

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

**Bench of R. B. Sinha and Dr S. K. Sinha, Members of RERA, Bihar**

**Complaint Case No-CC/26/2018**

**Smt Ruby .....Complainant**

**Vs**

**M/s Bhawani Infracon Pvt Ltd.....Respondent**

**Present: For the Complainant:- In person  
For the Respondent:- Ms Manisha Singh, Advocate**

**01/04/2019**

**ORDER**

1. Smt Ruby, w/o Mr Mukesh Kumar, resident of Shree Krishna Rest House, Shekhpura Bagicha, east gate of IGMS, Patna has filed a complaint petition on 2<sup>nd</sup> July 2018 under section 31 of the Real Estate (Regulation and Development) Act 2016 against M/s Bhawani Infracon Pvt Ltd for early hand over/possession of an apartment booked by her in the Project Vasundhara Enclave along with interest and compensation. In pursuance thereto, a notice was sent to the Respondent Company through their MD Mr Raman Singh for response to the complaint within 30 days of the receipt of the notice. The Respondent Company through their MD Mr Raman Singh submitted its response on 9<sup>th</sup> August 2018 contesting the claims of the complainant. Thereafter both parties were called for hearing. Hearings were held on 9<sup>th</sup> October, 2<sup>nd</sup> November, 6<sup>th</sup> December and 12<sup>th</sup> December 2018.

**Complaint of the Petitioner**

2. In her Petition, she has stated that she had booked a 2 BHK apartment with 1081 sqft super built up area (Flat no 303) on the 3<sup>rd</sup> floor in the project Vasundhara Enclave of the Promoter M/s Bhawani Infracon Pvt Ltd located at Kurji More, Patna in September 2014 and entered into an agreement for sale with the Respondent Company in October 2014 for the total consideration of

Rs 35,75,000. As per sale agreement, the promoter was required to handover the Apartment in November 2015. She further informed that she paid Rs 30,40,000 (82 percent of the estimated cost) in between September 2014 and May 2015 as follows:

15.09.2014	- Rs 5,00,000	by Cheque
25.10.2014	- Rs 5,00,000	by Cheque
01.12.2014	- Rs 1,50,000	by Cheque
31.12.2014	- Rs 1,40,000	Cheque Dishonoured but paid in cash.
04.03.2015	- Rs 9,50,000	in Cash
31.03.2015	- Rs 3,00,000	RTGS in two instalments of Rs 1,50,000)
23.05.2015	- Rs 5,00,000	Dishonoured
27.05.2015	- Rs 5,00,000	RTGS

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Total - Rs 30,40,000

3. She has submitted the copies of the receipts of payments made, with the observation that two money receipts were not issued by the Respondent Company, though they have acknowledged the receipts of the amount paid on the letter-head of the company. The Complainant has also stated that the super built up area (1081 sqft) of the Apartment No 303 calculated by the Promoter was extremely high as against the carpet area of 637 sqft and built up area of 772 sqft shown in the approved map depicted in the brochure given to her. The Complainant has stated that the promoter has not furnished the detailed calculations of the super built up area to her till date. She felt that the super built up area of her apartment would be less than 900 sqft whereas she was being charged 1081 sqft for payment.
4. She stated that when she went to take possession of the apartment in November 2015, she found that building structure was only erected at the venue and entire finishing work remained to be done. She therefore told the promoter that the balance payment of 18 percent of the cost would be paid only after completion of the project, receipt of the completion/occupancy certificate from the competent authority and final settlement of accounts as per payment terms and determination of actual super built up area of the apartment.
5. She has claimed following major reliefs amongst many others:
  - a Compensation of interest @ 10% per annum on the entire amount paid by the complainant to the builder on account of Flat No.303 from 15/09/2014

- till possession of the flat under Clause 10 of the Sale Agreement between the complainant and the builder;
- b Computation of exact super built up area as per law on basis of actual approved common service area with respect "Vasundhara Enclave" apartment to ensure that only the proportionate common area is being added to build up area of Flat No.303 for final settlement of account of the purchase rate of the flat.
  - c Registration of the said project under RERA Act, 2016, Issue of completion certificate and possession certificate by the builder to complainant and to facilitate registry of the flat by the builder to the buyer and if the builder fails to do so, then request to order for one sided registry.
  - d Peaceful hand over of the flat to the complainant, Removal of muscleman/goons/illegal people from the premises for peaceful living of the complainant and other occupants.
  - e The court fee and legal charges be awarded to the complainant; and
  - f Any other relief or reliefs be awarded to the complainant to which the authority deems fit and entitled to.

