

REAL ESTATE REGULATORY AUTHORITY, BIHAR
IN THE COURT OF SPECIAL PRESIDING OFFICER, RERA, BIHAR
RERA/CC/345/2023

Sanjay Kumar Mohanka **Complainant**

Vs

UtkarshSfatik Ltd. & Others **Respondents**

Project: THE RESIDENCY-CITY CENTRE, PATNA

Present: **For the Complainant: Mr. Punit Kumar, Advocate**
 For the Respondent: Mr. Rakesh Kr. Samrendra, Advocate

11.11.2025

ORDER

This complaint case has been filed by the complainant to direct the respondents to properly distribute the parking space as per clause 34.4 of the Agreement, to pay compensation and cost of litigation of Rs.25,000/- as well as mental harassment caused to him due to delay made by the respondents in completion of the project and also any other relief or reliefs for which he is entitled.

2. The facts of the case, in short, are that the complainant bought a flat and got the possession with the Real Estate Company, namely, UtkarshSfatik Ltd., under an Agreement for Sale dated 25.10.2019 to purchase a flat with regard to Apartment No.(CCPRAO501) A-501, Tower A, Type-1, having carpet area of 1233 square feet and balcony having carpet area of 153 square feet along with a utility room at 5th floor in the Residency-City Centre Project which is situated at Patna, with one car parking (Annexure-1). As per the agreement, the total consideration amount was fixed at Rs.1,55,51,938/-, including car parking space of the aforementioned flat, against which the complainant paid the total consideration amount, which was accepted by the developer.

The complainant got the possession of the flat consisting of three bedrooms flat from the developer and the developer agreed to register the same in favour of the complainant. Further, the complainant was assured by the developer that the rest distribution of the parking will be done as per clause

34.4 of the Agreement within six months and accordingly it will be handed over, but till date it could not be happened due to ill motive of the respondents. It is further stated that the parking was not allotted as per the Agreement, rather it has been allotted arbitrarily, against which the complainant sent e-mail on 15.11.2022 mentioning about policy/method of distribution of parking, against which the respondent replied on 16.11.2022 but the respondent intentionally ignored complainant's query about the basis of allotment of parking. Further, the complainant sent e-mail on 29.12.2022 and 13.02.2023 enquiring about the basis of allotment of parking (Annexure 2 Series). When the complainant got no response after the lapse of given time, then he along with other allottees of the project sent legal notice dated 15.03.2023 raising their issues, against which the respondents replied on 06.04.2023 by denying all allegations. In response to the same, the complainant with other allottees also replied on 20.04.2023 in respect of which they also replied on 11.05.2023 (Annexure 3 series). In response to the legal notice by the respondent dated 11.05.2023, the respondent denied receipt of any e-mail i.e. Annexure 2 series. It is the ill intention of the respondents and hence this case is filed.

3. In reply to the complainant's case, the respondent-UtkarshSfatik Ltd. filed a counter affidavit, in which the respondent has not denied regarding payment of consideration amount of Rs.1,55,51,938/-, but he has denied only concerning sale of car parking as no amount was charged separately. It is further stated that the parking space of vehicle was done in accordance with clause 34.4 of the Agreement for Sale. The car parking space(s) was granted on a "First Come First Serve" as per Agreement for Sale. The parking space was granted in order in which application forms of various allottees were received and processed by the employees/authorized personnel of the respondent-promoter without any prejudice or bias to any of the allottees. The promoter/respondent was granted Certificate for Provisional Occupancy No.13673 on 28.09.2022 by the Patna Municipal Corporation, which duly communicated to all allottees of the project, including the complainant, on 28.09.2022 by e-mail (Annexure C and D). The promoter/respondent sent notice of possession on 29.09.2022 to all allottees, including the complainant, stating that it would be the promoter respondent's endeavor to complete the handing over of apartment possession by October, 2022 seeking co-operation

of all the allottees. By that notice of possession, the respondent/promoter also informed all the allottees irrespective of the fact whether any allottee takes physical possession of the apartment or not, 01.12.2022 will be treated as deemed date of possession in terms of the Agreement for Sale (Annexure E).

