

REAL ESTATE REGULATORY AUTHORITY, BIHAR
IN THE COURT OF ADJUDICATING OFFICER, RERA, BIHAR
RERA/CC/151/2023

Shamim Ahmad and Others

..... Complainants

Vs

**M/s Kamini Homes through its Partner
Imran Khan**

.....Respondent

Project: AHMAD RESIDENCY

Present: For the Complainants: Mr. Syed Shahid Imam, Advocate
For the Respondent: Mr. Amit Singh, Advocate

16.09.2025

ORDER

Earlier this matter was taken up on 03.09.2025 when Mr. Syed Shahid Imam, learned counsel had appeared for the complainants and Mr. Amit Singh, learned counsel had appeared for the respondent. After hearing the learned counsel for both the parties, order was reserved.

2. The complainant has filed this case under various Sections of the Real Estate (Regulation and Development) Act, 2016 and the Bihar Real Estate (Regulation and Development) Rules, 2017 against the respondent M/s Kamini Homes through its partner Imran Khan.

3. The main relief is (i) for compensation/penalty against the delay in construction, with interest, (ii) to compensate the land owners against the wooden fitted windows in place of aluminium glazing with tinted glass fitted windows, (iii) to compensate the land owners for the floor tiles purchased by them for Flat Nos.302 and 303 in their share and (iv) to compensate the land owners further rental to be given to the land owners for the rental house in execution of MOU dated 25.02.2014 by the parties and also interest on them.

4. In short, the complainant's case is that there is a land of (1) Syed Nasim Ahmad (2) Bilquis Jahan (3) Ghazanfar Ahmad and (4) Talat Parween measuring an area of 4 Kathas, 18 Dhurs equivalent to 6677 Sq.ft. i.e., 15.33 decimals situated at Mohalla-Chak Damariya, Survey Mauza-Chitkohra, Pargana-Phulwari, Survey P.S.-Gardanibagh, District- Patna, bearing Plot

Nos.1388 and 1389, Khata Nos. 8 and 4, Tauzi No.5118/8494 under Revenue Thana No.17, Zone-3, Government Land Valuation List Serial No.134, within the jurisdiction of Sub-Registry Office and Sadar Registry Office, Patna.

The respondent-M/s Kamini Homes through its partner Imran Khan approached the land owners and requested them to get their land developed in the form of residential apartment on conversion basis. Thereafter, a registered Development Agreement was executed mutually by the land owners and the respondent-builder on 18.01.2016 (Annexure-1).

Some important salient features with regard to the terms and conditions agreed mutually by the parties are as follows :

- (a) The land owners and the builder-Company will share their total built-up area in the ratio of 50% each.
- (b) The stipulated time period for completion of construction and hand over the owner share is three years with six months grace period; total three years six months from the date of registry i.e., 08.01.2016 and which was to be completed on 07.07.2019 (paragraph 8 and paragraph 14).
- (c) The respondent undertook in Clause 25(a) that if he fails to hand over possession of 50% land owners' share in three and a half years, then after that i.e., from 17.07.2019, he will pay a monthly rent of the landlord share as per market rate of 50% share i.e., 8 flats of land owners' share consolidated area of 50% and other tenements, including common area and car parking etc. Since the Development Agreement came to an end on 17.07.2019 and they handed over the land owners' share in December, 2021 and that too in incomplete construction, the builders are liable to pay the market rate rent for eight flats from 17.07.2019 till December, 2021; total 29 months i.e., at the lowest rent eight flats monthly rent is not less than Rs.80,000/- i.e., total Rs.23,20,000/- (Rupees Twenty three lacs twenty thousand only).
- (d) It was further undertaken by the builder in the MOU dated 25.02.2014 that the respondent-builder will pay a sum of Rs.11,000/- per month to the land owners as rental. The builder (respondent) did not pay regular rental and a heavy sum is pending till date.

