Real Estate Regulatory Authority (RERA), Bihar, Patna

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

RERA Case Nos. CC/81/2018, CC/82/2018 & CC/83/2018

Ms Savita Sah, Mr Sitaram Singh & Mr Navin Kumar Sinha
……Complainants
Vs
M/s Nesh India Infrasture Pvt Ltd…….……Respondent

Present: For the Complainants : In person
Mr Sharad Shekhar, Adv
For the Respondent: Mr Abhinav Srivastava, Adv
Mr B.K. Sinha, Advocate

09/08/2019 O R D E R

1. Ms Savita Sah, D/o Late Bharat Sah and a resident of A/416 Hazari House, South West Corner of Park, A.G.Colony, Patna, Mr Sitaram Singh, S/o Mr Indra Deo Singh and a resident of A/488, South of A.G. Colony Park, Ashiana Nagar, Patna and Sri Navin Kumar Sinha, a resident of Chandmari Road No.11, Dwarka Path, Patna each have filed a complaint petition under Section 31 of the Real Estate (Regulation & Development) Act, 2016 on 18/09/2018 against M/s Nesh India Infrastructure Pvt Ltd through its MD Sri Shashi Bhushan Sinha for possession of their share of flats after issue of Completion Certificate (CC) and Occupancy Certificate (OC) of the project, compensation at prescribed rate for the period of delay in handing over the flats and additional damages and compensation for mental torture and harassment caused to them by the builder through their repeated demands for additional money for handing over the flats.

2. The Petitioners are the owners of pieces of land measuring 5926 sqft, allotted by Alok Sahkari Grih Nirman Samiti, a society registered under the Bihar and

Orissa Co-operative Societies Act 1935. The Promoter M/s Nesh India Infrastructure Pvt Ltd had proposed to develop a residential building namely Tiruvantpuram city on pieces of land measuring 9978.297 sqmt owned by 40 odd land-owners. In similar petitions, three petitioners have stated that they had entered into a Development Agreement along with a Supplementary Agreement on 25/08/2011 with the promoter M/s Nesh India Infrastructure Pvt Ltd through its MD Sri Shashi Bhushan Sinha for development of their land. In the Development Agreement, it was agreed that the builder shall provide flats of super built up area of 2.25 times of land area of 2000 square feet i.e. (2.25 X 2000) 4500 sq ft to each of them along with a parking space for a 4-wheeler vehicle with each flat. They further claimed that it was provided in the Supplementary Agreement, executed on the same date as that of the Development Agreement with the builder, that the builder shall give three flats each of 1440 sq ft as follows :-

Ms Savita Sah - Flat No- C/311, C/312 and D/104, Ph 1, AG Enclave

Mr Sitaram Singh - Flat No- B/207, B/309 and D-103, Ph 1, AG Enclave

Mr Navin Kr Sinha - Flat No- B/205, B/206 and B/208, Ph 1 AG Enclave

It was also prescribed in the agreement that the Petitioners will not have to pay anything to the developers in this respect at the time of possession. The Development Agreement also stipulated that the project would be completed within two and half years of the signing of the Development Agreement with a grace period of six months. It was also agreed that if the developer fails to complete the construction of flats within the stipulated time-frame, the developer shall be liable to pay to the land-owner compensation @ Rs 8000/- per flat per month to each of them. It was further provided under Clause 21 of the agreement that if the said multi-storied building is further extended upward, the share of additional construction shall be distributed proportionately among the complainants.

3. Each petitioner has sought following reliefs:-

1. Specific performance of contract may kindly be enforced (Section 10 of the Special Relief Act, 1965).

2. Building may be constructed and internal and external finishing may be given as per specification in schedule B of the Development Agreement.
3. Time limit may kindly be fixed by the RERA within which the builder will hand over the prescribed three flats to each of them after obtaining CC and OC of the project.
4. Compensation @ Rs 8000/- per month per flat for the period from September, 2015 to September, 2018 amounting to Rs 8.88 lakhs only from the builder. Then Rs 24,000/- per month may be paid from October, 2018 onward to date of handing over of the fully completed and finished flat (para-7.2 of the Agreement).
5. Allotment letter in respect of quantum of proportionate share in additional construction of two floors in multi storied building (G+7) instead of (G+5) as agreed in para-21 of the Development Agreement, by the builder.
6. Payment of damage and compensation for mental torture and harassment caused by builder particularly for repeatedly and arbitrarily demanding money for 120 sq ft extra super built up area for each flat and also for hardship faced due to non-completion of flats and not handing over the flats till date.
7. The builder is demanding Rs 2.5 lakh as one time maintenance charge while CC and OC has not been obtained by the builder as required under Section 11(4)(a)(b) of RERA, 2016. Therefore, they prayed that the builder may kindly be restrained from demanding money for one time maintenance charge before obtaining CC and OC from competent authority and before giving physical possession of the flat and the builder may be asked to comply the provision of Section 11(4)(d) and (e) of the Act in respect of formation of Association of allottees for maintenance.

