REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR

Before

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

Complaint Case No: RERA/CC/51/2018, RERA/CC/52/2018 and RERA/CC/ 57/2018

Mr Raj Kumar Sinha, Mr Sanjay Kumar Sinha, and Mr Binod Kumar…..……...Complainants

Vs

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

Present: For the Complainants: In Person
Mr Sharad Shekhar, Advocate

For the Respondent: Mr. Abhinav Srivastava, Advocate
Mr. Binod Kumar Sinha, Advocate

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08/08/2019 **O R D E R**

1. Sri Raj Kumar Sinha, s/o late Ram Bilas Prasad, a resident of Quarter No-C-4/06, Type IV, Accountant General Residential Complex, R Block, Patna-800001,Sanjay Kumar Sinha, S/O Late A. Y. Sahay, a resident of Quarter no –C-2/05, Type IV, Accountant General Residential Complex, R Block, Patna-800001 and Sri Binod Kumar Son of Late Fakirchand Ram, a resident of Madhukunj, Visheshwariya, Nagar, Bailey Road Nahar Par, Danapur, Patna have filed a complaint each under Section 3,18,19 and 36 of the Real Estate (Regulation & Development) Act, 2016 on 02/08/2018 against M/sNesh India Infrastructure Pvt. Ltd.. through its M.D. Sri S.B. Sinha for early possession of their share of flats of the project, payment of rent/compensation at prescribed

rate for the period of delay in handing over the flats and additional damages and compensation for mental torture and harassment caused to them by the builder etc.

2.The Petitioners are the owners of pieces/plots of land, allotted by AlokSahkariGrihNirmanSamiti, a co-operative society registered under the Bihar and Orissa Co-operative Societies Act 1935. The Promoter M/s Nesh India Infrastructure Pvt Ltd had proposed to develop a residential building namely Tiruvantpuram city on pieces/plots of land measuring 9978.297 sqmt owned by 40 land-owners. In their petitions, the Complainants have stated that they along with five other plot-holders had executed a common development agreement with developer (M/sNesh India Infrastructure Pvt.Ltd) vide registration No 2737/ Dated 31.01.2011 for construction of Multi Storied Apartments named AG Enclave in Tiruanantpuram City, Khagaul Road, Danapur, Patna on Kheshra No 196/215 under Thana no -40 Aadampur,Danapur, Patna. The said project was to be completed in three and half years with a grace period of six months. However Owners (Petitioners) were required to be given flats within two years from the date of sanction of the plan or handover of the vacant possession of land to the developer. They further claimed that it was provided in the individual Supplementary Agreement, executed with each of them separately on the same date as that of the common Development Agreement or immediately thereafter (31.01.2011/01.02.2011/05.02.2011), with the builder, that the builder shall give two flats each to them including parking space depending upon the size of the plot of land of each complainantas follows :-

Mr Raj Kumar Sinha - Flat No- D/7, D/8, Block–D, Ph-1, AG Enclave

Mr Sanjay Kumar Sinha -Flat No- D/10, 3RD Floor, Ph-1, AG Enclave
Flat No-P-1/P-6, Block P, Ph-1,Tiruvantpuram city

MrBinod Kumar - Flat No- D/11, D/12, Block–D, Ph-1, AG Enclave

While all flats were of 1440 sqft in D Block, the flat in P Block was of 900 sqft. Each petitioner was also required to make payment of a fixed sum to the Developer at the time of taking over the possession of the Apartments.It is relevant to mention that till then plan/Map of the building was not yetapproved.

3.It is further stated by the complainants that developer has not handed over their share of two flats to each of the Complainants till date while it was required to be completed by Jan. 2014. In this regard a plan was approved by Nagar Parishad, Danapur on 18.10.2012 for construction of a multi-storied building on 9978.297 sq.mtr. land with constructed area of 28602.22 sq. metres having FAR of 2.86.

