



REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR
6th Floor, Bihar State Construction Corporation Building, Shastri Nagar, Patna-800023

Complaint Case No. RERA/55/2018

Navin Kumar Jha.....Complainant

Vs

M/s Sarvodaya Marketing Pvt Ltd.....Respondent

Present: For the Complainant:- In person
For the Respondent:- Mr Bhola Shankar, Advocate

For the Authority :- Mr Sumit Kumar, Advocate
Ms Shivi, Advocate

31/01/2019

ORDER



1. Mr Navin Kumar Jha, a resident of Khushibagh, Purnea has filed a complaint petition on 3rd August 2018 under Section 31 of the Real Estate (Regulation & Development) Act, 2016 against M/s Sarvodaya Marketing Pvt Ltd for refund of his deposit with full interest and compensation. In pursuance to the receipt of the Complaint, a notice was issued to the Respondent Company for their response on the allegations made in the complaint in August, 2018. The respondent company has given its response on 25/10/2018 to the Authority. Accordingly, a hearing was held on 05/12/2018.

Complaint of the Petitioner

2. In his petition, the complainant has stated that he had entered into an agreement for sale with the respondent company for a 3BHK apartment of approximately 1406 sqft super built up area (Flat

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No.C/403) on the 4th Floor of Block-A1 with one reserved car parking in the proposed multi-storied building complex "Sarvodaya City" located at Adampur, Khagaul, Danapur. The estimated cost of the Apartment was stated to be Rs 28,40,120/-. Against that, the complainant had paid Rs 14,63,061/-, a little more than 50% of the estimated cost by 31/08/2013.

3. The complainant had also submitted the receipts of payment for Rs 3.00 lakh and a bank transfer from his bank loan account amounting to Rs 11,63,061/- on 31/08/2013 to the respondent company. It was observed that the booking for the Apartment was made by the petitioner on 05/09/2011 on payment of Rs 1,75,000/-. As per the registered Agreement for sale dated 5th February 2003 signed by the complainant with the respondent company, the Apartment was to be completed within a period of three years i.e. on or before January, 2016 with a grace period of six months. The agreement also provided that if the promoter fails to hand over the possession of the flat within the stipulated period i.e. 01/07/2016, interest @ 12% per annum will be paid to the customer on the paid amount with effect from 01/08/2016. As per schedule of payment attached with the agreement, it was provided that the next installment of 10% was due on casting of the roof of 5th floor. The complainant has stated that as there had been inordinate delay in construction of the apartment, he wished to withdraw from the project.



Response of the Respondent Company:

4. The respondent company M/s Sarvodaya Marketing Pvt Ltd through its MD Mr D.N. Singh, in its response, has stated that the company

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started a mega project in the year 2009-10 under the name and style of Sarvodaya City to provide quality housing to the buyers. The aim of the company was to buy land on its own and construct seven towers having sixteen floors in each tower consisting of more than 400 flats.

5. The respondent company asserted that they faced lots of hurdles from initial stage on the entire land where the apartments are being constructed. The entire land has been purchased by the Respondent Company from their own resources. They stated that there was delay in sanction of building plan by the municipal authorities on account of orders passed by the Hon'ble Patna High Court in a PIL (Narendra Mishra Vs State of Bihar & Ors) which has further delayed the commencement of the construction of the project. They further stated that on several occasions the construction work was stopped on account of shortage of building materials like sand etc. In 2017-18, the State Government introduced new policy for sand mining which caused huge shortage of sand in the market and commensurate price hike. Further Hon'ble National Green Tribunal, Kolkata Bench has passed order for stoppage of construction work in all projects in the State of Bihar where the project exceeded 20000 sq mtrs of constructed area. As a result the construction was stopped for several months.

