

REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR
Before the Single Bench of Mr. Naveen Verma, Chairman

Case Nos. RERA/CC/885/2021

Krishna Kumari.....Complainant

v.

Shiv Jaya Construction & Developers.....Respondent

Present: For Complainant: Mr. Om Prakash, Advocate
For Respondent: None

ORDER

30-12-2021 The matter was last heard on 29-11-2021.

The relevant facts of the case is that the complainant is owner of a piece and parcel of land situated at branch road of Saristabad known as Indrapuri Path, Police Station- Gardanibagh, Thana No. 18, Tauzi No.2323, Khata No. 84 and 85, Part of Plot No.561 and 562, Town and District- Patna in the State of Bihar, measuring an area of 02 (Two) Kathas, within the limit of P.M.C. The complainant along with other land owners of said plot no. 561, and 562 entered into a development agreement with the respondent company on 30.04.2009 and registered development agreement was also executed on 31.03.2010 vide deed No.9845. The complainant has stated that according to the agreement, the complainant being land owner was entitled to get 32% of the total built up area in flat and car parking space. As per the agreement, the respondent company had to complete construction of the project within a period of 4 (Four) years from the date of sanction of plan by PRDA/ P.M.C and if there was any delay beyond the stipulated period of time in giving possession to the owner, the respondent company was liable to pay to the complainant, by way of compensation, Rs. 3000/- (Three Thousand) only per Flat per month from the stipulated time. The map was

sanctioned in March 2010 for G+4 and the respondent company allotted Flat No. 106, in Block C measuring 745 sq. feet and Flat No. 201 in Block –C measuring 1145 Sq. feet total 1890 sq. feet to the complainant against her 32% share in the built up Area, but on construction measurement of Flat was done, and it was found that Flat No. 106, measured only 736 Sq. feet as such the respondent had given only 1881 Sq. feet built up area to the complainant, while in share division agreement the respondent had wrongly mentioned 1890 Sq. feet.

The complainant has alleged that the respondent company also agreed in writing that if they would get sanction plan for 5th Floor from P.M.C. then they would give further 32% share in the 5th Floor to the complainant which amount to 450.28 Sq. feet and on including deficit area of Flat No. 106, it becomes 450.73 Sq. feet. The respondent company got sanction plan for 5th Floor but as alleged by the complainant, till today the respondent company has not given share of the complainant in 5th Floor as well as the corresponding car parking space. It has further been alleged that neither share has been given nor compensation amounting to Rs.1,44,000/- has been given to the complainant till date. The complainant approached the respondent company several times but no response was received. The complainant has further alleged that the respondent company has also violated the terms of agreement in construction as in agreement they had agreed to provide marble flooring in the Flat and Sakhua wooden Frame in the window but the respondent company have used simple tiles flooring in the Flat and aluminium frame in window and inspite of assurance given by the Respondents they have not changed the Flooring and frame of window. The complainant also sent a legal notice on 03.11.2018 but the respondent company chose not to reply inspite of receiving the notice. Therefore, the complainant has filed the complaint praying for share of 32% on the 5th Floor of Block C, Rs.1,44,000/- being the amount of compensation, compensation for mental harassment and violation of terms of the agreement, change of floor tiles and window

frame and restraining the respondent company from selling the flats on 5th floor till the disposal of the complaint.

The complainant has placed on record development agreement dated 29.03.2010 and agreement dated 15.08.2010 with respect to share division of flat and car parking space.

Perused the records of the case. The Bench notes that there has been no appearance on the part of the respondent company even after issuance of notices upon them. Since the respondent company has not appeared and rebutted the submissions of the complainant, the Bench has no other option but to rely upon the submissions of the complainant and the documentary evidences filed.

The Bihar RERA Regulations, 2021 has declared the landowner who has entered into a development agreement with the promoter as an 'allottee' under the Act. The Authority holds the development agreement at par with an agreement to sale where the property is to be transferred after payment of the consideration amount. In accordance with the development agreement, the Bench directs the respondent company to provide the share of 32% on the 5th floor and also share in the corresponding car parking space. In so far as the request to change the floor tiles and window frame and construct as per the agreement is concerned, the allottee would send this to the promoter in writing and if not satisfied with the response, she could move for compensation before the Adjudicating Officer as provided in Section 19(3) of the Real Estate (Regulation and Development) Act, 2016.

The respondent company is further restrained from selling the flats on the 5th floor till the share of the complainant is demarcated and provided.

As far as the claim for compensation is concerned, the complainant is at liberty to approach the Adjudicating Officer for compensation and other damages.

With these directions, the matter stands disposed of.

Sd/-
Naveen Verma
Chairman