Response of the Respondent Company

4. In its response, the Respondent Company through its CMD Sri S. B. Sinha has not disputed the fact that they had entered into development and supplementary agreements with the petitioners but has questioned the jurisdiction of the Authority and stated that

a. This Act was not meant for the disputes between a developer/promoter and the landowner for the reason that the landowner is not an Allottee or purchaser of the flat or Apartment. Since the relationship of a Developer and landowner is based on a Development Agreement, for any dispute either of the parties can approach the competent court of law for violation of any term of the Development Agreement. Therefore, the Respondent Company claimed that redressal of their grievances, if any, can be sought for by the landowner before a competent civil court or consumer court only and not before this Authority.

b. There is an Arbitration clause being clause no.- 17 in the Registered Development Agreement which binds both the parties to resolve their disputes with regard to registered Development Agreement through Arbitration Proceedings under the Arbitration & Reconciliation Act 1996. Therefore, in view of the specific clause, both the parties were bound to submit themselves to an Arbitration proceedings. They claimed that in Real Estate (Regulation & Development) Act 2016 and the Rules made there under, there was no provision that Authority will entertain any claim between the parties inspite of there being an Arbitration clause in the Development Agreement.

c. The Supplementary Agreement being unregistered has no legal value and therefore no legal credence can be given to this document. It was further submitted that as per section 21 of the General clauses Act, the Supplementary Agreement, which was in addition to the main Development Agreement, has also to be registered. Therefore, the claim of the complainants on the basis of unregistered Supplementary Agreement was not tenable in the eye of law. Further, the supplementary agreement was to be treated as null and void if the

plan/map of the building was not approved before November 2011. Admittedly, the plan was approved in October 2012. Therefore, the supplementary agreement was null and void.

5. In addition, the Respondent Company has stated that the claim of the complainants for 4320 sqft (1440 x 3) super built up area out of total super built up area of 5720 sqft (2000 x 2.86) amounted to about 67 % of constructed super built up area and was therefore not only illogical but improper also. They further claimed that as the super built up area of the flat constructed which could be offered to the complainants was of 1560 sqft and assuming claim of 3 flats, total share of complainants would be about 82 %.

Further, the Respondent Company claimed that initial plan map was sanctioned in 2012 for Block Nos A and D, on the basis of which Block A was constructed. Meanwhile, the Developer submitted revised sanctioned plan to construct other Blocks also, which was sanctioned in July 2016. The construction was going on as per revised plan and since three years have not passed since then, the claim of complainants was illegal, improper and unjustified.

Rejoinder of the Petitioners

6. In their rejoinder to the response of the Promoter, the Complainants stated as follows that :

a. The learned Authority has power to entertain the present matter as one of the prime objectives of the Real Estate (Regulation and Development) Act 2016 as enshrined in the preamble of the Act, was to protect the interests of the consumers in the Real Estate Sector. They have further contended that in Civil Appeal No-944 of 2016 – (SLA (Civil) No-1633 of 2016) **Banga Daniel Babu (Appellant) Versus M/s Sri Vasudeva Constructions & others**, the facts of which was similar to the present case, Honorable Supreme Court has held in July 2016 that the Land Owner under the Development Agreement was a consumer under the Consumer Protection Act.

In the aforesaid case, the apartments constructed by the Developers were to be shared in the proportion of 40 % and 60 % between the Appellant (Land-owner) and the Respondent (Promoter/Developer). After analyzing every aspects of the case, Hon'ble Supreme Court held as follows:

"Therefore, the irresistible conclusion is that the Appellant is consumer under the Act".

