

# **REAL ESTATE REGULATORY AUTHORITY, BIHAR**

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

**Complaint Case No.: CC/210/2019, CC/223/2019**

**Mr. Anil Kumar/Smt. Leela Devi.....Complainant**

**Vs**

**M/s Lakhan Homes Ltd .....Respondent**

**Present: For the Complainant: In person**

**For the Respondent: Mr Sharad Shekhar, Advocate**

**09/10/2020**

**O R D E R**

1. Mr Anil Kumar S/o Mr. Krishna Prasad, resident of R.P.S More, Raghunath Path No.- 01, Bailey Road, Danapur, Patna-801503 and Smt Leela Devi W/o Sri Lakshman Prasad, resident of Hasanpur Chaitola, VIP Colony, Patna-800004 have filed a complaint petition each on 18<sup>th</sup> January 2019 and 31<sup>st</sup> January,2019 respectively under section 31 of the Real Estate (Regulation and Development) Act 2016 and section 36 of the Bihar Real Estate (Regulation and Development) Rules 2017 against M/s Lakhan Homes Ltd, Lakhan Sona, near R.P.S more, Bailey road, Patna, a company incorporated under the Companies Act 1956, having registration No U45200BR2005PLCO11449, through their MD Sri Sanjay Kumar for breach of agreement by not providing their Ground Floor shops G-7 & G-8 respectively on

time in the Project Lakhan Sukhbaso, situated at Saguna More, near Heitech Hospital, Danapur, Patna.

### **Case of the Complainants**

2. In their Petitions, the complainants have stated that the Respondent company has not been acting as per the provisions of the registered agreement for sale entered into with them by the Respondent Company.
3. In his complaint, Mr Anil Kumar has stated that he had bought a Ground Floor Shop no. G-7 in the Project Lakhan Sukhbaso from M/s Lakhan Homes Ltd in 2014 and however, after completion of construction of the allotted shop i.e. G-7 in the project, the Managing director of the Respondent Company, Mr. Sanjay Kumar was saying that he would not give the Ground Floor shop no G-7 which was mentioned in the Agreement of sale entered into by the promoter with the complainant, but a shop on the first floor, which was not acceptable to him. The Complainant has submitted a copy of the registered agreement for sale executed on 3<sup>rd</sup> May 2014 with the Respondent Company for sale of 220 square feet Ground Floor shop No- 7 at the basic sale price of Rs 13,20,000 out of which Rs 7,00,000 had already been paid by the Complainant till then. The balance sum was payable a month before the date of possession of the Shop. He claimed that he has made full payment of the cost of his shop to the Respondent Company. However, his GF shop no 7 was not handed over to him. He has therefore, filed this complaint petition requesting for handing over the possession

of the same shop on which the agreement was made i.e. ground floor G-7.

After filing of the aforesaid complaint, a notice was issued to Mr Sanjay Kumar, Managing Director of the Respondent Company on 15th February, 2019 for submitting his response.

4. In her Complaint petition, Smt Leela Devi has claimed that she had bought a Ground Floor 260 square feet super built up area Shop no. G-8 in the Project Lakhan Sukhbaso from M/s Lakhan Homes Ltd in 2014 and after completion of construction of the allotted shop i.e. G-8, the Managing director of the Respondent Company, Mr. Sanjay Kumar was not putting the shutter of the shop on one pretext or the other, though such shutters have been put on all other shops, resulting into non-use of the shop by her. The Complainant has also submitted a copy of the registered deed of absolute sale executed on 4<sup>th</sup> February 2015 with the Respondent Company for sale of 260 square feet super built up area Ground Floor shop No- 8 at the basic sale price of Rs 13,20,000. She has also made full payment of the entire cost of the shop.

After filing of the aforesaid complaint, a notice was issued to Mr Sanjay Kumar, Managing Director of the Respondent Company on 15th February, 2019 for submitting its response.

**Response of the Respondent Company:**

5. The Respondent Company however did not give any response to the notices issued to them. Accordingly both the parties were directed to come for hearing in each complaint case.

