

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

**Before the Bench of Mr R. B. Sinha & Mr S.K. Sinha, Members of the  
Authority**

**RERA Case No : CC/102/2018**

**Shambhavi Sandilya.....Complainant**

**Vs**

**M/s Ukarsh Infra Construction Pvt Ltd and others....Respondent**

**RERA Case Nos : CC/105/2018**

**Rakesh Kumar David.....Complainant**

**Vs**

**M/s Ukarsh Infra Construction Pvt Ltd and others....Respondent**

**RERA Case No.CC/106/2018**

**Rashmi Singh.....Complainant**

**Vs**

**M/s Ukarsh Infra Construction Pvt Ltd and others....Respondent**

**RERA Case No : CC/114/2018**

**Renu Singh.....Complainant**

**Vs**

**M/s Ukarsh Infra Construction Pvt Ltd and others....Respondent**

**RERA Case No : CC/125/2018**

**Deepak Kumar and others.....Complainant**

**Vs**

**M/s Ukarsh Infra Construction Pvt Ltd and others....Respondent**

**RERA Case No : CC/152/2018**

**Sidhartha Singh.....Complainant**

**Vs**

**M/s Ukarsh Infra Construction Pvt Ltd and others....Respondent**

**RERA Case No.CC/222/2018**

**Sarla Devi.....Complainant**

**Vs**

**M/s Ukarsh Infra Construction Pvt Ltd and others....Respondent**

**Present**

**For the Complainants : In Persons**

**For the Respondents : Mrs Arpana Kumar, Director**

**Mr Nirmal Kumar, Director**

**Mr Naveen Kumar, Ex- Director**

**Mr S B Singh, Advocate**

**Mr A K Upadhyay, Advocate on  
behalf of Mr Naveen Kumar**

**20/01/2020**

**ORDER**

1. In identical petitions under Section 31 of the Real Estate (Regulation and Development) Act 2016 filed during October 2018 to January 2019, the aforesaid complainants have stated that the Respondent Company M/s Utkarsh Infra Construction Pvt Ltd and their directors Mrs Apana Kumar, Mr Nirmal Kumar and Mr Naveen Kumar have not completed their real estate project Kedar Palace located at Karorichak, Mitramandal Colony, Phulwari Sharif, Anisabad, Patna in last seven years inspite of taking full or nearly full payment of the cost of the flats, as against stipulated completion period of three and half years. The first three complaint cases were submitted in October 2018 followed by others in later months (November 2018- January 2019).
2. The complainants have stated that despite repeated assurances/ commitments given by the Promoters regarding completion of the project, the project has not been completed even after three years of stipulated period of completion of the project. They have further

contended that though the project was incomplete and ongoing, the promoter has also not yet got their project registered with the Authority, as required under section 3 of the Real estate (Regulation and Development) Act 2016. They have requested the Authority to direct the respondent company to immediately initiate registration process of the project. They have further claimed rent at market value since October, 2016. They have also requested for compensation for the mental and physical harassment at the hands of the builder for the last seven years.

As all cases pertained to the Project Kedar Palace and related to non-completion of the ongoing project, the Bench decided to club all cases and hear them together.

**Case of the Complainants:**

3. The complainants have submitted that the project “Kedar Palace” was initiated in November 2011 by M/s Utkarsh Infra Construction Pvt Ltd at Kirorichak, Phulwari Sharif, Patna and the development agreement was executed between the Developers and Land-owners in March 2012. As per the development agreement, the project was to be completed within a period of three years from the date of approval of the building plan/Map by the competent authority with a grace period of six months. The Building plan/Map of the Project Kedar Palace was approved by the Patna Municipal Corporation in May 2012 vide Plan Case No CKA/PMC/Muza-Beaur/PRN/G +6/122/2012 but the project has not been completed till December 2018.
4. In their Petitions, four complainants (Shambhavi Sandilya, Rakesh Kumar David, Rashmi Singh & Sarla Devi) have stated that after making false commitments to complete the project soon, the promoter had even registered the conveyance deeds of the incomplete flats during July 2017- august 2018). Two other complainants (Smt Renu Singh and Mr Siddharth Singh) have requested for registration of conveyance deeds of the flats, besides

completion of the project. Mr Deepak Kumar, another complainant has requested for allotment of his share of flats as agreed upon in the development agreement by the Promoter, besides completion of the project.