- (e) The further case of the complainant is that the Development Agreement was signed only for 4 Kathas 18 Dhurs i.e., 6677 Sq.ft. land with the builder and 12 Dhurs vacant land was kept exclusively by the land owners over which the land owners have right, title and interest.
- (f) As per Schedule II of the Agreement, the respondent-builder undertook the specifications of super deluxe residential flats applicable for the construction of the building (structure, finishing, fittings and fixtures).
- (g) The Development Agreement was registered on 18.01.2016 and the land owners (complainants) handed over the physical possession of the property to the builder-M/s Kamini Homes (respondent) for construction and moved into rental flats in October, 2017, after the approval of map by the P.M.C. As per the said MOU dated 25.02.2014, the builder (respondent) was supposed to pay Rs.21,00,000/- as non-refundable money, out of which he paid Rs.1,00,000/- at the time of signing of MOU and undertook to pay Rs.9,50,000/- at the time of registration of the Development Agreement and further Rs.10,50,000/- after approval of map. The builder (respondent) paid only Rs.3,00,000/- till the registration of the Development Agreement and did not give Rs.18,00,000/- till date.
- (h) The builder dismantled the house of the land owners and started the construction work. The respondent applied for the approval of map before the Patna Municipal Corporation and got it approved on 07.01.2017 as Map Plan Chitkohra/PRN/G+4/111/16 after around one year in the name of land owners and which was to be completed on or before 17.07.2019. The P.M.C. authorities gave permission to build 16 flats and other tenements act, including 1369.82 squaremetres equivalent to 14744.61 Sq.ft. over the land in Development Agreement (Annexure-3).
- (i) The respondent-builder also applied for getting registration certificate of the Project "Ahmad Residency" (on-going project) and got registration certificate dated 10.09.2018, bearing Project Registration No.BRERAP00127-1/209/R-161/2018, under Section 5 of the RERA Rules. This approval was granted commencing from 10.09.2018 and ending on 07.04.2020 (Annexure-3).
- (j) The respondent-builder did not complete the project within the time granted by the RERA. Thereafter, the respondent-builder applied for the extension of time for completion of the project. The RERA again granted the respondent-

builder one year's time under Section 6 commencing from 08.04.2020 to 07.04.2021.

- (k) After starting the project, the builder started booking 50% share i.e., eight flats to various allottees and extracting money out of them and did not construct the land owner share of eight flats as similar to their allottees; resulting therefore the land owners raised objection but the respondents replied them in a very harsh way. Lastly, the land owners purchased their floor tiles and sanitary fittings and finishing windows on their own cost of Rs.10,00,000/- and got Flat Nos.302 and 303 completed themselves. The finishing and floor tile works were done by the landlords themselves on their own cost, which is in clear breach of the terms and it must be compensated by the builders (Annexure 6). After 07.04.2021 which extension was granted by the RERA, Bihar, the builders still did not complete construction of north-eastern boundary wall of the project and further finishing are left unattended in the land owners share.
- (l) The builders sold his share flat and extracted money about six crore rupees but have no interest in completing the land owners share and some common amenities as stated in paragraph 25(b) of the Development Agreement. Due to non-completion of construction of eastern boundary wall, the whole building is structurally unsafe and is often being easily stormed by the anti-social elements, as per paragraph 25(b).
- (m) As per Schedule II of the registered Development Agreement, the builder is bound to abide by the specification which is part of the agreement, but the builder violated the terms and instead of aluminium glazing with tinted glasses, they fixed ordinary wooden windows with inferior quality, which is just to save the money; as a result he spent Rs.2,00,000/- and fixed windows in Flat Nos.302 and 303. The violation of the terms of the agreement was made by the developer without the consent of the land owners.

5. In reply, the respondent filed a written statement stating therein that the complaint petition is completely false, fabricated and has been filed by suppressing material facts. The developers was granted RERA certificate, vide No.BRERAP00127-1/209/R-161/2018, and the same was extended under Section 6, vide order dated 29.09.2020, till 07.04.2021. Further, the RERA vide O.O. No.108 dated 13.12.2021 extended the completion date by nine

months i.e., till 06.01.2022. The developer has completed the project in question as per the Development Agreement and subsequently sanctioned plan within the parameters prescribed and permitted provisions and the completion certificate from the competent authority has been filed before the RERA and also uploaded on RERA website on 22.06.2023 (Monitor RERA) (Annexure 1).

The complainants have admitted that they have received the possession of their flats in December, 2021 whereas the process had begun on or from August, 2021 itself, which is evident from the letters annexed hereunto marked as Annexure 2 series. As such, there is no delay in construction and hence or for any demand of compensation on ground of delay is baseless and fit to be outrightly rejected.

So far wooden fitted windows are concerned, it is an open secret that wood is at least three times costlier than aluminium and hence no developer in his right senses will opt for wood instead of aluminium. It was at the instance of the complainants that wooden windows were first installed in their share and then to conform infirmity of the building that the developers got wooden windows installed in the whole building. Even though the complainant is making it a ground for complaint, this is in consonance with the notes at paragraph 16 of Schedule II of the Development Agreement which squarely covers such variations in interest of uniformity and beauty of the building.

