

**REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR**

**Complaint Case No. RERA/09/2018**

Before

**Bench of R B Sinha and Dr S K Sinha, Members of RERA, Bihar**

**Mr Vijay Kumar Sharma .....Complainant**

**Vs**

**M/s Kanishka Buildcon Pvt Ltd.....Respondent**

Present: For the Complainant :- Self  
Mr. Rajiv Nayan Singh, Adv  
For the Respondent :- Mr. Manoj Kumar, Adv

**01/04/2019**

**O R D E R**

1. Mr Vijay Kumar Sharma, a resident of Village-Mahur, PS –Haspura Dist.- Aurangabad, has filed a complaint under Section 31 of the Real Estate (Regulation & Development) Act, 2016 against M/s Kanishka Buildcon Pvt Ltd through their CMD Mr Praveen Kumar on 28/05/2018 for refund of the entire payment of Rs. 35,05,364 including Stamp/ registration fees made against booking of the Apartment in project “ **Vidyanand Maheshwari Complex**” near Saguna , Danapur, Patna, along with a compound interest @18% per annum. He has also claimed heavy compensation for facing untold miseries, mental agonies, harassment he has suffered due to inordinate delay in completion of the apartment.
2. In pursuance to the complaints received, a notice was issued on 04/06/ 2018 to the respondent company to submit their response to the complaint within thirty days. As respondent failed to respond, even after reminder, both the parties were directed to appear in person before the bench on 22/11/2018. However the Respondent Company submitted the response to the Authority on 15th January

2019. Thereafter, hearing was held on 11/02/2019 wherein Complainant Mr Vijay Kumar Sharma along with his counsel Mr. Rajiv Nayan Singh and Mr. Manoj Kumar, Ln. counsel for the respondent company were present. Next date of hearing was fixed on 18/02/2019 with the direction to respondent to get the registration done with the Authority and to submit a copy of application for Completion certificate submitted by them to the competent authority.

### **Complaint of the Petitioner**

3. In his petition, the Complainant has stated that he had booked a 1025 sqft (super-built up ) flat No. 305 on 3rd floor in Block D of the Project “ Vidyand Maheshwari Complex” near Saguna , Danapur, Patna for a total consideration amount of Rs. 36,86,250.00 (Rs 34,06,250 for the flat no 305 and Rs 2,80, 000 for car parking, electricity charges, Generator, fire, lift etc) only and entered into agreement for sale on 14/09/2013 after making payment of Rs 6,68,217 (Rupees Six lakhs sixty eight thousand two hundred seventeen only). He has enclosed a copy of the receipt with the complaint. In total, he has paid Rs. 34,35,899/ within two months from the date of execution of Agreement for sale (i.e. by November 2013) along with Rs 69,464 for stamp and registration fees after taking a home loan from the State Bank of India.
4. As per agreement for sale, the Apartment was required to be completed by December 2014 with a grace period of six months.
5. He has further stated that the Respondent company had stopped ongoing construction work in December 2013 while a lot of work was still pending. To know the status of the project when he approached the respondent, no satisfactory answer was given. Therefore complainant stopped further payment which was very small and primarily meant for car parking, electricity charges, Generator, fire, lift etc.
6. The Complainant has further stated that he received a letter on 27/07/2015 to get the flat registered after clearing the dues. He again received letters dated 05/08/2015 and 14/08/2015 in which the Respondent Company had claimed that in case flat is not registered within a week, the booking of the flat in question

would be cancelled. Thereafter in the first week of October when complainant visited the site, he found that entire building was incomplete and inhabitable. He then sent a letter to Respondent that before transferring the flat in question, it should be completed and be made habitable. Thereafter he stated that the respondent promised him to get the flat completed in all respect and obtain completion/occupancy Certificate before registering it. On his promise, Complainant further paid him Rs One lakh on 05/03/2016 under the hope that he would get fully complete flat. Thus, the Complainant had paid 93.21 percent of the total consideration amount by then, though the proportionate work had not been done till then.

7. In his complaint, the complainant has expressed his apprehension that the Respondents company had perhaps misappropriated the funds whereas he was under the burden of repaying SBI housing loan also. He has therefore requested for refund of the booking amount with compound interest and heavy compensation. The Petitioner has also submitted the copies of the cheques issued by him and receipts given by the respondent company.

