

REAL ESTATE REGULATORY AUTHORITY, BIHAR
Before the Single Bench of Mrs. Nupur Banerjee, Member
Case No. RERA /CC/439/2022

Mrs. Babita Kumari & Ors.**Complainant**

Vs

M/s Ashirvad Engicon Pvt. Ltd.**Respondent**

Project: IOB Galaxy

01/08/2024

ORDER

This matter was last heard on 07.05.2024 when the complainant's Advocate Mr. Rohit Kumar Sharma and the respondent's Advocate Mr. Ishiyaque Hussain were present. The matter was fixed for orders, however, due to pre-occupation of the Bench in other matters, order could not be pronounced on the date fixed.

2. The learned counsel for the complainants submits that the complainants are the landowner in the project IOB Galaxy. They filed this case for distribution of their respective proportionate share corresponding to their father's share in the super built area in the above project. They further submitted that a case for distribution of share of the said property was filed before the L.R.D.C., Danapur, Patna vide Case No. 09/2021-22, which was disposed of on 23.05.2022 with a direction to move before the competent court i.e. RERA. The project land is coparcener property of joint Hindu family of the complainants. The complainant no. 1 approached the Director of the respondent but he did not pay any heed to her request. The respondent no. 1 and 2 i.e. the builder entered into development agreement on 02.09.2014 with other respondents without knowledge of these complainants. The respondents are not ready to allot the share of the complainants. The respondents without knowledge of the complainants took their father in the registration office, Patna to get the agreement for development of the property registered and executed the agreement for share distribution whereas their father is a sick person and suffering from various ailments. She further submitted that the respondents are not ready to allot the share of the complainants, hence they filed this case.

3. There is a dispute between both the parties over the share in the project and the complainants are demanding their share in the completed project but the respondents are not ready to allot their share.

4. The learned counsel for the complainants submits that there are four complainants in this case who are landowners. The respondent no. 1 is the company and the respondent no.2 is the Chief Managing Director. He submits that the complainants have filed this case for distribution of their respective proportionate share corresponding to their father's share in the super built up area

in the above project. The respondent no. 3, 4 and 5 are family members and the respondent no.9 is cousin brother. They have also sold out several flats and shops in the meantime of construction of building. However, the building is not fully constructed.

5. Learned counsel for the respondent submits that dispute is between the Gotias which is civil in nature. It is a registered project. He also submits that there was a development agreement between the landowner and the promoter. The respondents have not made the complainants as a party in the share distribution. He submits that the agreement was made between the landowners and the company. Share distribution has been made showing the shares of the builders and the shares of all the landowners together. The development agreement was signed between the respondent developers and five members of landowners. But actually there are three landowners and the other two are the sons of one of the landowners. Out of three landowners, one landowner is Shambhu Nath Sharma, who has been made a party to this case. The complainants are the daughters of Shambhu Nath Sharma. The learned counsel for the respondents submits that the share distribution has been made and the respondent has already given 40% share to the landowner but the shares as mentioned are not specifically distributed among the landowner. The complainants request for the specific allocation of shares of Shambhu Nath Sharma, so that they get their shares from their father.

6. The learned counsel for the complainants submits that the complainants are the daughters of one of the landowners. On 07.05.2024 share distribution agreement has been submitted by the learned counsel for the promoter where number of shops and number of flats have been mentioned in para 7 of the counter affidavit filed by the respondent.

7. The complainants are the own daughter of one of the landowner namely Shambhu Nath Sharma son of late Bhavnath Singh who along with his Gotia had entered into a development agreement to develop their land on 03.06.2014 vide deed No. 9154 on conversion basis on the ratio of 60:40, the developers 60% and landlord 40%. The respondent's counsel states that the complainants have actual dispute with her father as well as her Gotias and not with the respondent company. The complainants have filed the present complaint petition for getting their share from her father Shambhu Nath Sharma which is not maintainable before this Court and thereafter they may be advised to move before the competent court for redressal of their grievances. Just after development agreement, a share distribution deed was prepared on 03.09.2014 in between the builder respondent and the landlord wherein in the last page it can be seen, all the landlords including Shri Shambhu Nath Sharma have voluntarily put their respective signatures. The respondent company have already divided share of the landlord and builder and now it is upon the landlord to make share distribution of their 40% share.

8. The details of the flat which falls in the share of landlord has been categorized as follows:-

Share of Shambhu Nath Sharma:

Shop-

Ground floor Ist Floor 2nd Floor

| Shop & Area | Shop & Area | Shop & Area | Flat nos |
|-------------|-------------|-------------|----------------|
| G17-452 | F1-532 | S1-21-452 | 403, 503, 603, |
| G21-373 | F2-452 | S2-22-532 | 703, 704, 803, |
| G22-535 | F3-452 | S3-23-373 | 804, 903, 904, |
| | | S-15-452 | 1003, 1004 |

Share of Sunil Kumar Singh:

Shop-

Ground floor Ist Floor 2nd Floor

| Shop & Area | Shop & Area | Shop & Area | Flat nos |
|-------------|-------------|-------------|----------------|
| G1-532 | F20-373 | S1-532 | 402, 502, 602, |
| G2-452 | F21-373 | S2-452 | 705, 706, 805, |
| G3-452 | F22-535 | S3-452 | 806, 905, 906, |
| | | S20-452 | 1005, 1006 |

Share of Jai Prakash Singh:

Shop-

Ground floor Ist Floor 2nd Floor

| Shop & Area | Shop & Area | Shop & Area | Flat nos |
|-------------|-------------|-------------|----------------|
| G18-452 | F17-452 | S16-452 | 401, 501, 601, |
| G19-532 | F18-452 | S18-450 | 701, 702, 801, |
| G20-373 | F19-532 | S24-373 | 802, 901, 902, |
| | | S25-535 | 1001, 1002 |

9. Only one flat which cannot be distributed, equivalent price of that flat will be distributed amongst the landowner.

10. It is stated that the respondents company has nothing to give and take the share of landlords and therefore it is prayed that as per the details all the flat can be divided as final share. The complainants have applied to handover the possession of the proportionate share in the project IOB Galaxy. This application is being filed by the complainants for distribution of their respective proportionate share corresponding to their father's share in super built up area in multi storied residential and commercial apartment in township namely IOB Galaxy developed by the respondents which is situated at Mauza Mohammadpur, Panel Surveye Thana Maner presently in Bihita Police station.

11. The Bench takes note of the submission of both the parties and peruses the record. The Authority observes that share distribution has already been made which is incorporated hereinabove.

12. In the light of the above observation and also taking into consideration the submissions made on behalf of the parties and going through the materials available on record including development agreement dated 03.09.2014 as well as the discussion made above, the Bench hereby directs the respondent to give the shares to the landowner Shambhu Nath Sharma, as detailed in paragraph-9 as aforesaid. The complainants may get their shares from their father Shambhu Nath Sharma.

13.. With the aforesaid observation and direction, this case is disposed of.

Sd/-
(Nupur Banerjee)
Member