6. The MD of the respondent company also stated that the complainant was required to pay his installments as per the payment schedule prescribed in the agreement for sale dated 05/02/2013 and they had repeatedly requested for payment of second installment. However, the complainant refused to pay the installments. He stated that despite all



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the constraints, the respondent company has already started the construction work at the site and the complainant himself was at fault as he failed to comply with the terms of the agreement signed by him. Therefore, he was not entitled to any relief. He stated that he was trying to complete the construction of the building at the earliest but that would be possible only if the purchasers like the complainant pay their installments as per terms and conditions of the agreement. The Respondent Company has stated that they have been making every possible efforts and the project was likely to be completed by March, 2021.

Hearing

7. In course of hearing while the complainant himself defended his case, the respondent company was represented by Mr Bhola Shankar, Advocate. The complainant reiterated his assertions made in his complaint petition that the developer has delayed the project inordinately and still there was no commensurate increase in the efforts to complete the project at the earliest. He stated that more than seven years have passed since he booked his apartment in September 2011 and more than five years have passed since he has paid more than 50 % of the estimated cost of the apartment but there was hardly any commensurate progress in the construction of project. He was not confident about the commitment of the developer to complete the project. He also stated that he had paid more than 50% of the total estimated cost of the project but not even basic structure of the building is ready. He also stated that his son was seriously sick and so he could not wait indefinitely for getting his apartment. He wished to



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withdraw from the project and sought refund of the amount paid by him along with the due interest and compensation for harassment and mental agony he has undergone due to lack of efforts on the part of the developer.

8. The developer on the other hand, committed that they were increasing their efforts on the project and they were confident that they would be able to complete their project by March, 2021.

Issues for consideration

9. There is only one issue under consideration of the Bench i.e. whether there was inordinate delay in the construction of the project and whether the complainant was justified in withdrawing midway from the project. It is apparent from the records that the complainant Mr Navin Kumar Jha had paid his booking amount of Rs 1,75,000/- on 05/09/2011 and balance amount of Rs 1,25,000/- in three installments in the months of January-February, 2013. Mr Jha has also paid through RTGS a sum of Rs 11,63,061/- on 31/08/2013 against the demand letter issued by the respondent company on 06/07/2013. Hence, the complainant has already paid more than 50% of the estimated cost of his apartment more than five years ago. The construction has however not advanced proportionately. Further, arguments given by the respondent company for delay in the construction work were very general in nature and some of them were incorrect as well. For example; the company claimed that they started the mega project in 2009-10 but they could not get even their map and building plan sanctioned due to orders of the Hon'ble Patna High Court in the PIL.



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10. It has been brought to the notice of the Bench that the quoted case Narendra Mishra Vs State of Bihar & Ors was not a PIL but CWJC No.8152/2013 (Narendra Mishra Vs State of Bihar & Ors) in which the Hon'ble Patna High Court had passed certain orders on 10/05/2013 restricting the construction of multi-storied apartments beyond eleven meters on roads with width of six meters i.e. 20 ft.

11. It has also been brought to the attention of the Bench that the respondent company has distorted the facts and misrepresented the information regarding delay in sanction of the building plan by the municipal authorities. As a matter of fact, the building plan was approved by Certified Architect six months before the passage of the order by Hon'ble High Court. Hence, shortage of sand for few months every year during the rainy season could not be a reason for inordinate delay in completion of the project by several years.

12. Hence, it is established that there has been inordinate delay in completion of the project by the promoter and if a consumer wished to withdraw from the project even knowing that the real estate prices have gone up significantly in the area, he or she was fully justified to do so particularly when he had paid more than 50 % of the estimated cost of the Apartment, more than five years ago.

Order

13. We, therefore, order that the respondent company should refund the full amount of Rs 14,63,061 (rupees fourteen lakh sixty three thousand and sixty one only) deposited by the complainant along with

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the interest at the rate of MCLR of State Bank of India applicable for three years or more, plus two per cent from the date of deposit to the date of refund. The payment should be made within sixty days of issue of this order.



S.K. Sinha
31.01.2019
(S.K. Sinha)
Member



R.B. Sinha
31/1/2019
(R.B. Sinha)
Member

Patna,
Dated the 31st January, 2019.