The money receipts, paid in lieu of rent, paid till March, 2021 is annexed hereunto marked as Annexure 3 and is ample and sufficient prove of the false and fabricated allegations of the complainant aimed at harassing the developers and suppress the main issues of confrontation.

The complainants themselves are wrong-doers and hence to cover up their misdeeds they have filed this complaint. The complainants have illegally encroached upon the roof area by constructing barriers on the roof area, which is the common property of all the resident owners. Several complaints have been lodged against them and are being annexed hereunto marked as Annexure 4 series which clearly demonstrates their disregard for the law of the land and their intention to disobey the rules, regulations and law as set down and it is fit to be rejected.

6. In reply to the W.S. (rejoinder), a counter reply has been filed on behalf of the complainant, stating therein that the counter reply filed by the respondent is a bundle of lies and contrary to the terms and conditions of the registered Development Agreement. The respondent has failed to abide by this tenure and delayed the construction for a long time. The respondent handed over the land owners area in December, 2021 in incomplete state. They have given possession without performing the facts mentioned in agreement deed at paragraph 25A. The respondent has sent different types of completion certificate to the land owners in the pendency of this case which are false and fabricated and cannot be relied upon.

The respondent himself admitted in his reply vide paragraph 3 that he has uploaded the completion certificate on RERA website on 22.06.2023 while as per the Development Agreement, he was to complete the project and hand over possession on or before 17.07.2019. Hence, the respondent is bound to abide by the terms of the completion as per paragraph 25 A and pay the landlords compensation as already agreed.

Paragraph 6 of the counter affidavit filed by the respondent is false and baseless. The respondent was to construct the building and move the materials only and strictly as agreed in the Development Agreement. Any deviation from the terms mentioned therein is not acceptable and the respondents are duty bound to pay the compensation for aluminium panel windows. The respondent has not kept his words and they stopped payment of rent as per the MOU dated 25.02.2014, which comes around Rs.18,00,000/- and which is more fully described in paragraph 5 of the complaint petition. The respondents have handed over half finished Flat Nos.302 and 303 and as such, they are also liable to pay the land owners Rs.18,00,000/- with interest as per agreed terms of MOU dated 25.02.2014.

The complainants have not occupied any roof area but they have equal right to use the roof and have not constructed any barrier etc., as alleged in the reply. The complainants are entitled for all the compensations as sought for.

7. Now, the following issues have been framed to be determined:

- (i) Whether the complainants' case is maintainable in the eye of law or on facts or not?
- (ii) Whether the complainants are liable to get relief(s), as sought for ?

Issue No.(i)

8. After perusal of complaint petition and reply of the respondent, it appears that the complainants and the respondent entered into an agreement executed on 18.01.2016 (Annexure 1). The land owners and the builder-Company have equal share i.e., 50% each. As per agreement, the completion of construction work was to be complete within three years with six months grace period i.e., it was to be completed on or before 17.07.2019 (as per paragraphs 8 and 14 of Annexure 1).

9. The respondent has not denied such facts; rather he has submitted that he completed the construction work in extended period, vide RERA O.O. No.108 dated 13.12.2021, by 06.01.2022. This fact itself crystal clears that the completion of construction was done in extended period and not within the stipulated period as per agreement. The extended period was given an opportunity to the respondent to complete the work and it does not mean that the complainants have no right to get compensation. Delay in construction work may be compensated as per agreement and as per law prescribed.

As per complainants, they have received the concerned flats in December, 2021 whereas as per respondent (paragraph 4 of the reply) he has started allotting flats in August, 2021 (as per Annexure 2 series).

10. After perusal of Annexures filed by the respondent, it appears that the keys of Flat Nos.302 and 303 were received on 16.12.2021 and as such, the evidence of the respondent itself clears that the keys of the flats were received on 16.12.2021 and as such, the statement of the complainants appears to be true with regard to receiving the keys of Flat Nos.302 and 303.

