

REAL ESTATE REGULATORY AUTHORITY, BIHAR
Before the Bench of Mr. Naveen Verma, Hon'ble Chairman
Case No.CC/1884/2020

Munna Kumar.....Complainant

Vs

M/s JMD Services Pvt. Ltd.....Respondent

Project: RKM Tower

Order

14-10-2022: This matter was last heard on 29/09/2022.

The complainant signed a development agreement with a builder namely J.M.D. Services Pvt. Ltd. for construction of a multi storied building upon a land situated at Jalalpur, PS Rupaspur, Patna on 21.4.2017 which was to be completed within 4 year 6 months with a grace period of 6 months. It has been submitted that after completion of the project, 50% of the total constructed area on the given land was to be given to the land owner as his share. It has been alleged that the promoter has handed over 3 flats to him bearing flat no. B-501, B-504, B-606 which measures in total 3233 sq.ft. but this is less than the constructed area allotted to one Chanda Kumari, who as landowner, held lesser land than him. He has stated that constructed area is 890 sq ft less than what the complainant ought to have been allotted. The complainant has alleged that the promoter fraudulently got his signature in the particular share division agreement signed on 05.06.2018. The complainant has filed the complaint case for his remaining share of 890 sq ft built up area.

The complainant has also alleged that the promoter has not done share division properly and kept the constructed area which falls under the E.W.S. category with himself. He has further stated that there are total 71 flats in the project but only 69 flats were divided and allotted between all the land owners and the developers.

The complainant has placed on record development agreement dated 21-04-2017, agreement for division of the built up area.

The respondent had filed a reply on 12.2.2021 which was earlier unfortunately not linked up with the case records. In the reply, it has been stated that a registered development agreement was entered with the complainant and Smt. Chanda Kumari, sister of the complainant on 21.4.2017. The area of land over which the project was to be developed was 04 kathas out of which 01 katha 16 dhurs 10 dhurkis belonged to Smt. Chanda Kumari. In terms of paragraph-3 of the development agreement, 50% of the developed area was to be handed over to the land owner and rest 50% was to be retained by the developer for sale to the purchasers of flat. There

was no clause in the development agreement as to how the share between Munna Kumar and Chanda Kumari will be distributed. However, on page-6 of the development agreement was provided that for partition of share between the land owner and developer, a memorandum of partition will be signed on the basis of which the 50% constructed share of the land with flat and space and other facilities will be distributed.

The respondent has further stated that a separate development agreement was executed between Manoj Kumar, Ramnath Sharma and the respondent and another development agreement was executed between Kunal Sharma, Mantu Sharma, Punam Devi and the respondent. The respondent has stated that there were three development agreements under same terms and condition wherein the land owner was to be given 50% share of the constructed area and all these development agreements were executed after payment of certain consideration amount, which is mentioned in the development agreements.

The respondent stated after the construction got started all the land owner entered into a memorandum of partition with the respondent and in terms of this memorandum the share of various land owners was decided. The land owners also paid for the extra area which was in excess to his proportionate share. The complainant accepted his share of flat in terms of the memorandum of partition and also paid an amount of Rs. 6,75,000/- to the respondent.

The respondent has stated that as per the terms of the affordable housing policy framed by the Govt. of Bihar, the respondent being the developer has to provide 15% of the constructed area for EWS/LIG housing purpose and in lieu of such provision for 15% area for EWS/LIG, the developer has to get the encouragement in the form of standard floor area ratio. He further stated that the complainant being the landowner has got no share in the area meant for EWS/LIG. The respondent has stated that he is ready to distribute the two flats as one of them has to be in the share of the developer and another to the land owner and there are 7 land owner and there are 7 land owners, therefore it is for the complainant to bring all the land owner on an agreement as to what portion of the said flat they will get in partition or what amount.

The respondent has placed on record development agreement dated 21/04/2017, agreement for division of the buildup area, account statement and copy of relevant pages of affordable housing policy of Govt. of Bihar.

The complainant has filed supplementary petition stating therein that 6th floor of tower A and 7th floor of tower B was constructed later on (it was not in the original layout approved map plan) in the name of EWS and it has been kept out of the share division. He has further stated that as per registered development

agreement 50% share division has to be done in the total constructed area including the floor constructed in the name of EWS category.

The complainant has placed on record agreement for division of the buildup area and application for registration of project with a copy of brochure.

The respondent has filed reply of the supplementary petition filed by the complainant. It has been specifically mentioned that the respondent got approval of map of Block A and B on 28.8.2017 and on the EWS portion of the map on 6.1.2018.

During the course of hearing the learned counsel for both the parties reiterated the contents of the petitions filed by them.

The submissions advanced by the learned counsel for the parties and documents on record have been considered by the Authority . The Authority observes that the allegation of obtaining forged signature over share distribution agreement is concerned has to be raised before the appropriate Court. RERA can consider the claims of landowners as allottees on the basis of development agreements and share distribution agreements but it cannot adjudicate on the authenticity of the signatures in such agreements .The Authority cannot adduce evidence to come to a conclusion on rival claims. The complainant may approach competent appropriate forum for redressal of this issue.

The Authority is inclined to accept the view of the respondent that the proper forum which can entertain disputes and other issues relating to distribution of share arising out of agreement entered between the parties is a court of competent civil jurisdiction.

The complainant has not refuted the contention of the respondent that he is not entitled to a share in the EWS flats built by the promoter. The Authority holds that the land owners have already benefited from a higher FAR and hence the claim in share of EWS flats does not seem to be justified.

The Authority takes note of the willingness of the respondent to give one more flat to all the seven landowners. Both the complainant and respondent are advised to approach the other landowners to amicably resolve the distribution of the remaining one flat.

With these observations, the matter is disposed of.

Sd/-
Naveen Verma
Chairman