

**REAL ESTATE REGULATORY AUTHORITY, BIHAR**

**Before the Single Bench of Mrs. Nupur Banerjee, Member, RERA,  
Bihar.**

**Complaint Case No. RERA/CC/1071/2021**

**Shakuntala Devi .....Complainant**

**Vs.**

**M/s Trishul Classicon Pvt. Ltd. ....Respondent**

**Project: R.N. Tower**

**For Complainant: Mr. S.K. Sinha, Advocate**

**For Respondent: Ms. Kriti Suman, Advocate**

**ORDER**

**07-12-2022**

The matter was last heard on 01.09.2022 and was fixed for orders on 25.10.2022. However, due to pre-occupation of the Bench in other matter, order could not be pronounced on the date fixed.

The case of the complainant, inter alia, is that her husband namely Chandeshwar Ray, who died on 4.2.2022 leaving behind her and two sons, along with others entered into a registered development agreement with the respondent on 28.8.2017 for construction of Multi storied residential cum commercial building in 60-40 percentage share, which was to be completed within 4 years including 6 months grace period, but even after expiry of grace period, the project work is not completed and as such she is entitled to get 5% additional share from the share of respondent as compensation according to the terms of the development agreement.

It is also stated on behalf of the complainant that since the respondent was not making construction work in her share and lingering the work of the project, she sent a legal notice to the respondent but in spite of the valid service of notice, the respondent did not responded and thus violated the terms and conditions of the agreement and, therefore, the present complaint.

Learned counsel for the respondent in his show cause reply has stated that the complainant has filed the present complaint without approaching the respondent. Undoubtedly, the complainant is one of the landowners with whom a development agreement was entered into for construction of Multi Storied residential cum commercial building having 60-40 share i.e. 60% of landowners and 40% of developer which was to be completed within 4 years including 6 months grace period.

It is further stated that the respondent has completed the project within the time frame as the period of delay is duly covered by *force majeure* and period of 9 months was given to all the buildings as relief by the State government due to covid19 intervention. The completion and occupancy certificate has already been issued by the competent authority and the same has already been submitted to the Authority via e-mail. The landowners have received their shares of the shops as per agreement and possession letter was issued to the complainant but complainant is reluctant to accept rather she raises frivolous issues. The issue raised for additional 5% by the complainant also does not stand as the project was completed within time.

Learned counsel for the complainant states that as per agreement, the project was to be completed within 4 years including grace period of 6 months, but even after expiry of grace period, the project work has not been completed and as such the complainant has not got her proportionate share in flats and shops. She is also entitled to get 5% additional share from the share of respondent because of non-completion of the work within time. It is further stated that shutters of the shops have not been fitted and the materials used in construction was of sub-standard.

Learned counsel for the respondent states that the complainant is one of the landowners with whom an agreement was entered into for construction of Multi storied residential cum commercial building which was to be completed within 4 years including 6 months grace period.

Learned counsel for the respondent further states that the respondent has completed the project within the time frame

and the period of delay is duly covered by *force majeure*. The completion and occupancy certificate has already been issued to the respondent, which has already been submitted to the Authority via e-mail. The landowners have received their shares of the shops as per agreement and possession letter was also issued to the complainant but she is reluctant to accept rather she raises false issues. The issue raised for additional 5% by the complainant does not stand as the project was completed in time.

Respondent on 27-10-2022, further submits their written submissions along with photographs showing completion of work. Respondent has also placed on record letters showing transfer of ownership and possession in respect to shops falls in the share of complainant.

The Bench observes that authority has jurisdiction to entertain the complainant under section 31 of the RERA Act, 2016 for any dispute arises between the land owner and promoter in respect of their shares of flat which has been not handed over by the promoter to landowner as per the development agreement or such like arrangement between the promoter and the landowner/s as per Bihar Real Estate Regulatory Authority (General) Regulations, 2021 Section- 6 (3).

In the light of the submissions, advanced by learned counsel for the parties and documents placed, this Bench deals the issue raised in the present complainant in the following manner:-

As regards the completion of project is concerned, the Bench takes the notes of form-XII as Notice (Certificate) of Completion dated 06-10-2022 and Occupancy Certificate dated 29-01-2022 brought on record as well as force majeure advisory dated 17-11-2021, issued by Urban Development and Housing Department, Bihar as well as photographs showing the completion of the work and observes that it appears that project is complete and the claim of complainant does not sustain.

As regards claim for extra 5 % share is concerned, the Bench finds that project is completed within the time frame

taking into consideration force majeure advisory dated 29-01-2022 and further observes that claim for deciding shares does not fall under the jurisdiction of this Authority under the ambit of the RERA Act, 2016.

As regards the quality of material is concerned, the Bench observes that under section 14(3) of the Act, the allottees can approach to Adjudicating Officer

*In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.*

Hence, so far using low quality of material by the respondent is concerned, the complainant may place his grievance before the appropriate forum as per law.

With these observations, the matter is disposed of.

Sd/-

**Nupur Banerjee**  
**Member**