

REAL ESTATE REGULATORY AUTHORITY, BIHAR

Before the Single Bench of Mrs. Nupur Banerjee

Case No.CC/963/2021

Vikash KumarComplainant

Vs

M/s Kanishka Buildcon Pvt. Ltd.Respondent

Project: Vidyanand Maheshwari Complex Block-A & B

Present: For Complainant: Mr. Manoj Kumar Singh, Advocate

For Respondent : Mr. Aryan Singha, Advocate

03/08/2022

ORDER

This complaint has been filed under section 31 of the RERA Act, 2016, seeking relief to direct the respondent to provide the facilities as mentioned in the development dated 15-02-2011 and also provide properly maintained flat's with Generator and Intercom facility.

The case of the complainant is that complainant's father registered a development agreement with M/S Kanishka Buildcon Pvt. Ltd., to develop a Project namely Vidyanand Maheshwari Complex having Block- A & B. He further submitted that according to registered development agreement respondent has promised to provide thirty world class flat's with Intercom, Silent Generator, Fire Fighting System, separate car parking for every flat, proper electric panel system etc, but has totally failed in providing. He further submitted a slum- like flat has been handed over having improper drainage system, without exterior paint, proper parking, guard room and finished staircase and common area that causing everyday moisture problems in all exterior wall and wall drawers. He further submitted that there is always a fear that someday the ceiling may not collapse, because the putty

and plaster of the ceiling and the wall keeps falling in time to time. He further submitted that it is very difficult for him to live in a slum like flat given by them. Therefore, he filed this complaint petition praying to direct the developer i.e. respondent to provide all the facilities mentioned in that registered development agreement, and provide him a safe and properly maintained flat's with generator and intercom facility.

On 28-02-2022, respondent has filed their show cause petition stating therein that division of share was done between the complainant and the respondent company on 15.06.2016 and accordingly, the respondent company had handed over the peaceful possession of 30 flats to the Complainant. It has been further submitted that the respondent company has already provided the parking space to the complainant and has allotted the Parking Space to the other flat owner also. It has been further submitted that the complainant may sign and collect the parking allotment letter by coming to the office of the respondent company. It has also been submitted that it is wrongly alleged by the complainant that the respondent company had not done the paint works on the exterior walls of the Apartments. Whereas, the respondent company had done the paint in the year 2015-16 itself but with time, the same has faded. Whereas, the work of repainting the walls have already begun and the painters who have undertaken the work have assured that they would complete the same within 3-4 months. It has also further submitted that the complainant who is a land owner instead of supporting the respondent company for repainting work, is making obstruction in the paint work for no reason whatsoever, by threatening and beating the labours and further the complainant is abusing the laborers by using filthy language. It has also been submitted that the respondent company is doing all the construction work of Block E as per the Site Plan and the Municipal Corporation vide Memo No. 180 dated

16.01.2017 had permitted and approved the Plan Case No. 180/2016-17 for construction of Block E of Vidyanand Maheshwari Complex and respondent company had applied for registration of aforesaid project vide Application No. RERAP197201800631-1 on 29.09.2018 with all the required documents and thereafter, this Hon'ble Authority, has issued Project Registration Certificate to the Respondent Company vide Project Registration No. BRERAP00631-1/654/R- 260/2018 dated 27.11.2018. It has also been submitted that against the complaint dated 02.09.2021 made by the few residents of Vidyanand Maheshwari Complex, Nagar Parishad, Danapur had issued a Memo No. 2581 dated 10.09.2021 to the Respondent Company by way of which Nagar Parishad, Danapur had directed the respondent company to demolish the alleged illegal construction. Accordingly, the respondent company had preferred a Writ Petition vide CWJC No. 17022 of 2021 before Hon'ble High Court of Patna against the Memo No. 2581 dated 10.09.2021 whereas, the Hon'ble High Court of Patna vide order dated 04.10.2021 was pleased to quash the Memo No. 25B1 dated 10.09.2021. It has been further submitted that thereafter, Nagar Parsihad, Danapur has issued a show- cause Notice Memo No. 442 dated 31.01.2022 whereby, it has been alleged that the construction of G+3 building which is being carried out by the land owners of Plot No. 401 (P) is illegal and against the Plan Case No. 180/2016-17 and further directed the Respondent Company to file its reply within 15 days accordingly, the Respondent Company has filed its reply wherein, the Respondent Company has made it very clear vide Para No. 8 and 11 that Respondent Company has no concern with the construction of G+3 building which is being carried at Plot No.401 (P) and Nagar Parsihad, Danapur may pass an appropriate order in accordance of law against said illegal construction of G+3 building on Plot No. 401(P) situated at Mauza- Saguna, Thana No.23, P.S. - District - Patna, Bihar.

