

# Real Estate Regulatory Authority, Bihar

6<sup>th</sup> Floor, Bihar State Construction Corporation Building, Shastri Nagar, Patna-800023

Date- 14<sup>th</sup> September 2018

Before the Bench of R B Sinha, Member and Dr Subodh Kr Sinha, Member

Complaint Case No. RERA/CC/07/2018

Kundan Kumar and Jyoti Kumari.....Complainants

Vs

M/s Nesh India Infrastructure Pvt Ltd.....Respondent

- For the Complainants: 1.Mr Kundan Kumar  
2. Mr Rai Saurabh Nath, Advocate
- For the Respondent : 1.Mr Shashi Bhushan Sinha, MD  
2. Mr Binod Kr Sinha, Advocate



Mr Kundan Kumar and Mrs Jyoti Kumari have filed a complaint petition under Section 31 of the Real Estate (Regulation & Development) Act, 2016 to the Authority against M/s Nesh India Infrastructure Pvt Ltd through their Managing Director Sri Shashi Bushan Sinha on 15<sup>th</sup> May, 2018. In pursuance to the complaint, a notice to the Respondent M/s Nesh India Infrastructure Pvt Ltd through its Managing Director was served to give their response on 22<sup>nd</sup> May, 2018. When no response was received till well after four weeks, a notice was issued to M/s Nesh India Infrastructure Pvt Ltd for appearance in person or through their representative on 31<sup>st</sup> July, 2018. On 31<sup>st</sup> July, 2018 the Respondent No.1 did not turn up at the appointed time 11 AM though the Bench waited upto 12:45 PM.

*R. Sinha*



Accordingly, the case was adjourned and next hearing was fixed on 8<sup>th</sup> August, 2018. However, subsequently an Advocate representing the respondent came to the Authority at 2:30 PM and submitted a reply on behalf of the Respondent to the complaint of Mr Kundan Kumar and Mrs Jyoti Kumari.

As the response of the Respondent was received, the Bench while sending a copy of the response to the Complainant, fixed the date of hearing on 17<sup>th</sup> August, 2018. However, 17<sup>th</sup> August, 2018 was subsequently declared as a holiday on account of the demise of Shri Atal Bihari Vajpayee, former Prime Minister of India. Therefore, the date of hearing was changed to 31<sup>st</sup> August, 2018. The hearing took place on 31<sup>st</sup> August, 2018 in which the Complainant Mr Kundan Kumar along with his counsel Mr Rai Saurabh Nath and the Respondent along with his counsel Mr Binod Kumar Sinha appeared and argued their case.

#### **Case of the Complainant :**

The Complainants in their petition have stated that they had booked the Flat No. D/726 in AG Enclave of Thiruanantapuram City at Khagaul, Danapur in August, 2016 which was being developed by M/s Nesh India Infrastructure Pvt Ltd. The Complainants stated that they paid a total sum of Rs 30.01 lakh upto 24<sup>th</sup> August, 2016 and signed the Agreement for Sale with the Promoter/Builder.

The Complainants further stated that at the time of booking in August 2016, the super structure of the block was ready and approximately 90% of the brick-partition work of the flat was done. When the builder completed the balance brick-work and got 90% of the internal plaster done, the Complainants paid a further sum of Rs 3.00 lakh on 2<sup>nd</sup> April, 2017 as per schedule-C (page 12) of the Agreement.

The Complainants stated that as per the payment schedule mentioned in the Agreement for Sale, they were required to pay further sum of Rs 8.00 lakh to the builder by the end of July, 2017 when the builder was to complete the flat in all respects by 31<sup>st</sup> July, 2017. However, the Complainants claimed that without making any further progress in the flat, the builder started demanding further payment on telephone from the