The Petitioners have thus claimed that they would also fall under the term "Consumers" and hence, Real Estate (Regulation and Development) Act 2016 would be applicable in the instant case.

b. So far as the Clause 17 of the Development Agreement for settlement of dispute through the provisions of the Arbitration and Conciliation Act 1996 is concerned, the Complainants claimed that section 89 of the Real Estate (Regulation and Development) act 2016 provided that " the Provisions of this act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force." Further since the RERA Act 2016 was the latest law approved by the Parliament in March 2016 for speedy dispute redressal in a specific sector i.e. real estate sector, RERA Law will prevail over the Arbitration and Conciliation Act 1996. As such, the Authority was fully competent to entertain this case under section 89 of the RERA Act 2016, despite there being an Arbitration clause in Development Agreement.

c. The Complainants claimed that they had nothing to do with FAR or percentage of super built area as non obstante clause of the Development Agreement (Clause 20) stipulated that the Respondent Company shall give 2.25 times of the land area to the complainants.Further Clause 21 of the agreement provided that if the multi-storied building will be constructed more than G+5, then there will be proportional distribution of additional construction between the landowner and the Developer. As it is the admitted position of the Respondent Company that the proposed building would be a G+7 structure and therefore the petitioners were also entitled to additional proportionate share in the additional construction.

d. In the present case, the complainants are the Land-owners of the property in question whereas the Respondent company has executed development agreement with the land owners to settle their share on terms of development agreement dated 25-08-2011. Thereafter as per the said development agreement (clause 5), the Supplementary Agreement of the same date i.e. 25.08.2011 was executed between the parties but was not registered. The Respondent has agreed to settle the actual share portion of the present complainant according the terms of the Supplementary Agreement, which was duly signed and accepted by the parties without any objection so far. The complainants further added that according to the section 49 of the Registration Act, such unregistered document can also be used as an evidence of collateral purpose as provided in the proviso to section 49 of the Registration, Act. So the supplementary agreement dated 25.08.2011 was properly executed document with actual stamp fees, and therefore it was legally valid.

e. Clause 7 of the Development Agreement prescribes the time-frame within which the Developer has to complete the project and according to section 7.1, the time shall be counted from the date of the sanction plan or handing over the vacant possession of the land to the Developer. They claimed that getting approval of plan was the sole responsibility of the promoter and he was required to take approval of the plan before November 2011 and if there has been any inordinate delay, the Developer was liable to face the consequences. They further claimed that the builder did neither take their approval for the revised plan as required under the agreement nor sought their approval for increasing the super built up area of their flat from 1440 sqft to 1560 sqft, though the map/plan of the project was approved twice in October 2012 and July 2016. They are therefore not required to pay anything at the time of taking over possession of three flats along with a parking space with each flat as stipulated in the supplementary agreement.

Hearing

7. In course of hearing, the Complainants were represented by the Learned Counsel Mr Sharad Shekhar whereas the Respondent Company was represented by Learned Counsel Mr Abhinav Srivastava and Mr Binod Kumar Sinha. The Complainants claimed that there was inordinate delay in completion of the project and the developer had not kept them informed about the changes in the plan made by them. They claimed that though the project was to be completed within two and half years with a grace period of six months from the date of handing over the land or date of the approval of the plan i.e. by September 2015, the project has not yet been completed. They also stated that there was a provision for compensation of Rs8000 per flat per month if the flats were not handed over to them within stipulated period. However, nothing has been paid by the developer till date. They also claimed compensation on account of mental harassment and torture due to demands of one-time maintenance charges for each flat by the developer etc.

Learned Counsel of the Respondent Company put up a spirited defence stating that the Authority was not the forum for redressal of disputes arising out development agreement between developer and land-owners, particularly when supplementary agreement had become void in view of condition mentioned therein. He claimed that Clause 17 of the Development Agreement provided for arbitration proceedings under Arbitration and Conciliation Act 1996 Act and the land-owners should have gone to arbitration proceedings, if they so wished. He reiterated the contention of the respondent company stated in their response to the notice that unregistered supplementary agreements can not be relied upon as it had already become void due to non-approval of the plan within stipulated period i.e. November 2011 and has no legal basis. He also claimed that the claim of the petitioners for three flats was excessive and illogical. In respect of Petitioners' claim for

additional share for 6th and 7th floor, he stated that the main spirit of share distribution between land-owners and developer was the area of land i.e. 2.25 times of the land area. Therefore their share wouldn't increase due to increased construction (6th& 7th floor) as their contribution in form of land area has not increased. Moreover, the complainants did not ask for share distribution of the increased construction though the initial plan approved in October 2012 had envisaged construction of G+ 7 structure. He further contended that as the project is not yet complete, no compensation was payable to the petitioners.

8. Issues for consideration

A. question of Jurisdiction :

1. Whether the project was covered under the Real Estate (Regulation and Development) Act 2016 ?;

2. Whether disputes between a developers/ promoters and the landowners can only be settled before a competent Civil Court or consumer court ?

