

REAL ESTATE REGULATORY AUTHORITY, BIHAR**Before the Single Bench of Mrs. Nupur Banerjee, Member****Case No. RERA /CC/1016/2021****Prabhawati Devi**Complainant

Vs

M/s Dream Heaven Pvt. Ltd.Respondent**Project: Apna Basera****09/05/2024****ORDER**

This matter was last heard on 29.01.2024 when the complainant's Husband Harendra Singh was present and the respondent's Advocate Mr. Hitendra Singh was also present. The matter was fixed for orders, however, due to preoccupation of the Bench in other matters, order could not be pronounced on the date fixed.

2. The complainant submits that she booked a Duplex flat in the project Apna Basera on 02.03.2014, the total cost of which was Rs. 31,00,125/-. The complainant submitted that out of total consideration amount, the complainant paid Rs. 30,00,000/- and again she paid Rs. 3,00,000/- to the respondent company. Thereafter, the respondent has refunded Rs. 2,40,000/-. The complainant spent money on finishing work. The respondent company informed the complainant that the Duplex would be handed over in 1.5 years from the date of the agreement. It has been further submitted that in the meanwhile, the land was registered in the name of the complainant and the cost of registry was borne by the complainant herself. It has further been alleged that the work is incomplete and upon contacting the respondent company, the respondent company is only asking for payment of the rest of the amount but no work is being done by them on the site.

3. The complainant submits that the flat has not been handed over. She has put her hard-earned money to complete some work. Out of deposited amount some money has been refunded by the respondent. Still, the complainant has not got possession of the flat.

4. The learned counsel for the Respondent submits that this case is not maintainable in RERA, Bihar because the title dispute is pending before the civil court. He submits that this project is not registered with RERA. He further submits that the title suit was filed before the Act came into force. The respondent submits that the project is of the year 2012. Within time the respondent has completed 80% of work.

5. The complainant submits that a Suo motu case has already been initiated against the respondent. The complainant states that on 12.02.2014 the respondent executed registered sale deed of land in her favor and the cost of executing sale deed was borne by her. However, after undertaking some work

of construction at the project site, the respondent abandoned the project leaving the work pending. She submitted that upon contacting the respondent and enquiring about the completion of the project, respondent used to ask for payment of additional amount. It has been further submitted by the complainant that a legal notice has been received by her from the landowner and upon receipt of the same when she enquired, she came to know that the Director of the respondent company has fraudulently registered the land in her favor as he was not authorized to execute the registered sale deed of land. Hence, the present complaint has been filed seeking refund of the amount paid along with interest or to hand over the duplex booked with all the amenities. The complainant has placed on record the money receipts duly issued and acknowledged by the respondent along with deed of agreement for sale and sale deed.

6. The respondent has filed the petition raising objection on the maintainability of the present complainant. It has been submitted that the present complaint is not legally maintainable and the complainant has no right to file this complaint before the Authority as she was aware that a civil suit is already pending. It has also been submitted that the Authority has no jurisdiction to entertain the complaint in case of unregistered project. Further it has been submitted that a Title Suit no. 552/2017 is filed by the landowner in the court of learned Sub-Judge-1, Arah at Bhojpur against the respondent, where this complainant is also a party as respondent and hence the matter is not maintainable.

7. The complainant states that the respondent has not registered the project, though the same falls under the planning area. It has been further submitted that due to non-discharge of obligation by the respondent, as per the agreement, the landowner has approached the court. On 08.11.2022, the complainant had filed the petition stating therein that pendency of the title suit before the competent civil court does not bar the complainant to approach the Authority in view of the provisions of the Section 79 of the RERA Act, 2016.

8. The complainant also states that she has spent Rs. 5.50 lakh in interior work against which the promoter has returned Rs. 2.42 lakh. Registry has been done and mutation has also been done. The sale deed has been done on 27.10.2016. The document has been registered as Deed No. 11457. The respondent has stated that the said land owner sent a legal notice to the respondent on 07.02.2017 for the purposes of threatening and creating dispute with this respondent.

9. The Bench takes the notes of submission of both the parties and peruses the record.

10. The Authority observes that the complainant booked a Duplex flat in the project Apna Basera on 02.03.2014, the cost of which was Rs. 31,00,125/- On 12.02.2014 the respondent executed registered agreement for sale of land in her favor. The sale deed has been registered on 27.10.2016. The document has been registered as Deed No. 11457. Mutation has also been done. The work is incomplete till date. A Title Suit no. 552/2017 is filed by the landowner in the

court of learned Sub-Judge-1, Arah at Bhojpur against the respondent. The complainant also spent Rs. 5.50 lakh in interior work against which the promoter has returned Rs. 2.42 lakh. This project is not registered with RERA though the same falls under the planning area. A Suo motu case has already been initiated against the respondent. The present complaint has been filed seeking refund of the amount paid along with interest or to hand over the duplex booked with all the amenities. The complainant has placed on record the money receipts duly issued and acknowledged by the respondent along with deed of agreement for sale and sale deed. The copies of the money receipts placed by the complainant shows a total of amount of Rs. 29,75,000/-.

The Respondent submits that this case is not maintainable in RERA, Bihar because this project is not registered with RERA and because the title dispute is pending before the civil court and has been filed before the Act came into force.

An Interim Order has already been passed by the double bench of the Authority settling the issue on the point of maintainability of this case.

The Authority notes on this issue stating that in case of M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of U.P. & Ors. [2022] (1) RCR (Civil) 357, where the Hon'ble Supreme Court has observed that the Act is not retrospective in nature, rather it is retroactive before it affects the existing rights of the persons mentioned in the Act like promoter, allottee etc. The intent of legislature was to include all ongoing projects which commenced prior to the commencement of the Act.

The Authority also observes that the project was incomplete at the time of commencement of the Real Estate (Regulation and Development) Act, 2016. Therefore, this project will be considered as an ongoing project and is liable to be registered as per 1st proviso of Section 3 of the Act. The respondent should have registered the project within 3 months and as they failed to do so, a Suo motu proceeding for violation of section 3 of the Act, bearing case No. SM/3555/2019, has already been initiated against the promoter.

The pendency of the title suit before the competent civil court does not bar anybody to approach RERA Authority in view of the provisions of the section 79 of the Act. The Authority takes note of the title suit filed by the landowner, and observes that the Act provides that the promoter would compensate the allottees for any defect in title. If due to any defect in title the promoter is not able to give possession of Duplex flat, which they are under obligation to provide as per the agreement for sale, they have to refund the principal and interest on deposit to the allottee. Hence, the matter is maintainable.

11. In the light of the above observations and also taking into consideration the submissions made on behalf of the parties and going through the materials available on record including agreement for sale dated 12.02.2014 and the absolute sale deed dated 27.10.2016, as well as the discussions made above, the Bench hereby directs the respondent to refund the principal amount of Rs. 29,75,000/- to the complainant, along with interest within sixty days of

issue of this Order. The rate of interest payable by the promoter shall be applicable for three years plus 2% interest above the MCLR rates of the State Bank of India from the date on which the amount becomes due till the date of payment.

The Bench also directs the respondent to refund the remaining amount spent by the complainant in doing interior work of the flat.

The Authority directs the respondent to register the project immediately.

12. The complainant is at liberty to press other claims which are in the nature of compensation before the Adjudicating Officer, as per the provisions of the RERA Act, 2016.

13. With the aforesaid observations and directions, this case is disposed of.

Sd/-
(Nupur Banerjee)
Member