5. They claimed that in the month of April, 2018 some of the customers formed a group to collect the money for completion of the project but faced stiff resistance from the builder. This project consists of 48 flats but the builder has completed only 70% of work and that they were not able to complete the remaining 30% of the work with such a meagre amount. The builder has also not handed over the map of the project passed/ approved by the competent authority to any allottee even after registration of conveyance deed. They claimed that builder intentionally created hindrances/disturbances with regard to due payment from some of the allottees due to which they could not proceed further in the project.
  
6. They further submitted that during the last one and half year, they have been able to provide electricity, transformer, water management and civil works including windows, doors and tiles etc with the help of some additional fund provided by some of the allottees. Since under the Development agreement, 50% of the Apartments was to be share of the land-owners, it was also difficult for the group of allottee to identify the flats which would go to the share of land-owners in absence of flats share agreement. The builder has allotted car parking space to some of the allottees of flats but till date neither the parking area nor bonafide allotment has yet been formally decided, causing tension among the allottees. They have requested that the builder may be prohibited from making further sale deed of the remaining five flats. Some of the allottees have dues to be paid. They may be asked to make payment of those dues to the group of allottees. The excess amount incurred in execution of the works during the last two years may be got reimbursed from the builder.

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

7. The Managing Director of the Respondent Company did not furnish any response to the show cause notice issued to them in October 2018, based on the complaints received by the Authority. However, one of the Respondents, Mr Naveen Kumar, Director of the respondent company in his response to the show-cause notice has admitted that in May, 2012 M/s Ukarsh Infra Construction Pvt Ltd entered into a registered development agreement with four land-owners who were residents of village Karorichak PO & PS Phulwari Sharif for development of their land measuring 10 kathas 02 dhurand 10 dhurki. He further submitted that the company was accorded permission from the PRDA now PMA in May, 2012 and accordingly construction of the multi-storied building known as “Kedar Palace” commenced on the said land and that the project was completed in 42 months and handed over. He further stated that he had only 15% share in the project and that having dissatisfied with the work culture of Smt Arpana Kumar, MD of the company and wife of Mr Nirmal Kumar who had 85% share, he resigned as Director of the company in August, 2018.
8. Mr Naveen Kumar further admitted that the flats were not completed and handed over in time to the complainants but claimed that for inordinate delay, he was not responsible. He claimed that Smt Arpana Kumar w/o Mr Nirmal Kumar was the Managing Director of the Respondent Company and main builder of the said project.
9. In course of hearing, MD of the Respondent Company submitted their written response on direction of the Bench. In her response, she stated on 4<sup>th</sup> April 2019 that the respondent company **Ukarsh Infra Construction Pvt Ltd** was incorporated on 12th January 2012. She attached a copy of the consent agreement signed by the earlier company M/s Utkarsh Constructions Pvt Ltd with the land-owners Mr Prakash Kumar, Mr Deepak Kumar, Mr Prabhat Kumar and Mr Vikash Kumar, all sons of Late Kedar Prasad, residents of Karorichak, Phulwarisharif, Patna for development of a multi-story

building on a plot of land measuring 10 katha, 2 dhur and 10 dhurki on 50 : 50 basis. The Agreement stipulated that the construction of building would be completed within three years with a grace period of six months, from the date of approval of Map/building plan by the Competent Authority. She claimed that there was delay in construction of the project due to prohibition of mining of sand for 17 months by the State Government and non-availability of stone-chips for 8 months. She also made several allegations against her Director Mr Naveen Kumar for siphoning of funds from the accounts of the company without her knowledge. She also claimed that all flats registered till date were registered by Mr Naveen Kumar only and that she had signed as witness only.

10. She further claimed that her life was in danger and that flat owners were not allowing her to work. She also claimed that Rs 51 lakh was outstanding from twenty flat owners/allottees. She claimed that eighty percent work was over and if the allottees pay their dues, the remaining work could be completed. She also assured that if more funds would be required, the same would be made available by the respondent company.

**Hearing :**

11. Hearings were held on 30/01/2019, 25/02/2019, 27/03/2019, 04/04/2019, 16/05/2019, 19/06/2019, 09/07/2019, 10/07/2019, 01/08/2019, 26/08/2019, 28/08/2019 and 18/09/2018.

