

REAL ESTATE REGULATORY AUTHORITY, BIHAR

Before the Bench of

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

RERA/CC/299/2023

Anil Kumar and 2 others Complainant

Vs.

M/s Majestic Constructions and Developers Pvt. Ltd.Respondent

For the complainants: Mr. Sumit Kumar, Advocate

For the Respondent: Mr. Punit Kumar, Advocate.

Project:- MAJESTIC JANKI CITY

ORDER

19.07.2024 This case was last heard on 21.06.2024 and the order was reserved. Mr. Sumit Kumar, Advocate, appeared and defended the case of the complainants. Mr. Punit Kumar, Advocate, appeared and defended the case of the respondent. The respondent was directed vide proceeding dated 21.06.2024 to file counter reply to the rejoinder dated 05.03.2024 within a week with a copy to the complainant's counsel, who was directed to file supplementary rejoinder, if any, within a week thereafter. The respondent's counsel has filed counter reply through mail dated 04.07.2024, which would be dealt with at the appropriate place here-in-after. The complainants' counsel has, however, not filed any rejoinder. The order is, therefore, being delivered today i.e. 19.07.2024.

2. Learned counsel for the complainant submitted that the complainants are the landowners, who executed Development Agreement with the respondent - developer on 22.09.2012 to develop a residential project "Majestic Janki City Block-F, G & H on their land situated at Danapur Sahjadpur, Mohalla – East Gola Road, Patna. wherein It has been specified in the Agreement that out of the total built up area made over the land the complainants – landowners would get 40% share and the Developer 60% and thereafter a Share Distribution Agreement was executed on 14.10.2018. He further submitted that this complaint has been filed due to non-delivery of possession of six flats of Block F and their additional share of 2566.98 sq. ft. or in lieu thereof

a flat of the same dimension. The respondent has given only 30,195 sq. ft. in Block- F,G & H in place of 32,761.98 sq. ft., for which the complainants sent legal notice to the respondent on 25.05.2023, to which the respondent replied mentioning therein the baseless grounds.

3. Learned counsel for the respondent by filing reply dated 23.01.2024 submitted that the respondent – promoter completed the project in the year 2020 and the complainants were handed over possession of flats of their share. They were provided occupation certificate on 10.10.2020. He further submitted that the complainants have not disclosed about reply-cum- legal notice dated 07.06.2023 for demand of Rs.57,27,000/- as GST, which is to be paid by the landowners and to avoid the said payment the instant case has been filed. He also submitted that as per the judgment of the Appellate Tribunal passed in REAT Appeal no.14 of 2023, the matter relating to GST should be raised before the competent Court and not the Authority and, therefore, this case is not maintainable.

4. Learned counsel for the complainant by filing rejoinder dated 05.03.2024 submitted that the present case has been filed for providing physical possession of six flats and additional share of 2566.98 sq. ft or a flat of the same dimension to the complainant but the respondent instead of giving reply on merit has raised the matter of GST and has wrongly quoted the judgment of the Appellate Tribunal dated 19.07.2023. By referring Rule 4(3) of the RERA Rules, 2017, he also submitted that the respondent is to disclose the size of the apartment based on carpet area. He further submitted that in the light of Development Agreement dated 21.09.2012 and Share Distribution Agreement dated 14.10.2018, the complainants – landowners are liable to pay Capital Gain Tax in terms of paragraph 19 of the Agreement as at the time of Agreement there was no concept of GST rather it was only Tax of Capital Gain on the landowners' share. However, during the course of the proceeding dated 21.06.2024 he submitted that

the complainants are ready to pay GST amount if notices are received by them from the Department of Revenue. If the respondent – promoter wants he may implead the complainants as party - respondents to the case pending before the Tribunal hearing GST matter of the said project.

