

**REAL ESTATE REGULATORY AUTHORITY (RERA),
BIHAR**

**Before the Double Bench of Mr. Vivek Kumar Singh, Chairman
& Mr. S. D. Jha, Member**

Case No: RERA/CC/58/2023

Ashish Gaurav

...Complainant

Vs.

M/s Ghar Laxmi Buildcon Pvt. Ltd.

...Respondent

Project: Income Tax Residency “Block – A”

Present: For Complainant: Mr. Sumit Kumar, Advocate

**For Respondent: Mr. Sujit Chandra Keshari, Representative of
respondent.**

18-09-2024

ORDER

This matter was last heard along with the batch of cases before the Double Bench on 28.08.2024.

This complaint has been filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016. The complainant had booked a flat bearing no. 808 in the project Income Tax Residency “Block – A”. He submitted that an agreement for sale was executed on 27-05-2019 according to which the said flat was to be completed up to 30-10-2019 but the project has still not been completed by the respondent company. Hence, the complainant has filed this case seeking relief to handover the possession of the flat.

The complainant’s counsel has placed on record copy of agreement for sale dated 27-05-2019, payment description and Registration Certificate of the project dated 02-04-2019.

The complainant's counsel has filed a petition dated for impleading Association of Allottees (hereinafter mentioned as A.O.A.) and prayed to transfer the project in terms of Section 8 to the said association for the completion of the project.

The respondent's counsel has filed a reply stating therein that brick work of the project has been completed up to 90% and accordingly plaster work has been started. He has stated that respondent company is ready to handover the possession by 31st March provided that the allottees cooperate the respondent company releasing the instalment as per present material cost. He has further stated that the project has been lapsed and accordingly the respondent is ready to get map re-approved from the concerned authority. He has refuted the submission regarding the twice registration of flats and only those allottees flats were re-allotted who have already entered into cancellation process with respondent-promoter.

The respondent's counsel has filed a letter dated 28-08-2024 stating therein that Complainant has booked flat in the project of the respondent company namely – Income Tax Residency.

Since, the project is lapsed as on date, the complainant was represented through A.O.A. formed in the light of Section 11(4) (e) of the RERA Act, 2016.

Learned counsel for the A.O.A. has further filed written submission on hearing dated 29-05-2024 stating therein four prayers, namely, (i) to handover the said project under Section 8 of the RERA Act, 2016 to the A.O.A. for carrying out the remaining development work of the project (ii) to direct the A.O.A. to operate the financial transactions of the project from the concerned bank (iii) to declare that the respondent – promoter has no right, title, interest in the project since the lapse of extension of registration from 18.12.2021 & (iv) to direct the Bank i.e. IndusInd Bank, Boring Road Branch, not to release any fund to the promoter and further direct the Bank to give statement of accounts to the Association and release funds in favour of the Association for carrying out remaining development work of the project.

Learned counsel for the A.O.A. also requests for getting an inquiry done by the Authority to ascertain the estimated cost in completing the

project. The allottees are ready to bear the cost in completing the project. He also submits that the respondent - promoter has allotted several flats twice to other allottees, to which the respondent's counsel submits that the respondent – promoter has allotted only those flats twice for which cancellation of booking has been sent by the allottees to the respondent. Learned counsel for the respondent submits that he would file counter reply to the written submission filed by the A.O.A. He further submits that brick work of the project, which was launched in the year, 2014, is complete. The respondent – promoter is ready to complete the remaining work provided the allottees cooperate with him.

On hearing dated 28-08-2024, learned counsel for the complainants submitted that the A.O.A. has decided to complete remaining work of the project and in this regard the Technical Wing of the Authority has submitted its report dated 18.06.2024 regarding the estimated cost required for completion of the remaining work of the project. As per the said report, the total estimated cost required for completion of remaining work is Rs. 6,85,64,514.014/-. He further submitted the Association has also got the estimated cost of remaining work of the project evaluated by Evaluator Er. Shashi Bhushan Prasad Yadav, who has submitted its estimated report dated 23.08.2024., which shows that the estimated cost for completion of remaining work is Rs. 3,43,75,000/-. The allottees of the project in question have total due amount of Rs.1,92,22,725/- and they are ready to pay and they have further agreed to bear the cost which may incur in excess to the amount for completion of the remaining work in their proportionate shares. He also submitted that as per technical report of RERA dated 18.06.2024 the promoter has spent only Rs. 2,59,20,485/- as against total receipt Rs.7,13,47,275/- and, thus, the promoter has misappropriated a total sum of Rs.4,54,26,790/- (i.e. Rs. 7,13,47,275/- – Rs. 2,59,20,485/-) which may be recovered from the promoter by referring the matter to the EOU or Enforcement Directorate for investigation and recovery of fund.

The respondent has filed a reply dated 05-09-2024 wherein the respondent opposes the proposal of handing over the project to the A.O.A on the pretext that the A.O.A neither has the sanction of the state

nor it fulfils the RERA's directives of 2/3 of allottees. He has stated that the forged list of Allottees along with falsified incorrect payment claims has been submitted. He has further stated that the respondent has applied for extension of the project and also opposed the valuation of the project filed by the A.O.A The respondent has prayed for one opportunity to complete the project.

The Authority heard both the parties at length and perused the entire materials placed on the record and observes that the registration of real estate project Income Tax Residency "Block – A" has lapsed in the year 2021 itself and henceforth, respondent-promoter has not acted in any manner to develop this project. Even, respondent has not got the map revalidated in these years which establishes that respondent-promoter is neither serious in developing this project nor its past actions show their commitment to complete the project. Moreover, respondent never approached the Authority with any proposal which shows seriousness of the promoter about the project completion and due to such act of respondent-promoter, several allottees filed complaint with Authority either demanding possession or refund. Further, in cases where order for refund was passed, the respondent-promoter remains defaulter in not paying the decretal amount. Hence, after taking into account the interests of allottees and **considering the prayer and submissions of A.O.A** of the project that they want to construct the remaining work of the project in accordance with Section 8 of the RERA Act, 2016, the Authority observes that as the promoter's right to construct remaining of the project has ceased to exist as per the provision of Section 8 of the RERA Act, 2016 due to the lapse of registration of the project, there is no merit in granting the right for completion of remaining work in Income Tax Residency "Block – A" to the respondent-promoter, especially when allottees and their association are vehemently opposing it.

The Authority also observes that various opportunities were already provided to the respondent-promoter to complete the project, but they failed. Under these circumstances, the Authority agrees with the submission of allottees not to get the remaining work done by the respondent-promoter and endorses the proposal of the A.O.A to get the remaining development work completed with the observation that this

may be referred to State Government as provided under Section 8 of the RERA Act, 2016.

Let this matter be referred to government for consultation as provided under Section 8 of the RERA Act, 2016.

The Authority also directs the A.O.A. to make an application for registration of the project for Income Tax Residency “Block – A” under Section 4 of RERA Act, 2016 after the views of the State Government are obtained.

The Authority also observes that the A.O.A has pointed out about the misappropriation / embezzlement of fund by the promoter. The A.O.A is free to take appropriate action for the misappropriation / embezzlement of fund as per the relevant statutory provisions as it deems fit. The Authority also directs the Registration Wing, RERA, Bihar to issue a letter to the Indusland Bank, Boring Road Branch Patna for not releasing any fund from the concerned Project Account to the respondent – Promoter. A copy of this Order should also be sent to the said Branch.

With these observations and directions, the matter is disposed of.

Sd/-
S.D. Jha
Member

Sd/-
Vivek Kumar Singh
Chairman