## Hearing

6. Hearings were held on 06.05.2019/16.05.2019, 09.07.2019/23.07.2019 06.08.2019, 18.09.2019, 15.10.2019, 31.10.2019, 15.11.2019, 20.12.2019 and 15.01.2020. In course of hearing, the complainants were present personally to defend their cases while the respondent company was represented by Mr Sharad Sekhar, Advocate. In course of hearing, as both cases were similar in nature and were related to the same project of the Respondent company, the Bench decided to hear them together with effect from 06.08.2019.
  
7. In course of hearing, the Respondent company was directed by the Bench to get their on-going project registered with the Authority, as required under section 3 of the Real Estate (Regulation and Development) Act 2016. However, they failed to do so inspite of assurances given in course of hearing.
  
8. On 09/07/2019, the Authority directed both the parties to amicably resolve the dispute but no progress was made by the parties. On the next date of hearing on 06/08/2019, the Authority directed the Director of the respondent company to be present personally on the next date of hearing as the respondent company was avoiding to comply with the order of the Authority. On the next date of hearing on 18/09/2019, the Authority imposed cost of Rs. 10,000/- (Ten thousand only) for non appearance of the respondent company. On 15/10/2019, the Authority directed the learned counsel of the respondent company to act as amicus curie on behalf of the Authority and visit the campus to check whether the lock has been opened. If the lock has been opened the Authority

directed the learned counsel of the respondent company to get the work of installation of shutter done in Shop no G-8 within two weeks. Also the Authority directed the respondent company to bring all the concerned papers with regard to the case of complainant Anil Kumar in the next date of hearing. However, there was no success on the issue.

9. Accordingly the Bench constituted a team to visit the different campuses of the Respondent company under section 59 of the Act to see whether the ongoing projects were getting registered with the Authority in a related suo moto case. The team found on 31.12.2019 that the Project Lakhan Sukhbaso was an ongoing project and hence required to be registered with the Authority.

### **Issue of Consideration**

10. There are two issues for consideration before the Bench: Firstly whether the project Lakhan Sukhbaso was an ongoing project as on 1<sup>st</sup> May, 2017, the date on which all provisions of Real Estate ( Regulation and Development) Act 2018 became operational in the state of Bihar.

Secondly, whether the complainants have entered into valid registered agreement for sale/deed of absolute sale with the Respondent company and whether they have made full payment of the cost of the shops.

11. As per the absolute deed of one of the complainant (Smt Leela Devi), the total land of the project was 6,806.25 square feet (632.5 sqm) and super built up area was 17,405 square feet on which the project Lakhan Sukhbaso was being developed. Further, the statements made by the complainants that their shops were

not yet fully complete, was also corroborated by the RERA inspection team which confirmed that only ground floor of A block ( Lakhan Sukhbaso) was erected. Hence it is proved beyond doubt that the project Lakha Sukhbaso was an ongoing project as on 1<sup>st</sup> May 2017. The size of the land and super built up area of the project makes it mandatory for the Developer to get it registered with the Authority. Though the Bench directed the promoter to get the project registered with the Authority, they have not even applied for registration of the project. Therefore, they are liable for penalty under section 59 (1) of the Act 2016. The suo motu case in this respect is being dealt separately.

12. As regards the second issue, both complainants had submitted copies of either registered agreement for sale or registered deed of absolute sale. Both of them have also claimed that they have made full payment of the cost of shops. The Respondent Company has also not contested the claims of the complainants in this respect. Therefore it is admitted that both complainants have entered into valid registered agreement for sale/deed of absolute sale with the Respondent company and have made full payment of the cost of the shops. They are therefore entitled for their shops GF G 7 and G 8.

### **Order**

13. The Bench therefore orders the respondent company to apply for registration of their project Lakhan Sukhbaso within thirty days of issue of this order, failing which the Authority may initiate the proceedings under section 59 (2) of the Real Estate (Regulation and Development) Act 2016 which entails punishment

with imprisonment for a term which may extend upto three years or with fine which may extend up to further ten percent of the estimated cost of the Project or with both.

14. The Bench also orders the Respondent Company to hand over the possession of the Ground Floor G-7 & G 8 in fully complete form to Sri Anil Kumar and Smt Leela Devi respectively within thirty days of issue of this order, failing which a penalty of Rs 10,000 for each day of delay in handing over the possession of the Shops would be payable to each complainant.

Sd

R B Sinha  
Member

Sd

Dr S K Sinha  
Member