On 14-07-2022, respondent has filed supplementary affidavit stating therein that that possession and parking of Flat No. 101, 102, 103, 104, 105, 106, 301, 302, 303, 304,305, 306, 403, 404 and 405 of Block-A and 101, 102, 103, 104, 301, 302, 303, 304, 403 and 404 of Block - B was duly handed over to the landowners in the year 2013 .Whereas, possession and parking of Flat No. 501, 502 and 503 of Block - A and 501 and 502 of Block - B was duly handed over to the landowners in the year 2016. It has been further submitted that completion certificate in respect to alleged project is issued in the year 2017, itself. It has also been submitted that the paint work both inside and outside wall of the said residential Apartment namely “Vidyanand Maheshwari Complex” has already been completed and the same can be ascertained by the photographs annexed by the respondent company. It has been further submitted that it is wrongly stated by the Complainant that the boundary wall has not been provided by the Respondent Company in the said residential Apartments. Whereas, the fact is that work of boundary wall has been completed much earlier and the same can be ascertained from the photographs submitted by the Respondent Company showing boundary wall is there in the said Residential Apartments. It has also been submitted that lift and electric panel is installed in the apartment and the generator is purchased but complainant is not allowing for installing the same. It is further submitted that parking has been allotted to complainant and also in compliance of the order dated 04-07-2022, the respondent company has sent the parking allotment letter to the complainant through mail as well as speed post.

During the last hearing, learned counsel for the complainant has submitted that the building has not been completed till date. There is no improvement at all. Possession has already been given in 2018. Lift, Parking, boundary wall etc. has not been done. Illegal construction on 6th

floor has been done without taking approval from Competent Authority. He further submitted that even the approach road has been encroached upon which Block E is being constructed for which registration from Authority has taken.

Learned counsel for the respondent has submitted that the complainant has done the painting work but has got faded and re painting will be done. He further submitted that construction of block E has been made by the land owner not this promoter. The promoter is not well. He is in Delhi now. So, he needs time to complete the remaining works in building. He further submitted that they are ready to give the parking area and the allotment letter.

After the perusal of case records and submissions made and considering the documents filed by the respondent by way of Supplementary Affidavit, it appears that almost all of the works has been completed as it seems from the photographs placed. However, respondent himself submits that generator installation is pending for which respondent submits that complainant is not allowing to install the same, hence, considering that the generator is already purchased and there at the building, the Bench directs respondent to install the same within 15 days of issuance of this order and further directs complainant to cooperate with the respondent in installing the same. The Bench also directs respondent to complete if any work is pending in building within 60 days and further also directs complainant to cooperate with respondent in completing the work.

The Bench takes the notes of parking allotment letter placed on record by respondent and directs complainant to take the physical possession of the same and also directs respondent to give the same. The Bench directs both the parties to mutually fix the date for giving and taking

the physical possession of the allotted parking space as per the parking allotment letter.

As photographs placed on record by the respondent that showing lift is installed in the building and boundary wall is already constructed, the Bench observes that since it appears from the photographs placed that lift is installed and functioning there in the building and boundary wall is also constructed, hence, taking note that as per the last direction complainant has not placed any documents showing the same is not completed, the Bench after the perusal of the photographs placed observes that above stated works are completed and finds that last hearing direction has been complied.

So far the issue of the deviation of map and illegal construction of as pointed by the complainant on 6th floor is concerned, the Bench takes the notes of submissions of respondent made in respect to that and also the averments in form of allegation leveled by complainant and advise complainant to approach to competent authority for that and competent authority is requested to enquire about the same and take appropriate action as per law.

So far the issue raised regarding construction of E block which has been encroaching the approach road of the present constructed building is concerned, the Bench directs complainant to inform the same to the competent authority who will enquire about the same and take appropriate action as per law.

So far the issue rose regarding falling of ceiling or it may collapse or any defects happens in building in future is concerned, the Bench observes that duty cast upon promoter under section 11(4) (a) and 14 (3) to cure such defects if arise within 5 years from the date of handing over the possession,

hence, complainant is at liberty to bring such issue if it comes to knowledge of complainant within that period.

With these observations and directions, this complaint petition is disposed of.

Sd/-

Nupur Banerjee
Member