12. As Mrs Arpana Kumar, MD and Mr Nirmal Kumar, Director of the respondent company did not furnish any response to the show-cause notice issued to them and did not attend the hearings on 30<sup>th</sup> January and 25<sup>th</sup> February 2019, the Bench in exercise of the powers given under Section 36 of the Real Estate (Regulation & Development) Act, 2016, directed on 25<sup>th</sup> February 2019 that all bank accounts of the Respondent company and both Directors viz; Mrs Arpana Kumar

and Mr Nirmal Kumar be frozen with immediate effect until further order.

13. In course of hearing, the Bench also directed the complainants to form an Apartment Owners Association/Society and get it registered. They were also directed to submit details of the funds received by them, their utilization, accounts duly verified by a chartered accountant and progress report. The respondent company/group of complainants were also directed to submit a detailed plan along with the resource to be arranged for meeting the requisite expenditure.

14. In course of hearing on 16/05/2019, the MD of the respondent Company Mrs Arpana Kumar and Mr Nirmal Kumar committed that they would transfer Rs 10 (ten) lakhs to the account of the Society and that they would pay the lift suppliers for installation and commissioning of two lifts in the complex. They were also directed to get their project registered with the Authority without any further delay. However on the next date of hearing on 19/06/2019, both the Directors of the respondent company did neither turn up nor send their representative as a result of which a cost of Rs 10,000/- in each case was levied on them for non-appearance.

15. Later on, in the course of hearing it was reported by the complainants that both the Directors of the respondent company have not yet transferred Rs 10 (ten) lakhs as committed earlier in May 2019 until 15/09/2019.

**Issues for consideration :**

16. There are following issues for the consideration of the Bench:

1. Whether the Project was an ongoing project as on 1.5.2017, the date on which the provisions of the Real Estate (Regulation and Development) Act 2016 came into operation;

2. Whether there was an inordinate delay in completion of the project and the project has been abandoned by the promoter without completing it, forcing the complainants to take up the construction of the projects themselves;

3. If there was a delay, what were causes for delay and whether any interest or any other compensation was required to be paid to the complainants from the scheduled date of completion;

4. How would be the amount of funds contributed by the complainants over and above amount payable under the agreement for sale, be returned or compensated ?

17.As regards the first issue, there is no dispute on the fact that the Project Kedar Palace was an ongoing project as on 1.5.2017, the date on which the provisions of the Real Estate (Regulation and Development) Act 2016 came into operation. In course of hearing, all three directors admitted that the project was still incomplete with the most of flats being without doors and windows, stairs without railings, no lift etc Hence, it is an admitted fact that the Project Kedar Palace was an ongoing project as on 1.5.2017, the date on which the provisions of the Real Estate (Regulation and Development) Act 2016 came into operation. Therefore, the Project Kedar Palace was required to be registered with the Authority under section 3 of the Real Estate (Regulation and Development) Act 2016. In spite of repeated directions by the Bench, the ongoing project was not registered by the Promoters for which they were liable to be penalized under section 59 of the Act. Further all three directors were considered liable for the failure of the respondent company as Mr Naveen Kumar claimed to have resigned in August 2018, well after scheduled date of completion of the project.

18.As regards the second issue, the project was to be completed within a period of 3 years and six months from the date of approval of the Map /building plan of the project by the competent authority. As the plan of the Project was approved by the competent authority in May 2012, the project ought to have been completed by i.e. by October



2015. As the project has not been completed as yet, there is no doubt that there has been inordinate delay in completion of the project. Moreover, much of the finishing work like flooring, doors & windows in many apartments, electrical work, transformer etc have been done by the complainants themselves in the last one and half years.

19. As regards the causes for the delay, MD of the Respondent Company had stated that stoppage of sand mining for 18 months and non-availability of the stone-chips for eight months were primarily responsible for the delay. She had however not given specific documents like government orders, newspaper cuttings etc to buttress her claim. The Complainants at the same time vociferously refuted the allegations and claimed that the promoters had diverted the funds from the projects, resulting into inordinate delay in completion of the project. They claimed that most of them had taken home loans from the Banks and were paying EMIs along with rent for the residential accommodations they have hired. They also stated that grace period of six months was provided in the agreement to cover the exigencies like stoppage of sand mining, non-availability of the stone-chips at times for few months. They also stated that it was false to say that sand mining was stopped for one and half years at any time during the construction period of the Project. They invited the attention of Bench to the allegation of the MD and Director of the Company against each other of siphoning the funds of the Projects. The Bench therefore feels that ends of justice would be met if a period of twelve months is allowed for completion of the project in addition to the stipulated period of construction of 3 and half years.