4.The developer got a revised plan sanctioned in July 2016 for the same project and claimed that its revised completion date was in July 2020 and the claim of complainants was not valid and the complainants were entitled to get the completed flat after the revised completion date.

5.The complainants however stated that the project was complete and that developer in another case through affidavit hadhimself declared before Sub-Registrar, Danapur that he had constructed multi-storied building/ complex in name and style of “Tiruvantpuram City” at Khagual, Danapur, Patna which was completed before July, 2016, copy of it has also been attached..

6.The complainants have further stated that besides said two flats, developer was also liable for the payment as follows:

i) For Non-compliance ofClause no 7.1(a) of development Agreement, which specified that the respondent would provide residential accommodation to the complainants from the date of handing over the land. Therefore they have claimed rent from February, 2011 to June, 2018 i.e. for 89 months@8000/- P.M. for residential accommodation for each Petitioner till delivery of possession, which was not arranged by the developer.

ii) For non-compliance of clause 7.2 of the Development Agreement whereby they were entitled to get compensation @ Rs 8000/ PM fortheir entire share if the flats were not constructed and not handed over to them. Therefore they have claimed compensation from February, 2014 to June, 2016 for 29 months @ Rs. 8000 P.M. per flat.

iii) Compensation under section 18 and Rules- 18 and 17 of RERA for inordinate delay in completion of the project for the period from July,2016to June,2018 against the cost of two completed flats @10.5% of the Cost.

iv) Cost of proportionate share of sixth floor and seventh floor at the same rate at which they were required to pay for additional built up area under the G+5 structure (@ Rs 2000/- per sq.ft.) to the Developer.

Response of the Respondent Company

7. In response, the Respondent Company through its CMD Sri S. B. Sinha havenot disputed the fact that they have executed the development agreement and separate supplementary agreements with each of three petitioners either on the same day or next day but have questioned the jurisdiction of the Authority and raised that

a. This Act is not meant for the **disputes between a developers/ promoters and the landowners** for the reason that the landowner is not an Allottee or purchaser of the flat or Apartment. Since the relationship of a Developer and landowner is based on a Development Agreement, for any dispute either of the parties can approach the competent court of law for violation of any term of the Development Agreement. Therefore, the redressal of the relief can be sought for by the landowner before a competent Civil Court only and not before this Authority.

b. There is an **Arbitration clause** being clause no.- 17 in the Registered Development Agreement which binds both the parties to resolve their disputes with regard to registered Development Agreement through Arbitration Proceeding under the Arbitration & Reconciliation Act 1996. Therefore in view of the specific clause, both the parties were bound to submit themselves to an Arbitration proceedings as in Real Estate (Regulation & Development) Act 2016 and the Rules made there under, there was no provision that Authority will entertain any claim between the parties inspite of there being an Arbitration clause in the Development Agreement.

c. The**Supplementary Agreement** being unregistered has no legal value and therefore no legal credence can be given to this document. It is further submitted that as per section 21 of the General clauses Act, the Supplementary Agreement which was in addition to the main Development Agreement has also to be registered. Therefore the claim of the complainant on the basis of unregistered Supplementary Agreement was not tenable in the eye of law.

d. The claim of compensation @ Rs 8000 p.m. under clause 7.2 of the Development Agreement for inordinate delay in handing over the possession of the flats was not tenable as there was a blanket ban on the construction of multi-storied buildings from 2013 by Hon'ble Patna High Court in case of Narendra Mishra vs The State of Bihar & Others (CWJC No 8152 of 2013). As a result, till 2016, construction could not be made. The Revised building plan/map was approved in July 2016 and accordingly, construction of the building would be completed by July 2020. They further stated that the provision of handing over the flat in two years was illogical and improbable as the flat could be handed over after completion of the entire building/block.

e. As regards claim of the Petitioners for Non-compliance of Clause no 7.1(a) of development Agreement, which specified that the respondent would provide residential accommodation to the complainants from the date of handing over the land, is concerned, the Respondent company stated that since a vacant position of the land was given by the complainants, there was no loss of accommodation to the Petitioners. Therefore, there was no occasion to provide or arrange residential accommodation for the Petitioners by the Respondent.

f. So far the compensation u/s 18 of the RERA is concerned, it was stated that the claim was not maintainable, as they had only 36 % share and further, the construction period was extended to July 2020 as stated above.

g. As regards proportionate share for additional construction on 6^{th}& 7^{th} floors, the Respondent stated that the Petitioners were entitled to 36 % of the super built up area only.

