

REAL ESTATE REGULATORY AUTHORITY, BIHAR

Before the Single Bench of Mrs. Nupur Banerjee

Complaint Case No.CC/1002/2020

Raj Kumar SinghComplainant

Vs

M/s Nesh India Infrastructure Pvt. Ltd.....Respondent

Project: Tiruanantpuram City

Present: For Complainant: Mr. M.K. Singh, Advocate

For Respondent : Mr. Raushan, Advocate

INTERIM ORDER

27-07-2022

This matter was last heard on 20-06-2022.

This complaint has been filed seeking relief to direct the respondent to hand over the due share in the project as per the Development Agreement.

The Case of the complainant is that complainant had entered into Development Agreement dated 06-03-2012 with the respondent company M/s Nesh India Infrastructure Pvt. Ltd for the construction of multi storied building upon his land of 41 decimal. He further submitted that as per the agreement, the building has to be completed within 2 years and the complainant's share of 48% should be handed over by the respondent but respondent has not handed over his shares of 48% of total built up area till date along with parking space. Hence, this complaint.

The complainant has placed on record Development Agreement dated 06-03-2012.

Perused the record of the case. Respondent has filed its counter affidavit on 25-11-2021, stating therein that complaint is not maintainable because dispute relating to the share allocation pursuant to development agreement amply falls within the jurisdiction of principal court of original civil jurisdiction. It has been further submitted that pursuant to the development agreement dated 06-03-2012 executed between the parties, the possession of flats of complainant's shares has been handed over to him and complainant has sold major of share of his flats to third parties as per

clause 1.5 of the aforesaid agreement and these facts have not been brought on record.

The respondent has placed on record Supplementary Agreement dated 16-03-2013.

On 14-07-2022, respondent has filed their written submissions stating therein that complainant concealed the fact that a supplementary agreement dated 16/03/2013 was executed between him and the respondent by which 13 flats were allocated in his favor which was handed over to him and the respondent have brought the supplementary affidavit dated 16/03/2013 on record by way of counter affidavit. It has been further submitted that complainant after taking possession of 13 flats and selling most of the flats, filed the present case with a malafide intention and trying to confuse the court that his share has not been handed over which is totally false. It has also further submitted that the flat area ratio remains the same even after construction of the building till 10 th floor and the complainant after accepting the same has taken possession of 13 flats out of which he has further sold several flats to third parties.

During the course of hearing on 13-12-2021, learned counsel of the complainant has submitted that the respondent has not yet filed his reply. He further stated that as per development agreement, the land owner was to get 48% share but the same has not yet been demarcated by the respondent and the earlier approved map has not been revised. In the development agreement it was mentioned that 48% of the total built up area would be the land owner's share.

Learned counsel of the respondent has submitted that they have filed supplementary petition. He further stated that already 13 flats have been handed over to the land owner as per development agreement.

The Bench observes that authority has jurisdiction to entertain the complainant under section 31 of the RERA Act, 2016 for any dispute arising between the land owner and promoter in respect of their shares of flat which has been not handed over by the promoter to landowner as per the development agreement. The Bench also observes that as per Bihar Real Estate Regulatory Authority (General) Regulations, 2021 Section- 6 (3) which reads as follow:-

"In cases where there is a development agreement or such like arrangement between the promoter and the

landowner/s, unless otherwise mentioned in the agreement, the landowner would be treated as an allottee under the Act as he is getting apartments in lieu of land . In all such cases the promoters of the project would be responsible for fulfilling all obligations under the RERA Act and Rules made there under.”

In light of above observation, the issue pertaining to jurisdiction is found to be within the ambit of Authority.

After the perusal of material placed on record and submissions made, the Bench observes that as averred by the respondent in their submissions that possession of 13 flats has been handed over to complainant as per the Supplementary Agreement dated 16-03-2013 and also complainant has sold most of his shares but it appears that no possession letter issued in favor of complainant or any sale deed showing complainant is selling the allotted shares has been brought on record which substantiate the averments of the respondent.

In the light of above observations, the Bench directs respondent to address the Bench on the above pointed issues with supporting documents. Let the matter be kept for hearing again on 17-08-2022.

Inform both the parties accordingly.

Sd/-

Nupur Banerjee
Member