

# REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR

Bench of R. B. Sinha and Dr S. K. Sinha, Members, RERA, Bihar

Complaint Case No. CC/97/2018

Mr Dinesh Pandey .....Complainant

Vs

M/s Agrani Homes Pvt Ltd.....Respondent

Present: For the Complainant:- In person  
For the Respondent:- Ms Manisha Singh, Advocate

21/02/2019

## ORDER

1. Mr Dinesh Pandey, a resident of Vachaspati Nagar, Near Sinha Market, Patna-800006 has filed a complaint petition on 04/10/2018 under Section 31 of the Real Estate (Regulation & Development) Act, 2016 for early hand over/possession of the apartment in the D Block of the Project IOB Nagar, Sarari, Danapur, Patna along with due compensation. In pursuance to the receipt of the complaint, a notice was issued to the respondent company M/s Agrani Homes Pvt Ltd through their Managing Director Mr Alok Kumar on 11/10/2018.
2. Learned counsel for the respondent company Ms Manisha Singh has submitted its response on 24/10/2018. Hearings were held on 07/12/2018, 22/01/2019 and 05/02/2019.

### Complaint of the Complainant:

3. In his complaint, the Petitioner has stated that he had booked an Apartment (Flat No.103) on the First Floor in Block-D of the project "IOB Nagar Main Phase" at the total consideration of Rs 30,70,000/-. As per registered agreement for sale signed by the developer and the complainant, the Apartment was to be completed by December 2014, provided that the time for completion shall be deemed to have been extended in the event of non-availability of building

materials or delay in receipt of installments of the consideration amount from the buyers/vendees of other flats and delay due to force majeure clause.

4. In his petition, the complainant has stated that he has already paid Rs 24,81,020/- till January, 2017, out of which Rs 22,02,020.00 were paid by 31<sup>st</sup> January 2015. The petitioner has also submitted the receipts of payments made by him.
5. The petitioner has further stated that though the payments were made in time and as and when demanded but he has not been given possession of the apartment till now. He said that he has been paying rent of Rs 8,000/- per month and EMI for the Home Loan of Rs 14,000/- to the ICICI Bank since 2014. He has also stated that he was a senior citizen and hence should be accorded priority.
6. He has therefore, requested that he should be given possession of the apartment at the earliest along with compensation so that he has physical and mental peace.

**Response of the Respondent Company:**

7. In her response dated 24.10.2018, Ms Manisha Singh, learned counsel for the respondent company stated that Block-D at IOB Nagar was almost complete and would be delivered to the complainant by 30/11/2018. She further stated that the work of finishing was going on and likely to be completed by 31/10/2018 and the outer work will be finished by 30/11/2018. She assured that the developer was prepared to hand over the possession of the flat to the best of satisfaction of the allottees.
8. She has further stated that the building plan/map of the IOB Nagar was approved in September, 2012 and thereafter Bhoomi Puja, soil cutting, rafting etc were taken up. She however, stated that certain difficulties like the order passed by the Eastern Zone Green Tribunal in January, 2016, order passed by the Hon'ble Patna High Court in CWJC No.17809/2015 regarding ban on extraction of sand from Sone River etc hampered the work. She therefore, claimed that the claim for compensation and payment of house rent should not be agreed to as the delay was not due to any fault of the company but due to the reasons beyond their control.
9. She further invited the attention of the Bench to Para-15 of the Agreement for Sale which stated that the time of completion shall be deemed to have been extended in the event of non-availability of building materials or delay in receipt of installments of the consideration money from the buyers/vendees or delay due to force majeure clause as provided therein. She has also stated that the

complainant was not entitled to any relief as he has not yet paid the full amount i.e. about Rs 7,50,000/- odd was still pending with him.

10. In his rejoinder, the Complainant stated that he had paid more than 80 percent of cost of the apartment and would have willingly paid the balance amount, provided the Respondent Company would have handed over the possession of the Apartment by December 2014, as agreed in the agreement for sale signed on 18<sup>th</sup> February 2013. He stated that he had been requesting the promoter for the last four years for handing over the possession but he has been given only false promises, misleading assurances etc. In support of his claim, he attached two documents- one letter dated 30<sup>th</sup> August 2015 written by the Mr Alok Kumar MD of the company that he was committed to finish the internal work in one of the Apartments in Block D at IOB Nagar within 15 days and second- a work schedule dated 31<sup>st</sup> July 2015 indicating the schedule of completion of structure, brick work, door frame, electric conduit, water proofing, plumbing/wiring, plaster, tiles, wall putty, window/door fitting, electric fitting, painting etc by 15<sup>th</sup> November 2015 and hand over date as 20<sup>th</sup> November 2015.

