

**Real Estate Regulatory Authority (RERA), Bihar, Patna**

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

**Case Nos.CC/56/2018**

**Mrs Shanti Devi and Kumari Sheela.....Complainants**

**Vs**

**M/s Sri Krishna Constructions.....Respondent**

**Present**

**Complainants : In person**

**Mr Subhash Kumar ( Son)**

**Respondents : Mr R. K.Shrivastava, Advocate**

**10/07/2019**

**O R D E R**

1. Mrs Shanti Devi & Kumari Sheela, residents of Flat No.-102, A-Block, Shanti Apartment, DusadhiPakri, Near Matukdhari Apartment, Kankarbagh, Patna have filed a complaint petition under section 31 of the Real estate (Regulation and Development) Act 2016 before Real Estates Regulatory Authority against Mr Abhinandan Kumar Suman and Manindra Kumar Mishra, partners of M/s Sri Krishna Construction for not completing the obligations cast up on them as promoter in their real estate project “Shanti Apartments”.

**Case of the Complainants:**

2. The complainants in their complaint petition have stated that they were landowners and had entered into registered development agreement with the respondents on 19/06/2008 for construction of 4-storied “Shanti Apartment” to be completed within 28 months i.e. by

01/02/2011. They have also stated that map (Plan No.98/08) was sanctioned by the Patna Municipal Corporation (PMC) vide their letter No.564 dated 11/09/2008. The PMC had also prescribed certain conditions subject to which map had been sanctioned. The complainants stated that to ensure compliance with the conditions of PMC and the terms of development agreement, one flat of the builder's share i.e. Flat No.4/B was kept as security under land owner but this was fraudulently sold by the respondent. As per development agreement, the respondents were duty bound to hand over 11 flats with covered car parking space. They alleged that for A-Block land owners had given 7410 sq ft and for B-Block 3400 sq ft to the respondent for construction of Shanti Apartment and the remaining land measuring 1000 sq ft was kept intact with the complainants.

3. As per the development agreement, the respondents had 58% share while the land owners were to possess 42% share. The complainants stated that the respondent has to pay Rs 5,000/- per flat per month to the complainant and her nominee after the grace period was over on 01/05/2011 in addition to Rs 3,000/- per month as rent. However, the respondent stopped paying rent and not paid a single penny as yet for the delay in completing the apartment though the respondent have been time and again reminded.
4. The respondents have also not installed the lift, provided water connection to the water tanks and not demolished the fresh pillars on the roof of the building. They have also not obtained Completion/Occupancy Certificate from the competent authority and have gone on selling the incomplete flats. The complainants have stated that being a senior citizen disabled lady she approached the Bihar Human Rights Commission on whose instruction an FIR No.291/14 in Kankarbagh Thana and a case in the Civil Court, Patna was lodged via her nominee son which is for different purposes. Further a demand notice of Rs 50 lakhs jointly signed by the complainants' nominee and flat purchasers was sent to the

respondents for completing the apartment but that that was also not responded by the respondents.

**Relief Sought:**

5. The complainants have requested to direct the respondents to comply with the conditions prescribed by the PMC while sanctioning the map of the building and to furnish Completion/Occupancy Certificate from the competent authority and to hand over possession letter of 12 flats and 11 car parking to the complainants within three months. The respondents may also be directed to pay compensation at the rate agreed in the development agreement i.e. Rs 5,000/- per month per flat with effect from 01/05/2011 and house rent of Rs 3,000/- per month payable under the development agreement. They have also requested the Authority to direct the respondents to pay the amount received by them from selling the security flat no.405/B Block. As an interim measure, the complainants have requested the Authority to declare the project Shanti Apartments as incomplete and instantly necessary action be undertaken. They have also requested to put a ban on selling other flat no.106/B. The complainants have enclosed copy of the development agreement signed with the respondents, map sanctioning letter issued by the PMC, preliminary flat distribution between the land owners and the developer, revised flat distribution of second floor dated 15/06/2010, consent letter of builder of security flat No.4/B Block etc along with his petition.

**Response of the Respondent Company:**

6. In response to the notice issued by the Authority to the respondent for giving their reply on the complaint petition received by the Authority, the respondents have stated that the building in question was constructed only after building plan was sanctioned on 11/09/2008 under Section 27(i) of the Bihar Regional Development Authority Act, 1981 by the competent authority. They informed that a Title Suit No.5485/2014 has already been filed by the complainant

namely Shanti Devi which is pending before Sub-Judge II, Patna. The respondents have also stated that PS Case No.291/14 is also pending in the Court of Ist Class Judicial Magistrate, Patna on the same matter on which this complaint petition has been made.

