

REAL ESTATE REGULATORY AUTHORITY, BIHAR

Before the Bench of

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

RERA/CC/392/2023

Mr. Anil Singh Complainant

Vs.

M/s Jaidev Green Homoes Pvt. Ltd.Respondent

For the complainant: Mr. Ujjwal, Advocate

For the Respondent: Mr. Jai Ram Singh, Advocate

Project:- MALTI KUNJ

ORDER

22.08.2024 This case was last heard on 12.08.2024 and the order was reserved. Mr. Ujjwal, Advocate, appeared and defended the case of the complainant whereas Mr. Mr. Jai Ram Singh, Advocate, appeared and defended the case of the respondent. The order is being delivered today i.e. 22.08.2024.

2. At the first inception, the Authority perused the complaint filed by the complainant's counsel through mail dated 23.08.2024, wherein, it has been stated that in the proceeding dated 12.08.2024 his oral submissions were not recorded and further in the proceeding dated 02.07.2024 also his complete submission was not recorded. In this connection, it is to clear that it is not necessary for the Court to record entire arguments in all the proceedings particularly in a situation where all the arguments made by the parties are not found beyond the record. Further, even the submissions made in the above referred complainant are also found to be reiteration of facts which have already been mentioned in the written submission filed earlier and is part of the record and that would be dealt with here-in-below.

3. Learned counsel for the complainant submitted that the complainant is the landowner, who entered into a Development Agreement with the respondent on 15.03.2011 to develop multistoried building over his land. As per the Agreement, the complainant was to be given 45% share of the total built up area. The total built up area comes to about 150527.12 sq. ft. whereas 45% of the total area comes to 6762 sq. ft. but the complainant got only

6514.95 sq. ft. which is 248 sq. ft. less and the remaining area of 248 sq. ft. has not been handed over to the complainant. He also submitted that till date the building has not been completed as per the Agreement. He further submitted that there are structural defects in the building which were brought to the notice of the respondent – promoter but till date those defects have not been rectified by him. Hence, the complainant has filed this complaint for a direction to the respondent – promoter to complete all the works of the project as per the Agreement, to hand over possession of his 45% share to the total built area including the car parking and to rectify the defects of the building as pointed out by the complainant.

4. Learned counsel for the respondent by filing counter reply dated 02.07.2024 submitted that the complainant received possession of his share in the year, 2015. He further submitted that the structural defects pointed out by the complainant after eight years does not come under Section 14(3) of the RERA Act, 2016 and, therefore, on this ground this complaint is liable to be dismissed. He further submits that the Development Agreement was executed between the parties on 15.03.2011 and share distribution cum declaration of possession was made in the year, 2015. The map of the building was sanctioned by the competent Authority vide plan case no.. NDPS/Sikandapur(R)G+4-01/2011 dated 01.09.2011. The project was completed and possession of share of the complainant was delivered in the year, 2015, that is, before coming into force of the RERA Act, 2016. After getting share, the complainant sold two flats bearing nos.202 & 302 of his share and that is why he would be treated as promoter in view of Regulation 6 – Explanation 1(c) of Bihar RERA (General) Regulation, 2021.

5. Learned counsel for the complainant by filing rejoinder dated 12.08.2024 submitted that as per the Development Agreement the complainant is entitled to get 45% share to the total built up area including car parking but till date neither building as per

the Agreement has been completed nor possession of his share has been handed over in spite of repeated reminder made by him from the year, 2016 and lastly he sent legal notices on 23.02.2017 & 10.05.2017. Thereafter, the complainant filed criminal case vide Complaint Case no.1033(C) of 2019 before the Civil Court, Danapur, for the criminal breach of trust committed by the respondent, wherein, his anticipatory bail has been rejected on 08.01.2024 and he has been evading his appearance before the Court. He also submitted that the complainant had also raised objection with regard to structural defects of the apartment and quality of work but the promoter did not rectify those defects and also did not take completion certificate from the Patna Municipal Corporation.

6 (i) Perused the record including the Development Agreement dated 15.03.2011. The Authority observes that there is no dispute between the parties regarding proportionate share to the built-up area and the same is clearly mentioned in Clause 2 of the Agreement that the complainant would get 45% of the Built-up area. There is also no dispute that the building was to be completed as per the specifications made in the Agreement For Sale and the approved plan dated 01.09.2011.

(ii) The Authority further observes that the respondent – promoter has not brought on record the completion certificate issued by the competent authority certifying that the project has been developed according to the sanctioned plan, lay out plan and specifications as approved by the competent authority. In this case since the completion certificate has not been obtained from the competent authority, the respondent cannot claim that project has been completed as per the plan in the year 2015 and in such a situation the provision of Section 14(3) of the RERA Act, 2016, as claimed by the respondent, would not attract and, therefore, on this ground the plea taken by the respondent that this case is not maintainable stands rejected. More so, the main issue involves in this case is to complete the building as per the Agreement and

specifications of the plan approved by the Authority and to handover 45% share of the total built up area including the parking.

(iii) The Authority further observes that the respondent has not brought any document on record to refute the claim of the complainant that he got only 6514.95 sq. ft. which is 248 sq. ft less to his actual share of 6762 sq. ft .

7. Taking into consideration the aforesaid facts and the observations made above, the Authority directs the respondent – company and its Directors namely Kumar Sourabh, Mukesh Kumar Singh, Rajeev Kumar Singh and Kumar Nikhliesh to complete the project as per the Agreement and the specifications of the plan approved by the Patna Municipal Corporation and obtain completion certification from the Authority within two months from the date of issue of this order. They would handover the completion certificate to the complainant also. The Authority further directs the respondent – Directors to deliver possession of remaining 248 sq. ft. share of the complainant within the aforesaid time.

8. Let a copy of this order be sent to the Registration Wing of RERA to take necessary steps in the matter for initiating a suo motu proceeding under Section 59 of the RERA Act, 2016 for violation of Section 3 of the RERA Act, 2016 in view of the fact that even though the project is claimed to have been completed in 2015 before coming into force of the RERA Act, 2016 but till date neither completion certificate has been obtained from the competent Authority nor the respondent has got the project registered with RERA and on the other hand the complainant claims that till date project has not been completed.

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

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