Rejoinder of the Petitioners

8. In their rejoinder, the Petitioners stated that in present case, the complainants were the Land owners of the property in question whereas the defendant has executed development agreement with them to settle their share in terms of development agreement dated 31-01-2011.Thereafter as per the said development agreement (clause 5), the Supplementary Agreement for each petitioner was executed between the parties either on the same date i.e. 31.01.2011 on which the main development agreement was executed or immediately thereafter i.e. after a day on 1st February 2011 or 5th February 2011. The Respondent has agreed to settle the actual share portion of the complainants according to the terms of the Supplementary Agreement, which was duly signed and accepted by the parties without any objection so far.

   a. They further contended that the learned Authority has power to entertain the present matter under section 38(2) of the Act, whereas the learned Authority can dispense the matter with respect to their judicial mind and it was rightly held in **Lavasa corporation Ltd Hicon Versus JitendrajagdishTulsiani Judgment dated 07.08.2018.**

   The Section 38(2) of the Real Estate Regulation and Development Act, 2016 states that the Authority shall be guided by the principle of the Natural justice and subject to the other provisions of this Act and rules made there under, the Authority shall have power to regulate its own procedure.

   b. The complainants further added that according to the section 49 (2) of the Registration Act, such unregistered document can be used as an evidence of collateral purpose as provided in the proviso to section 49 of the Registration Act. So the supplementary agreement dated 31.01.2011 was properly executed document with actual stamp fees and therefore, it is legally valid. They further

stated that the supplementary agreement was part and in continuation of the main development agreement dated 31.01.2011 (clause5), which was duly signed, and never been objected by the Respondent even after lapse of seven years. Therefore it deemed to be accepted as per law.

c. According to the clause 7(i)(a) of the Development agreement deed dated 31.01.2011, the developer shall arrange the residential accommodation for the land-owners/complainantstill the delivery of the possession of apartment/flats, which have not been done by the Promoter. The Petitioners have therefore claimed compensation from the promoter from the date of development agreement deed i.e. 31.01.2011 till the date of handing over the possession of atleast one flat.

d. It was specifically stated in the Clause 7.2 of the Development agreement deed dated 31.01.2011 that in case the developer fails to complete the constructions as per plan within the stipulated time-frame, the developer shall be liable to pay the compensation @ Rs 8000 (Rupees eight thousand only) per flat per month to the complainantsfor the entire share of the Petitioner's area. As the Promoter has not giventhe possession of the two flats to the complainants as yet, they have sought of relief on this count also.

Hearing

9. In course of hearing, the Complainants were represented by the Learned Counsel Mr Sharad Shekhar whereas the Respondent Company was represented by Learned Counsel Mr Abhinav Srivastava and Mr Binod Kumar Sinha. The Complainants claimed that there has been inordinate delay in handing over the possession of the flats to them, though the promoter has done registration of the flat in other cases. They further contended that the developer had not kept them informed about the changes/modifications in the plan earlier. They claimed that though the owner's flats were to be completed within two years, the flats have not yet been delivered to them. They also stated

that there was a provision under clause 7.2 for compensation of Rs8000 per flat per month if the flats were not handed over to them within stipulated period. However, nothing has been paid by the developer till date. They also claimed compensation on account of Clause 7.1a of the Development Agreement which provided for arrangement of residential accommodation for the Petitioners by the Promoter till the delivery of flat by them. They have also claimed compensation for mental harassment and torture etc.

