

# **Real Estate Regulatory Authority (RERA), Bihar**

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

**Complaint Case Nos. CC/04/2018**

**Anil Kumar Pandey..... Complainant**

**Vs**

**Mr Ranjit Kumar Mishra, MD,**

**M/s Pahi Constructions Pvt Ltd.....Respondent**

**04/07/2019**

**ORDER**

1. Mr Anil Kumar Pandey, a resident of 402, Bor Bigha Apartment, Road No.01, Gardanibagh, Patna-800002 filed a complaint petition under Section 31 of the Real Estate (Regulation & Development) Act, 2016 against Mr Ranjit Kumar Mishra, MD, M/s Pahi Constructions Pvt Ltd for not giving possession of his apartment ( Flat No-307, 3<sup>rd</sup> floor, Radha Palace) even after seven years though he has paid more than 95 percent of the estimated cost. He has also claimed interest and compensation.

## **Case of the complainant:**

2. In his complaint petition, Mr Pandey has stated that on 19/09/2011, he got a Deed of Agreement for Sale registered with District Sub-Registrar, Patna for a 2 BHK Flat on 3<sup>rd</sup> Floor having Flat No.307 in the project **Radha Palace** located at Nayatola, Arya Samaj Road, Near Bailey Road, Patna. He has stated that though more than 7 years have passed since the

agreement was registered, the builder has not handed over possession of the flat till now. The apartment is still unfinished and there are a lot of work required to be done in the project. He claimed that he has already paid Rs 21,36,970/- against the total consideration amount of Rs 21,60,000 (Rupees twenty one lakh and sixty thousands only).

3. Mr Pandey further stated that in April, 2018 Mr Mishra rang him up on his mobile and requested to get his no dues and obtain possession letter from him as RERA has come into effect. However, for the same, GST has to be deposited and accordingly he demanded Rs 1,21,000/- to be transferred to his bank account immediately. In order to get possession immediately, the complainant paid Rs 1,21,000/- on 10/04/18 through RTGS/Cheque. Thereafter, the builder again demanded Rs 1,28,000/- for paying bribe in the office of GST/Sales Tax Deptt etc. Since the complainant was not satisfied, he did not make any further payment to Mr Mishra. The Complainant claimed that he enquired from the Sales Tax Deptt whether GST was required to be paid on the apartment and if yes, at what rate. He was informed that presently no GST was being levied on flat and if at all GST had to be deposited, it had to be paid by him after opening a GST A/c. Hence, He felt that the promoter was misleading him in order to collect as much money as possible from him.
4. The complainant has stated that he was paying Rs 12,273/- as equidated monthly installment (EMI) to the IDBI Bank every month against the the home loan and at the same time paying Rs 8,000/- as house rent for taking a hired residential accommodation. He stated that his financial position was in very bad shape and he was in a precarious situation. He requested for early possession of the apartment and refund of Rs 1,21,000/- paid by him for issue of NOC etc. He has also requested for payment of interest and compensation due to inordinate delay in handing over possession of the apartment. He has submitted details of the money paid by him firstly through home loan from IDBI Bank amounting to Rs

11.24 lakh in between 05/10/2011 and 15/01/2013. He has also enclosed details of payment made through account payee cheques to M/s Pahi Construction Pvt. Ltd amounting to Rs 7.21,000/- in between 26/08/2011 to 31/10/2013. Besides he has paid Rs 1,21,000/- as stated above in April, 2018 to Mr Mishra, MD. He has also claimed that he has paid Rs 1,70,970/- to the representative of the promoter against money receipts for various items of works which were done in the apartment. In all, he claimed that he paid Rs 21,36,70/- to the respondent company against the cost of apartment he has purchased. He has enclosed along with his complaint, a copy of agreement for sale, details of bank account, money receipt etc.

5. In pursuance to the complaint petition received by the Authority, a notice was issued to the MD of M/s Pahi Construction Pvt Ltd for submitting their response within 30 days of receipt of the notice. Since no response was received within the stipulated time, the respondent company was directed to be present on 26/07/2018 for personal hearing. However, neither he nor anyone on his behalf turn up.
6. Mr R.K. Mishra, MD of the respondent company filed their response to the petition filed by the complainant on 08/10/18.

#### **Response of the Respondent Firm:**

7. In their response, the respondent company stated that the complainant has hidden facts and has filed this case for harassing the respondent and this case does not deserve to be proceeded further. The respondent also stated that all the allottees have formed a committee and have taken over the entire work of completion of the apartment in the project stating that they would complete the project themselves. Hence, he was not responsible for the present status of the apartments and the committee of allottees was constructing the building as of now. He admitted that he had received Rs 16,52,970/ (Rupees sixteen lakhs fifty two thousand , nine hundred and seventy only) from the complainant. However, rest of the money has not been paid to him. He stated that some of the money which

the complainant claims to have paid to him is not correct as during that period he was in jail as the complainant has himself stated. The respondent further stated that the complainant wanted to take possession of the apartment directly and had even applied for electricity connection for which the Deptt had asked an NOC from the builder. Hence, the complainant had given Rs 1,21,000/- to him. Rest of the charges are denied. He stated that he was prepared to pay back his money if he cancels his booking as he appeared to have difficulties in making payment.

