

REAL ESTATE REGULATORY AUTHORITY, BIHAR

**Before the Bench of Hon'ble Inquiry Commissioner, Mr. Sanjaya Kumar Singh, RERA,
Bihar**

RERA/CC/83/2024

Jeevan Sahay & Kavita Sahay

.....Complainants

Vs

M/s Kamini Developers Pvt. Ltd.

.....Respondent

Project: Bhagwan Niwas

Present: For Complainant: Ms. Kriti Suman, Advocate
For Respondent: Mr. Amit Singh, Advocate

18/07/2025

ORDER

Heard Ms. Kriti Suman, learned counsel for the complainants and Mr. Amit Singh, learned counsel for the respondent.

The complainants have prayed for the following reliefs:

- (i) To direct the respondent to pay the remaining amount against the remaining share of 650 sq.ft. along with 50% share in the relevant parking space at present market value to the complainants in accordance with the development agreement and declaration of division of flats.
- (ii) To direct the respondent to issue possession letters to the complainants for flats and parking areas in their share as landowners.
- (iii) To direct the respondent to hand over completion and occupancy certificates to the complainants as per section 11(4)(b) of the RERA Act.
- (iv) To give liberty to file before the Adjudicating Officer for compensation.

In short, the fact of this case is that the property admeasuring 4760 sq.ft. belonged to late Bishwanath Sahay, who was the father of the complainant no.1 and father-in-law of complainant no.2. After death of Bishwanath Sahay, the property got devolved to his two legal heris, namely, Jeevan Sahay and late Gyaneshwar Sahay. Due to death of Gyaneshwar Sahary, his wife Kavita Sahay and her children being the legal heirs inherited equal share in the property belonging to the complainant no.1. It is stated that on the assurance of the respondent to develop their land into a multi-storied residential building on the aaid property and hand over possession of the flats and parking space in their

shares within a period of two years in the ratio of 50:50, both the parties entered into a development agreement on 02.08.2018 for developing the same in the name of Bhagwan Niwas which had to be completed within two years with grace period of six months. As per para no.8 at page 5 of the development agreement, share distribution agreement was entered into by both the parties on 04.03.2019 clarifying the areas/ floors belonging to the landowners as well as the respondents. The project has a total of 9 flats each measuring 1300 sq.ft., out of which four flats have already been handed over to the complainants without issuing possession letters to them. It is further stated that after allocation of four flats to the complainants, according to share division only one flat admeasuring 1300 sq.ft. on the 1st floor along with parking area was to be divided between both the parties which came to 650 sq.ft. each to both the parties. It is also stated that there has been no demarcation of the entire parking area of the project. As per para 8 of the development agreement and para (e) of the declaration of division of flats, respondent no.2 had agreed to pay to the complainants their share in each of the remaining one flat at the market value along with 50% share in the parking space but the respondent no.2 in complete violation of clause (e) has sold all the flats of his share including the remaining one flat and the amount has no yett been paid to the complainants till date. However, the complainants requested the respondent to pay the amount but no payment was made. Thereafter after several reminders and requests, the respondent no.2 paid the amount of Rs.2.50 lakh on 18.11.2023 and an amount of Rs.2.00 lakh on 12.01.2024 to each complainant through cheques i.e. total of Rs.9.00 lakh. It is further stated that the respondents have not yet handed over the possession letters for the corresponding flats and parking areas of the complainants' share to them. Neither completion certificate nor occupancy certificate has been handed over to them even after the project was completed in January, 2022. Despite several reminders to the respondents to pay the due amount pertaining to,50% of their share in the flat and parking space and also to hand over the OC and CC, no step has been taken as yet. Hence, this complaint.

The complainants have placed on record a copy of the registered development agreement dated 02.08.2018 as Annexure 1, copy of the declaration of division of flats dated 04.03.2019 as Annexure 2, copies of the application dated 31.05.2023 and 30.07.2023 as Annexures 3 and 4 respectively.

Perused the records. A reply has been filed on behalf of the respondent in which it is stated that the respondent has paid Rs.9.00 lakh to the complainants which they have acknowledged. The flat No.103 was sold at a consideration amount of Rs.45.00 lakh only and the amount was received by the respondent. A detailed calculation chart has been enclosed with his reply. It is also stated that

as per directions of the Authority on 08.05.2025 two cheques are being submitted in the name of Jeevan Sahay and Kavita Sahay of Rs.9,42,950/- each. As far as direction for payment of interest is concerned, the complainant has neither pleaded nor prayed for payment of interest in the complaint petition and it has been held by the Hon'ble Supreme Court that grant of relief neither pleaded nor prayed for cannot be awarded by any court. He has cited two judgments of the Supreme court on this point, firstly Civil Appeal No.6325-6326 of 2015 (Akela Lalitha vs.=. Konda Hanumantha Rao & anr.) decided on 28th July, 2022 and another in the case of Bharat Amaratlal Kothari vs. Dosukhan Samadkhan Sindhi & ors. decided on 4th November, 2009.

