

REAL ESTATE REGULATORY AUTHORITY, BIHAR

Before the Bench of

Hon'ble Member Mr. S.D. Jha, RERA, Bihar,

RERA/CC/211/2022

Kumari Priyanka..... Complainant

Vs.

M/s Amina Constructions Pvt. Ltd..... Respondent

For the complainant: Mr. Chandan Kumar, Advocate

For the Respondents 1 &2 - promoters: None

For the Respondent no.3- landlady: Mr. Yashvardhan Singh,
Advocate

Project:- SUDHA COMPLEX

ORDER

28.05.2024 This case was last heard on 03.05.2024 and the order was reserved. Mr. Chandan Kumar, Advocate, appeared and defended the case of the complainant. Mr. Yashvardhan Singh, Advocate, appeared and defended the case of the respondent no.3, landlady. The respondent nos. 1 & 2 are absent. The complainant and the respondent no.3 were granted two weeks time to file written arguments which have been filed and would be dealt with at an appropriate place. The order is being delivered today i.e. 28.05.2024.

2(i). Learned counsel for the complainant submitted that the complainant had entered into an Agreement For Sale with the respondent – promoter on 25.09.2012 to purchase a residential Flat no.301 of 1075 sq. ft. on 3rd floor along with car parking in the apartment “Tiruvantpuram City” located at Lalit Nagar Colony, Patna City, P.S. Patrakar Nagar, Patna, on consideration amount of Rs.18,25,000/-, which was paid by him through cheques dated 17.11.2022 & 10.12.2011 and Rs.2,00,000/- in cash on 05.10.2013. The flat was assured to be handed over with all the basic amenities by the end of the year, 2015, but in spite of passing of five years the respondent nos. 1 & 2, builders, have not delivered possession of flat with basic

amenities as per the Agreement. He also submitted that she booked flat in question on the basis of an unregistered Distribution of Share Agreement dated 22.03.2012 executed between the respondent nos.1 &2, builders, and the respondent no.3 - landlady, in which Flat no.301 has been shown in the share of the respondent – builders.

(ii) He further submitted that disappointed with the dealing of the respondent - builders in the year, 2018 the complainant lodged a Kotwali P.S. Case no.540 of 2018 against the Managing Director of the Respondent – company, in which he was granted bail on the condition that he would hand over possession of flat after completing it within six months from the date of order, failing which the bail bond would stand cancelled, but the Managing Director did not comply with the order of the court and was taken into custody, against which the Managing Director moved the High Court by filing Cr. Misc.No.1659 of 2020 in which he was granted bail on condition that he would hand over possession within six months and thereafter the Managing Director of the respondent - company vide ref. no. HOP_KP_SUDHA COMPLEX dated 06.11.2019 informed the complainant to take handover possession of flat. When the complainant visited her flat, the respondent no.3, landlady, did not allow her to enter into the flat in spite of the fact that she has been handed over possession letter of Flat no.301 by the respondent - promoters, which is kept on the record. The complainant requests for a direction to the respondent no.3, landlady, not to create hindrance in getting peaceful possession of flat in question by the complainant and to form a society/association of allottees to complete the remaining work of the project.

3(i). Learned counsel for the respondent no. 3, landlady, by filing preliminary objection petition dated 16.8.2022 and written argument dated 13.05.2024 submitted that this case is not maintainable as the complainant has already filed Complaint

Case no. RERA/CC/577/2019 against the respondent - builders, which is pending.

(ii) He further submitted that the respondent – promoter had entered into a Development Agreement dated 29.03.2011 with the respondent no.3 and in clause -12 (on page -5 of the Agreement) Flat no.301 has been shown in the share of the respondent no.3. He further submitted that when the respondent – promoters abandoned the project in midway, the respondent no.3 filed Title Suit no.350/2019 against the respondent nos. 1 & 2, wherein, status quo has been granted and the Title Suit has been *sub-judice* before the Civil Court, which is much before filing of this complaint. The Authority has, therefore, no jurisdiction to overrule the order of the Civil Court. He also submitted that the plan sanctioned in the year 2011 has already expired, which needs to be revalidated by P.M.C. The unregistered Distribution Of Share Agreement dated 22.3.2012 is forged and fabricated and is not binding upon the respondent no.3.

4. The complainant by filing preliminary objection dated 05.03.2024 submitted that in the Development Agreement dated 29.3.2011 between the respondent – promoters and the respondent no.3, it was agreed that the respondent no.3 would get 50% of the total constructed area. The map of the building was sanctioned on 5.8.2011, wherein only two flats each on 3rd & 4th floor were approved. Thereafter, on the basis of the said sanctioned map, fresh allocation of share was done on 22.03.2012 between the builders and the respondent no.3 in which Flat no.301 on 3rd floor came in the share of builders and on the basis of the said fresh allocation of share dated 22.03.2012 the complainant had entered into an Agreement on 25.09.2012 with the respondent nos.1 & 2 – builders. He also stated that the respondent no.3 also approached the Court of Additional District & Sessions Judge – XI, Patna, and filed anticipatory bail, in which

she was granted bail on 22.11.2019 on the submission that she herself has been cheated by the respondent nos. 1 & 2 and she also stated that due to non-completion of work, she has also filed a complaint case in RERA, Patna, but she did not mention there that she is the owner of Flat no.301. He further stated that on the one hand the respondent no.3 has taken bail that she has been cheated and on the other hand she has locked the premises unlawfully in order to impede the process of taking peaceful possession of Flat no.301 by the complainant.