10. Learned Counsel of the Respondent Company put up a spirited defence stating that the Authority was not the forum for redressal of disputes arising out of development agreement between developer and land-owners. He claimed that Clause 17 of the Development Agreement provided for arbitration proceedings between developer and land-ownersunder Arbitration and Conciliation Act 1996 Act and the land-owners should have gone to arbitration proceedings if they so wished. He reiterated the contention of the respondent company stated in their response to the notice that unregistered supplementary agreements can not be relied upon and has no legal basis. He further stated that the claim of the petitioners for delivery of flats within two years was illogical and improbable. He further rejected the claims of the complainants for compensation either under Clause 7.1a or 7.2 of the Development agreement on the plea that delay has occurred due to circumstances beyond the control of the Developer.

11. Learned counsel for the Petitioners contended that the Authority had full powers to entertain the present matter as one of the prime objectives of the Real Estate (Regulation and Development) Act 2016 as enshrined in the preamble of the Act was to protect the interests of the consumers in the Real Estate Sector. They further stated that in a similar case - Civil Appeal No-944 of 2016 – (SLA (Civil) No-1633 of 2016) **Banga Daniel Babu (Appellant) Versus M/s Sri Vasudeva Constructions & others**, Honorable Supreme Court has held that the Land Owner under the Development Agreement was a consumer

under the consumer protection Act. Learned Counsel therefore claimed that the petitioners would fall under the term Consumers and hence, Real Estate (Regulation and Development) Act 2016 would be applicable in the instant case. He also stated that the as the project was still ongoing and has been registered with the RERA, the provisions of the Real Estate (Regulation and development) Act 2016 and the rules/regulations made thereunder would be applicable to the project and the promoter. Learned Counsel of the Complainants also stated that orders passed in CWJC 8152 of 2013 Narendra Mishra Vs State of Bihar & others were not applicable in this case as the plan of the project was already approved in October 2012 and 65 percent construction work had already been completed by September 2015 as the Developer had requested the allottees at that time that only 35 percent work remained to be completed which they planned to complete in six months. They had also submitted a copy of the notification dated 28.09.2015 issued by the Developer.

12. Issues for consideration

A. question of Jurisdiction :

1. Whether the project was covered under the Real Estate (Regulation and Development) Act 2016

2. Whether disputes between a developers/ promoters and the landowners can only be settled before a competent Civil Court.?

3. Whether Registered Development Agreement binds both the parties to resolve their disputes only through Arbitration Proceeding under the Arbitration & Reconciliation Act 1996.?

4. Whether Supplementary Agreement being unregistered has no legal value ?

13. So far as the first issue is concerned, there is no dispute on the matter as the Respondent Company has registered their ongoing

Project Tiruvantpuram city with the Real Estate Regulatory Authority (RERA), Bihar and hence, the provisions of the Real Estate (Regulation and Development) Act 2016 and the Rules thereunder are applicable to the project. Accordingly, the promoter is required to obtain Completion Certificate (CC) and Occupancy Certificate (OC) before registering the apartments.Further, interests of allottees are also involved as regards to ensuring compliance with the specification of work mentioned in the Schedule B of the development agreement. Protection of the interests of the consumers/allottees is one of the primary intent of the Real estate (Regulation and Development) act 2016 and therefore theproject was covered under the Act 2016. The Promoter is therefore required to comply with the provisions of the Act and rules made thereunder.

14. **Regarding issue no 2 above-** Hon'ble Supreme Court of India in civil appellate Jurisdiction, Civil appeal No. 3302 of 2005, Faquir Chand GulativsUppal Agencies Pvt. Ltd. &Oths had clarified that

"23. We may notice here that if there is a breach by the landowner of his obligations, the builder will have to approach a civil court as the landowner is not providing any service to the builder but merely undertakes certain obligations towards the builder, breach of which would furnish a cause of action for specific performance and/or damages**.** On the other hand, where the builder commits breach of his obligations, the owner has two options. He has the right to enforce specific performance and/or claim damages by approaching the civil court or he can approach the Consumer forum under Consumer Protection Act, for relief as consumer, against the builder as a service-provider. Section 3 of the Act makes it clear that the remedy available under the Act is in addition to the normal remedy or other remedy that may be available to the complainant."

