

REAL ESTATE REGULATORY AUTHORITY, BIHAR

**Before the Double Bench of Mr. Naveen Verma, Chairman,
& Mrs. Nupur Banerjee, Member**

Case No.CC/144/2021

Lukky Kumari.....Complainant

Vs

M/s Sree Hari Developers Pvt. Ltd.....Respondent

Project: Pratibha Heights

14/09/2021

ORDER

This matter was last heard on 1.9.2021.

The case of the complainant, who is the General Secretary of the Pratibha Heights Flat Owners Association is that the work in the project has not been undertaken in accordance with the specifications mentioned in the development agreement signed in 2011 by the respondent with the land owners Smt Pratibha Devi and Smt Hemlata Devi. It is stated in the petition that there is only one staircase, the boundary wall has not been completed, the parking area has not been allotted and the project is not yet complete.

A written statement was filed on behalf of the respondent stating that the project was undertaken after taking all due permissions and was completed in December 2015. It is stated in the reply that property tax is being paid, all amenities have been provided, occupancy certificate was not demanded and that registration deed of flats were executed in 2016, much before the Authority came into existence and hence the case is not maintainable. The promoter has filed a copy of the letter issued by the Authority regarding registration of apartments.

The Bench clarified that the Authority had issued the said letter in the context of an earlier communication as ready to move apartments were not being transferred to individual allottees through registered deed of conveyance until the project was registered by the promoter with RERA under section 3 of the Real Estate (Regulation and Development) Act, 2016. This was modified to the extent that registration with RERA was not mandatory in respect of such projects where even apartment of the project was transferred to an individual allottee through a registered deed prior to 2017.

The Bench observed that while the promoter is free to transfer completed apartments to allottees through registered deed of conveyance, the promoter mandatorily has to get the project registered with RERA if it is ongoing and completion certificate has not been obtained on the day of the commencement of the Act.

The promoter has filed a supplementary reply stating that the completion certificate was given by the engineer in December, 2015; the lift

was installed in 2015, and a lease agreement signed in 2016 when the flats were given on rent. Photographs of the completed building and the parking area have also been filed.

The complainant has not filed any rejoinder to contradict the above submissions of the respondent. The Bench, therefore, accepts the contention of the respondent that the project was not on going at the time of the commencement of the Act.

It appears from the proceedings that the matters raised by the complainant emanate from the interpretation of the development agreement.

The Bench observes that as per the Bihar RERA Regulations, 2021, the land owners are allottees under the Act as they are giving land share in lieu of payment. The land owner as allottees have a right to ask for completion/occupancy certificate from the competent authority and the approved map from the promoter. Further, the registered development agreement with the promoter would be equivalent to the agreement to sale in case of other allottees who pay money to get an apartment. The promoter is bound to provide all amenities and constructions as per specifications mentioned in the development agreement.

The Bench directs the respondent company to provide a copy of the approved map to the complainant and obtain the completion certificate and occupancy certificate from the competent authority viz Danapur Nizamat Parishad and give copies to the complainant and other allottees. The complainant as allottees may write to the promoter about the deficiencies in the amenities provided as compared to what was stated in the development agreement and as per Section 14 (3) of Real Estate (Regulation and Development) Act, 2016. On receipt of such a communication, the respondent company would have to rectify these defects as it would be within five years from the date of possession. The complainant would be at liberty to press for compensation before the Adjudicating Officer in case the deficiencies as mentioned in the development agreement are not rectified within a reasonable period.

With these directions the matter is disposed of.

Nupur Banerjee
Member

Naveen Verma
Chairman