### **Response of the Respondent Company**

6. In their response, the Respondent Company has admitted that they had entered into agreement for sale with the complainant for a 2 BHK Apartment (Apartment no 303) measuring super built up area of 1081 sqft on 3<sup>rd</sup> floor in the project Vasundhara Enclave on 1<sup>st</sup> October 2014 for a total consideration of Rs 35,75,000. They claimed that the Complainant has paid Rs 20,90,000 only as follows :

15.09.2014	- Rs 5,00,000
25.10.2014	- Rs 5,00,000
01.12.2014	- Rs1,50,000
31.12.2014	- Rs 1,40,000-Dishonoured but paid in cash later.
31.12.2015	- Rs 3,00,000 (RTGS in two instalments of Rs 1,50,000)
23.05.2015	- Rs 5,00,000----- Dishonoured
27.05.2015	- Rs 5,00,000 ( through RTGS)
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Total	- Rs 20,90,000

7. The respondent company claimed that the case filed by the complainant was not maintainable as the concerned project was already completed and most of the flat owners were residing in their respective flats after executing Absolute

Sale Deed of their apartments. Further, there was no need for registration of this project with the Authority under the provisions of Real Estate (Regulation & Development) Act, 2016.

8. In their response, the respondent has however, admitted that on the request of some flat owners, some furnishing work was done after commencement of this Act but no advertising was done for booking of the flats. It was also admitted that some furnishing work which do not come under the “construction of work” as per provisions of Section 4.5 of Bihar Building Bye-laws, 2014 was left as per provision but it was also completed before the commencement of this Act. They had assured the complainant that her flat was ready to move in, provided she pays the entire amount as per the agreement. The respondent also claimed that if there was a dispute regarding calculation of the area, the complainant was entitled to take action as per para-16 of the agreement for sale after satisfying the requisite court of law. They claimed that they have been regularly requesting the complainant for payment of the due amount and execution of registration of the flat but she was not interested as she did not want to deposit the dues. Therefore, the respondent company requested to dismiss this complaint petition and direct the complainant to pay the balance amount.

**Counter Reply by the Complainant:**

9. In her rejoinder to the response of the respondent company, the complainant claimed that the project “Vasundhara Enclave” was still incomplete as on the date of filing of the counter reply i.e. 04/10/2018 and the promoter did neither have the completion certificate nor occupancy certificate from the competent authority. About 15% to 20% of various works was still remaining to be done which include fire safety measures, genset installation etc. She claimed that the current status of the project could be easily verified by physical verification of the site. She also found anomalies in the details of payment furnished by the promoter and stated that the complainant had never made payment on 31/12/2015. The last payment was made by her on 27/05/2015. She further stated that the respondent was the Director in a large construction company and had issued the money receipt clearly mentioning “received sum of Rs