**Response of the Respondent Company:**

8. The Respondent Company did not give any response to the notice along with a copy of the complaint sent by the Authority on 4<sup>th</sup> June 2018 to them for their response /observations. On the first day of hearing on 22<sup>nd</sup> November 2018, Ln Counsel of the Respondent Company requested for a copy of the Complaint filed by the Complainant, though both notices- notice for the response of the Respondent Company sent on 4<sup>th</sup> June 2018 and Notice for hearing on 11<sup>th</sup> October 2018– were sent at the same address of the Respondent Company by speed post.

9. In its written response, the Respondent Company through its CMD Mr Praveen Kumar stated on 11<sup>th</sup> December 2018 that in view of the clause 21 of the Agreement for Sale, the complainant was not at liberty to go for remedy to any Forum other than for Arbitration. The Respondent Company further claimed that

the Real Estate Regulatory Authority came in force only in 2017 after Bihar Real estate (Regulation and Development) Rules 2017 was notified on 28<sup>th</sup> April 2017. They claimed that section 12 and 19 of the Real Estate (Regulation and Development) Act, 2016 was not applicable in this case as it has no retrospective effect. He has further added that the complainant was a defaulter and he has still to pay his dues and in case of clearance of all dues, the flat in question which was ready, could be registered in the name of the Complainant. He has also dismissed the claim of the complainant for interest and compensation and stated that demand for refund and payment of interest was illegal as the Complainant had failed to perform his part of responsibilities in the agreement.

### **Hearing**

10. Hearings were held on 22<sup>nd</sup> November 2018, 17<sup>th</sup> December 2018, 15<sup>th</sup> January 2019, 11<sup>th</sup> February 2019 and 18<sup>th</sup> February 2019. In course of hearing, the complainant was represented by his counsel Mr Rajiv Nayan Singh, Advocate while the Respondent Company was represented by the learned counsel Mr. Manoj Kumar.
11. In course of hearing, the Learned counsel of the complainant reiterated his stand that he had submitted more than 90 percent of the cost of the Apartment within two months from the date of execution of Agreement for sale (i.e. by November 2013) along with Rs 69,464 for stamp and registration fees after taking a home loan from the State Bank of India but the promoter had not given the possession of the Apartment even after five years after obtaining the completion occupancy certificate from the competent authority. He claimed that the building was still incomplete and therefore, the promoter has not yet been able to obtain completion/occupancy certificate for the project. Learned counsel of the Respondent Company challenged the jurisdiction of RERA, stating that the project was completed earlier than 2017 as registration of many apartments in the building was done prior to the commencement of the Act. When the Bench enquired specifically whether the promoter had the completion/occupancy certificate for the project, Learned counsel for the Respondent stated that there was no such practice prevalent in the state of

Bihar. The Bench directed the Respondent company to get the project registered with the Authority repeatedly but the Respondent Company did not submit the application for registration of the Project with the Authority nor give any conclusive proof of completion of the Project.

In the course of hearing on 15<sup>th</sup> January 2019, the Learned Counsel of the Respondent Company submitted a list of 13 sale deeds out of 40 apartments in D block to claim that the project had been completed. Out of these 13 sale deeds, two were done in 2015, six in 2016 and the remaining five in 2017.

On 18<sup>th</sup> February 2019, Learned Counsel of the Respondent Company submitted a photocopy of the undated certificate of completion issued by one Satyendra Prasad Singh, Licensed Engineer to the Respondent Company instead of the competent Municipal Authority.

### **Issues for consideration**

12. Although both Complainant and the Respondent Company agreed on the issue that complainant booked the flat in question and the amount, mode and time of payments, there were disputes on

- i. Jurisdiction of Real Estate Regulatory Authority
- ii. Inordinate delay in completion of the Project

