

REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR
Before the Single Bench of Mrs. Nupur Banerjee, Member

Case No: RERA/CC/43/2022

Sharmila Sundram

...Complainant

Vs.

M/s ABM Developers Pvt. Ltd. & Anr.

...Respondent

13/05/2024

24/05/2023

ORDER

This complaint petition has been filed seeking relief to direct the respondent to provide physical possession of the shop in question with demarcated dimensions and location according to agreement for sale as per the sanctioned map. The complainant also seeks to direct the respondent concerned to provide all the amenities as committed under the terms of Agreement for Sale dated 28.12.2015 and to register the Conveyance Deed in favour of the allottee along with undivided proportionate title in the common area and supply all relevant documents regarding the development of the project as per Section 17 of the RERA Act, 2016.

In short, the case of the complainant is that the respondent no.1 has come into the Agreement for Sale dated 22.12.2015 executed among ABM Developers, respondent no.1 BCTA, respondent no.2 and the complainant and the complainant has deposited Rs.11,000/- to respondent no.1. It is stated that the complainant was a tenant and had been occupied a shop from long time and the complainant had been paying rent to respondent no.2. Thereafter the respondent no.2 approached the complainant and convinced him for proposal of development of market whereas respondent no.2 has persuaded him to purchase the aforesaid shop @ Rs.6000/-. Thereafter development agreement dated 18.10.1995 has been commenced between respondent no.1 and 2 for development of the market in the year 1995. It is stated that certain disputes have been occurred between respondent no.1 and 2. After some time both the parties agreed upon development of the market. After settlement, respondent nos. 1 and 2 have executed Agreement for Sale with the complainant on 28.12.2015 for allotment of shop on the ground floor. It is further stated that after approval of the map, respondent no.1 on recommendation of respondent no.2 shall allot the shop to the

complainant. It is also stated that after completion of the project, respondent no.1 shall execute absolute sale deed in his favour against the shop in question after receiving the total consideration. It is mentioned in para-7 of the agreement that respondent no.1 has to raise the demand of due consideration after approval of the sanctioned map but even after approval of the map the respondent no.1 has not yet been abiding by the agreement for sale and there is no development in the project. The complainant trusting on respondent no.1 vacated the shop for the purpose of construction of other shops over the aforesaid land. It is also stated that even after lapse of more than six years both the respondents has been delaying to give physical possession of the said shop to the complainant. When the complainant approached the respondent to inquire about the latest development regarding the shop, they have given no satisfactory reply. The complainant has given several reminders to settle the matter, no steps have been taken by the respondent. It is further stated that due to laches on the part of the respondent concerned, the complainant is suffering heavy financial, physical as well as mental loss because shop was the only source of earning to the complainant.

A reply has been filed on behalf of respondent no.1 in which it is stated that the relief prayed by the complainant is not maintainable in the eye of law. The statement made in the complaint petition goes to show that the complainant entered into an agreement for sale on 22.12.2015 with respondent no. 1 and respondent no.2. From perusal of the agreement for sale it appears that the complainant has entered into agreement for sale with Baptist Union Church whereas he has made party as respondent no.2 Baptist Trust Association, which are two different entities and as such, impleadment of respondent no.2 is illegal and meaningless. Therefore, the present complaint case cannot proceed against respondent no.2. In fact the complainant had made encroachment over the land in question and declared himself as tenant of Baptist Union Church to whom he used to pay rent. It is stated that the representatives of Baptist Union Church were claiming to be the real owner and title holder of the project. Therefore, the present complaint petition is not maintainable before this court and fit to be dismissed at all.

A rejoinder has been filed on behalf of the complainant to the counter affidavit filed by the respondents stating that the complainant has come into agreement for sale dated 28.12.2015 with respondent no.1 and respondent no.2 for allotment of one shop admeasuring area of 130 sq.ft. @ Rs.6000/- per sq.ft. in the said project which is to be constructed on land measuring are 43 kathas, 7 dhur bearing plot no.866 and 261 in Ward No.12/06. It is stated that the complainant has been running his shop before execution of agreement for sale. Thereafter the developer was entered into registered development agreement dated 18.10.1995 with BCTA for the development of proposed project. Since the project

is to be developed by the developer ABM Developers on the same development agreement, certain dispute was cropped up between the respondents but has been settled by the Hon'ble Supreme Court on 11.12.2015 in which ABN Developer Has got right for construction of multi stories on the plot. It is stated that all the averments made in the counter affidavit filed by the respondent is vague, unjust, concocted, baseless and not tenable in the eye of law, hence denied all the averments made by the respondent in the counter affidavit.

After hearing the parties and considering the records of the case, it appears that the complainant is not able to establish that the complainant entered into agreement with the respondent as an allottee and from the documents placed by the complainant, it is not evident that any allotment has been made by the respondent as alleged by the complainant. Hence, the Authority finds that the complaint of the complainant does not fall under the ambit of the RERA Act, 2016.

The complainant may approach to the appropriate forum under the provision of law in regard to their disputes.

With the above observations, the matter is disposed of.

Sd/-
Nupur Banerjee
Member