

REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR

Complaint Case No. RERA/282/2019

Smt. Kanchan MishraComplainant

Vs

M/s Technoculture Building Centre Pvt Ltd.....Respondent

Present: For the Complainant :- Mr Shekhar Kumar, Husband

For the Respondent :- Mr Dheeraj Kumar Roy, Advocate

24/12/2020

O R D E R

1. Smt. Kanchan Mishra, w/o Sri Shekhar Kumar and Mr Shekhar kumar, residents of Flat No-A-4/1-J, SAIL City, New Pundag, Ranchi-834004 Jharkhand has filed a complaint petition on 18th February 2019 under Section 31 of the Real Estate (Regulation & Development) Act, 2016 against M/s Technoculture Building Centre Pvt. Ltd for handover of the possession of their house- Jayanti Unit No 38, Vastu Vihar, Saharsa, booked by them in June 2014, at the earliest along with due interest, penalty and compensation in form of House rent @ Rs 10,000 per month from 1st January 2016 till finalization of the dispute.

Case of the Petitioners

2. In their complaint, they have stated that they had booked a house bearing no Jayanti Unit No 38 with 1000 sqft land and 1300 sqft of built up area on 11th June, 2014 at Vastu Vihar, Saharsa and an agreement was executed with the Respondent Company Technoculture Building Centre

Pvt Ltd on 18.06.2014 at the cost of Rs 20.93 lakh including legal expenses of Rs 78,000. As per the scheme, the Petitioners had agreed to purchase the plot of land measuring 1000 sqft and get a house constructed by the Respondent company as per standard drawing and specifications. Earlier, the plot of land measuring 1000 sqft was conveyed to the Petitioners by the respondent company vide sale deed no 6684 dated 17.06.2014.

3. The Complainants claimed that they had made the booking on 11th June 2014 by paying a sum of Rs 1,63,500 which was followed by another payment of Rs 2,37,000 on 17th June 2014. Thereafter, the Petitioners had paid Rs 10,09,357 on 19.12.2014, 2,70,643 on 25.04.2015 and Rs 3,57,964 on 1.6.2017. In all, the petitioners claimed that they had already made the payment of Rs 20,38,464 (97.39 % of the total cost) to the Respondent company. They claimed that as per the Agreement, the building was to be handed over to them within 18-24 months from the date of agreement. However, the building has not yet been handed over to them.

4. As per the agreement, if the plot owners desired any change in finishing work, they will inform the same in writing three months in advance. Further, cost of extra work has to be paid at the time of request of extra work by way of a crossed cheque or DD to the promoter/developer.

5. The Agreement also provided that the builder shall retain possession of the plot of land assigned to them for construction of the bungalow till realization of all their dues including compensation, if any, @1.5 % per month on the installments in arrears and any extra work done. The

Builder shall also have right to use the said building for their own use or to let it out till full realization of all dues.

6. The Petitioners further claimed that as per the agreement, the built up area of the building was to be 1300 sqft but the constructed building was of 1230 sqft only with the carpet area of 1075 sqft only. They claimed that though the matter was taken up with Saharsa unit as well as corporate office of the Respondent Company, they hadn't yet got the possession of the building.

7. They have also claimed that they had taken a home loan from State Bank of India and had been paying an Equated Monthly Instalment (EMI) of Rs 15,500. As a result, they were facing financial constraints due to inordinate delay in handing over the house by the Respondent company. The Petitioners have submitted the copies of the money receipts/bank transfer details, agreement executed between complainant and respondent and email/whatsapp correspondence/interaction made with the respondent company.

8. Based on the complaint received, a notice was issued to the respondent company on 4th April 2019 to submit their response by 28/04/2019. The Respondent Company vide their learned counsel Mr Dheeraj Kumar Roy submitted their response on 14th May 2019.

Response of the Respondent Company

9. In their response, the Respondent company has stated that the petitioners had also filed a consumer complaint petition bearing no 31/2018 on the same issue before District Consumer Forum, Saharsa, which was pending for adjudication. The Respondent claimed that the

petitioners couldn't move to two forums/Authorities for resolution of the similar/same cause.

10. The Respondent company further claimed that the Jayanti Duplex House booked by the complainants was completed long back and ready for possession but as the complainant didn't clear the dues, the company had not delivered the possession of the house. The Respondent claimed that some extra work for Rs 1,22,064 have also been done in the said bungalow, which was also required to be paid along with agreed cost of bungalow with applicable statutory taxes. They claimed that the total agreed consideration of the house was Rs 20,93,000 including Rs 78000 as legal expenses. The Respondent company admitted that the complainants had paid Rs 20,38,464 including service tax of Rs 65,786. Accordingly, Rs 271,877 was still required to be paid by the complainants.

