

**REAL ESTATE REGULATORY AUTHORITY, BIHAR**

**Before the Single Bench of Mrs. Nupur Banerjee**

**Case No.CC/24/2018**

**Subash Prasad .....Complainant**

**Vs**

**M/s Chitra Homes Pvt. Ltd & Anr .....Respondent**

**Project: Chitra Gulabo Apartment**

**For Complainant: In person**

**For Respondent : Mr. Mayank Rukhriyar , Advocate**

**17/08/2022**

**ORDER**

This complaint has been filed seeking relief to direct the respondent to complete the remaining work of the Project like installation of lift, final painting work, allotment of the parking areas, electrification in the common area etc. Complainant also sought to direct the respondent to pay the compensation for the harassment and violation of different provisions of the Act.

The facts of the cases in short reveals that complainant had entered into Agreement for Sale with the respondent for the purchase of flat bearing flat nos. 404 & 403 in Chitra Gulabo Apartment and accordingly full filling the terms and conditions of the said agreement, Sale Deed was executed between the parties on 31-03-2012 without completing the remaining works in the common and parking area. It has been further submitted that it is apparent from the registered Agreement for Sale and Sale Deed that the respondents have to construct and complete the finishing of parking space and installation of lift and generator for which the respondent has given assurance to complete the same but till date, the same has not been done. Hence, this complaint has been filed.

The complainant has placed on record Agreement for Sale dated 15-11-2011 and Deed of Sale dated 31-03-2012 along with legal notice dated 12-11-2014.

The respondents have filed their reply stating that complaint is not maintainable. It has been further submitted that complainant has filed a complaint before the District consumer forum and before the State Human Right Commission and accordingly, in the light of order passed and under the instruction by Nagar Parishad, Danapur, respondent has started the work. It has been also submitted that respondent tried many times to complete the unfinished works but complainant along with his wife used to abuse and threatened the staff and workers and even the lift providers due to which lift provider refused to work. It has also been submitted by respondent to direct the complainant to pay the security dues of Rs.8.80 lakh.

The complainant had filed a rejoinder to the reply of respondent denying the averments made by respondent and submits that there is only one complaint pending before the District Consumer Forum where deliberately, the respondent has not appeared. He further submitted that as per the direction of Nagar Parishad, Danapur, respondent has started work but stooped after two- three days.

The respondents have filed detail supplementary affidavit stating therein that complaint is not maintainable as the possession has been handed over way back in the year 2012-13 prior to the existence of RERA Act. It has been further submitted that respondent have always endeavored to get the lift installed but complainant has always put a hindrance to the same. It has been further submitted that respondent undertakes to install the lift provided that complainant and the other residents will take 3 phase electricity connection.

The respondents have filed another supplementary affidavit stating about three phase connection and installation of lift within four months after three phase connection taken and denying other claims averred by complainant.

During the last hearing on 20-07-2022, the complainant has submitted that the installation of lift, generator and demarcation of parking has not been done even after the several directions of this Hon'ble Court.

Learned Counsel for respondent has submitted hat he has information that the work of installation of lift has started in building.

In reply complainant submitted that there is no work started at the building.

In light of submissions made and after the perusal of documents placed, the Bench observes that it is evident that the Sale Deed is executed in the year 2012 but as alleged by complainant that few works are not completed by the promoter which they had also admitted in their reply filed, hence, it is very much clear that project was incomplete after the commencement of The Real Estate (Regulation and Development) Act, 2016. Therefore, this project will be consider as ongoing project and was registrable as per 1st Proviso of Section 3(1) of the Act. The Hon'ble Supreme Court recently in M/s Newtech Promoters & Developers Pvt. Ltd. Vs State of U.P & Ors. [2022] (1) RCR (Civil) 357 has observed that the Act is not retrospective in nature, rather it is retroactive because it affects the existing rights of the persons mentioned in the Act like promoter, allottee etc. The intent of legislature was to include all ongoing projects which commenced prior to the enforcement of the Act.