Upon receipt of the notice of possession, the complainant duly accepted the possession of the apartment in the project, including car parking space No.RPOPO5, vide Possession acceptance letter dated 11.10.2022 without any objection or protest. Thus, any ill motive on the part of the respondent/promoter as alleged by the complainant is denied as baseless, false and untrue.

It is further stated that the respondent/promoter replied appropriately to all the queries sent by the complainant in a timely manner barring the email dated 13.02.2023 which was sent as a response to the e-mail from the respondent/promoter intimating the complainant about the amount of stamp duty and registry fee to be paid for registration of the Deed of Conveyance pertaining to the flat allotted to the complainant. Hence, the e-mail dated 13.02.2023 sent by the complainant was neither through proper channel nor was it sent through the concerned department of the respondent/promoter.

It is further stated in the counter affidavit that the complainant was fully aware of the common exit when he was allotted the concerned flat as it was vividly shown in the brochure and if the complainant had any grievance over this issue, he should have raised the matter before the representative of the respondent/promoter at the time of allotment of the apartment or at least prior to the registration of the above referred Agreement for Sale. The building plan of the Project was approved by the competent authority i.e., Patna Municipal Corporation on 04.04.2019 and RERA Registration Certificate for the project on 13.09.2019 (Annexures G, H, I). It is completely legitimate building plan within the knowledge of the complainant about common exist at the time of allotment and the subsequent registration of the Agreement for Sale duly signed by the complainant, renders this prayer of the complainant completely invalid and it is an unfair tactics to harass the promoter/respondent and hence it needs to be dismissed.

The allegation regarding noise pollution is denied in its entirety. The promoter/respondent has also been complying with the directions of the Bihar State Pollution Control Board under paragraph 5 of the Emission Consent Order and submitting AAQ (Noise) report to the Bihar State Pollution Control Board on yearly basis. Copies of the Discharge Consent Order, Emission Consent Order and latest compliance report dated 21.03.2023 and consultant's report dated 25.06.2016 and 27.11.2021 have been annexed as Annexure J colly.

So far as formation of Association of Allottees is concerned, it is presently on hold. So far allegation regarding money paid by the complainant for the purpose of registration of the Agreement for Sale have been diverted towards any other cause is denied as incorrect and defamatory as the stamp duty and registry fees is paid directly in the designated account number given by the office of the Registrar meant for collection of stamp duty and/or registration fees.

4. A rejoinder on behalf of the complainant to the counter affidavit dated 25.01.2024 has been filed stating therein that the respondent failed to give any specific reason for allotment of parking space. Annexure-A enclosed by the respondents discloses that the complainant applied for the flat on 25.09.2019 whereas in paragraph 7 it has been stated by the respondents that the same was applied on 01.10.2019, which is self-contradictory and has failed to explain the "First Come First Serve Basis". Annexure B to the counter affidavit discloses the number of parking holders are 79 whereas total flats in the project is 127 whereas the said list of parking annexed is improper and not in terms of clause 34.4 of the Agreement. The list of parking filed by the respondent in serial no.11 to 18 which has been shown, are not proper and the complainant only wants to adopt allotment on the basis of "First Come First Serve" among all the eight allottees if the rest 127 allottees are ignored. It is the duty of the promoter to provide free entry and exit zone so that the residents of the said project may not fall in hazardous situation. Till date, the Association of Allottees is not formed. Under the above circumstances, the complainant's reliefs may be allowed.

FINDING

5. The complainant's main grievance is regarding allotment of car parking space. It is an admitted fact that the Agreement for Sale took place on 25.10.2019 for the consideration amount of Rs.1,55,51,938/- for a flat with regard to Apartment No.(CCPRAO501) A-501, Tower A, Type-1, having carpet area of 1233 square feet and balcony having carpet area of 153 square feet along with a utility room at 5th floor in the Residency City Centre Project, including one car parking space. It is also an admitted fact that the total consideration amount was paid by the buyer (complainant) and the buyer has taken possession of the aforesaid flat and car parking space. It is also admitted fact that the car parking area was to be distributed among the allottees as per clause 34.4 of the Agreement for Sale ("First Come First Serve").

