

REAL ESTATE REGULATORY AUTHORITY, BIHAR
Before the Single Bench of Mrs. Nupur Banerjee, Member
Case No. RERA /CC/729/2021

Sunil Kumar

.....Complainant

Vs

M/s R.R. Builders Developers Pvt. Ltd.

.....Respondent

Project: Sanchar Nagar

06.08.2024

ORDER

This matter was last heard on 13.05.2024 when the complainant's Advocate Mr. Sumit Kumar and the respondent's Advocate Mr. Kumar Saurav were present. The matter was fixed for order, however, due to preoccupation of the Bench in other matters, order could not be pronounced on the date fixed.

Learned counsel on behalf of the complainant submits that as per the development agreement 45% share of the constructed building over the land are to be handed over to the complainant, however, the respondent has failed to hand over the same. The complainant prays for handing over the agreed share to the complainant. The development agreement was of the year 2016. In the year 2016 the complainant had handed over 12 kathas of land to the respondent for constructing building and as per the agreement the respondent has to handover 45% share of built-up area. He also submits that the same flat is allotted to some other allottees too, by producing incorrect documents. The complainant also submits that the respondent has not obtained the completion certificate and executing the sale deed.

The complainant states that he had entered into the development agreement dated 06.02.2016 with the respondent company for the construction of a multi storied building over his land situated at Mauza- Adampur, Survey Thana- Danapur, District Patna having Thana No. 40, Tauzi No. 5712, Khata No. 108, Kheshra No. 460 for the project named "Sanchar Nagar". The total measurement of land was 39.50 decimals. As per the development agreement the building was to be completed within 5 years with a grace period of six months. He further submitted that in 2017, the builder signed share distribution agreement with other landowners but not with the complainant. He has submitted that as per the development agreement, 45 % share of the constructed building, over the land, which is their rightful share, is not being given by the respondent and respondent is trying to put pressure on him, to not claim for transfer of his share of flat in constructed building as per the development agreement. The complainant requested to direct the respondent to hand over the rightful share in constructed building.

The order in this case was passed on 10.03.2022. Then the complainant has gone to Appellate Tribunal and REAT has remanded back the case to be heard afresh regarding the issue of the actual shares to be given to the complainant. The builder in its map has shown that the FAR is 2.48. Basically, that calculation is faulty. The built-up area has to be calculated on the basis of the FAR.

The learned Senior counsel for the respondent has admitted that they are ready to give shares to the landowner- complainant.

The complainant wants his actual share.

The learned counsel for the respondent submits that the REAT remanded the matter for actual share. The complainant in compliance of the order/ proceeding dated 04.08.2023 has already submitted the detail calculation of the carpet area of the constructed flats in the project as well as the total number of flats present in the said project. The complainant has submitted that calculation of total carpet area in all the 11 towers in Sanchar Nagar of RR Builder and Developer, as submitted by the Respondent Builder in the Tribunal Court. The total area of the land for this project is 418078 sq. ft. Total share of carpet area for 1 sq. ft. of land comes to 2.4488 sq. ft. The total carpet area of all the said 11 towers/ blocks and convenience/ shopping block is equal to 1023821 sq. ft. and total number of flats in all the 11 towers is equal to 1118.

Calculation of Share of Sunil Kumar & Others

Total area of land = 418078 sq. ft.

Total carpet area of all the said 11 towers/ blocks and convenience/ shopping block = 1023821 sq. ft.

Area of the land of Sunil Kumar & Others – 17204.62 sq. ft.

Therefore, proportionate share of carpet area of Sunil Kumar & Others + Builder = 17204.62 sq. ft. divided by 418078 sq. ft. multiplied by 1023821 sq. ft. = 42131.97 sq. ft.

As per Development Agreement out of said Carpet area of 42131.97 sq. ft.

Builder's share will be 55 % of 42131.97 sq. ft. = 23172.58 sq. ft.

Share of Sunil Kumar & Others will be 45 % of 42131.97 sq. ft. = 18959.38 sq. ft.

Accordingly, Sunil Kumar & Others are entitled for the share of the Flats measuring the Carpet area of 18959.38 sq. ft. in the said Sanchar Nagar of M/s R.R. Builders & Developers.