9,50,000/- in the account of Flat No.303 by Mr Mukesh Kumar” on 04/03/2015. Till 04/03/2015 the complainant had paid Rs 25,40,000/- including the applicable service tax. Hence, she questioned as to why a receipt of only Rs 9,50,000/- was issued for receiving amount in cash. She alleged that this issue was raised by the respondent to grab money of the complainant, complicate the matter and to confuse the parties by giving a different angle to this complaint petition. She stated that actually her last cheque dated 31/12/2014 for Rs 1,40,000/- bounced due to technical problem and the respondent thereafter insisted that he would not entertain any cheque in future and asked the complainant to deposit cash in lieu of bounced cheque. Hence, on 06/01/2015 the complainant paid cash amounting to Rs 1,40,000/- and the respondent issued receipt for the same on his letter head. The respondent also directed the complainant to the effect that all future payment would be entertained in the form of DD/NEFT/Cash only and in no circumstances, payment through cheque will be entertained. Hence, when the respondent demanded payment of next instalment, the complainant tried to arrange for payment through RTGS but the RTGS facility was not active in the bank account. As the respondent was in need of fund badly, he requested the complainant to transfer either through NEFT or pay in cash. The complainant tried to transfer the money through NEFT but as the limit was below Rs 2 lakhs, the complainant paid Rs 1,50,000/- twice amounting to Rs 3 lakh. Since the respondent demanded more amount in cash urgently with the promise to hand over the flat in November, 2015, the complainant arranged and paid Rs 9,50,000/- in cash on 04.03.2015 to the respondent through her husband Mr Mukesh Kumar. She claimed that for the payment received in cash, the respondent again issued a receipt of Rs 9,50,000/- on the letter head of the company. She further claimed that the respondent told her that money receipt for all the cash transactions would be issued at the time of registration of the flat by giving a single money receipt. She further claimed that she had paid Rs 30,40,000/- to the respondent.

10. The complainant further claimed that the project was still incomplete though few flat owners had shifted in the partially constructed apartments without completion certificate or occupancy certificate/NoC at their own risk and living

in a very pathetic condition. She alleged that the main objective of the respondent was to avoid registration of the ongoing project with the Authority so as to avoid payment of registration charges and cheat the purchasers. She alleged that the respondent was not transparent and has not provided calculation of the super built up area to them so as to avoid refund of the excess payment. She claimed additionally reliefs i.e. to initiate criminal proceedings against the respondent for fraud, cheating and misappropriation done in the accounts of the complainant and to direct the respondent to complete the said project in all respect including genset, fire fighting measures within a fixed deadline.

11. On 26/10/2018, the complainant submitted copies of the photographs and videographic proofs to show that the said project was still incomplete and claimed it to be the reason as to why the respondent was unable to obtain completion/ occupation certificate or NoC till date. She claimed that the project did not have complete boundary wall and requested the Authority to direct the respondent to construct the boundary wall in the entire area of the land measuring 38.45 decimals and install a main gate to be exclusively used by the 40 flat owners only.

### **Hearing**

12. In course of hearing, the Complainant was emphatic that the project was still incomplete and as a result thereof, the promoter has not been able to obtain completion /occupancy certificate for the project. She claimed that as per section 3 of the Real Estate (Regulation and Development) Act 2016, all such ongoing real estate projects were required to be registered with the Authority. She further alleged that the promoter has exaggerated the super built up area and claimed that as per the approved plan of the project, the super built area of her flat should be less than 900 sqft as against 1081 sqft shown by the builder.
13. She also reiterated her claim that she had given Rs 30,40,000 to the promoter and obtained money receipts and cash receipts from the director of the company on the letter-head of the company. She stated that she wanted to have her apartment rather than getting the refund of the deposit along with the

interest. The Promoter however disputed the claim and stated that he has received Rs 20,90,000 only and the receipt of Rs9,50,000 on the letter-head was given to the petitioner in good faith for all the payments made by him.

14. In course of hearing she also produced the original receipt of the cash payment on the letter head of the company. She has also filed an affidavit to this effect. Learned counsel for the respondent stated that they had given the receipt of Rs 9,50,000 on the letter head in good faith without any date and witness for the cheques received by them between 25<sup>th</sup> October, 2014 to 31<sup>st</sup> March, 2015. He however, could not explain as to why a second receipt was issued on the letter head of the company with money receipts were already given for transactions made on 25/10/2014, 01/12/2014 and RTGS transaction done in March, 2015. He could not also explain as to why such receipts were not issued for other payments made by the complainant which they themselves have admitted amounting to as per their calculation Rs 10,90,000. Learned counsel for the respondent also stated that a number of allottees have already registered their flats though they have not obtained the completion certificate. In course of hearing, the learned counsel for the respondent was directed to get their project registered with the Authority as the project was still ongoing.