15. In the light of the above judgment, this authority feels that the present dispute is between the landowner and the promoter for implementation of the registered development agreement entered into between them and nothing is involved to establish ownership of real estate (land and

building affixed to it) in order to establish a party's title to real estate, nor promoter has raised any issue on the title of the land. Likewise section 89 of the Real Estate (Regulation and Development) Act, 2016 is replica of the above quoted section 3 of Consumer Protection Act, wherein it is specified that the provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

16. Further, Section 2 of the Act defines Allottee as (d) "allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;

17. In these cases also, the complainants being the landowners get their apartments by way of transfer. In consideration, they have given the land to Promoter for execution/development of building/flats. More over as per the Supplementary agreements signed separately with each complainant, it was agreed that two flats would be handed over to them. For example-Sri Binod Kumar in lieu of his land of 1600 sqft, would get two flats of 1440 sqft each, D 11 and D 12 on 3rd floor in D Block of AG enclave but will be required to pay to developer Rs. 3.51 lakhs for excess area at the time of possession. Similarly, Sri Raj Kumar Sinha for his land of 2000 sqft, would get two flats each of 1440 sqft area in D7 and D8 on 2nd floor in D Block of AG enclave and will pay Rs. 6.00 lakhs to Developer for excess area at the time of Possession of flats while Sri Sanjay Kumar Sinha, for his 1600 sqft land would get built up flats of 1440 sqft i.e. D-10 on 3rd floor in D Block of AG enclave and of 900 sqft i.e. P1/P6 on 2nd floor, P Block, Tiruvantpuram City and would pay Rs. 10.50 lakh to Developer for excess area on the date of Possession. Besides the consideration of

land, the complainants have also to pay the agreed amount as above,which brings all the complainants in the category of " Allottee".

18. Therefore, in the light of the above-mentioned paras, the plea of respondent that the Petitioners/landowners were not allotteeand hence Authority has no right to entertain this complaint is not acceptable. Further, RERA has the responsibility of protecting the interests of the consumers/allottees by ensuring the compliance with the specifications committed in the Development agreement.

19. More over the Authority has inherent powers for the growth and promotion of a healthy, transparent, efficient and competitive real estate sector and protection of the interest of the Allottees. Therefore Civil Court is not an appropriate forum to deal with such a dispute. Section 79 of the Act also validates it by providing that " No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

20. Regarding issue no 3 above: Despite the existence of provision for an arbitration proceedings between the parties, RERA has the jurisdiction to adjudicate disputes,provided any involved party opts for it. The reasoning has two foundations. Firstly, the legislature is presumed to be aware of all laws enacted by it; as RERA was enacted in March 2016, nearly two decades after the Arbitration and Conciliation Act, 1996 (ACA) was enacted. Therefore, the need for RERA was felt, inspite of existence of ACA. Hence, the RERA is another option for the parties to go to , even when ACA is there. Secondly, the legislature has specifically provided a non obstante clause in section 89 of RERA. This states that RERA shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force. Thus, the provisions of RERA override section 8 of ACA, which

mandates a judicial authority to refer to arbitration disputes that are subject to an arbitration agreement.

21. While delivering the judgment of Aftab Singh v Emaar MGF Land Limited &Anr [Consumer Case No 701 of 2015*]*, NCDRC relied on Booz Allen Hamilton Inc v SBI Home Finance Ltd [(2011) 5 SCC 532], where the Hon'bleSupreme Court said that the Arbitral Tribunals are private forum chosen voluntarily by the parties to the dispute, to adjudicate their disputes in place of courts and tribunals which are public forum constituted under the laws of the country. The bench further observed, "the disputes which are to be adjudicated and governed by statutory enactments, established for specific purpose to sub-serve a particular public policy, are not arbitrable." Therefore the claim of the respondent that there is no provision that Authority will entertain any claim between the parties in spite of there being an Arbitration clause in the Development Agreement is not maintainable.