11. The Respondent company had claimed that if the complainant makes the payment of outstanding dues of Rs 2,71,877.00, they would hand over the bungalow to the complainant.

12. While forwarding the copy of the response of the Respondent company to the complainants, both parties were called for hearing on 08th July, 2019.

Hearing

13. Hearings were held on 08.07.2019, 22.08.2019, 14.10.2019, 13.12.2019, 26.12.2019, 07.01.2020 and 21.01.2020.

14. In course of hearing, the complainant defended himself while the Respondent company was represented by their Learned Counsel Mr

Dheeraj Kumar Roy. On the very first day of hearing, the complainant was directed by the Bench to either continue the case in the District Consumer forum or withdraw the case from there in order to proceed ahead with the case in the Authority. The Complainant agreed to withdraw the case from the consumer forum and was accordingly directed to show the copy of the withdrawal on the next date of hearing. On 22nd August, 2019, the Petitioner submitted a certified copy of the withdrawal of the complaint petition no 31/18 filed before the District consumer forum, Saharsa, which was accepted by the Forum on 5th August 2019.

15. In course of hearing, the petitioners stated that they had made payment against each demand raised by the Respondent company except the final demand as it was considered unreasonable. They claimed that they had paid more than 80 of the cost of the building within ten months of the execution of agreement. However the promoter didn't handover the possession of the Bungalow within stipulated period of 18-24 months of execution of Agreement.

16. Further, the complainants claimed that the Agreement executed in June 2014 didn't specify that service tax was payable over and above the total cost of the Bungalow mentioned in the agreement. Further, they were never told that they would be required to pay service tax in addition to the total cost mentioned in the agreement. They produced each demand letter issued by the Respondent company in December 2014, February 2015 and May 2017 and the money receipts issued to them by the Respondent Company to show that neither in the demand letters for release of construction-linked instalments nor in the money receipts, the

respondent company had ever mentioned that the service tax was payable and would be required to be paid additionally. As per the law, the developer ought to have raised each demand letter for construction-linked installment including service tax at the prescribed rate but the respondent company didn't do it, meaning thereby that the amount of installment was inclusive of all taxes including service tax.

17. The Petitioners further claimed that since the service tax on under - construction building was introduced in the financial year 2012-13 and the respondent company had not mentioned the payment of service tax as an additional cost over and above the total cost mentioned in the agreement in June 2014, it meant that the Respondent Company had already included the element of service tax in the total cost of the bungalow mentioned in the Agreement. Further, the Petitioner said that he had made payments of installments in different financial years viz 2014-15, 2015-16 & 2017-18 and in none of these years, the respondent company raised any demand for service tax in their demand letters for installments to the petitioners. Thus, there was no justification for them to raise the bill for service tax for previous years now in 2018 when the scheme of service tax has already been subsumed in GST.

18. Further, the Petitioners claimed that after they made payment of 80 percent of the cost of the bungalow in April, 2015, the Respondent company didn't hand over the bungalow in June 2016. It was only in May 2017, when they visited Saharsa and met the concerned officials, the Respondent Company raised the next demand letter and it was during this meeting that the supervisory officer of the Respondent company agreed to do some additional work in the bungalow as a compensation

for a year's delay in handing over the unit to him. He claimed that he has never given any request in writing for additional/extra item of work as the so-called extra work was to be treated as compensation for delay in handing over the possession of the Bungalow by a year and that's why the respondent company had not issued the demand letter for extra work prior to execution of the extra work as required under the agreement and taken the cost of extra work from them before commencement of the work. He further claimed that he would pay the balanced/remaining amount of cost, if any, at the time of handing over the possession of the building.

19. The Respondent Company through their learned counsel Mr Dheeraj Kr Roy stated that service tax was a mandatory statutory tax, payable by all agencies providing services, as determined by the Ministry of Finance of the Government of India. He stated that the rates of service tax used to vary every financial year depending on the rates prescribed in the budget every year. Further, he claimed that as the husband of the complainant was in an uniformed service, they trusted him and that was why extra work was done by the respondent company as a good-will gesture without insisting on prior payment. He also gave detailed analysis of the payments made by the complainants to show that they have not made payments of the installment, as mandated in the agreement executed between the petitioners and respondent company. They claimed that the bungalow was ready and as soon as they get the payment of the residual amount, they would hand over it to the complainants.

