses the proposal of the association of allottees of IOB Nagar I Block to get the remaining development work completed.

In view of the above, the Authority directs that the Association of allottees of I Block, IOB Nagar would complete the remaining work in I Block, IOB Nagar.

In their reply the respondents have stated that they had received Rs. 8,93,17,292/- and Rs. 3,24,86,865/- is still due from the allottees. The Authority directs that the value of development work carried out in the project be assessed by a chartered valuer.

The Authority directs both the respondent and the association of allottees to share the cost involved in undertaking valuation of the project as on date by a chartered valuer. The respondent is directed to share the amount received in the project and the expenditure made so far, as certified by a civil engineer and chartered accountant. The valuer will also determine the estimated resale value of the unsold partly constructed flats. In case the valuation of construction of Block-I is less than the amount taken from the allottees, the respondent would either return the excess amount to the Association of Allottees or lose his rights on the unsold flats to the extent of the difference between the amount collected for the project and amount spent thereon. In the event

of the valuation being equal to or more than the deposits taken from allottees the respondent would retain his rights on the three unsold flats but they would share the proportionate cost for completing the remaining work in these three flats along with other allottees, if they are required to raise additional resources to be given to the new Promoter.

Let this matter be referred to government for consultation as provided under section 8 of the RERA Act, 2016.

The Bench directs the allottees of association to make an application for the registration the project for Block- I under section 4 of RERA Act, 2016 after the views of the State Government are obtained.

With these directions the matter is disposed of.

Sd/-

S.D. Jha
Member

Sd/-

Nupur Banerjee
Member

Sd/-

Naveen Verma
Chairman