

# **Real Estate Regulatory Authority (RERA), Bihar**

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

**Case Nos.CC/119/2018**

**Mrs Ishrat Parween.....Complainant**

**Vs**

**M/s Kamini Home.....Respondent**

**Present : For the Complainant:- MdSayyid Mohammed Nazbul Bari, Adv**

**For the Respondent:- Mr Imran Khan, MD  
Mr Akash Keshav, Adv  
Mr Shaswat, Adv  
Mr Gyan Abhinav, Adv**

**04/07/2019**

**ORDER**

1. Mrs Ishrat Parween W/o Mr Ataur Rahman, a resident of Punjabi Colony, Chitkohra, PS Gardanibagh, Patna-800002 has filed a complaint petition under Section 31 of Real Estate (Regulation & Development) Act, 2016 against M/s Kamini Homes, a partnership firm, through their partner Mr Imran Khan for handing over the possession of a 2 BHK Flat No.104 on the first floor with 850 square feet super built up area in the project "Ahmad Residency" of the promoter located at Chitkohra, Patna.

**Case of the complainant:**

2. In her complaint petition, she has stated that she had entered into an Agreement for Sale with M/s Kamini Homes for Flat No.104, 1<sup>st</sup> Floor, a 2-BHK unit having two bed rooms, two toilet-cum-bath room, kitchen, one drawing-cum-dining space and two balconies having its super built up area of 850 sq ft in

the project Ahmad Residency against total consideration amount of Rs 25 lakhs of which Rs 10 lakhs had also been paid at the time of signing of the Agreement for Sale on 18/02/2016. The Complainant claimed that she paid another Rs 10 lakhs in two installments in February and March, 2016. As per Agreement for Sale, the developer was required to pay the remaining amount at the time of handing over the possession of the flat.

**Response of the Respondent Firm:**

3. The respondent Firm in their response on 26<sup>th</sup> December 2018 stated that the allegations made out by the complainant were false, frivolous, vexatious, malafide, baseless and premature. They stated that an agreement was executed between M/s Kamini Homes with the complainant on 18/02/16. In the said agreement, the allottee was promised a residential flat bearing No.104 in First Floor with super built up area of 850 sq ft at total consideration of Rs 25 lakhs. The respondent firm claimed that as the agreement was executed prior to the commencement of the RERA Act, 2016, it was not applicable to the said project. They said that there were certain key omissions in the averments made by the complainant, which could cause grave miscarriage of justice.
4. They further informed that the said project Ahmad Residency got its clearance and approval from the Patna Municipal Corporation (PMC) on 04/04/17 and was also registered with RERA on 10/09/2018. The respondent company informed that after the map of the project was approved by the competent authority, there was alteration in the super built up area of the apartment which increased from 850 sq ft to 1070 sq ft. As a result of this, the total consideration amount appreciated from Rs 25 lakh to Rs 37,80,000/-. Thereafter in March'18 both the parties met in person where the respondent detailed him about increase in super built up area and both the parties

agreed to execute a new modified Agreement for Sale where all the modifications were mentioned.

5. However, the respondent did not get any communication from the complainant as a result of which the respondent sent a notice dated 09/04/2018 requesting for due payment of Rs 7,16,800/-, Thereafter the complainant sent a notice dated 16/04/18 when the petitioner refused to acknowledge the new modified agreement for sale and raised baseless questions upon increased super built up area. Again on 30/10/18 a notice was served on the complainant intimating termination of the agreement for sale if he fails to make payment within seven days from the date of receipt of the notice and on 22/11/18 another notice was served on the complainant informing him of the termination of agreement for sale due to default of payment. It was further mentioned that the paid amount will be returned to the complainant's bank account after sale of the concerned flat. The respondent firm further stated that the date of delivery and possession of the flat was promised in June, 2019 with a grace period of six months in the new agreement for sale. Hence, the complainant's case in question is premature at this stage.