6. As per the complainant, the respondents have not followed the terms and conditions of clause 34.4 of the Agreement for Sale. In support of his case, the complainant filed Annexure 2 series to show that he sent several letters for enquiring about the basis of allotment of parking, against which the respondents failed to reply. After getting no response, a legal notice was sent by the complainant on 15.03.2023, against which reply dated 06.04.2023 was received by which the respondents denied the allegations. Against the said reply, the complainant along with other allottees sent the reply dated 20.04.2023 to the respondents and it was replied on 11.05.2023 (Annexure 3). As per the complainant, these annexures show ill-intention of the respondents.

7. On the other hand, on the aforesaid facts, the respondents filed Annexure-E to show that they sent notice of possession on 29.09.2022 to all the allottees, including the complainant. Upon receipt of the notice of possession, the complainant duly accepted the possession of Apartment No.CCPRAO501 in the Project, including Car Parking Space No.RPOPO5, vide possession acceptance letter dated 11.10.2022 without any objection or protest (as per Annexure-F). In support of their contention, the respondents filed Annexure A to show that the complainant filed his application on 29.09.2019 (which is given in Form along with the applicant's signature). Annexure B is the list of allotment of car parking area, following the contents of clause 34.4 of the Agreement for Sale.

8. Learned counsel for the complainant argued that Annexure A, which is of respondents' documents and it shows that the application form No. is 20 at first page whereas his name is given in serial No.5, which is contradictory and this document is false and created and cannot be relied on.

9. Learned counsel for the respondents explained that serial No.20 is number of issuing the 'Form' and not filing of the 'Form'. His form was submitted on the date on which he wished i.e., 29.09.2019 as it has been mentioned by the complainant with his signature and as such, the argument of the complainant is not justified.

10. During argument, the learned counsel for the complainant argued that at the time of receiving the acceptance letter, he did not know about the actual position of the car parking area, some of them are covered area, some are not covered area and some are small area in which even small car cannot be kept and they are not in accordance with the norms of car parking space. It is also argued that the numbering of car parking area was not done before the acceptance of the flat and car parking area and due to ill intention, better car parking area was given to some of his close persons. On this point, learned counsel for the respondents argued that all the car parking areas were allotted on one specific date i.e., on 15.06.2022, as per Annexure B. As per Annexure B, 79 persons were allotted car parking area as on that date, a large number of gathering was there which created hazard and it was allotted in a hurry.

11. Considering the argument of both sides, it appears that at the time of allotment, it was not disclosed by the respondents that the car parking area of which number is covered or not covered, what was the area of the covered area and what process was adopted for numbering the car parking area. There is no provision in the agreement that the car parking area should be of different types e.g., covered, not covered and also small and big size car parking area. In such situation, it appears that the car parking area was not allotted as per law of natural justice.

12. Considering Annexure B, the complainant's name is in the list at serial No.5 and he appears to get car parking area which comes in serial No.5 best to better car parking area i.e., covered roof and area of the surface.

13. There is no doubt that both the parties are bound with the terms and conditions mentioned in clause 34.4 of the Agreement for Sale. But those facts which have not been mentioned in the Agreement regarding covered, not covered area, small or big area, marking of numbers of car parking space should be as per the Natural Justice. The terms and conditions of clause 34.4 of the Agreement have not been followed considering the Natural Justice. The complainant's name is at the serial No.5 (Annexure-B), so he appears to be entitled for getting best to better at fifth number covered and larger area of car parking space.

14. Other facts are not related to the main relief no.1 and as such, no comment is required.

15. So far the relief of compensation is concerned, it is within the scope of consideration by the Adjudicating Officer of the RERA and as such, the complainant, if he so wishes, may approach the Adjudicating Officer as per law prescribed.

16. Considering the aforesaid facts and circumstances of the case, the respondents are directed to allot the car parking space as per clause 34.4 of the Agreement for Sale following Natural Justice e.g., covered and large space of car parking is to be given priority on best to better at 5th number to the complainant. This order is to be complied within 60 (sixty) days.

17. The case is accordingly disposed of.

Sd/-

(Vinod Kumar Tiwari)
Special Presiding Officer,
RERA, Bihar