3. Whether Registered Development Agreement binds both the parties to resolve their disputes only through Arbitration Proceeding under the Arbitration & Reconciliation Act 1996 ?

4. Whether Supplementary Agreement being unregistered has no legal value ?

As regards the first issue is concerned :

9. There is no dispute on the matter as the Respondent Company has registered the Project Tiruvantpuram city with the RERA, Bihar and hence the provisions of the Real Estate (Regulation and Development) Act 2016 and the Rules thereunder are applicable to the project. Accordingly, the promoter is required to obtain CC and OC before registering the apartments. Further,

interests of allottees are also involved as regards ensuring compliance with the specification of work mentioned in the Schedule B of the development agreement. Protection of the interests of the consumers/allottees is one the primary intent of the Real estate (Regulation and Development) act 2016 and therefore the project was covered under the RERA Act 2016.

Regarding issue no 2 above :

10. The Respondent company claimed that the RERA Act was not meant for settlement of the disputes between a developer/ promoter and the landowners for the simple reason that the landowner was not an Allottee or purchaser of the flat or Apartment. Since the relationship of a Developer and landowner was based on a Development Agreement, for any dispute, either of the parties can approach the competent court of law for violation of any term of the Development Agreement. Therefore, the Respondent Company claimed that redressal of their grievances, if any, can be sought for by the landowner before a competent Civil Court/ Consumer Court only and not before this Authority. However the Petitioners have claimed that the learned Authority has power to entertain the present matter as one of the prime objectives of the Real Estate (Regulation and Development) Act 2016 as enshrined in the preamble of the Act was to protect the interests of the consumers in the Real Estate Sector. Further, in Civil Appeal No-944 of 2016 – (SLA (Civil) No-1633 of 2016) **Banga Daniel Babu (Appellant) Versus M/s Sri Vasudeva Constructions & others**, the facts of which was similar to the present case, Honorable Supreme Court has held that “the Land Owner under the Development Agreement is a consumer under the Consumer Protection Act.”

11. The Petitioners have therefore contended that Real Estate (Regulation and Development) Act 2016 would be applicable in the instant case also, as they would be deemed to be consumers in the real estate sector. However, the Respondent Company claimed that this judgment came (July 2016) after passage of the RERA Act in March 2016 and as such this definition of

consumer was primarily meant for Consumer Protection Act. While it may be true but it is also a fact that by July 2016, none of the states had established even interim RERA, let alone regular Authorities. In most of the states, RERA has been established in 2017 only. It is therefore felt that since land-owner was also deemed to be a consumer, RERA Act 2016 and rules made thereunder would be fully applicable in the instant case.

Regarding issue no 3 above:

12. The Petitioners claimed that that so far the Arbitration and Conciliation Act 1996 for settlement of disputes as referred in clause 17 of the Agreement was concerned, it was in consonance with the provisions of section 88 of the RERA Act which states that " the provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force."

13. Further, there is a overriding section 89 in the RERA Act 2016, which reads that : "The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force."

14. It is therefore felt that since RERA Act 2016 is the latest law and has been passed by the Parliament for speedy dispute redressal of the real estate sector, it would prevail over the Arbitration and Conciliation Act 1996. As such, under Section 89 of RERA Act 2016, the Authority is fully competent to decide the claims between land-owner and Developer despite there being an arbitration clause in Development Agreement

15. While delivering the judgment of Aftab Singh v Emaar MGF Land Limited &Anr[Consumer Case No 701 of 2015*]*, NCDRC relied on Booz Allen Hamilton Inc v SBI Home Finance Ltd [(2011) 5 SCC 532], where the SC said that the Arbitral Tribunals are private forum chosen voluntarily by the parties to the dispute, to adjudicate their disputes in place of courts and tribunals which are public forum constituted under the laws of the country. The bench further

observed, “the disputes which are to be adjudicated and governed by statutory enactments, established for specific purpose to sub-serve a particular public policy, are not arbitrable.”

16. Therefore, the claim of the respondent that there is no provision that Authority will entertain any claim between the parties in spite of there being an Arbitration clause in the Development Agreement is not maintainable.

