

Real Estate Regulatory Authority (RERA), Bihar

Before Mr R. B. Sinha & Mr S.K. Sinha, Members of the Authority

Case Nos.CC/39/2018

Mrs Chandra Prabha Lal.....Complainant

Vs

M/s Hem Developers Pvt Ltd.....Respondent

30/05/2019

O R D E R

1. Mrs Chandra Prabha Lal, a resident of Flat No.511, Hem Plaza, Fraser Road, Patna-800001 has filed a complaint petition under Section 31 of the Real Estate (Development & Regulation) Act, 2016 against M/s Hem Developers Pvt Ltd for handing over of the remaining part of her entitlement in the built up area in the Project Hem Plaza, a copy of completion certificate from the competent authority and completion of the unfinished work in the building which has already been handed over as there was seepage from the walls and ceilings, exterior walls did not have any plaster, the flooring was incomplete etc.
2. She has enclosed a copy of the Development Agreement signed by her husband Late Saomi Saran Lal with the developer M/s Hem Developers Pvt Ltd. According to the agreement, the builder was to develop 58320 sq ft area and hand over 47% of the built up area to the owners with her husband's share being 2987 sq ft out of total built up area. She claimed that though the agreement was signed in May, 1993, her husband did not get any portion of the building till 1999 when he died. Thereafter, she claimed that she got in installments with shop no-G/20 having 327 sq ft, Flat No.109 of 220 sq ft and Flt No.308 of 530 sq ft in the year 2003. She also took possession of Flat No.511 on 5th Floor having 1185 sq ft super built up area in 2017.

3. Based on the complaint received, a notice was issued to the respondent company on 10/09/2018 to give their response within 15 days of receipt of the notice.

Response of the Respondent Company:

4. The respondent company M/s Hem Developers Pvt Ltd through their Director Mr Bhawesh Kumar, in their response, stated that the matter pertains to the year 1993 i.e. about 25 years back and was in connection with a building popularly known as Hem Plaza, Fraser Road, Patna. He claimed that this building was fully occupied by the tenants since 20 years or more much before RERA came into existence. He also claimed that the complainant has never purchased any flat from them by paying any amount to the company. The respondent company also stated that the complainant was not a consumer and she was one of land owners of Hem Plaza and is having her occupancy in the building from many years. The respondent company has also brought following facts to the notice of the Bench :-

- i) The Development Agreement of Hem Plaza was executed between the respondent company and eight co-share holders of plot in 1993. Late husband of the complainant was one of the eight co-share holders of plot. The construction of the building started after the map was approved by the PRDA in 1994 but as there were many tenants of the land owners, so few parts of the land was not handed over to the developer initially. These tenants of the land owners filed few cases in Hon'ble Patna High Court namely; CWJC No.9957/2002, 9829/2002 and later LPA No.757/2005 and SLP No.35582/2011 in the Hon'ble Supreme Court. He claimed that CWJC No.9829/2002 and SLP No.35582/2011 were still pending before the Court.
- ii) As per Hon'ble Patna High Court directions, the tenants allowed us to complete the construction and the remaining part of the building was also handed over.

- iii) He stated that the complainant has not revealed that she had filed a Request Case No.17/2016 before the Hon'ble Patna High Court for appointment of an Arbitrator which was turned down by the Hon'ble Court on account of limitation of being time barred. Similarly, her SDO Court Case No.160(M)/2017 was also dismissed.
5. The respondent company claimed that she was occupying her space in Hem Plaza and trying to extract some undue advantage from them. The respondent company requested the Bench to dismiss the case for misleading and using RERA Office as a weapon against a law abiding citizen to give a message to people not to harassing any one.

Rejoinder of the Complainant

6. In her rejoinder, the Complainant stated that though the development agreement was signed twenty five years ago, the project was not yet complete as the only lift in the front area of the building has not yet been installed, 1/3rd of front area remained unplastered and parking/common areas have not been handed over. She stated that she has not been handed over 915 sqft residential area out of her entitlement of 2987 sqft till date. She claimed that the promoter has not yet obtained the completion certificate from the competent authority. As the completion certificate has not been issued and there are many necessary unfinished items of work in the project, the project would only be categorized as ongoing and hence, would fall within the purview of the Real Estate Regulatory Authority and be subject to the provisions of the Real Estate (Regulation and Development) Act 2016.
7. She further stated that all pending court cases pointed out by the developer in their response to the notice were related to others and there was no case in which complainant was a party. She claimed that

since there was an agreement between the husband of the complainant and the developer, provisions of the agreement should be followed.