In Lavasa Corporation Limited v/s Jitendra Jagdish Tulsiani & Others, Second Appeal (Stamp) Nos. 9717 of 2018 & 18465 of 2018, 18467 of 2018 with Civil Application Nos. 683 of 2018, 791 of 2018, 792 of 2018, the Hon'ble Bombay High court has observed that RERA is brought on Statute Book to ensure greater accountability towards the consumers and significantly reduce frauds and delays, as also the current high transaction costs. It attempts to balance the interests of consumers and promoters, by imposing certain responsibilities on both. It seeks to establish symmetry of information between the promoter and purchaser, transparency of contractual conditions and set minimum standards of accountability and a fast track dispute resolution mechanism. The RERA, as stated in its 'Objects and Reasons', was enacted for inducting professionalism and standardization in the sector, thus, paving the way for accelerated growth and investments in the long run.

It has been further observed that as per Clause (2) of Section 3, the RERA is made applicable even to the projects that are on-going on the date of commencement of the RERA and for which, Completion Certificate has not been issued. In respect of such projects also, Promoters are required to register the projects with the Real Estate Regulatory Authority within three months from the commencement of the RERA, with an option that they can

register entire real estate project or part of it. The specific 'Explanation' to the Section 3 of the RERA provides that, where the real estate project is to be developed in phases, every such phase shall be considered as a standalone real estate project.

The Hon'ble Bombay High Court also observed that The Real Estate (Regulation and Development) Act, 2016, as its 'Preamble' shows, is enacted by the Legislature, 'To establish the 'Real Estate Regulatory Authority' for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy redressal and also to establish the Real Estate Appellate Tribunal to hear Appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and Adjudicating Officer and for the matters connected therewith or incidental thereto. The 'Statement of Objects and Reasons' of the Act shows that, the necessity of enacting such Act was realized by the Legislature after perceiving that, The real estate sector plays a catalytic role in fulfilling the need and demand for housing and infrastructure in the country. While this sector has grown significantly in recent years, it has been largely unregulated, with absence of professionalism and standardization and lack of adequate consumer protection.' It was felt that, 'Though the Consumer Protection Act, 1986 is available as a forum to the buyers in the real estate market, the recourse thereto is only curative and is not adequate to address all the concerns of buyers and promoters in that sector.' The lack of standardization was found to be a constraint to the healthy and orderly growth of real estate industry. In view of the above, it was found necessary to have a Central Legislation, namely, the RERA, in the interests of effective consumer protection, uniformity and standardization of business practices and transactions in the real estate sector. The RERA is, therefore, enacted to provide for establishment of the 'Real Estate Regulation and Development Authority' for regulation and promotion of real estate sector and to ensure sale of plot, apartment or building, as the case may be, in an efficient and transparent manner. The object of the RERA is stated to be to protect the interests of consumers in the real estate sector, like the Respondents herein.

Thus, the RERA is brought on Statute Book to ensure greater accountability towards the consumers and significantly reduce frauds and delays, as also the current high transaction costs. It attempts to balance the interests of consumers and promoters, by imposing certain responsibilities on both. It seeks to establish symmetry of information between the promoter and purchaser, transparency of contractual conditions and set minimum standards of accountability and a fast track dispute resolution mechanism. The RERA, as stated in its 'Objects and Reasons', was enacted for inducting professionalism and standardization in the sector, thus, paving the way for accelerated growth and investments in the long run.

Hence, the present Complaint Case is maintainable against the Respondents.

The Bench further observes that section 11 to section 17 of the Real Estate (Regulation & Development) Act 2016 casts certain duties upon the promoter to be abided by them in letter and spirit and fulfill all the requirements as mentioned in the agreement for sale or sale deed.

In the light of above observations, the Bench hereby directs the respondent company to complete the remaining work as mentioned in complaint petition in consonance to Agreement for Sale and sale deed within 60 days of issuance of this order, failing which penalty of Rs.5,000/- would be imposed upon them for each day of delay.

The respondent is also directed to provide the parking space with proper demarcation to complainant and further directs respondent to place a board on the parking area specifying the allotted parking number to respective allottees with their proper demarcation made their in the space available for parking as per the sanctioned plan.

The complainant is also directed to cooperate with the respondent in the completion of work.

As regards compensation, the complainant is at liberty to press the same before the A.O.

As regards, respondent claim for security amount as stated in reply filed, the Bench directs respondent to file separate complaint if claim made out.

The Bench further directs respondent to register the project immediately, failing which appropriate action will be taken as per the provisions of the RERA Act, 2016.

With these directions and observations, this complaint petition is disposed of.

Sd/-  
**Nupur Banerjee**  
**Member**