Regarding issue no 4 above

17. So far as the issue of unregistered supplementary agreement is concerned, the Petitioner stated that according to Section 5 of the Apartment Act, the Agreement between Petitioners and developer has been registered. In clause 5 of the aforesaid agreement, it has been mentioned that separate supplementary agreement will be made between the parties for determination of actual share of each party. Therefore, it is apparent that supplementary agreement is in continuation and part of the main agreement dated 25.08.2011, which is duly signed, and never been objected by the Respondent even after lapse of seven years. Therefore it is deemed to be accepted as per law. Moreover without the execution of supplementary Agreement, the Development agreement cannot be considered as complete because of the fact that in consideration of land, the share of land owner was not specifically mentioned in the Development Agreement. According to the section 49 of the Registration Act, such unregistered document can be used as an evidence of collateral purpose as provided in the proviso to section 49 of the Registration Act. Therefore the supplementary agreement dated 25.08.2011 was properly executed with actual stamp fees and therefore it can be considered as valid evidence.

18.. As all the questions raised by the respondent questioning the jurisdiction of the Authority were not found justified after being examined on the basis of various scales, this case now qualifies for disposal on the basis of its merits. Question of merits, to be decided, are as follows :

B. Whether the claim of Petitioners for taking over the possession of three flats along with parking space within a prescribed time frame was reasonable and whether complainants claim for compensation under clause 7.2 was valid and from which date, it was payable ?

19. The Petitioners have claimed possession of three flats, details of which have been mentioned at paragraph no 2, each of 1440 sq ft along with a parking space for each flat within a definite time-frame as more than eight years have passed against stipulated period of three years, since agreement was executed between them and the developer. They have also stated that it was prescribed in the agreement that the Petitioners will not have to pay anything to the developers in this respect at the time of possession.

20. The Complainants have also claimed compensation @ 8000/- (Rupees eight thousand only) P.M. per flat from September, 2015 till delivery of possession under the Clause No. 7.2 of the agreement, which states that in the event, the Developer fails to complete the constructions as per plan within the stipulated time frame, the owners shall be entitled to and the Developer shall be liable to pay to the land-owners compensation @8000/- only per flat per month for entire share of land-owners area if the same is unconstructed and not handed over The Compensation will be reduced in direct proportion to the Complainants share completed and handed over. It is admitted fact that the project is still ongoing and CC and OC has not yet been issued.

However, the respondent company has claimed that the initial sanction plan was only for Block nos A & D, and revised sanction was approved in July 2016 and hence, three years construction period was not yet over. A careful examination of the Development and supplementary agreement however revealed that the commitment of the developer to hand over three specific flats in different Blocks in the time-frame of two and half years with a grace period of six months was unambiguous and there were no conditions mentioned except force majure clause. The Respondent Company has not even claimed the shelter under force majure clause. Moreover, the Developer had at no point of time informed the petitioners that the initial

sanction plan was approved for two Blocks only. Even the copy of the sanctioned plan submitted to the court shows that the approved plan of 2012 was for all Blocks within the total plot area measuring 9978.297 sqmt owned by 31 land-owners. Thus the contention of the Respondent Company is illogical, untenable and therefore unacceptable.

21. Clause-7.2 of the Development agreement read with supplementary agreement executed on the same day stipulated delivery of specific flats in different blocks within a maximum period of three years inclusive of grace period from the date of sanctioned plan or hand over of the vacant possession of the land to the Developer. As the Complainants have claimed that the vacant possession of the land was handed over immediately after execution of agreements on 25th August 2011 and the plan was sanctioned on 30th October 2012, three years construction period would end 29th October 2015. Thus, developer was required to hand over possession of three specified flats along with a covered parking space for a 4-wheeler vehicle with each flat to each Petitioner after taking CC/OC of the project without any further delay. However the claim of compensation on account of delay in completion of the project was covered under section 18 of the Real Estate (Regulation and Development) Act 2016 and therefore, required to be adjudicated by the Adjudicating officer appointed under section 71 of the Act.

C. Whether claimant can claim their proportionate share in additional construction undertaken by the Promoter/Builder subsequent to the execution of the Development/Supplementary Agreement ?

22. The Plan/Map of the proposed building was not yet sanctioned at the time of execution of Development/Supplementary agreement on 25th August 2011. Clause 2 of the Development agreement stipulated that immediately after the execution of the Agreement, the Developer shall proceed expeditiously with the preparation of plans and drawings for the said building. Clause 3 of the agreement also prescribed that the Developer shall obtain consent/approval of the owners for the final plans of the said building. Clause 21 of the

Development agreement provided that if the multi-storied building structure will be constructed more than G+5, then there will be proportional distribution of additional construction between the landowner and the Developer.