**Issues for consideration:**

15. There are two major issues for consideration before the Bench. Firstly, it has to be decided whether the project was ongoing as on 01/05/2017 and required to be registered with the Authority. Secondly, whether there has been delay in completion of the project and if yes, what kind of reliefs could be granted to the complainant.

16. Section-3 of the Real Estate (Regulation & Development) Act, 2017 states that the project which are ongoing on the date of commencement of the Act and for which completion certificate has not been issued by the competent authority are required to be registered with the Authority within three months of the commencement of the Act.

17. The respondent themselves have admitted that some of the finishing work have been done by the respondent in many flats after commencement of the

Act. Further, they have admitted that they have not received either the completion certificate or occupancy certificate from the competent authority till now.

18. Section-17 of the Act envisages registration of the conveyance deed only after issue of completion/occupancy certificate by the competent authority. Though some of the flat owners have registered their apartments, it did not mean that those flats/apartments have been completed. The complainant has also produced a number of photographic and videographic presentation of the status of the project as on the date of hearing which indicated that the boundary wall have still not been completed, genset has not been installed and fire fighting measures have not been undertaken. In view of these evidences, there is no doubt that the project "Vasundhara Enclave" is an ongoing project and required to be registered with the Authority forthwith.

19. Secondly, as regards completion of the project, there is apparent delay in completion of the project as the promoter had committed to complete the project by November, 2015. It is expected that there appears to be some difference between the complainant and the builder which has resulted in a situation where the respondent expressed their willingness to refund the deposit made by the complainant which was not accepted by the complainant. However, it is also a fact that the complainant has been raising valid issues on following counts :-

- 1 Calculation of super built up area;
- 2 Issue of cash payment of Rs 9,50,000; and
- 3 Compensation due to delay in handing over possession of the apartment.

20. So far as calculation of super built up area is concerned, the promoter has given the details regarding super built up area and the carpet area in Schedule B & C of the Agreement for Sale. Hence, it is his responsibility to give break up of the super built up area of the apartment of the complainant so as to enable the complainant to have a reasonable understanding of the payment being made by her for Flat No.303. Accordingly, the promoter should provide full details in respect of super built up area of 1081 sq ft of Flat No.303 to the complainant. Should the complainant have any objection or observation on calculation of super built up area, she could seek clarification from the promoter following which she may seek clarification from the competent



- authority for which approved the building plan of the project. If she still is not satisfied based on solid reasons, she may approach the Authority.
21. As regards the receipt for the cash payment, we have no hesitation in admitting that cash transactions/payments was a reality in the real estate sector during the period under consideration i.e. 2014-2015. We are not going into the legality or illegality of the transactions. However, it is a fact that cash transactions were predominantly prevalent in this sector during this period. The complainant has been able to provide a reasonable basis for making the cash payment and obtaining a receipt on the letter head of the company. As against that the learned counsel for the promoter has not been able to give any cogent reason for giving the receipt of Rs 9,50,000 on the letter head of the company by the Director for receiving the money. So we are inclined to believe that the complainant has made payment of Rs 9,50,000 to the promoter.
22. As regards compensation, it is accepted that there has been delay and the promoter has not been able to obtain the completion/occupancy certificate from the competent authority till now as they have not yet completed the boundary wall and other works required under the Bihar Building Bye-laws, 2014. However, it is also a fact that some delay has been caused due to lack of trust in between the complainant and the promoter.

### **Order**

23. We therefore, order that the possession of Flat No.303 be handed over to the complainant by the promoter after obtaining completion/occupancy certificate from the competent authority within three months of issue of this order.
24. The complainant/allottee should also make payment of the balance amount on the date of possession after adjustment of the compensation being ordered separately.
25. As regards compensation for the delay made by the promoter, it is ordered that a simple interest of 5% per annum may be paid by the promoter to the complainant from the date of deposit to the date of possession of the flat.

26. The promoter is also directed to register the project with this Authority without any further delay. The case is disposed of accordingly.

Sd  
R B Sinha  
Member

Sd  
Dr S K Sinha  
Member