middle of April, 2017. Resultantly they issued a letter dated 1<sup>st</sup> June, 2017 to the builder making it clear that further payment would be withheld if there was delay in completion of the flat. The Complainants claimed that they did not get any response to their letter till the end of July, 2017 and therefore, they sent another letter on 9<sup>th</sup> August, 2017 asking the builder to complete the flat by 31<sup>st</sup> August, 2017 so as to enable them to make payment of the due amount. However, the Builder responded only on 4<sup>th</sup> September, 2017 once again demanding full payment with GST before 20<sup>th</sup> September, 2017 with a request to get the flat registered in their name as due to some Government policy they would not be able to register the flat afterwards. In response to that, the Complainants enquired from the builder vide letter dated 6<sup>th</sup> September, 2017 as to under which Government policy they were being coerced to get the registration of the flat done without finishing the project, getting completion certificate and No Objection Certificate from the civic body and without issuing Possession Certificate to them. They however did not get any response from the builder. The Complainants have stated that they issued another letter on 21<sup>st</sup> October, 2017 to the builder giving them time till the end of March, 2018 for completing the flat in all respect as they had to go abroad for 4-5 months due to some urgent family matters. The Respondent however sent a notice dated 15<sup>th</sup> February, 2018 through a whatsapp message to deposit the balance full payment within fifteen days failing which they would cancel the booking and forfeit the advanced paid without any further notice to them. The Complainants have stated that on return from abroad, they met the Managing Director of the Respondent company on 22<sup>nd</sup> March, 2018 but their request to complete the flat for taking the balance full payment was not accepted. Noticing the attitude and arrogance of the builder, the Complainants stated that they applied for refund of their entire money with interest @ 11% as per Clause 12 of the Agreement on 22<sup>nd</sup> March, 2018 followed by reminders on 2<sup>nd</sup> April, 2018 and 6<sup>th</sup> April, 2018 for refund of the interest and damages.

The Complainants have pleaded for refund of the principal amount (Rs 30.01 lakh) along with interest @11 % as provided in Clause 12 (a) of the Agreement for sale, besides 2% damages accrued. They have also



requested for refund of the Principal amount paid to the Builder as interim relief in their complaint.

**Reply of the Respondent:**

In its response to the show cause notice, the Respondent M/s Nesh India Infrastructure Pvt Ltd agreed that the Complainants had taken the flat No. D/726 for Rs 48.96 lakh in their real estate project Thiruanantpuram city, Danapur, Khagaul and entered into an Agreement for Sale in August, 2016 and paid Rs 30 lakh.

The Respondent Company have stated that they have approached the Complainants several times telephonically informing them that their flat has been completed and requesting them to make the full and final payment. However, the Complainants always evaded and avoided making the payment to the Respondent. The Respondent claimed that the flat was ready for handing over the possession to the Complainants.

The Respondent also stated that the Complainants had themselves admitted in their complaint that at the time of booking of the flat in August, 2016, the super structure of the flat was already complete to the extent of 90%. The Respondent further submitted that as per Clause 12 of the Agreement for Sale, the said flat was to be completed in all respect by July, 2017 and the building along with all common amenities was to be completed by July, 2017 with a grace period of six months, provided that the time for completion shall be deemed to have been extended in the event of non-availability of building materials or delay in receipt of instalments from the Complainants or due to delay on account of reason beyond the control of the Respondent. They claimed that the flat was ready for possession by the Complainants subject to full and final payment.

The Respondent further claimed that as per Clause-18 of the Agreement for Sale, the Complainants have to give a written notice to the Respondent for cancellation of the Agreement for Sale, which they have not done. The Respondent also stated that Clause 19(a) of the Agreement also provides for arbitration in accordance with law, which the Complainants have ignored.



The Respondent also claimed that the Complainant was also liable to pay interest at such rate as prescribed in the Agreement for Sale for any delay in making payment of instalments or charges to be paid as provided under Section 19 (6), (7) and (8) of the Real Estate (Regulation & Development) Act, 2016.

### Hearing on 31<sup>st</sup> July, 2018

Learned counsel of the Complainants Mr Rai Saurabh Nath stated that the reply of the Respondent has not covered the main issues raised by the Complainants. He stated that as per Clause-12 of the Agreement for Sale, the construction of the said flat was to be completed in all respects by July, 2017 and contested the claim of the Respondent that the flat was ready for possession. He stated that this statement of Respondent is totally incorrect and the basic reason for filing this complaint is that there has been breach of terms of the Agreement.

Learned counsel for the Complainants further sought attention of the Bench towards Clause-6 of the Agreement wherein it was provided that the builder was to notify the completion of the flat to the buyer after No Objection Certificate (NOC) and Completion Certificate have been issued by the competent authority i.e. Khagaul Nagar Parishad. In the present case since the Respondent has not obtained NOC, it could not have given notice to the buyer for taking possession.

