

REAL ESTATE REGULATORY AUTHORITY, BIHAR

Before the Full Bench of Mr Naveen Verma, Chairman,
Mr R.B. Sinha, Member & Mrs Nupur Banerjee, Member

Case No.CC/757/2019

Vikash Kumar Raj.....Complainant

Vs

M/s Adharshila Housing Buildcon Pvt Ltd/ M/s Green Ghar
Infrastructure and Construction Pvt. Ltd.....Respondents

13/09/2021

ORDER

This matter was last heard at length on 23.8.2021 and the pleadings of the learned counsels for all the parties were recorded at length the order sheet.

The case of the complainant is that he had booked a Simplex house in the Project AARON, Central City in January 2015 of M/s Adharshila Housing Buildcon Pvt. Ltd. (now renamed as Green Ghar Infrastructure and Construction Ltd.) but till date nothing has been done. The complainant has prayed for immediate possession of the house. He has stated in his application that Mr. Shaheed Ahmad who was then Director of the Company, Adharshila Housing Buildcon Pvt. Ltd and Green Ghar Infrastructure and Construction Ltd. is the main respondent and that many other Projects of Green Ghar Infrastructure and Construction Ltd. are also under construction and have similar problems.

The complainant has submitted copy of the application form submitted to M/s Adharshila Housing Buildcon Pvt. Ltd. on 9.1.2015. He has also submitted copy of the receipt issued by M/s Adharshila Housing Buildcon Pvt. Ltd. There is a copy of the consent agreement notarised on non-judicial stamp paper on 31.5.2016 between the Directors of the Company namely, Mr. Anup Kumar, Mr. Sanjay Kumar and Mr. Vijyan as First party and Md. Shaheed Ahmad as a Second Party wherein the projects of M/s Adharshila Housing Buildcon Pvt. Ltd. in Darbhanga and Patna have been stated as handed over to Mr. Shaheed Ahmad with all the assets and liabilities. The complainant has also filed affidavit dated 24.2.2021 wherein he has stated that he had made

Mr. Anup Kumar as a respondent die to lack of knowledge of this consent agreement and also prayed that Md. Shaheed Ahmad instead of Mr. Anup Kumar should be made a party in this case.

On the last date of hearing the learned Counsel for both the companies M/s Adharshila Housing Buildcon Pvt. Ltd and Green Ghar Infrastructure and Construction Ltd had agreed that there is merit in the case of the complainant.

The fact that the complainant had booked a house in the project and had made payment is without any dispute.

It is evident from the documents submitted by the complainant that the money was taken and all transactions were made by the Company M/s Adharshila Housing Buildcon Pvt. Ltd..

The dispute centres on the issue of which of the Directors of the company is responsible for fulfilling the promise made to the complainant at the time of booking .

The Authority has taken note of the arguments and counter arguments put forward by the learned counsels and is of the view that the process of resignation of Directors thereof and terms and conditions of separation of assets and liabilities has to be guided by the Companies Act and a notarised consent cannot be a substitute for this purpose. In any case, the Authority is not the appropriate Forum to go into the validation of the agreement between the present and ex-Director of the Company M/s Adharshila Housing Buildcon Pvt. Ltd. nor is it competent to adjudicate on which of the assets and liabilities would devolve upon the particular Director.

The Real Estate (Regulation and Development) Act 2016 lays down in Section 69 that ifan offence under the Act is committed by a company, every Person who, at the time, the offence was committed was in charge of or was responsible for the affairs of the company, shall be deemed to be guilty of offence and shall be liable to be proceeded against and punished accordingly.

The Authority is of the view that since both the Directors who are now associated with different companies as mentioned above parties have admitted the claim of the complainant and also the fact that they were both responsible for the company M/s Adharshila Housing Buildcon Pvt. Ltd. at the time of booking of the house, both the Directors Mr. Anup Kumar and Md. Shaheed Ahmad are equally responsible for constructing the house and hand over the possession of the house at the rate agreed in the

prospectus. It is for them to settle among themselves as to how the house would be constructed.

The Authority directs the respondent Directors Mr. Anup Kumar and Md. Shaheed Ahmad of companies M/s Adharshila Housing Buildcon Pvt. Ltd and Green Ghar Infrastructure and Construction Ltd respectively to ensure that the house is constructed and handed over to the complainant within two years from the date of order.

The complainant is directed to make the remaining payment as per the construction linked schedule mentioned in the prospectus.

With these directions the matter is disposed off.

Sd/-
Nupur Banerjee
Member

Sd/-
R.B. Sinha
Member

Sd/-
Naveen Verma
Chairman