20. The Complainants have stated that they have spent more than 65 lakhs after taking contributions from the individual allottees over and above the dues payable by them. The contributions made by the allottees in excess of amount payable under the agreement for sale for completion of the Project, need to be refunded back. The

completion of the project was the responsibility of the promoters which they have not discharged. Hence, it is their liability to refund the full amount of contributions to the allottees. Besides any dues remaining payable by the allottees should also be recovered and paid to those allottees who had contributed for completion of the project over and above their dues under their agreement for sale.

**Order :**

21. The Bench directs the Respondent Company M/s Utkarsh Infra Construction Pvt Ltd and their three directors (Smt Arpana Kumar, Mr Nirmal Kumar and Mr Naveen Kumar) to register their ongoing project Kedar Palace with the Authority within 30 days of issue of this order. If they fail to do so, the Authority may initiate the proceedings under Section 59 (2) of the Act for contravening the provision of the Section 3 of the Act 2016.
22. The Bench also orders that the developer M/s Utkarsh Infra Construction Pvt Ltd and their all three directors (Smt Arpana Kumar (Aadhar No- 8774 4266 6159/PAN No- BOBPK9247P), Mr Nirmal Kumar (Aadhar No-3303 4096 6922/PAN No- AUHPK9785B) and Mr Naveen Kumar (Aadhar No-5117 0456 9815/ PAN No-ARQPK8524Q)) at the time of launching their Project Kedar Palace be black-listed with immediate effect and prohibited from acting as a developer or real estate agent in the state of Bihar with immediate effect. This communication should also be sent to the RERAs of all other states to impose similar bans on the company and their directors.
23. The Bench orders that all allottees who had made timely payment of their installments under the agreement for sale be given interest of seven percent per annum on the amount paid by them from 1.11.2016 till the date of possession by the Respondent Company.

24. All contributions made by the allottees in excess of amount payable under the agreement for sale for completion of the Project, need to be refunded back along with interest at the rate of seven percent per annum by the Respondent Company.
25. The Bench orders that IG Registration be directed to issue necessary instructions to all DSRs to prohibit registration of any flats in Kedar Palace with immediate effect until the real estate project Kedar Palace is registered with the Authority.
26. The Bench further orders that all bank accounts of the Respondent company M/s Utkarsh Infra Construction Pvt Ltd (PAN AABCU4039M) and their directors (Smt Arpana Kumar (Aadhar No- 8774 4266 6159/PAN No- BOBPK9247P), Mr Nirmal Kumar (Aadhar No-3303 4096 6922/PAN No- AUHPK9785B) and Mr Naveen Kumar (Aadhar No-5117 0456 9815/ PAN No- ARQPK8524Q) be frozen with immediate effect till their liabilities in the project Kedar Palace are fully discharged.
27. The Respondent Company M/s Utkarsh Infra Construction Pvt Ltd and their directors (Smt Arpana Kumar (Aadhar No- 8774 4266 6159/PAN No- BOBPK9247P), Mr Nirmal Kumar (Aadhar No- 3303 4096 6922/PAN No- AUHPK9785B) and Mr Naveen Kumar (Aadhar No-5117 0456 9815/ PAN No-ARQPK8524Q)) are prevented from selling any of their immovable and moveable properties until further orders. IG Registration should issue necessary orders in this respect to all DSRs to create lien of the Authority on all such immovable and moveable properties of the Respondent company and their three directors (Smt Arpana Kumar, Mr Nirmal Kumar and Mr Naveen Kumar).
28. The Bench directs the bonafide allottees who have made full payment to the developer/group of allottees for completion of the project to form an association of allottees and submit a proposal to the Authority, if they wish so, to take over the project Kedar Palace

to undertake the execution of remaining work and maintain the complex.

29. All rights of the Respondent Company M/s Utkarsh Infra Construction Pvt Ltd and their three directors (Smt Arpana Kumar, Mr Nirmal Kumar and Mr Naveen Kumar) over the project Kedar Palace are frozen with immediate effect until their full liabilities are extinguished by them to the full satisfaction of the Authority.

30. As regards the compensation for mental and physical harassment, the complainants may approach, if they wish so, the Adjudicating officer under the section 71 of the Real Estate (Regulation and Development) Act 2016.

Sd  
(R.B. Sinha)  
Member

Sd  
(S.K. Sinha)  
Member