Regarding issue no 4 above

22. So far as the issue of unregistered supplementary agreement is concerned, the supplementary agreement is in continuation of Clause 5 of the Development agreement and effectively part of the main agreement dated 31.01.201,which was duly signed either on the same day on which main agreement was executed or immediately thereafter, between the same parties and have never been objected by the Respondent even after lapse of seven years. Therefore it deemed to be accepted as per law. More over without the execution of supplementary Agreement, the Development agreement can not be considered as complete because of the fact that in consideration of land, the share of land owner was not specifically mentioned in the Development Agreement. As per section 49 of the Registration Act also, such unregistered document can be used as an evidence of collateral purpose. Therefore the supplementary agreement dated 31.01.2011 was properly executed with actual stamp fees, and hence, it can be considered as valid evidence.

B: Whether complainants claim for payment of rent in lieu of non-provision of residential accommodation by the Developer is valid?

23. The Complainants have claimed payment of rent as compensation from the date of execution of the agreement till delivery of possession of flatsi.e. from February, 2011 to June, 2018 i.e. for 89 months @8000/- P.M. in lieu of non-provision of residential accommodation by the promoter. Clause No. 7.1.(a) of the Development Agreementstates that the Developer shall arrange for the residential Accommodation for the owners till the delivery of the 1440 sqft super built up area against 1600 Sq Ft. land Area and for 1800 Sq Ft. super Built Up area against the 2000 sqft land area. The Respondent did not accept the claim stating that the claim of complainants for payment on account of non- provision of residential accommodation to themwas not tenable as Development Agreement clearly showed that a vacant position of the land was given by the complainant to the Respondent and therefore, there was no loss of accommodation to the complainants. Thus, there was no requirement to provide or arrange residential accommodation for the complainants. However, it is also a fact that there was no condition prescribed in the agreement that residential accommodation for the owners would be provided only in case land hadany structure on it. Conversely, it was also not provided in the agreement that the petitioners can unilaterally claim payment of rent or reimbursement of rent paid, without making any request to Developer for arranging the residential accommodation. The Complainants have also not produced any documents to show that they approached the promoter for residential accommodation in the last eight years. They have also not produced any documents/money/rent receipts to claim for reimbursement of payment of rent. The Bench therefore feels that the claim of compensation by the complainants in form of rent in lieu of non-provision of residential accommodation was a dispute arising out of the development agreement and therefore, the Complainants may approach the competent civil court or consumer court, if they wish, for the redressal of their grievances on this count.

C. Whether there was an inordinate delay in completion of the Project and the claim of compensation by complainants is justified?

24. Possession of said flats were not handed over to the complainants even after 8 years of execution of the Agreement. Clause-7 of the Development Agreement says that it shall take three yearsand six months with a grace period of six months and owners share will be completed within two years (By July 2013) from the date of sanction of plan or the hand over of the vacant possession of the land to the Developer except under extra-ordinary circumstances that is beyond the control of the Developer. In such eventuality, the time so lost will be further added to the stipulated period of construction.

25. The Respondent company however claimed that there was a blanket ban by the Hon'ble High Court from the year of 2013 on the construction of the multi-storeyed buildings in case of Narendra Mishra Vs The State of Bihar & Others (C.W.J.C. No. 8152 of 2013). It is further stated that till 2016, the construction could not be done by the respondent. In July 2016 the Respondent got the revised plan of the building sanctioned from the competent authority and resumed the construction thereon. Hence, the period for the construction of the Apartment would be treated from July 2016 and accordingly as per clause 7 of the Development Agreement the period of completion of construction work will be for four years and as such the construction period will expire in July 2020.

