

REAL ESTATE REGULATORY AUTHORITY, BIHAR

Telephone Bhavan, Patel Nagar, Patna-800023.

Before the Bench of Mrs. Nupur Banerjee, Member

Complaint Case Nos. CC/811/2019

Prakash Chandra PrasadComplainant

Vs

M/s Niwas Construction &ors.Respondent

Project: City Enclave

Present: For Complainants: Mr. V.V.Rana, Advocate
For Respondent: None

30 /06/2022

INTERIM ORDER

The complainant Prakash Chandra Prasad, a resident of Village Bidyadhar, P.O. & P.S. Khagaria, District Khagaria, Bihar has filed a complaint petition against the respondent firm M/s Niwas Construction through its authorized partner Amit Kumar Poddar to give the share of the complainant as per the agreement and also to pay compensation with interest due to the delay caused in handing over the flats as stated in paragraph-4 of the petition.

In short, the case of the complainant is that the complainant along with other land owners entered into a registered development agreement with respondent company on 16.11.2011 to develop a residential piece of land measuring 8.5 kathas (11570 sq.ft.) out of which petitioner land is of 1 katha 5 dhoor 14 dhoorki and as per agreement the complainant claims 2602.34 sq.ft. super built up area and also 520.34 sq.ft. on 6th floor and 52 sq.ft. on the ground floor, which is built up against the terms of the agreement. It is further stated that as per terms of the agreement, the petitioner has handed over the possession of the land. The project had to be completed in 2 ½ years plus 6-months grace period but the said time has lapsed. It is further stated that the developer built up G+6 building instead of G+5 and they have also constructed 1000 sq.ft. super built up area in the parking area which has already been sold out. It is further stated that as per the agreement he was to receive 2602.34 sq.ft. super built up area upto 5th floor but he received only 1865 sq.ft. super built up area.

The further case of the complainant is that when the agreement was not fulfilled, the complainant made several communications and sent legal notice to the developer on 16.02.2019 but all are in vein. After the legal notice they issued two possession certificates dated 11.04.2019 and 14.05.2019 for part of his share which is 1865 sq.ft. It is further stated that they have installed only one lift instead of two lifts and fire system has not been provided. They have also not issued the common distribution letter. Hence, this complaint.

A notice dated 28.02.2020 was issued to the respondent company under Section 31 of the RERA Act, 2016 and Rule 36 of the RERA Rules 2017 to file their reply, but the respondent company has not filed any reply. Thereafter, on 21.10.2020 again notice was sent to the respondent company to appear on 18.11.2020 and file reply with a copy to the complainant to appear on that date, but neither the respondent has chosen to appear nor file any reply

On 13.01.2021 hearing was taken up but none appeared on behalf of either sides. On 23.02.2021 the complainant was present but none has appeared on behalf of the respondent, On the submission of the complainant the Bench directed the complainant to provide all the details related to the respondent company and also imposed a cost of Rs.20,000/- upon them for not appearing before the Bench with a further direction to the M.D. to be present on the next date of hearing. On 04.03.2021 the complainant was present with his learned counsel but again none has appeared on behalf of the respondent. The Bench directed to serve a fresh notice on the M.D. On the submission that the respondent is continuously selling the flats the Bench directed the complainant to give it in writing on affidavit so that interim order could be passed. On 17.03.2021 again the complainant was present but none turned up on behalf of the respondent. Again a cost of Rs.10,000/- was levied on the respondent with a direction to issue fresh notice. On 20.12.2021 learned counsel for the complainant was present but again none appeared on behalf of the respondent company. The Bench directed to issue notice to the respondent as a last chance and observed that if they failed to appear on the next date, ex-parte order would be passed. On 11.04.2022 again learned counsel for the complainant was present and the respondent was absent. On the submission of the complainant the Bench again directed to issue fresh notice and if they failed to appear on the next date, ex-parte order would be passed. On 23.05.2022 the complainant was present and made his submissions. Again none was turned up on behalf of the respondent.

A supplementary affidavit has been filed on behalf of the complainant giving the details of the property sold by the respondent through the sister organization in which a prayer has been made to restrain the respondent for further registry of the property and direct the registry office to hold further registry of the properties.

Learned counsel for the complainant submitted that the complainant is the land owner and a registered agreement was executed with the respondent in the year 2011 and in 2014 it was supposed to be completed. It is further submitted that out of 3174 sq.ft. of his share (2602.34 sq.ft. super built up area + 520.34 sq.ft. on 6th floor + 52 sq.ft. on the ground floor) they have given only 1865 sq.ft., so there are short of 1309 sq.ft. He further submitted that the letter of share distribution has not been provided, there are three parking in his favour, parking has been given to the other land owner. He further submitted that the project had to be completed in 2 ½ years plus 1-year grace period. They have installed only one lift instead of two lifts and the fires system has not been installed as yet. He further submitted that the respondent be directed to pay compensation for the delay caused in completing the project.

Perused the record of case. A time petition with vakalatnama has been filed by the respondent on 07-02-2022 stating therein that both the parties are negating to settle this case outside of court but during the course of hearing after that no one appeared on the behalf of respondent.

During the last hearing, the complainant has submitted that he is the land owner and the registered agreement has been made in 2011. Learned counsel further submitted that out of 3174 sq.ft. of his share the respondent has given only 1869 sq ft. So, there are short of 1309 sq.ft. He further submitted that there will be three parking in his favour. The common distribution letter has not been provided. Parking has been given to the other land owner. So, his claim is for short area, short parking and letter of share distribution has not been provided. He further submitted that the project had to be completed in 2 ½ years plus 1-year grace period. He further submitted that they have installed only one lift instead of two lift and fire system has not been provided.

The Bench observes that as per development agreement, there are all together 7 land owners in which complainant is also one, hence, after the perusal of the development agreement, it is not clear that in whose favor what shares has been distributed in the lieu of land provided, therefore, the submissions of complainant that in total share falls in his favor is 2602.34 sq.ft. out of which he received 1865 sq.ft super built area only needs to be established, hence, Bench directs complainant to place on record share distribution taken place between the land owners and builder to ascertain the shares falls in the part of complainant.

The Bench also notes the submissions of complainant regarding the construction of extra 6th floor but observes that no documents has been placed on record from which it can be ascertain that extra floor has been constructed in contrary to the development agreement and sanctioned plan approved by the competent authority, hence, Bench directs complainant to placed on record supporting documents to established the same.

List this matter again on 25.8.2022.

Let **issue fresh notice** to both the parties and send a copy of this order to both the parties. The Bench also directs respondent to submit their response on the above observations before the next date of hearing.

Sd/-

Nupur Banerjee
Member