The respondent states that the complaint petition as filed by the complainant is not maintainable under the provisions of Real Estate Regulation and Development Act, 2016 as well as Rule 2017 due to the basic reason that the dispute in the present case relates between the landowner (complainant) and the developer- builder (respondent) who are promoters as per the definition provided under section 2 (zk) (i) of Real Estate (Regulation and Development) Act, 2016.

Shri Ashok Kumar Pal, complainant, along with five others signed the agreement with the respondent company. The respondent builder company has not provided all required documents like layout plan, the details of building construction etc. The project Sanchar Nigam is a very big project and this complainant and the landowner is very small stakeholder. There are more than 80 landowners who have given their lands to the respondent- promoter company.

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

The Authority observes that the complainant had entered into the development agreement dated 06.02.2016 with the respondent company for the construction of a multi-storied building over his land for the project named 'Sanchar Nagar'. He further submitted that total measurement of land was 39.50 decimals. As per the development agreement the building was to be completed within 5 years with a grace period of six months. He further submitted that in 2017, the builder signed share distribution agreement with other landowners but not with the complainant. He has submitted that as per the development agreement, 45% share of the constructed building, over the land, which is their rightful share, is not being given by the respondent. The complainant requested to direct the respondent to hand over the rightful share in constructed building.

The order in this case was passed on 10.03.2022. The Order states that 'Considering the submissions and documents filed by both the parties, the bench observed and directs the respondent to hand over the share of complainant as per development agreement dated 06.02.2016 within 60 days from the issuance of this Order.' Then the complainant has gone to Appellate Tribunal and REAT has remanded back the case to be heard afresh regarding the issue of the actual shares to be given to the complainant.

The Bench further observes that as per Bihar Real Estate Regulatory Authority (General) Regulations, 2021, Section 6 (3) which read as follows: - 'In case 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'.

Hence, in this case the matter is between the landowner who is an allottee and so this case is maintainable in RERA.

The complainant in compliance of the order/ proceeding dated 04.08.2023 has already submitted the detail calculation of the carpet area of the constructed flats in the project as well as the total number of flats present in the said project. The complainant has submitted that calculation of total carpet area in all the 11 towers in Sanchar Nagar of RR Builder and Developer, as submitted by the Respondent Builder in the Tribunal Court.

Total area of land = 418078 sq. ft.

Total carpet area of all the said 11 towers/ blocks and convenience/ shopping block = 1023821 sq. ft.

Area of the land of Sunil Kumar & Others = 17204.62 sq. ft.

Therefore, proportionate share of carpet area of Sunil Kumar & Others + Builder = 17204.62 sq. ft. divided by 418078 sq. ft. multiplied by 1023821 sq. ft. = 42131.97 sq. ft.

As per Development Agreement out of said Carpet area of 42131.97 sq. ft.

Builder's share will be 55 % of 42131.97 sq. ft. = 23172.58 sq. ft. sq. ft.

Share of Sunil Kumar & Others will be 45 % of 42131.97 sq. ft. = 18959.38 sq. ft.

Accordingly, Sunil Kumar & Others are entitled for the share of the Flats measuring the Carpet area of 18959.38 sq. ft. in the said Sanchar Nagar of M/s R.R. Builders & Developers.

In the light of above observations and also taking into consideration the submission made on behalf of the parties and going through the materials available on record including the development agreement dated 06.02.2016 as well as the discussion made above, the Bench hereby directs the respondent company to complete the project in all respect in accordance with the development agreement dated 06.02.2016 and as per promise made, and as adhered in the sanctioned map and also complete the necessary legal formalities and handover an area of about 18959.38 sq. ft. as carpet area, for the flats, as his shares, in favor of the complainant within 60 days of issue of this order.

The respondent is also directed to obtain the Completion certificate as well as the Occupation certificate from the competent Authority. A copy of the same shall be submitted to RERA, and, all the allottees as well as landowners to be given a copy of that CC and OC.

The respondent is further directed to provide all required documents like layout plan, the details of building construction etc. to the landowner complainant.

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.

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

Sd/-
(Nupur Banerjee)
Member