26. The Respondent also stated that in aforesaid clause 7, handing over the Flat to the owners/complainants complainant within 2 years was illogical and improbable as the flat could be only handed over after completion of the entire building/ Block.

27. However Complainants have stated that Narendra Mishra Case citation was not applicable in this matter as the Respondent was not refrained by the Hon'ble High Court for the concerned work, so plea taken by the Promoter in this context is not sustainable. They further stated that the

developer had started their construction work in right earnest after sanction of the building plan and had also published a notification dated 28.09.2015, wherein they had themselves claimed that theconstruction work hadalready been completed up to 65%and therefore, they had requested the alltottees for the further payment of amount. They even committed that the rest 35% of construction work will be completed within the 6 months. A true photocopy of the notification dated 28.09.2015 was also annexed by the complainants.

28. In this regard, the Complainants further stated that the project was completed long ago. To back up their claim, they cited that developer in another case through affidavit had declared before Sub-Registrar, Danapur that he had constructed multi-storied building/ complex in name and style of “Tiruvantpuram City” at Khagual, Danapur, Patna which was completed before July, 2016, copy of which was also attached. The Complainants have further stated that the Respondent company had also executed a registered sale deed on 29.03.2017 to give possession to one of Allotees/ purchasers. A copy of the sale deed dated 26.6.2017 was also annexed.

29. Clause no 7.2 of the Development Agreement states that in the event if the developer fails to complete the constructions as per Plan within the time frame as stipulated above, the Developer shall be liable to pay to the owners compensation @ Rs 8000/ per month for entire share of land owners area if the same is unconstructed and not handed over. The compensation will be reduced in direct proportion to the land owners share completed and handed over.

30. The claim of complainants for compensation on account of inordinate delay in handing over the possession of the flats/apartments was also coveredunder section 18 of the Real Estates Regulation Act 2016 and accordingly, the petitioners have claimed compensation under clause 7.2 of the development agreement as well section 18 of the RERA Act 2016 for inordinate delay in handing over the possession of the flats. The Bench therefore feels that the Complainants therefore may, if they

so wish, file a complaint petition before the Adjudicating Officer, RERA, Bihar under Section 31 read with Section 71 of the Real Estate (Regulation and Development) Act 2016 and under Rule 37 (1) of the Bihar Real Estate (Regulation and Development) Rules 2017 for compensation on this count.

D. Whether claim of the complainant for share in the additional construction area on 6th& 7th floor was justified ant reasonable?

31. The Complainant Raj Kumar Sinha had handed over plot of 2000 sqft of land to the developer whereas Binod Kumar and Sanjay Kumar Sinha gave 1600sqft. of land each to the Developer. In terms of individual supplementary agreement executed with the Developer, each petitioner -Raj Kumar Sinha, Binod Kumar and Sanjay Kumar Sinha was entitled for two flats each in lieu of the plots of land given by them for development as follows:

Mr Raj Kr Sinha - Flat No- D/7, D/8, Block–D, Ph-1, AG Enclave
Mr Sanjay Kr Sinha -Flat No- D/10, 3RD Floor, Ph-1, AG Enclave
Flat No-P-1/P-6, Block P, Ph-1,Tiruvantpuram city
Mr Binod Kumar - Flat No- D/11, D/12, Block–D, Ph-1, AG Enclave

All flats were of 1440 sqft size in D Block while, the flat in P Block was of 900 sqft.

In addition, Sri Binod Kumar was required to pay Rs. 3.51 lakhs to developer for excess area at the time of possession whereas Sri Raj Kumar Sinha would have to pay Rs. 6.00 lakhs to Developer for excess area at the time of Possession of flats and Sri Sanjay Kumar Sinhawould pay Rs. 10.50 lakh for to Developer for excess area on the date of Possession. This distribution of share among the petitioners was done on the premise that the proposed building would be G+5 structure.