5. Learned counsel for the respondent no.3 by filing written arguments stated that the respondent no.3 had entered into a registered Development Agreement on 29.3.2011 with the respondent nos. 1 & 2, whereby they agreed to give 50% of the built up area. In clause - 12 (at page of the said Agreement) the respondent - builders had agreed to give flat no.101 & 103 on first floor, Flat no.202 on 2nd floor, Flat no.301 & 303 on third floor and flat no.402 on fourth floor along with car parking and in clause 13 of the Agreement the builders had agreed that they will first handover possession of the share of the respondent no.3 and as such the complainant was fully aware that Flat no.301 is in the share of the respondent no.3. The complainant without enquiry had entered into an Agreement with the respondent nos. 1 & 2 on 25.9.2012 on the basis of forged and unregistered Distribution Of Share dated 22.3.2012, which is not binding upon the respondent no.3. Further the respondent no.3 is not a party in the Agreement dated 25.9.2012. Admittedly, when the building was not completed the respondent no.3 filed a complaint case (RERA/CC/44/2018) before the Authority and vide order dated 4.1.2021 the Hon'ble Bench directed to initiate proceeding under Section 59(1) & 59(2) of the RERA Act, 2016 against the respondent nos.1 & 2 and I.G. Registration has also been directed to direct Registrar/Sub-Registrar, Patna not to register any Sale Deed with respect to any

flat of the project. He also stated that the respondent no.3 has also filed Title Suit no.350 of 2019 before the competent Civil Court, Patna City, against respondent nos. 1 & 2, wherein, vide order dated 28.9.2020 parties have been directed to maintain status quo and the Title Suit is still pending and, therefore, the question of forming association of allottees to complete the project does not arise.

6. Learned counsel for the complainant has filed written arguments through mail dated 20.5.2024, wherein, it is stated that on 25.9.2012 the complainant entered into an agreement with the respondent to purchase residential flat no.301 on the basis of Development Agreement dated 29.3.2011 between the landowner and the respondent – company. The map of the building was sanctioned on 5.8.2011 and in the said sanctioned map only 2 flats each were approved for construction on 3rd floor and 4th floor and on the basis of the said map on 22.3.2012 fresh allocation of share was executed between the respondent – company and the landowner and Flat no.301 had fallen in the share of the respondent- company. He also stated that the Title Suit filed before the Civil Court , Patna, by the respondent no.3 – landowner is not maintainable as the relief sought therein is with regard to not completing the project. He also stated that the respondent nos. 1 & 2 - builders, have already given possession letter of Flat no.301 on 6.1.2019 to the complainant. He also stated that the distribution of share between the respondent nos. 1 & 2, builders, and the respondent no.3,landlady, has been accepted by the respondent no.3 regarding Flat nos. 101 & 102, which were purchased by Mrs. Anamika Singh from the respondent – builders on the basis of Distribution of Share dated 22.3.2012, but in this case the respondent no.3 is denying. The said Distribution of Share has never been challenged by the respondent no.3. He also stated that in the order dated 22.11.2019 granting bail to the respondent

no.3, landlady, it was nowhere her stand that she is owner of Flat no.301. Lastly, he stated that the flat was booked in the year, 2012, the Development Agreement was executed in year 2011 and the flat was to be handed over in the year, 2015 but during six years no case was filed by the respondent no.3, landlady, with regard to possession of flat but when the complainant filed a case against the respondent - builders, the respondent no.3 filed a Title Suit in the Civil Court, wherein the complainant has not been made party. The fresh allocation of share between the respondent – builders - and the respondent no.3 has never been challenged.

7. Perused the record. The Authority notes that there is a Title Suit no.350/2019 pending between the respondent no.3, landlady, and the respondent nos. 1 & 2, builders, over the project in question, in which the Civil Court has passed a status quo order dated 28.9.2020, which is pending for adjudication. Hence, the Authority observes that in a matter where title suit is pending before the Civil Court for adjudication and the Civil Court has granted an order of injunction, the Authority does not think it appropriate to direct the respondent no.3 to unlock Flat no.3 and hand over possession of flat until the title suit is decided by the Civil Court. Hence, the complaint filed by the complainant seeking a direction of the Authority to get the flat unlocked and handed over its possession by the respondent no.3, landlady, stands rejected and is disposed of accordingly.

With the aforesaid observation, this case is disposed of.

**Sd/-
S.D. Jha,
Member**