

REAL ESTATE REGULATORY AUTHORITY, BIHAR

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

Case Nos.CC/145/2018

Ranjit Singh.....Complainant

Vs

M/s Balaji Nexgen Homes Pvt Ltd.....Respondent

Present: For the Complainant: In person

For the Respondent: Mr B.K. Sinha, Advocate

Ms Akansha, Advocate

05/03/2020

O R D E R

1. Mr Ranjit Singh, a resident of Mill Road, Nawada, Arrah-802301, Bhojpur has filed a complaint petition on 4th December 2018 under Section 31 of the Real Estate (Regulation and Development) Act 2016 against M/s Balajee Nexgen home Pvt Ltd for delivery of his share of flats in the project Sidheswar Palace in duly completed form along with damages of Rs 98,66,880/- on account of inordinate delay in completion of the Project.
2. In his petition, the Complainant has stated that as per development agreement executed with the developer on 09/05/2011, the project was to be completed within a period of three years with a grace period of six months from the date of approval of the map by Arrah Municipal Corporation. If construction was not completed within the stipulated period of three and half years, the developer was required to pay Rs 15,000/- per month to the land owner till the entire work is completed. Further, the developer was required to pay Rs 7.5 lakh at the time of execution of development agreement and Rs 2.52 lakh at the time of commencement of work to the land owner which was to be adjusted as the construction would progress. Further, the petitioner was to pay Rs 10,000/- per month to the land owner till a flat is handed over

to him. As per development agreement 42% of the developed area was to be given to the land owner and 58% was to be retained by the developer.

3. The complainant has stated that though the share of the land owner in the residential/commercial building was to be handed over by 08/11/2014, the project has not yet been completed even after lapse of more than four years. Accordingly, the complainant has demanded Rs 98,66,880/- from the developer on account of market rent of his share of commercial and residential accomodation.
4. The Complainant also claimed that the project was not yet registered with the Real Estate Regulatory Authority though the project is incomplete and ongoing.

Response of the Respondent Company:

5. In response to the notice issued by the Authority in December, 2018 requesting for their comments, the respondent company M/s Balaji Nexgen Homes Pvt Ltd did not furnish any reply. Accordingly, the respondent compay through their Directors Mr Kundan Kumar and Mr Rajeev Ranjan Singh were directed to be present on the date of hearing i.e. 15/03/2019.

Hearing

6. On the first date of hearing, the respondent company filed their show cause stating therein that they have constructed the building on the basis of registered development agreement executed with Kalawati Devi wife of Late Sidheshwar Singh on 5 kathas of land at Nawada, Arrah. They stated that on the basis of development agreement, the respondent company has got the plan sanctioned from Arrah Municipal Corporation vide Plan Case No.Arrah/VD/SR/B+G+5/Fire-308/0650/12-13 dated 14/12/2012 through their Architect Ms Nishi Jain. The respondent company stated that as per terms and conditions of development agreement, the building was to be completed within a period of three years with a grace period of six months from the date of approval of plan/map of the project. It was further provided that if the building is not completed as stipulated in the development

agreement, the developer will pay Rs 15,000/- as rent to the land owner. Further, the Respondent company claimed that they have paid Rs 10 lakh to the land owner which was to be adjusted in course of construction as the construction progressed. Hence, the allegation against the respondent was not justified. The respondent company further alleged that whenever they approached the land owner to adjust the amount of Rs 10 lakhs, they avoided it and they have filed this case just to avoid refund of the amount. The respondent company further claimed that the building has been completed as per agreement for sale before the commencement of the Act and as such was not required to register with the Authority under Section 3 of the Act. In course of hearing on 15.03.2019, the complaint was directed to give their dues to the Respondent while the respondent company was directed to register their ongoing project with the Authority.

7. On the next date of hearing (02.05.2019), the Bench again directed the complainant to file an affidavit regarding his claims and financial transactions with the promoter/builder whereas the respondent company was directed to submit completion/occupancy certificate from the competent authority within a fortnight. In pursuance thereto, the complainant filed a notarised declaration in which he claimed that though the promoter has started some work in his share of flats after filing of the complaint petition in December 2018, a lot of work like installation of transformer, lift, generator etc have not yet been done. He claimed that even window rods and glasses in rooms, taps, shower, commode etc in washrooms have not been installed. Outdoor finishing as well as internal finishing have not been done. He also gave year-wise details of Rs 10,43,500 received by him during 2012-18 and claimed that as per development agreement he should get additional amount of 5,76,500 from the developer. He lamented that inspite of directions of the Authority, the promoter has not yet applied for registration of his ongoing project with the Authority.
8. In its Petition, the Respondent Company gave details of Rs 952,662 paid by them to the complainant through two banks ICICI Bank and Bank of Baroda during 2011-2018 along with cash payments of Rs 477,850 during the same period. The respondent claimed that the complainant has filed his claims in

the Petition only to avoid refund of the security amount of Rs 10 lakh paid to him before the commencement of the construction work.