11. Another objection of the respondent is that the wooden windows were first installed in their share and to conform infirmity of the building, the developer got wooden windows installed in the whole building but for uniformity, aluminium windows were installed as per paragraph 16 of Schedule II of the Agreement. Schedule II itself says that "all specifications,

sizes and layout etc. are subject to such variation, addition, alteration and modification as decided by the developers/land owner/architects/society or by competent authority". The respondent has not brought either pleading or evidence that such type of alteration or variation was made by consent of either co-sharer or any other concerned person. It does not matter which is more costly either wood or aluminium as it was done without consent of the party. Considering these facts, it appears that alteration was made without consent of either complainants or any concerned person. In such a situation, the respondent appears to be liable for this changing/alteration.

12. According to the complainants, the builders have to pay a sum of Rs.11,000/- per month to the land owner as rental for the land owners as the landlord moved to rental flat and gave possession of the land to the builder for construction till the builder hands over completely constructed land owner share, as per MOU dated 25.02.2014.

13. The respondent in paragraph 7 of his reply has stated that the money receipts paid in lieu of rent paid till March, 2021 are annexed as Annexure 3 and are ample and sufficient proof of the false and fabricated allegation of the complainant.

14. In the oral argument, learned counsel for the respondent argued that he is not bound by the MOU dated 25.02.2024 as it is not a registered document and it has no legal value in the eye of law.

15. After perusal of Annexure 3 series filed by the respondent, it appears that the rent receipts are of the months from November, 2016 to December, 2021. These rent receipts appear to prove that the respondent followed MOU dated 25.02.2014 to some extent as it was binding upon him.

16. Now question arises whether his payment as per MOU was actually made or not. There is no signature of either complainant or on his behalf any other person and also there is no signature even either of respondent or on his behalf any other person on all rent receipts. These rent receipts are not admissible documents for receiving the rent as per MOU, but it proves that he wants to say that he was bound with the terms and conditions of the MOU dated 25.02.2014.

17. Considering these facts, it is clear that as per these documents, he admits the fact that the MOU dated 25.02.2014 is binding and he has to

pay. As per MOU, the respondent has to pay Rs.11,000/- per month from the date of possession. Neither of the sides has pleaded the date of actual possession. The registered agreement document is of 18.01.2016 and the rent receipt filed by the respondent is from September, 2016, which appears to show that the possession of the land was taken by the respondent on the date of execution of agreement i.e., on 18.01.2016. So the respondent is liable to pay rent from at least February, 2016 till the complainants got share in August, 2021.

18. Considering the pleadings of both sides and perusal of the documents of both sides and argument advanced, it is crystal clear that the complainants' case is maintainable to get compensation in the eye of law and on facts, both and as such, it is decided in the favour of the complainants and against the respondent.

Issue No.(ii)

19. The complainants have sought relief for compensation per month to be paid against the delay in construction with interest by virtue of agreed terms by and between the parties in the development agreement dated 18.01.2016 which accounts for not less than 29 months till December, 2021.

20. As per pleadings, agreement and discussions made above in Issue No.(i), it appears that the project was to be completed on or before 17.07.2019 and was to be handed over to the complainants, but the flat was handed over in December, 2021. So in such a situation, the complainants have to get rent as the complainants had demanded only for 29 months i.e., Rs.23,20,296/- (Twenty three lacs twenty thousand and two hundred ninety six only) which appears to be genuine. The respondent is directed to pay the above amount.

21. So far as relief no.3 is concerned, the complainants have not proved that they spent Rs.10,00,000/- for finishing as per agreement.

22. As discussed in Issue No.(i), so far as the compensation regarding wooden fitted windows in place of aluminium glazing with tinted glass fitted windows is concerned, the respondent has to pay expenditure made by the complainants with regard to aluminium window etc. The complainants have demanded Rs.5,00,000/- on different amount of wooden fitted windows in place of aluminium fitted windows and for the same, they have produced

receipts of purchase of the aluminium products, so the respondent has to pay Rs.5,00,000/- (Five lacs). The respondent is directed to pay the above amount.

23. So far as compensation regarding agreed terms in MOU dated 25.02.2014 is concerned, as discussed above in Issue No.(i), the respondent is also liable to pay accordingly from 18.01.2016 at the rate of Rs.11,000/- per month. The respondent is directed to pay the same.

24. The respondent is also liable to pay Rs.50,000/- (Fifty thousand only) for mental harassment and legal expenditure. Hence, the respondent is also directed to pay the above amount.

25. Accordingly, this case is disposed of with a direction to the respondent to pay the above amount within two months of this order and if he fails to do so, these amounts will be recovered as law prescribed.

Sd/-

(Vinod Kumar Tiwari)
Adjudicating Officer
RERA, Bihar