Learned counsel for the Complainants further stated that the flat in question (D/726, 7<sup>th</sup> Floor, AG Enclave, Thiruanantauram City, Khagaul) was not even complete since neither windows, grills and doors have been affixed nor flooring with tiles have been done. Further bath room fittings have not been installed. Marble slabs, wall tiles and electrical fittings have not been done in the kitchen and bath rooms. Last but not the least, no lift has been installed which is necessary for reaching 7<sup>th</sup> Floor of the building and in absence of all the above requirements, the question of giving and taking possession of the flat did not arise.



The Respondent's learned counsel Mr Binod Kumar Sinha claimed that the Complainants had themselves admitted that at the time of booking of the flat in August, 2016, 90% of the brick partition work of the flat was already done. At this juncture, learned counsel for the Complainants intervened to state that what the Complainants had stated was regarding brick-partition work of the flat and not 90% completion of the entire flat. The Bench also desired to know whether the Respondent has obtained No Objection Certificate or Completion Certificate from the Khagaul Nagar Parishad to which the Respondent's counsel stated that they have not yet done so.

The Respondent's counsel further stated that they were agreeable to refund the money if the Complainants desire so or otherwise they were ready to give them a complete flat if they wish to take that. On this, the Complainant's counsel unambiguously stated that they would opt for refund of the principal amount paid along with interest on the amount till the date of refund of the money. It was agreed by both the Complainants and the Respondent that the rate of interest of Marginal cost of lending rate (MCLR) of State Bank of India (SBI) may be paid on the amount deposited by the Complainants to the Respondent in three instalments in equal measure. The last instalment to be paid on 27<sup>th</sup> November, 2018 would also include the amount of interest due and payable on the payment made by the Complainants.

### Order

**The crux of the issue was whether the booked flat in question (D/726, 7<sup>th</sup> Floor, AG Enclave, Thiruanantauram City, Khagaul) was complete in all respect by 31<sup>st</sup> July 2017. Though the Respondent in their written response had claimed that the flat was complete in all respect by 31<sup>st</sup> July 2017, during hearing they did not contest the claim of the Complainants that neither windows, grills and doors have been affixed nor flooring with tiles have been done. Even bath room fittings have not been installed. Marble slabs, wall tiles and electrical fittings have also not been done in the kitchen and bath rooms. Moreover no lift had been installed, which is a basic necessity for elderly complainants for reaching 7<sup>th</sup> Floor of the building.**



Further, the Respondent admitted that they have not yet obtained the NOC and Completion certificate from Khagaul Nagar Parishad. it was therefore conclusively proved that the flat was not complete as of 31<sup>st</sup> July 2017. In such circumstances, the contention of the Complainants appear to be justified and logical when they requested for completion of the flat in all respect before making any further payment.

As the flat in question was not yet ready and the Complainants have unambiguously stated their wish to get the refund of the entire amount paid by them along with due interest, the views of Respondent were elicited by the Bench. The Respondent was also agreeable to refund the deposits made by the Complainants. Since the Respondents have agreed to refund the principal amount, the only issue left was the rate of interest to be paid on the payments made by the complainants to the Respondent company. The agreement for sale provided for payment of interest at the rate of 11 percent per annum. However, in course of hearing, it was mutually agreed between Complainants and Respondent that the rate of interest at the Marginal Cost of Lending Rate (MCLR) of State Bank of India(SBI) may be paid on the deposits made by the complainants. As the Respondents have availed the benefits of the deposits made by the Complainants, it is ordered that the Respondents should refund the entire amount of principal paid by the Complainants along with interest at the rate of MCLR of SBI as prescribed on the date of order (14<sup>th</sup> September 2018) from the date of deposit of the amounts by the Complainants to the date of refund by the Respondent. The entire sum may be paid in three instalments on 14<sup>th</sup> September 2018, 12<sup>th</sup> October 2018 and 27<sup>th</sup> November 2018. The last instalment payable on 27<sup>th</sup> November 2018 should also include the amount of interest.



  
R B Sinha  
Member  
17/9/2018

  
Dr S K Sinha  
Member