

REAL ESTATE REGULATORY AUTHORITY, BIHAR

Before the Single Bench of Mrs. Nupur Banerjee

Case No. CC/393/2019

Manoj Kumar.....Complainant

Vs

M/s Chitra Homes Pvt. Ltd & AnrRespondent

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, generator and to provide car space. Complainant also sought to direct the respondent to provide compensation as interest for housing loan.

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 no. 304 in Chitra Gulabo Apartment and accordingly full filling the terms and conditions of the said agreement, Sale Deed was executed between the parties on 11-09-2012. It has been further submitted that as per the agreement, builder has to provide lift, generator and separate car parking space but inspite of elapse of six years, neither lift nor generator has been installed nor car parking space has been provided by the builder. Hence, this complaint has been filed.

The complainant has placed on record Agreement for Sale dated 28-04-2012 and Deed of Sale dated 11-09-2012 along with other documents.

The respondents have filed written statement 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 RERA itself has written letter to the Principal

Secretary, Registration Department that registration of project is not required for those projects which have been completed before 01-05-2017. It has been further submitted that Bihar Registration Rules, 2008 by bringing the Bihar Registration (Amendment) Rules, 2019, has exempted, the requirement of registration of project with RERA whose at least one flat has been registered before 30-08-2018.

The respondents have filed another supplementary affidavit stating that complaint is not maintainable and the project is completed prior to the commencement of the RERA Act, hence, Authority lacks jurisdiction and also stated that respondent has challenged the Suo-Moto proceeding initiated against respondent for another project before the Patna High Court where Hon'ble High Court has directed to deal with the issue of Jurisdiction.

The respondent has filed supplementary statement on 16-08-2022, stating therein that the material required for the installation of lift has been delivered at the project site and lift will be installed within 1 month.

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 that 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 reflects from the order of Nagar Parishad, Danapur brought on record and submissions made by parties during the course of hearings, 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.

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

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