A supplementary petition under Order VI Rule 17 CPC for addition of the prayer in the complaint petition has been filed on behalf of the complainants for a direction to the respondent promoter to pay interest on the amount to be paid to the complainants. It is stated in the petition that the flat was sold by the respondent in 2022 itself and since then he has been enjoying the interest on the selling amount of Rs.73.00 lakh. It is also stated that if the amendment is allowed, it does not change the nature of the complainant and no prejudice shall be caused to the respondent by its inclusion.

Learned counsel for the complainants has submitted that the original development agreement, which was entered into and signed mutually by both the parties along with a declaration of division of the share, outlines that a total of 50% of the share of the concerned project Bhagwan Niwas would be handed over to either of the share holders. The entire project comprises of nine flats and hence, it was decided that a total of four flats would be given to the landowner by the developer and 50% of the market value of the price of the remaining flat (9th flat-103) will be given to the landowner as per the actual sale of the said flat. She has further submitted that the said flat has been sold at a total price of Rs.73.00 lakh and hence, the landowner is entitled for a payment of Rs.36.50 lakh from the developer but the respondent has failed to pay to the complainant the corresponding share as agreed upon and only a partial payment of Rs.9.00 lakh has been paid by the respondent. She has further submitted that the respondent has also violated the terms of the agreement entered into. Even the possession certificate of the said flat has not been handed over to the landowner. She has further submitted that the complainants are liable for interest from the date of execution of the sale deed. Thereafter on 19.06.2025 the complainants have received two cheques of Rs.9,42,950/- each, meaning thereby the complainants have received a total amount of Rs.27,85,900/- only and the amount of Rs.8,64,286/- is yet to be paid.

Learned counsel for the respondent has submitted that the respondent has already paid the share of consideration to the complainants but the complainants are not entitled for interest because they have not pleaded in the complaint petition anywhere with regard to interest nor Para 8 of the development agreement and even in the declaration of share division dated 04.03.2019 mentions or refers to payment of interest.

Perused the entire records and gave a serious consideration to the facts and evidences available on record.

Having considered the entire points raised by both the complainants as well as the respondent, it is clear that according to the development agreement out of nine flats, four flats have already been handed over to the complainants and they are in possession of the same but the possession certificate of the said flats has not been given to the complainants/ landowners. It has also been found that for the 9th flat i.e. flat No.103 the respondent has paid the amount of Rs.2.50 lakh on 18.11.2023, an amount of Rs.2.00 lakh on 12.01.2024 to each of the complainant, meaning thereby the complainants have received Rs.9.00 lakh and thereafter on 19.06.2025 the learned counsel for the respondent has handed over two cheques for an amount of Rs.9,42,950/- each in the name of the complainants Jeevan Sahay and Kavita Sahay respectively. Therefore, it is clear that the complainants are entitled for interest from the date of execution of the sale deed i.e. from 10.09.2022 till the date of last payment i.e. 19.06.2025. It has also been found that the possession certificate of the four flats along with parking space has not been handed over to the complainants.

The learned counsel for the complainants in her submission and also during hearing has claimed for a refund of Rs.36.50 lakh stating therein that the 9th flat has been sold for Rs.73.00 lakh. However, she could not submit any concrete evidence to prove the veracity of her claim. On the contrary, it was found on perusal of the records that the total sale value as disclosed in the sale deed was Rs.45.00 lakh and the total amount on which the registration has been executed is Rs.55,71,428/-, hence the claim of the complainants does not hold good and is fit to be set aside. On the other side the statement of the complainants regarding final payment of the principal amount is accepted on the basis of documents submitted by him.

Hence, in exercise of the power under Sections 37 and 38 of the Real Estate (Regulation and Development) Act, 2016 read with Rules 17 and 18 of the Bihar Real Estate (Regulation and Development) Rules, 2017, the respondent is, therefore, directed to hand over the possession certificates of all the four flats along with parking space to the complainants and make payment of interest at

the rate of 2% above the MCLR (marginal cost of fund-based lending rate) of State Bank of India as applicable for three years within sixty days of issue of this order. The interest will be leviable over the entire unpaid amount at the above rate from 10.09.2022 onwards till the date of last payment of the amount i.e. 19.06.2025.

With these directions and observations, the matter is disposed of.

Sd/-

(Sanjaya Kumar Singh)
Inquiry Commissioner,
RERA, Bihar