7. They alleged that the complainant had filed false statement to the Authority and are liable to be punished under Section 340 IPC. The respondents claim that the respondents have already handed over 11 flats and 11 car parking. They have also stated that they have paid rent to the complainants and her nominee after the grace period of 01/05/2011 onward in addition to Rs 3,000/- up till handing over of the flats and the car parking space. They also stated that Flat No.405/B has already been sold by the respondent through registered deed prior to the receipt of the notice from the Authority. The respondent further stated that they were unable to procure Occupancy Certificate from the PMC because the complainants forcefully occupied the rear side of the plot and constructed temporary rooms and have given them on rent. The respondent claimed that unless those rooms were demolished, the competent authority wouldn't issue completion/occupancy certificates.

**Rejoinder by the Complainants:**

8. In their rejoinder the complainants have reiterated the statement made in their petition and have stated that the respondents have not followed the prescribed rules and regulations and the conditions imposed by the PMC. They have not yet obtained Completion/Occupancy Certificate from the PMC.

**Reply to the rejoinder of the complainants:**

9. In their rejoinder to the response of the complainants, Mr Rakesh Kumar Sinha, learned counsel of the respondent has filed a supplementary petition stating that the respondents were ready to install the lift in Shanti apartment and have executed an agreement on 05/11/2018 and paid Rs 50,000/- on 01/11/2018 and Rs

1,50,000/- on 05/11/2018 against installation of the lift at site and enclosed copy of receipts issued by M/s Momentum Elevators. He has also stated that the company has filed a notice of complain to the Municipal Commissioner, Patna for obtaining occupancy certificate. The respondents have also agreed to demolish the columns on roof which had been erected earlier. However, they complained that the complainants have forcefully made structure in the rear side of the building causing hindrance in obtaining the Completion Certificate from the competent authority. He has claimed that this can be verified in course of inspection of the site by the Authority. They have also agreed to provide connection of the water tank to the complainants's separate three water tanks on the roof the building as desired by the complainants.

### **Hearing:**

10. Hearings were held on 19/11/2018, 05/02/2019 and 05/04/2019. In course of hearing, the Bench directed the learned counsel for the respondent company to give fool proof evidence of installation of lift, fire-fighting equipment and transformer, like installation certificate of the supplier of the lift as well as transformer and videography of the entire set up.
11. Learned counsel of the respondent company was also directed to give access to the water tank built up by the developer to the apartment owners from the land owners' quota. The complainants were also directed to demolish all the structures in the set back area in the back side as per bye-laws.

### **Issues for Consideration**

12. There are following issues for consideration:
  1. Whether the Project was covered under the Real Estate (Regulation and Development) Act 2016;

2. Whether it was in the domain of the Authority to ensure compliance with the all conditions prescribed by the PMC at the time of sanction the building plan/map.
  3. Whether the obligations cast upon the promoter i.e. installation and commissioning of the lift, supply of water to all apartments, demolition of unauthorized structures, obtaining completion/occupancy certificate from the competent authority etc are the responsibility of the Authority.
  4. Whether Apartment owners/land-owners have to fulfill their obligations as well.
13. As regards the first issue, the promoter has not yet commissioned the lift and obtained the completion/occupancy certificates for the project. Hence the project would still be considered as ongoing project and hence would be covered under the Real Estate (Regulation and Development) Act 2016. As regards the second issue, it is not the responsibility of the Authority to ensure compliance with the prescribed conditions of the PMC. The Complainants have to approach PMC in this respect, if they so desire.
14. Third issue i.e. ensuring the compliance of the obligations of the promoters is one of the functions of the Authority prescribed under the Act and hence we direct the Respondent company to complete all remaining activities i.e. commissioning of the lift in a time-bound manner, restoring connection of water from the water tanks, obtaining completion/occupancy certificates from the competent authority, demolition of pillars from the roof-top of the building etc should be completed within three months. As regards fourth issues, Section 19 of the Act enjoins upon all consumers/allottees to fulfill their obligations timely. Hence, Land-owners are also directed to get the set back cleared of all unauthorized structures so that the promoter is able to obtain the completion/occupancy certificates timely.

**Order :**

15. We therefore order both parties- Promoter as well as land-owners to fulfill their obligations/responsibilities, as enumerated above, within three months of this order.

16. As regards compensation, the complainant may, if they so wish, approach the office of Adjudicating officer under section 31 read with section 71 of the Real Estate (Regulation and Development) Act 2016.

Sd  
(R.B. Sinha)  
Member

Sd  
(S.K. Sinha)  
Member