32. Clause-8 of the Development Agreement is very specific saying that 'It is hereby expressly, irrevocably and irretrievably, agreed and declared

by the owners that delivery of possession of fifty percent of the total build-up area of the said building in the manner provided herein shall from and always be deemed to form fair, reasonable and adequate consideration in lieu of thirtysix percent of the undivided share in the aforesaid property agreed to be conveyed as herein above by the owners to the Developer and / or its nominees. " Further Clause 8.3 of the Agreement states that the Owners and their nominees and the Developer and its nominees shall jointly have undivided right, title and interest over the total land of said property in their respective shares of thirty six percent of the owners and sixty four percent of the developer.

33. The complainants have claimed the share of the increased construction done by Developer on 6th and 7th floor of the building. Due to the approval of revised plan and construction of two additional floors, Floor Area Ratio (FAR) of the project increased to 4.03 and thus constructed area also increased to 432,685 sq. ft. on 107366.4 sq.ft size of land. Further, in the revised plan, three type of flats- 1560 sq. ft 3BHK, 1075 sq. ft 3BHK and 878 sq. ft. 2BHK were available while the share distribution as agreed in the supplementary Agreement was of the flats of size of 1440 Sq Ft and 900 Sq Ft. along with a pre-determined amount. However, at the time of signing of Supplementary agreement, no approved map was available.

34. Initial/Unrevised map, approved by Nagar Parishad Danapur on 18.10.2012 had planned project on 9978.297 sq.mtr. (107366.4 sq.ft) land with constructed area of 28602.22 sq. metres. (307960 sq.ft.) at FAR of 2.86. Due to the revision of plan in July, 2016, the built up area of the project increased significantly with FAR of 4.03. Therefore, in terms of clause 8 of the development agreement, the complainant with land of 2000 sqft would be entitled for 50% of 8060 Sqft i.e. 4030 Sq Ft. flats and two complainants who had given land of 1600 sq Ft would be entitled for 50% of 6448 sq Ft i.e. 3224 Sq Ft flats. The complainants have claimed Rs. 2000 psf for additional area, increased

due to revision of Plans i.e. the same rate which they were asked to pay in the supplementary agreement.

35. Moreover, as per clause 3 of the Development Agreement, the owners will have a right to choice of flats to their share of the built up area which shall be specified as owners share and remaining shall be developers share of the final plans of the building for which developer shall obtain consent/approval of the owners for the final plans of the said building.

36. As the developer did not take the consent of the complainants, who are land owners and the plan was revised wherein agreed sizes of flats are now not available, therefore complainants are entitled to the share as specified in the Supplementary Agreement or they can exercise the right to choose appropriate flat/s of their choice and will get an additional amount @ Rs 2000/per Sq. Ft. for excess/additional construction up to limit prescribed under clause 8 of the agreement. As complainants have to pay agreed amount also at the time of possession of flats, as decided in Supplementary Agreement and they were entitled to get @ Rs 2000/per Sq. Ft. for excess construction, the difference of amount now needs to be transacted only with the Developer.

Order :

37. In view of the above, the Bench directs the respondent company to hand over possession of the two flats of 1560 sqft to each complainant within sixty days of issue of this order. The Promoter may accordingly pay the difference or adjust the amount payable, if any, due to be adjusted against the amount payable under distribution of additional share of increased built up area due to increase in approved FAR to 4.03 and increase in height of the project from G+5 to G+7 structure, subject to the limit prescribed under Clause 8 of the Development Agreement to each petitioner.

38. As regards compensation payable under Clause 7.1a and Section 7.2 of the Development Agreement is concerned, there is a dispute between the parties, the complainants may, if they so wish, approach the competent civil court or consumer court for the redressal of their grievances.

39. So far as compensation under Section 18 of the Real Estate (Regulation & Development) Act, 2016 is related, the complainants may file a separate application under Section 31 read with Section 71 of the Act before the Adjudicating Officer of the Authority.

Sd

(R. B. Sinha)
Member

Sd

(Dr S. K. Sinha)
Member