23. The Petitioners have claimed that different sanctioned plans were given to different sources at different time. They stated that while respondent submitted the plan dated 30th October 2011 in Authority, they gave another plan dated 18th October 2011 to an allottee. However, the revised sanction plan was claimed to have been approved in July 2016, which was never given to them for their consent or approval. As it is the admitted position of the Respondent Company that the proposed building would be a G+7 structure and therefore, the petitioners have claimed that they were also entitled to proportionate share in the additional construction.

24. However, it is also a fact that the Petitioners didn't execute any other supplementary agreement for determining the exact share of the complainants in the additional construction in last seven years, though the initial plan approved in October 2012 itself envisaged construction of a G+7 structure in the project. Thus, we feel that there was a need for specificity as to entitlement of the Petitioners through another supplementary agreement, which was not done in the last seven years. As such, we are unable to determine or hypothesize on the share of the complainants in the additional construction. As the non-obstante clause of the Development agreement provided that the builder shall provide flats of super built up area of 2.25 times of land area of 2000 square feet i.e. (2.25 X 2000) 4500 sq ft to each of them along with a parking space for a 4-wheeler vehicle with each flat, their entitlement wouldn't increase or decrease depending upon the structure of the building. Hence we are unable to determine the claim of complainants for additional share in the additional construction of two more stories on the basis of clause 21 of the development agreement alone. The Complainants may approach the civil court or consumer court for their claim, if they so wish, on this count.

D. Damages and Compensation for mental torture and harassment

25. The Complainants have also claimed damages and compensation for mental torture and harassment caused to them by the Builder particularly for repeatedly and arbitrarily demanding money for 120 sqft extra super built up area for each flat and also for hardship being faced by them due to non-completion of flats and non-handing over the possession of the flats to them till date, even after lapse of seven years of execution of Development/ Supplementary agreement.

26. On the issue of compensation, the Complainants may, if they wish, file a complaint petition before the Adjudicating Officer, RERA, Bihar vide Section 31 read with Section 71 of the Real Estate (Regulation and Development) Act 2016 and under Rule 37 (1) of the Bihar Real Estate (Regulation and Development) Rules 2017.

E. Other Reliefs

27. The Petitioners have also prayed for implementation of the contract and direction to the Builder for construction of the building along with internal /external finishing in compliance with specifications prescribed in the Schedule B of the Development Agreement.They have further stated that the builder was demanding Rs 2.5 lakh as one time- maintenance charge though the CC and OC of the project has not yet been obtained by them. The Petitioners have therefore requested for direction to the promoter to obtain the CC and OC of the Project in a time bound period before demanding the maintenance charge from them. They have also stated that such charges should be made payable by them only when all other allottees were also paying them. The Petitioners have also requested for direction to Builder for complying with the provision of formation of association of allottees for the project.

28. It has already been made clear above that the project, being an ongoing project as on 1st May 2017, was covered under the RERA Act 2016 and

hence, are subject to the provisions of the Act and rules made thereunder. The Promoter has also registered the project with the Authority. Thus there was no need for the Petitioners to have any apprehensions on these counts as it is mandatory for the Promoter to fulfill all the commitments made to the consumers as regards the specifications, time-frame etc that have been committed to. Further it is the promoter's responsibility to obtain CC & OC before registering the flats under section 17 of the RERA Act 2016. The Promoter is also required to provide assistance in formation of association of allottees under section 11 (4) (e) of the Act.

Order

29. In view of the above, the Bench directs the developer to hand over possession of three specified flats along with a covered parking space for a 4-wheeler vehicle with each flat to each Petitioner after taking CC/OC of the project within sixty days of issue of this order, in lieu of land area offerred. The Petitioners will not have to pay anything to the developers in this respect at the time of possession, as stipulated in the supplementary agreement, except the demand of one-time maintenance charges raised by the Developer provided such charges are payable by all other allottees also.

We also direct the promoters to follow the provisions of the Real estate (Regulation and Development) Act 2016 and rules made thereunder meticulously and discharge their obligations prescribed under the Act.

30. So far as proportionate share on 6th and 7th floor of the project is concerned, the Complainants may approach the competent civil court or consumer court for their claim, if they so wish, as we are not able to decide.

31. As regards compensation prescribed under Section 18 of the Real Estate (Regulation & Development) Act, 2016 (compensation under Clause 7.2 of the

Development Agreement) and damages /compensation on account of mental torture is related, the complainants may file if they wish so, a separate application under Section 31 read with Section 71 of the RERA Act before the Adjudicating Officer of the Authority.

Sd

(R B Sinha)
Member

Sd

(Dr S K Sinha)
Member