### **Hearing**

8. Hearings were held on 8/10/2018, 24/10/2018/, 16/11/2018, 26/11/2018, 6/12/2018, 11/01/2019 and 28/01/2019.
9. In course of hearing, though the complainant attended himself or through his advocate Mr Sharad Shekhar, the Respondent company was represented by their MD Mr Ranjit Kumar Mishra or his son or by learned counsel Mr Niranjan Singh. Learned Counsel of the Complainant reiterated the issues mentioned in his Petition that though he had paid nearly full amount of the cost of the apartment, he has not been given possession of the apartment even after seven years of registration of the agreement for sale. He stated that the MD of the Company Mr Ranjit kumar Mishra fraudulently took Rs 1,21,000on 10/04/2018 through RTGS/Cheque for handing over the possession of the apartment but didn't hand over the apartment. The Respondent stated that the apartment-owners had taken over the construction work of the apartment when he went to the jail and they themselves were constructing/finishing the apartments in the project. He also claimed that part of the amounts, the complainant have claimed to have paid, has actually been not paid to him but to the committee of the Apartments-owners. He further claimed that since Apartments-ownerswere were involved in finishing works of the building and part of the payments have been made to them by the

complainant, he was not in position to hand over the possession of the apartment. When he was directed to register his project with the Authority, he agreed to do so and stated he would get all his projects registered once he gets his money. He claimed that he was likely to get his dues of Rs1.72 crores from Government of Jharkhand in one of the arbitration cases, he would finish his project.

10. The Complainant however claimed that he has paid all the money to the director of the company or his representatives and have obtained money receipts for each payment made by him. The MD of the Respondent Company claimed that the concerned Director was removed from the directorship and he was not authorised to receive the payments from apartment owners but he could not produce any documents in support of his claim. He also did not produce any document in support of his claim from the Government of Jharkhand, though he missed several hearing on the plea that he was attending the hearing at Jharkhand High Court.

### **Issues for Consideration**

11. There are following issues for consideration before the bench. Firstly it has to be determined whether the project was covered under the Real Estate (Regulation and Development) Act 2016. Secondly whether the Complainant has signed any agreement for sale with the promoter and whether he has fulfilled his responsibilities under the agreement to claim his apartment; Thirdly, whether there has been inordinate delay in completion of the project.
12. As regards the first issue, the agreement for sale between allottee and developer was registered on 9<sup>th</sup> September 2011. It provided that the developer shall finish and handover the said flat to the purchaser/allottee within thirty six months with a grace period of six months. Hence, it should have been completed by March, 2015. The complainant has claimed and respondent has also accepted that the project has not yet been

completed. The Promoter has not yet obtained the completion /occupancy certificate for the project from the competent authority. Thus the project Radha Apartment was an ongoing project as on 1<sup>st</sup> May 2017 and hence covered under the Real Estate (Regulation and Development) Act 2016.

13. The Complainant has also submitted a copy of the registered deed of agreement dated 9<sup>th</sup> September 2011. As per registered agreement for sale, the allottee was required to pay Rs 421,000 as booking amount and 70 percent of the estimated cost (Rs21,60,000) i.e.Rs15,12,000 in seven equal instalments until plaster work/flooring work were done. The remaining amount was required to be paid at the time of possession. The Complainant has claimed that he had already paid Rs 21,36,970 to the promoter and his representatives which was more than what was required to be paid (Rs19,33,000) under the agreement before handing over the possession. The possession of the flat has not yet been given to the allottee. It was therefore evident that the petitioner has fulfilled his commitments under the agreement for sale while the promoter has not completed the project as envisaged by March 2015.
14. As regards the delay in the project, it is apparent from the deposition of the complainants and respondent that the project has not yet been completed. The promoter was not able to produce either completion/occupancy certificate of the project in course of hearing. Further, though he had agreed to register the project with the Authority, he has not done so as yet. Thus it is evident that the project is delayed by more than four years.

### **Order**

15. The Bench orders the promoter M/s Pahi Constructions Pvt Ltd and its managing director Mr Ranjit Kumar Mishra to obtain the Completion/ Occupancy certificate of the project Radha Palace and hand over the Apartment no 307 to the Complainant within sixty days of issue of this order. The Promoter is also directed to pay an interest at the rate of MCLR

of the State Bank of India, as applicable for three years or more, on the amount deposited by the complainant from 10<sup>th</sup> March 2015 until the date of refund.

16. As regards his claim of compensation, the complainant may approach, if he deems it necessary, the Adjudicating officer of the Authority, under section 31 read with section 71 of the Act 2016.

Sd/-  
**(R. B. Sinha)**  
**Member**

Sd/-  
**(Dr S. K. Sinha)**  
**Member**