20. The Bench felt that both parties should sit together and try to arrive at a compromise solution. Accordingly, the Bench gave them a month's

time to reconcile their differences but they failed to do so. Both parties requested the Bench to decide the issues on the merit of the case as they were not able to resolve the issue amicably.

Issues for consideration

21. There are no disputes on the facts of the case. Both parties have agreed on execution of the agreement and amount of payments made by complainants. Issues remaining for consideration of the Bench are as follows:

1. Whether the amount of Service Tax was payable by the complainants over and above the total cost of the Bungalow mentioned in the Agreement;

2. Whether service tax was payable by the complainants even when the Demand letters for construction-linked installments didn't include the amount of service tax;

3. Whether extra cost charges were payable by the complainants, when no written request was made by them and no advance payment was asked by the respondent as required in the Agreement;

4. Whether there was a delay in handing over the possession of the bungalow by the respondent company and if yes, what should be amount payable to the complainants for the delay, if any.

22. As regards the first issue, we have gone through the copies of the agreement executed between the complainants and respondent company and Booking form submitted by the Respondent company and have not found any mention of liability of complainants on account of any taxes

including service tax over and above total cost of Bungalow of Rs 20,15,000 and Legal charges of 78,000. We are therefore inclined to agree with the claim of the complainants that they were not required to pay any additional cost over and above the total cost specifically mentioned in the Agreement and Booking form, particularly when both these documents were executed two years after introduction of service tax on construction –linked flats/apartments/bungalows in the Financial year 2012-13. It was therefore reasonable for the complainants to believe that the total cost mentioned in the agreement was inclusive of all taxes.

23. As regards second issue, service tax was payable by the complainants only on demand by the respondent company/developer. As the respondent company didn't raise any demand for service tax in the Demand letters issued by them for construction-linked installments in 2014-15, 2015-16 & 2016-17, the Complainants do not have any liability towards service tax for the payments of installments in those years.

24. So far as third point is concerned, it looks strange that the respondent company agreed to the verbal request of the complainants for extra work without getting the request for extra work in writing along with payment from the complainants. It was specifically provided in the Agreement that the consumer has to make a request in writing for extra work three months in advance and pay the cost of extra work fully by way of crossed cheque or DD at the time of request. We are therefore inclined to believe the statement of the complainants that the supervisory officer of the Respondent Company at Saharsa in meeting with the complainants in May 2017 had agreed to do a few extra work as compensation for delay of more than a year in handing over the possession of the Bungalow.

However, as the Complainants have agreed to pay the extra cost charges graciously, we encourage them to pay it.

25. The Complainants are therefore directed to pay the balance amount of Rs 1,76,600 ($\text{Rs } 20,15,000 + 78,000 + 122,064 = \text{Rs } 22,15,064 - \text{Rs } 20,38,464 = \text{Rs } 1,76,600$) to the respondent after adjusting the amount receivable on account of delay.

26. As regards the 4th issue, there was no dispute between both parties to the effect that the bungalow was not ready for possession until June 2017, though all demands for payments made till then had been paid by the complainants. Therefore, the complainants are entitled to get a simple interest @ 6 percent per annum on the amount of Rs 16,80,500 deposited with the Respondent Company amounting to Rs 1,00,830 from 1st July 2016 till 30th June 2017.

27. As regards the delay in taking over and handing over possession of the flat after 1.7.2019, we hold both parties equally responsible for the delay as neither the complainants paid the balance amount of the total cost of the Bungalow to the promoter nor did the promoter act as per the provisions (Paragraph 5 (i) of the Agreement) of the agreement by handing over the possession of the Bungalow to the complainants after recovering their dues in form of using the bungalow for their own use or earning rental income by letting out the bungalow to any tenants at prevailing market rates. The Promoter was not therefore justified in holding the bungalow indefinitely without following the provisions of the Agreement. We therefore hold that no compensation would be

payable by either party to the other party on account of delay beyond 01 July 2017.

Order

28. We therefore order the Respondent Company to hand over the possession of Bungalow bearing number Jayanti Unit no 38 at Vastu Vihar, Saharsha after making it in a habitable condition within 30 days of issue of this order.

29. The Petitioners are directed to pay the balance amount payable (Rs 1,76,600 – Rs 1,00,830 = Rs 75,770) in form of a demand draft to the respondent company on the date of taking over possession of the Bungalow.

30. As regards the claim of the Petitioner for compensation in form of house rent etc, the Petitioner may, if he so wishes, approach the Adjudicating officer of the Authority under Section 71 of the Real Estate (Regulation and Development) Act 2016.

Sd/-
(R. B. Sinha)
Member

Sd/-
(Dr S. K. Sinha)
Member