5. Learned counsel for the respondent by filing reply to the petition under Rule 4(3) of Bihar RERA Rules, 2017 of the complainant through mail dated 04.07.2024 has stated that the complainants got Possession Certificate dated 09.12.2020, wherein total area of each Block has been defined. They took possession of flats of their share except six flats in question after full satisfaction and inspection and gave declaration that they will have no claim against the respondent. He further submitted that the complainants are also promoter who got possession of flats except six flats in question on 09.12.2020, subject to payment of GST, and, therefore, Rule 4(3) of Bihar RERA Rules, 2017 is not applicable. He also stated that as per Development Agreement, out of the total built up area, the share of the complainants is 31640 sq. ft. and complainant has been handed over 3130 sq. ft. and, thus, only 330 sq. ft. remains to be adjusted in extra work done in the share of the complainants by the respondent. He further stated that in para -19 of the Development Agreement it is mentioned that both the parties have to bear the tax on their respective share, if any, taxes are imposed by the Government. Further, in clause 26 of the Agreement it is specifically mentioned that the building would be constructed as per Schedule –II and for the extra work of the complainants, they shall have to bear the expenses of extra work. The respondent has done extra work of Rs.25,00,000/-, which would be adjusted against 330 sq. ft. Lastly, he stated that this case has been filed to avoid payment of GST amount.

6. Perused the record.

(A) The Authority notes that the complainants' counsel has raised following points during course of the arguments in support of the reliefs sought for by the complainant in this complaint:

(i) To deliver physical possession of six flats in Block F of the project.

(ii) The complainants are not liable to pay GST amount as claimed by the respondent.

(iii) To allot additional share of 2566.98 sq. ft. area or a flat of the same area in favour of the complainants and to disclose the size of the apartment based on carpet area in terms of Rule 4(3) of the RERA Rules, 2017 .

(B) The Authority further notes that the respondent's counsel has raised following points while opposing the reliefs sought for by the complainant:

(i) The respondent – promoter is willing to handover physical possession of six flats to the complainants, subject to payment of GST amount of Rs.57,27,000/- .

(ii) The complainants are liable to pay the GST amount in terms of clause 19 of the Development Agreement.

(iii) The question of additional area of 2566.98 sq. ft. share of the complainants does not arise. As per Development Agreement, total built up area of the share of the complainants is 31640 sq. ft., out of which 3130 sq. ft. has been handed over to the complainant and only 330 sq. ft. excess area is left, which would be adjusted in extra work done in the share of the complainants in terms of clause 26 of the Agreement, which mentions that the building would be constructed as per Schedule –II and for the extra work of the complainants, they shall have to bear the expenses of extra work. The respondent has done extra work of Rs.25,00,000/-, which would be adjusted against 330 sq. ft. Therefore, there is no requirement of re-verification of the size of the apartment.

7. The Authority considered each of the points raised by the parties and observed as follows:

(I) The Authority observes that as per the Development Agreement, the respondent – promoter is under obligation to deliver possession of six flats of Block – F to the

complainant, to which the respondent agrees with condition. Hence, the point raised at 6 (A) (i) is allowed.

(II) The Authority observes that the complainants are liable to pay GST in context to corresponding share of apartment for availing construction services from the promoter and also in view of clause 19 of the Development Agreement, wherein, it is clearly stated that the Developer and the landowners would pay taxes of their respective share and they would have no problem. Hence, the point raised at 6 (A) (ii) by the complainant is rejected and point raised by the respondent at 6B (ii) is allowed.

(III) Rule 4(3) of the Bihar RERA Rules, 2017 clearly states that the promoter shall disclose the size of the apartment based on carpet area, which shall not affect the validity of the agreement between the parties and the allottee to that extent. Hence, the Authority observes that the respondent is liable to get the apartment measured by the Architect so that the confusion arose of excess area of 2566.98 sq. ft. , as claimed by the complainants, may resolve. If excess area is found after measurement then the respondent would be liable to deliver possession of additional area to the complainants. Hence, the point raised by the complainant at 6(A) (iii) is allowed and the point raised by the respondent at 6(B) (iii) is rejected.

8. Taking into consideration the aforesaid facts and the observations made above, the Authority directs that the complainants will pay the GST amount within two months from the date of issue of this order and before taking possession of six flats in Block F and the respondent - company and its Director Shabnam Kumari would hand over physical possession of six flats of Block -F to the complainants within two months from the date of payment of GST amount. The Authority also directs the respondent - company and its Director to get the size of the apartment verified by the Architect and disclose the size of the apartment based on carpet area in terms of Rule 4(3) of the Bihar RERA Rules, 2017 and if less area is

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found then the respondent would deliver physical possession of that additional area to the complainants as per Agreement within the same period of two months from the date of issue of this order for handed over possession of six flats.

With the aforesaid observations and directions, this case is disposed of.

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