

REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR

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

RERA Case No. CC/61/2018

Mrs Navita Kumari.....Complainants

Vs

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

**Present: For the Complainant: In person
Mr Satyendra Kumar Singh (father)**

For the Respondent:- Mrs Manisha Singh, Advocate

03/05/2019

O R D E R

1. Mrs Navita Kumari W/o Mr Kumar Gyan Prakash, B/127, PC Colony, Kankarbagh, Patna-800020 has filed a complaint petition on 21st August 2018 under Section 31 of the Real Estate (Regulation & Development) Act, 2016 against M/s Agrani Homes Pvt Ltd for not having given possession of Flat No. G/03, Ground floor, Block-D, IOB Nagar, Sarari, Danapur, Patna booked by her in August 2013. She has enclosed a copy of the Agreement for sale along with money receipts issued by the Respondent Company to her for the payments made.
2. As per the registered Agreement for sale signed by the Developer with her in August 2013, she had paid Rs 9,02,166 at the time of booking against the total consideration value of Rs 36,08,665/-. As per the agreement, the promoter had committed to construct and hand over a 1435 sq ft super built up area Flat No-G/03, Ground floor, Block-D in the Project IOB Nagar, Patna with one reserved car parking by December, 2014.
3. In pursuance to the receipt of the complaint petition, a notice was issued to the Respondent Company through their MD Mr Alok Kumar on 10th September 2018 for submitting its response within 15 days of receipt of the notice.

Response of the Respondent Company:

4. Ms Manisha Singh, learned counsel for the respondent company in her response dated 27th September 2018 stated that “as per building bye-laws 2014, a fire clearance was required before proposal was sent before the competent authority for approval of the map. In the present case, the Hon’ble Patna High Court on 15.12.2014 passed an interim order staying the approval of the maps. On perusal of the report of the public grievance redressal department during that period, no maps were approved by the competent authority as the new master plan was contemplated to be declared. After the vacation of the interim order, the maps were sent to the fire and after it was approved from the department of fire, it was submitted before the competent authority after observing all the formalities.”
5. The Learned counsel further submitted that the Complainant’s apartment was almost ready. All the internal fittings and fixtures were installed and the flat was ready from inside. As far as external work of the Tower was concerned, it would be completed by 31st October 2018. She assured that the apartment would be completed finally by 30th November 2018.

Rejoinder of the Complainant

6. In her rejoinder, the complainant stated that reply given by the respondent was false and misleading. She stated that she had paid Rs 29,05,255.00 to the builder after taking a home loan of Rs 20 lakh and has been paying EMI of Rs 26416 per month for the last 4 years. She said that that she had paid more than 80 percent of the estimated cost of the Apartment till 2015. Though the registered agreement for sale dated 20.08.2013 signed by her with the promoter stipulated that the apartment would be handed over by the December 2014, the apartment has not yet been handed over to her. As a result, she has been incurring the additional cost of Rs10,000 as monthly rent on the house she has hired for her residential accomodation.

Hearing

7. On the date of first hearing on 19/12/2019, learned counsel for the respondent company assured that the flat allotted to the complainant would be completed in all respect and handed over to the complainant by 31st January 2019, otherwise the company would pay Rs one lakh per month to the complainant as compensation. On the next date of hearing on 31/01/2019, no one turned up on behalf of the respondent company. However, the complainant was represented by her father Mr Satyendra Kumar Singh who informed that he was summoned by the company a few days ago and asked to pay the remaining amount of Rs seven lakhs before possession of the apartment could be handed over to her. He stated that the project was not yet complete as occupancy certificate has not yet been obtained by the promoter from the competent authority. The project did not have independent transformer and sewerage facilities. He felt that his apartment also needed attention as he would be the first person in the entire Block to occupy his flat.
8. As Learned Counsel of the Respondent had committed to handed over the apartment on 31st January 2019 and no one appeared from the Respondent side on 31.01.2019, a cost of Rs10,000 was imposed on the Respondent with the direction to the MD of the company to remain present on the next date of hearing. It was still not known whether the respondent company had even applied for issue of occupancy certificate for the D Block, let alone have obtained the occupancy certificate from the competent authority before handing over possession of the flat. On the next date of hearing on 08.02.2019, the respondent company was represented by MD of the company and the Learned Counsel Ms Manisha Singh. They agreed to rectify the shortcomings in the apartment pointed out by the complainant within two weeks and handover the apartment to the complainant. They however confirmed that they have not yet initiated the process of obtaining the completion/occupancy certificate for the D Block. They were directed to obtain the completion/occupancy certificate within three months after completing the entire building. The Promoter agreed to do so.

Issue for consideration

9. There is no doubt that there has been inordinate delay in completion of the project D block in the IOB Nagar, Sarari, Danapur, Patna. The project, which was to be completed by December 2014, has not yet been completed. Moreover, Learned counsel of the Respondent Company has tried to mislead the Bench by stating that there was inordinate delay in the approval of plan/map of the project due to interim order of the Patna High Court on 15.12.2014. However it was found that in the registered Agreement for sale signed by the promoter with the complainant in August 2013, it was stated that the Map of the IOB Nagar Main Phase had already been sanctioned by Danapur Nagar Parishad vide plan case no 43276/22/R-B+G+6/02/18-09-12/NPK. Further, a Project Duration Planning sheet sent by the respondent company to the complainant in July 2015 clearly indicated that the structure of the building up to 5th floor and brick work upto 3rd floor had already been completed by July 2015. The Company had then assured that the apartment would be handed by 20th November 2015.
10. The promoter has not obtained the completion/occupancy certificate from the competent authority even now. He has not yet even filed the papers for issue of completion/occupancy certificate. However, keeping in view urgent requirements viz school education of the daughter etc, the complainant has taken informal possession of the Apartment, as rules provide that the promoter was competent to hand over the possession only after receipt of the completion/occupancy certificate from the competent authority. Even assuming that the complainant has taken over the possession of the Apartment in March 2019, there has been delay of fifty months in handing over possession of the Apartment. The Complainant has stated that she had taken a home loan of Rs 20 lakh and had been paying EMI of Rs 26416 per month since 2014. She has claimed that she has also been paying a monthly rent of Rs 10,000 for her hired accomodation. She has also submitted a series of letters she had written to the respondent company in the last 4 years for early possession of the Apartment.

Order:

11. It is therefore ordered that the Respondent company should adjust the remaining amount payable by the complainant against the interest payable to the complainant at the rate of seven percent per annum on the amount deposited by the complainant with effect from 1st January 2015 to 28th February 2019 and thereafter raise demand on the complainant, for the balance amount remaining, if any, is left to be recovered from her after adjustment of interest payable to her. The rate of interest to be paid by the promoter has been kept lower than the MCLR of the State Bank of India, keeping in view the difficulties faced by the promoters in procuring building materials like sand etc

The Respondent company is also directed to obtain the occupancy certificate for the D Block of the IOB Nagar on priority basis without any further delay.

Sd

(S.K. Sinha)
Member

Sd

(R.B. Sinha)
Member