**Rejoinder by the Complainant :**

6. In her response to the counter affidavit filed by the respondent company, the Complainant stated that the developer never informed her regarding the date of approval of the plan by the PMC earlier and it agreed into an Agreement for Sale in February, 2016 regarding sale of a 2-BHK 850 sq ft Flat to her. She further claimed that the developer has no right to unilaterally increase the size of the flat by more than 25% and enhance the rate/price per square feet also particularly when she had paid and the promoter had taken 80 percent of the estimated cost of the Apartment from her at a very early stage

of the project. The remaining amount was due to be paid only at the time of handing over possession of the apartment.

### **Hearing**

7. Hearings were held on 12<sup>th</sup> February 2019 and 1<sup>st</sup> March 2019 in which complainant was represented by her husband and Md S M Nazbul Bari, Advocate and the Respondent firm was represented by Imran Khan, Managing Partner, Mr Akash Keshav, Advocate, Mr Shaswat, Advocate and Mr Gyan Abhinav, Advocate. In course of hearing, the Complainant reiterated the statement made in his petition, stating that the Respondent Company has unilaterally increased the size (super built up area) of the Flat from 850 square feet to 1070 square feet and also the price per square feet of the apartment. The Learned Counsel of the Respondent firm stated that the complainant was informed about the increased size and enhanced cost of the Apartment in March 2018 and she was requested to make payment of next installment in April 2018 but she didn't. She was again requested to pay her installment in October 2018 but she failed to pay. As a result, her booking was cancelled due to default in making payment.
8. In course of hearing, the Bench directed the Complainant and Respondent firm to meet and find out the feasibility of compromise. The Complainant has since informed that in reverence to the direction of the Bench, they went to meet the promoter but he didn't budge.

### **Issues for consideration**

9. There are following issues for consideration:
  1. Firstly whether the project is covered under the Real Estate (Regulation and Development) Act 2016;
  2. Whether there was any agreement for sale executed between complainant and the promoter;

3. Whether there is any provision for increase in the size of the Apartment unilaterally by the Promoter;
  4. Whether there is any provision for escalation of cost of the Apartment unilaterally by the Promoter;
10. The promoter has registered the project with the Authority under the Real Estate (Regulation and Development) Act 2016 and hence it is established beyond doubt that the project was covered under the Act 2016. As regards the agreement for sale, the petitioner has submitted a copy of the agreement for sale which has specifically provided that the promoter M/s Kamini Homes had agreed to provide Flat No.104 on 1<sup>st</sup> Floor with super built up area 850 sqft in the project Ahmad Residency against total consideration amount of Rs 25 lakhs. The Respondent firm had also received Rs 20 lakhs in pursuance to the Agreement till March 2016 without getting the building plan/map approved by the Competent authority. Further, the Agreement also didn't provide any contingent clause that agreement has been prepared and signed without preparation and approval of the building plan by the competent authority and there was still scope for significant alterations/ changes in the plan/map.
11. In absence of such provisions, the agreement was required to be governed under the provisions of the Act 2016. Section 18 of the Act 2016 provides that any significant changes in the plan can be done only with the written approval of two-third customers, which have not been done prior to making changes in the plan. Further the agreement didn't provide for any provision for escalation of cost of the Apartment by the Promoter. Also under the RERA Act 2016, there was no provision for escalation of costs.

## **Order**

12. We hold that the cancellation of booking by the respondent company is illegal and declare it null and void. The booking of the Apartment is restored to the complainant at the same rate of per square feet (psf) which was agreed to by the promoter company in the agreement for sale executed with the complainant on 18<sup>th</sup> February 2016. Further the increase in the size of the flat is allowed up to 12.5 Percent only i.e. up to 956.25 sqft. Thus the Complainant is required to pay  $956.25 \times 2941.18 = \text{Rs } 28,12,500$  (Rupees twenty eight lakh twelve thousand and five hundred only) in total for the apartment in question. Rs twenty lakhs already paid may be adjusted and the remaining balance amount (Rs 8,12,500) may be paid at the time of getting possession. The Respondent company is ordered to hand over the possession of the said apartment to the complainant on payment of Rs 8,12,500 ( Rupees eight lakh twelve thousand and five hundred only) within sixty days of issue of the order or issue of the occupancy certificate, whichever is earlier.

Sd

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

Sd

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