**Question of jurisdiction:** The primary issue before the Bench is whether the complaint of the petitioner regarding project **Vidyanand Maheshwari Complex** falls within the jurisdiction of the Real Estate Regulatory Authority established under the Real Estate (Regulation and Development) Act 2016. Section 3 (1) first proviso provides that projects that are ongoing on the date of the commencement of the Act and for which the completion certificate has not been issued, are required to be registered with the Authority within three months of the date of commencement of the Act. All provisions of the Act came into force on 1<sup>st</sup> May 2017. Hence all ongoing projects as on 01.05.2017 were required to be registered by 31<sup>st</sup> July 2017. The Respondent company has neither claimed nor

submitted the completion/occupancy certificate of the Project from the competent authority till date to the Bench or Authority. The Respondent's claim that the agreement for sale was signed on 1<sup>st</sup> October 2013 and several flats had been registered prior to 2017 and hence the Authority had no jurisdiction over the project, has no foundation as the project was not yet complete as on 1<sup>st</sup> May 2017 and completion/occupation certificate for the project has not yet been issued by the competent authority. From the sale deeds submitted by the respondent Company, it was found that three of them were done well after 1<sup>st</sup> May 2017, the date of commencement of the Act. Further two of them were done in 2015 itself. The photocopy of the undated certificate of completion issued by Licensed Engineer was addressed to the Respondent Company rather than to the Municipal authority, as required under the Bihar building Byelaws 2014. In the Certificate, the Licensed Engineer requested the Promoter Company to issue occupancy certificate. It was not clear from the certificate as to how the promoter would issue an occupancy certificate to itself. Further, the Licensed Engineer did not give any exact date of completion but stated that the project had been completed by the date April 2017. If the project was completed in April 2017, it was not clear as to how 10 sale deeds were signed prior to April 2017. Hence, it is clear that the sale deed done with a consumer did not prove that the project has been completed

It is therefore established beyond any reasonable doubt that the complaint of the Petitioner falls within the jurisdiction of the Authority and the aforesaid project is required to be registered with the Authority and the provisions of the Act are applicable to the project.

As regards the claim of the Respondent that there was a provision of Arbitration under para 21 of the agreement for sale and hence the complainant ought to have gone for arbitration if they had any dispute about the provisions of the agreement, it is stated that despite the existence of an arbitration agreement between the parties, RERA has the jurisdiction to adjudicate disputes that could be the subject of the arbitration agreement also. The reasoning has two

foundations. Firstly, the Parliament was very much aware of all laws enacted by it as RERA was enacted after the Arbitration and Conciliation Act, 1996 (ACA), RERA would prevail over ACA, particularly when a party to any dispute has opted for it. Secondly, RERA is applicable to the Real estate Sector only and is sector – specific law and should prevail over any general law like ACA that is applicable to agreements related to all industries. Thirdly, the Parliament has specifically provided a non obstante clause in section 89 of RERA. This states that RERA shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force. Thus, the provisions of RERA override section 8 of ACA, which mandates a judicial authority to refer to arbitration disputes that are subject to an arbitration agreement.

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.”

**b. Inordinate Delay in Completion** :Clause 11 of the agreement for sale specifies the date of completion of the said Project in the month of December 2014.while the Annexure I attached with the reply submitted by the Respondent reveals that out of 40 flats only around one and half dozen sale registries are done, the earliest registry done was on dated 12/05/2015. Remaining all registration have been done in the year 2016 and 2017. It is conspicuous that all the registries done are after the date of completion i.e. December 2014 as mentioned in the claimants Agreement for Sale. Therefore statement of Complainant seems to be correct that till he paid the last installment of Rs One

lakh i.e. 93.21 percent of estimated cost of the apartment, the apartment was not proportionately complete. Moreover in absence of submission of the Completion and Occupancy certificate, the statement of the Complainant seems to have upper edge that the flat in question was not complete in real terms and was inhabitable

13. The Petitioner was not required to wait indefinitely for completion of the project. Further, the Respondent Company has not given any cogent and justifiable reasons for inordinate delay in the project. Moreover, whenever complainants approached the developer, they were not given any correct information. Therefore, the Respondent company is required to be given deterrent punishment to prevent them from behaving in such irresponsible manner and exploiting the consumers.

### **Order**

14. We therefore order the Respondent Company to refund of the entire payment of Rs. 34,35,899 and Rs. 69,465/ paid towards Stamp/ registration fees made against booking of the Apartment in project “ Vidyanand Maheshwari Complex” near Saguna , Danapur, Patna, along with interest at the MCLR of State Bank of India plus two percent from the date of deposit to the date of refund.

Sd  
**(R. B. Sinha)**  
**Member**

Sd  
**(Dr S. K. Sinha)**  
**Member**