On the next date of hearing on 22nd June 2019, the Complainant was directed by the Bench to file an affidavit, his reply towards the claim of the respondent company that they have paid Rs 14,30,512 to the complainant. The Respondent company was also directed to file documentary evidence of having paid such amount to the complainant. They were also directed to get the project registered with the Authority without any further delay.

On the next date of hearing, the Complainant again filed his notarized statement stating that the project was still incomplete and that he had received Rs 10,43,500 only from the respondent company as against the Respondent Company's claim of payment of Rs 16,45,000. He categorically denied that he had received Rs 477,850 in cash from the builder during 2011-18. He said that he therefore owes only Rs 3,98,500 to the Respondent company, which he would be able to pay only when he sells his share of flats after the promoter gets the project registered with the Authority. Alternatively, the builder was free to adjust the amount against building work as per the development agreement. The Respondent Company was allowed to file the relevant documents by 6th August 2019. However, they did not file any documents till that date.

9. On 3rd September 2019, the Respondent Company filed a petition reiterating their earlier statement to the effect that they were not able to complete the entire work as the complainant didn't refund Rs 10,00,000 which was required to be adjusted during the course of construction of the Project, as per the development agreement. They did not file any documents to support their claim of payment and pointed out that the complainants had also not submitted any documents in support of their claim. They further claimed that the project was nearly complete. They also committed that they would be able to register their project in two months time as they were facing acute shortage of funds.
10. The Respondent Company has filed their application online for registration of the Project Siddheswar Palace with the Authority on 14th December 2019.

Issues for Consideration :

11. There are three issues for consideration of the Bench: Firstly whether the project Siddheswar Palace was an ongoing project as of 1.5.2017, i.e. the date of commencement of the RERA Act. Secondly whether there has been inordinate delay in the completion of the project leading to entitlement of payment of damages to the complainant as per the development agreement. Thirdly whether the complainant has refunded/adjusted the amount of Rs 10 lakhs given to him by the Respondent company at the time of commencement of the project.
12. As regards the first issue, though the Respondent Company claimed that the project was completed before commencement of the Act, the Complainant vehemently denied it, claiming that the Project was incomplete as the promoter has neither installed the lift nor transformer in the project. He claimed that even window rods and glasses in rooms, taps, shower, commode etc in washrooms have not been installed. Outdoor finishing as well as internal finishing has not been done. He also submitted photographs in support of his claim. The Respondent company also could not produce completion/occupancy certificate before the Bench. It was therefore established that the project was still an ongoing project as on 1.5.2017, the date on which the Act came into operation. Accordingly, the Respondent company was directed by the Bench to register their ongoing project with the Authority.
13. So far as 2nd issue was concerned, it is an admitted fact that the Developer as well as the complainant entered into a development agreement in May 2011 for development of Residential cum commercial multi-storied building on 5 kathas of land within a period three and half years from the date of approval of plan/Map by the Municipal Authority. The Complainant submitted a building plan P/NAWADA/PRN/B+G+4 dated 17.10.2011 sanctioned by an architect Sudhendu Jain approved by Arrah Municipal Corporation. Accordingly, he claimed that he was entitled to payment of Rs 10000 per month for three and half years and additional Rs 15000 per month thereafter till the date of handing over the possession. In its response, the Respondent

company has claimed that on the basis of Development agreement, the building plan was approved from Arrah Municipal Corporation vide plan case no Ara/VD/SR/B+G+5/FIRE-308/0650/12-3 dated 14.12.2012 through its certified architect Nishi Jain. Thus, it is confirmed that there has been inordinate delay in the completion of the project leading to entitlement of payment of damages to the complainant as per the development agreement.

14. As regards the third issue, the Respondent company has claimed that the Complainant didn't adjust/refund Rs 10 lakh, which was given to them by the respondent firm as security before commencement of the construction of the Project. Whereas, the complainant claimed that he was paid Rs 10,43,500 only from the respondent company as against his claim of Rs 16,45,000 whereas the respondent company claimed to have paid Rs 14,30,512 to the complainant. Both parties did not give any evidence/documents in support of their claims. It is however admitted by the complainant that he has received Rs 10,43,500 only from the respondent company. He has also accepted that he has not paid back Rs 10,00,000 to the Respondent Company during the course of construction of the building which was required to be done under the development agreement. Thus the Respondent company was entitled to interest at a reasonable rate on Rs 10 Lakh security deposit for the last eight years on account of non-refund/non-adjustment of the deposit in addition of refund of the security amount of Rs 10 lakh.

Order

15. The Bench orders that the Respondent company must complete the project, obtain the c/occupancy certificate from the competent authority and hand over the possession of the share of the complainant within sixty days of issue of this order. The Complainant is also directed to pay back the security deposit of Rs 10 lakh along with interest at the rate of MCLR of SBI plus two percent after adjusting the due amount payable to him against rent.
16. So far as compensation is concerned, the complainant may, if he wishes to do so, apply to the Adjudicating officer of the Real Estate Regulatory Authority

under section 31 read with section 71 of the Real estate (Regulation and Development) act 2016.

Sd
(S.K. Sinha)
Member

Sd
(R.B. Sinha)
Member