### **Hearing**

11. On the date of first hearing i.e. 07/12/2018, the complainant reiterated his complaint and stated that though he had deposited Rs 24,81,020/- in installments since 2012 for the apartment, he has not been given possession of the apartment till now. He stated that at the time of agreement (18/02/2013), the developer had committed to provide the apartment by December, 2014 but he has not yet been handed over the apartment even after passage of four years.
12. Learned counsel for the respondent company stated that due to delay in registration of the Project with RERA, the banks were not giving money to the promoter, which in turn, is causing the delay in the project. On the next date of hearing i.e. 22/01/2019 the respondent company sought time as the learned counsel of the company was out of station.
13. In course of hearing on 05/02/2019, Mr Alok Kumar, MD of the respondent company agreed to hand over the possession of the apartment within a month or return the principal amount to the complainant whatever be the option of the complainant. The complainant stated that he would opt for immediate possession of the flat along with due compensation for inordinate delay in handing over possession of the apartment by the company.

## **Issues for consideration**

**14.** The main issues for consideration is whether the delay of four years in handing over the possession of the apartment to the complainant has occurred due to valid reasons or not. The reasons cited by the respondent company are as follows

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- 1 Order passed by the Eastern Zone Green Tribunal in January, 2016.
- 2 Order passed by the Hon'ble Patna High Court in CWJC No.17809/2015 regarding ban on extraction of sand from Sone River.
- 3 Notification of the Bihar Building Bye-laws.
- 4 Delay due to force majeure clause.

**15.** The first reason cited by them is regarding non-availability of sand for a period of two years. The company has however neither submitted a copy of the direction issued by the competent authority to them generally or specifically, nor have they submitted a copy of the order issued by the Hon'ble Tribunal to the effect. It is, therefore, not clear as to whether the respondent company was directly affected by the order concerned. The company has also not produced any document in course of hearing to support its claim. Secondly, the company has cited CWJC No.17809/2015 but no document has been produced which would indicate that the company was affected adversely. Moreover, the complainant has submitted a work schedule given by the MD of the Company dated 31<sup>st</sup> July 2015 which indicated that most of the sand work were either completed or were planned to be completed in 2015 itself. Third reason given by the company was the notification of the Bihar Building Bye-laws, 2014 which was in no way connected with the construction activities undertaken by the company as the building map had already been approved in 2012 and construction was required to be completed by December 2014. Incidentally Bihar Building Bye-laws was notified in December 2014. Fourthly and lastly, the respondent company has not produced any document which would make them eligible for use of force majeure clause.

**16.** Thus, there is no doubt that there has been some issues regarding non-availability of sand etc for a few months in the last few years but to generalize it to the extent to say that there has been no construction activities in the state during the last two years i.e. 2016 and 2017 is far-fetched, inaccurate and unrealistic. Further, the company did not produce any document in support of their claims made in their written response during the hearing. Since it is clear from the receipts submitted by the complainant that the company had been paid

nearly 80% of the estimated cost of the apartment and the possession of the flat has not yet been given, it was evident that the developer has availed the benefits of the deposits for several years without commensurate work.

### **Order**

**17.** In view of the inordinate delay in completion of the project, we direct the respondent company to complete the D Block in the project with the provisions of electricity, water and sanitation without any further delay and hand over possession of the apartment immediately after obtaining completion/occupancy certificate from the competent authority. As the respondent company has availed the benefit of the deposits made by the complainant, the developer is directed to adjust the interest @ 8% of the amount deposited with effect from 01/01/2015 till the date of possession of the apartment against the remaining amount payable by the complainant to the developer. If after adjustment, any excess amount remains to be adjusted, the same would be paid to the complainant. However, if the amount of interest so calculated is lower than the balance amount payable by the complainant to the developer, the complainant shall make payment of the differential amount.

Sd

**(R. B. Sinha)**  
**Member**

Sd

**(Dr S. K. Sinha)**  
**Member**