Reply of the Respondent to Rejoinder of the Complainant

8. In their reply, the Respondent Company reiterated that this was not a fit case to be dealt by the RERA as it commenced 25 years ago and was completed more than a decade ago. Further, the landowner was not a consumer as mentioned in the Preamble of the RERA Act 2016. The Respondent also stated that as per Development Agreement, it was the responsibility of the land-owners to settle the claims, if any, of the tenants. However, these tenants went to different courts as stated in their response.
9. The Respondent Company indirectly admitted that a part of the front portion was not plastered as these tenants were not allowing any sort of repair or plaster in the front portion of the building. They further stated that on the instructions of Patna High Court, the building was constructed, finished and handed over the owners' block on North portion to the owners where builders do not have any share and builder has got entire area in the South Block. Further, the owners divided their share among themselves and the claim of any area from builder was irrelevant. They further stated that the complainant has got the full area as she is calculating only carpet area/built up area rather than plinth area as per FAR/super built up area.

Hearing

10. Hearings were held on 20th December 2018, 26th March 2019 and 9th April 2019. In course of hearing the complainant was represented by Mr Rakesh Roshan Singh, Advocate while the Respondent Company was represented by Mr Rudrank Dhari Sinha Advocate and Mrs Parinita Rai,

Advocate. In course of hearing, the Complainant stated that she was 81 years old senior citizen and she has been dealt very badly by the developer. She stated that she should be given remaining part of her entitlements in the built up area. The Promoter should also install the lift in her block where the space has also been left by the builder for its installation and front side of the building should be plastered as it has been left out. The Promoter agreed to install the lift on the first date of hearing and complete the plastering work on the front side of building. However, he backed out later on stating that the complainant has not been paying maintenance charges regularly. As such, the lift even if installed can not run for long period.

11. On the next date of hearing, Learned Counsel of the Respondent Company took the plea that the project was not covered under RERA as the project has been completed long ago. However, they were not able to produce completion certificate, when directed by the Bench. They stated that the practice of issuing of completion certificate was non-existent in the state.

Issues for Consideration

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

The Project was launched about twenty five years ago and part of the building was handed over to her in 2003 and 2017. A part of the front part of the building was not yet plastered and a lift in the front side of owner's part of the building has not been installed. In view of these facts, it has to be decided

1. Whether the project was covered under the Real Estate (Regulation and Development) Act 2016.
2. Whether there was a development agreement between the late husband of the complainant and the developer and whether developer has to hand over the share of the built up area of late

husband of the complainant to the complainant or it was enough that the owners share was given to group of eight co-owners for distribution among themselves.

3. Whether the completion of incomplete work like installation of lift in the owner's block, Plaster work on the front side of the Owner's Block etc was required to be completed by the promoter.

13. It is evident from the first proviso to the Section 3 (1) of the Real estate (Regulation and Development) Act 2016 that the Promoters of all ongoing projects for which the completion certificate has not been issued, are required to make an application for registration with the Authority. Further Section 17 of the Act enjoins upon the promoters to obtain the completion/occupancy certificate before executing the registered conveyance deed in favour the allottee/consumer and handing over the physical possession of the apartments to the consumers.

14. As the promoter has not been able to produce completion /occupancy certificate of the project and there are unfinished items of work like installation of lift and plaster work on the front side of the Owner's block as on 1st May 2017, the date on which the Act became operational, the Bench feels that the project is covered under the Real estate (Regulation and Development) Act 2016.

Order

15. Protection of the interests of consumers is an important objectives of the Real estate Regulatory Authority. As the project is covered under the provisions of the Act, 2016 and considering the fact that the complainant is 81 years old widow staying at 5th floor of the building and who has not been given her entitlement/dues, we order that the Respondent Company complete the installation and commissioning of lift and plaster work on the front side of the Owner's block within three months of issue of this order. If the promoter faces any difficulties from any corners, they should approach Senior Superintendent of Police, Patna for assistance.

16. As regards handing over of the remaining part of her entitlement, if any, in the built up area in the Project Hem Plaza, the promoter shall furnish the detailed explanation/calculation to her within a month of issue of this order as to how her entitlements have been given to her.

(R B Sinha)
Member

(S.K.Sinha)
Member