

REAL ESTATE REGULATORY AUTHORITY, BIHAR
2nd Floor, BSNL Telephone Exchange Bldg, Patel Nagar, Patna-800023

Before the Bench of Mr R.B. Sinha, Member

Case No.CC/144/2019 & CC/173/2019

Amit Kumar & Rina RoyComplainants

Vs

M/s Ezzion Construction Pvt Ltd.....Respondent

Present: For Complainant: In persons

For Respondent : Mr Rajeev Sekhar, Advocate

Mr Kumod Kumar, Director

28/07/2021

O R D E R

1. Amit Kumar, a resident of Singh Manson, House number 11, Road no-3, Indrapuri, Patna and Smt Rina Roy, D/o Mr Yashod Nand Roy, a resident of Mashid Gali, Near Bihta Railway Station, Bihta, Patna have each filed a complaint petition in December 2018 under section 31 of the Real Estate (Regulation and Development) Act 2016 against M/s Ezzion Construction Private Limited through their director Mr Ejaz Hussain for early handing over of the flat booked by them in Ramagya Residency of the promoter located at sultanpur, Mauza-Shahjadpur, Danapur, Patna.
2. In his complaint petition, the complainant Mr Amit Kumar has stated that he along with his wife Mrs Sonali Singh had entered into an agreement for sale in July 2017 for 1450 sqft flat no- 302 on the third floor along with a car parking space in the project Ramagya Residency at the cost of Rs.31.00 lakh (Rupees thirty one lakh only). The petitioner has further stated that the promoter has not yet

registered the ongoing project with the Real Estate Regulatory Authority (RERA), Bihar in contravention of section 3 of the Real Estate (Regulation and Development) Act 2016. He claimed that the respondent has not given the possession of the flat though he had promised to handover the possession of the flat by the end of December 2017. The complainant has further claimed that the project is not yet ready and that he has already made payment of Rs.26,01,000 (Rupees twenty six lakhs and one thousand only) till date.

3. In her complaint petition, the complainant Smt Rina Roy has stated that she along with her husband Mr Kamal Anand had executed an agreement for sale for a 1450 sqft super built up area flat no- 401 on fourth floor in the Project Ramagya Residency in September 2015 at the cost Rs 38.75 lakhs (Rupees thirty eight lakhs and seventy five thousands only). She further claimed that though the project was incomplete, the promoter got the flat registered in her name in March 2018. She further claimed that she had paid Rs 34 lakhs in July 2016 and has since been paying EMI to the Bank. She further claimed that the project was not yet ready and builder is delaying the project indefinitely on one pretext or the other. Both directors are unreachable and have abdicated their responsibilities.
4. In pursuance to the receipt of complaint petitions, the Authority issued notices to the respondent company M/s Ezzion Constructions Pvt Ltd through their Director Mr Ejaz Hussain to submit reply/response by 18/02/2019. However, the respondent company did not submit any reply on the merit of two petitions.
5. In case of Smt Rina Roy, the respondent company stated that the registration of the flat of Smt Roy was executed in March 2018 on the basis of a cheque for Rs 7,31,250 she had submitted to respondent but the said cheque was not honored on presentation to the bank as the encashment of the cheque had been blocked by the petitioner. When after repeated requests, the cheque was not cleared, the respondent

had filed a case before CJM, Patna. The Respondent company however didn't make it clear as to why the incomplete flat was registered in hurry when the project was still ongoing and a lot of civil work, lift, DG set, water , electricity and drainage work remain to be done. Accordingly, the Authority called the parties for personal hearing.

Hearing

6. Hearings were held on 25.03.2019, 6.5.2019, 14.5.2019, 18.06.2019, 09.08.2019, 16.09.2019, 14.10.2019, 09.12.2019, 7.1.2020, 13.1.2020, 6.3.2020, 22.10.2020 and 04.02.2020.
7. In course of hearing, the complainants represented themselves while the respondent company was represented by Mr Amaresh Kumar, Advocate and Mr Kumod Kumar Director. In course of hearing, the Learned Counsel of the Respondent Company admitted that the project was still incomplete as part of the civil works remained to be completed, lift, transformer and generator etc were required to be ordered. The Bench therefore held that the project was an ongoing project and required to be registered with the Authority in terms of section 3 of the Act 2016. In spite of repeated directions, the Respondent Company did not apply for registration of the ongoing project with the Authority. The Bench therefore directed for issue of show-cause notice to the Respondent Company under section 59 (2) of the Real Estate (Regulation and Development) Act 2016.
8. Mr Kumod Kumar, Director appeared several times before the Bench and committed that he would get his project registered with the Authority and complete the project within three months but neither the application for registration of project was submitted to the Authority nor the project was completed. The Bench also noted that the validity of the sanctioned plan of the project had lapsed long ago.
9. Both Directors have tried to misled the court time and again by giving lame excuses and making false promises. The Respondent company has not applied for registration of the project Ramagya Residency till

date. They have also not deposited the cost levied on the directors for abstaining from the court without justifiable reasons.

Issues for Consideration

10. There are following issues for consideration before the Bench:

1. firstly whether the project Ramagya Residency was an ongoing project as on 1 May 2017, the date on which the Real Estate (Regulation and Development) Act 2016 came into operation in the State of Bihar;
2. whether there was inordinate delay in completion of the project and grievances of the complainants for early possession of the flats was justified and they need to be refunded the interest being paid by them to the banks for the home loan;

11. So far as first issue is concerned, the Respondent company and their directors have admitted time and again that the project was still going on and they would take few more months to complete the project. The Bench therefore holds the project Ramagya Residency as an ongoing project as on 1 May 2017, the date on which the Real Estate (Regulation and Development) Act 2016 came into operation in the State of Bihar. The Project Ramagya Residency is therefore required to be registered with the Real Estate Regulatory Authority, Bihar without any further delay..

12. As regards the 2nd issue, the Complainant Smt Rina Roy had entered into the registered agreement for sale with the Respondent company in September 2015. In the agreement, it was mentioned that the registered development agreement with landowners was executed in December 2011 and the building plan for the project was sanctioned vide Plan Case no –MD/Danapur/ Shahpur/5-129 dated 15.10.2011. As per the then prevalent building bye-laws, the building plan was sanctioned for three years subject to extension by two years. It is therefore estimated that the project was required to be completed by the end of 2016 at the latest. It is also in consonance with the claim of both complainants that the

promoter had been claiming that the project would be getting completed by the end of December 2017. Thus, there is no doubt the Project Ramagya Residency was inordinately delayed by the promoters. Both Complainants have taken home loan to pay the cost of the flats and were paying interest on the home loan to the Bank. They are therefore entitled for payment of interest.

Order

13. The Bench orders the Respondent company and their directors to register the project Ramagya Residency within thirty days of the issue of the order, failing which the Authority should initiate the proceedings under section 59 (1) of the Real Estate (Regulation and Development) Act 2016.
14. IG Registration is requested to direct the DSR, Patna and Sub DSR Danapur/Phulwarisharif to stop the registration of sale of the flats in the project Ramagya Residency of M/s Ezzion Construction Private Limited until further orders.
15. The Bench orders the Respondent company and their directors to get the revalidation/ reapproval of the sanctioned plan of the project, complete the project, obtain Completion Certificate (CC) /Occupancy Certificate (OC) from the competent Authority and handover the possession of the flats to the complainants without any further delay.
16. The Bench also orders the respondent company and their directors to pay interest at the rate of 8 percent on the deposited amount of the complainants from 1.4.2018 until the date of handing over the possession of the flats to the complainants after adjusting the remaining amount payable by both complainants.

R B Sinha

Member