

REAL ESTATE REGULATORY AUTHORITY, BIHAR

Before the Bench of

Hon'ble Member Mr. S. D. Jha, RERA, Bihar,

RERA/CC/395/2023

Nirmala Devi Complainant

Vs.

M/s Neelkantha Soluation Pvt. Ltd. Respondent

For the complainant: Mr. Ishtiyaque Hussain, Advocate

For the Respondent: Mr. Sanjeev Kumar, Advocate

Project:- NEELKANTHA DINESH RESIDENCY

ORDER

06.06.2024 This case was last heard on 28/05/2024 and order was reserved. Mr. Ishtiyaque Hussain, Advocate, appeared and defended the case of the complainant. Mr. Sanjeev Kumar, Advocate, appeared and defended the case of the respondent. The respondent has filed written arguments by mail dated 04.06.2024 in compliance of the proceeding dated 28.05.2024 which would be dealt with hereinafter. The order is being delivered to today i.e., 06.06.2024.

2 (i). Learned counsel for the complainant submitted that a Development Agreement between the complainant and the respondent was executed on 5.10.2012 to construct multistoried building over her land. He further submitted that as per paragraph – 14 of the Agreement it was agreed that the complainant – landowner would be handed over 43% of the total constructed flats. The respondent promoter has constructed total 30 flats. As per ratio decided in the Agreement, the complainant – landowner is entitled to get 13 flats but the respondent - promoter has handed over only 12 flats and one flat is still to be handed over. He also submitted that as per paragraph - 43 of the Agreement the construction work of the building was to be completed within three and half years with relaxation period of further six months from the date of

sanctioned of MAP. He also submitted that it is specifically mentioned in paragraph 35 of the Agreement that if the respondent – promoter does not complete the construction work within the prescribed period of time then in that situation the respondent – promoter would pay compensation to the complainant – landowner at the rate of Rs.2000/- per day till completion and handing over possession of flats of the share of the complainant – landowner.

(ii) He also submitted that the MAP was approved from the Municipal Corporation on 17.10.2012. The period of Agreement expired on 18.10.2016 from the date of approval of the map. In 2023 almost 11 years are going to end but the respondent promoters has not completed finishing work of the apartment in spite of repeated requests made by the complainant and, therefore, the complainant, being unsatisfied and fed up with behavior of the promoter, had sent several legal notices dated 6.10.2017, 28.12.2020, 26.11.2022 & 5.6.2023 requesting to complete the building and for paying arrear amount of delay as per terms and conditions mentioned paragraph -35 of the Agreement. By filing this complaint, the complainant has requested for handing over remaining one flat of her share in the light of the Agreement and to pay compensation for the delay in delivering possession of flats at the rate of Rs.2000/- per day from the date of expiry of period of Agreement i.e. 18.10.2016.

3(i). Learned counsel for the respondent by filing written statement by mail dated 24.05.2024 as well as written arguments by mail dated 04.06.2024 has stated that the instant case is not maintainable as the same is hopelessly barred by limitation and in this case no separate petition under Section 5 of the Limitation Act has been filed for condoning of delay. He has also stated that the present complaint requires to be referred

for arbitration under Section 8(1) of the Arbitration Conciliation Act, 1996 in view of clause -33 of the Agreement dated 5.10.2012. He has further stated that the Development Agreement had been executed before the enactment of RERA Act, 2016 and, hence, the Arbitration and Conciliation Act would be applicable in this case. He has also stated that, as per terms and conditions of the Agreement, the share of the respondent - developer was fixed 57% and 43% of the complainant and the respondent has already handed over possession of flats of the share of the complainant with all amenities and the allegation that the respondent has not completed the flats is totally false.

(ii) He has also stated that the respondent – promoter has received a show cause notice dated 24.01.2023 from the office of State Tax Commissioner, wherein, tax has been determined on construction services provided by the builder to the landowner and, accordingly, the respondent sent notice dated 15.3.2023 and then reminder notice dated 3.7.2023 to the complainant for payment of tax liability but the complainant has not paid the tax till date. The complainant is liable to make payment of her share of tax liability of Rs.7,47,630/- as per Agreement in the capacity of being a co-promoter along with the respondent – promoter.

(iii) He has also stated that the respondent is not liable for any amount for delay in delivery of possession of flats as the respondent has already handed over possession of flats of the share of the complainant which was accepted without any objection. He has also stated that during negotiations and execution of the Development Agreement with the complainant, the complainant demanded a sum of Rs.28,00,000/- from the respondent as a loan for personal need, which was meant to be adjusted from the share of the complainant. He has also stated that during pendency of this project the RERA Act, 2016 was

introduced and the respondent got the said project registered as per the provisions of the RERA Act, 2016. He also submitted that the it is wrong to say by the complainant that the respondent-promoter did not reply to the legal notices rather the respondent replied to each and every notice of the complainant.

4. Having heard learned counsel for the parties and perused the record, the Authority notes that the respondent, inter alia, has raised following six points while opposing the reliefs sought by the complainant;

a. The instant case is not maintainable as the same is hopelessly barred by limitation.

b. In view of clause -33 of the Agreement dated 5.10.201, the present complaint requires to be referred for arbitration under Section 8(1) of the Arbitration Conciliation Act, 1996.

c. Since the Development Agreement had been executed before enactment of the RERA Act, 2016, the present case is not maintainable.

d. The respondent is not liable to make payment by way of compensation for delay in delivery of possession of flats as the respondent has already handed over possession of flats of the share of the complainant and she accepted without any objection.

e. The complainant is liable to make payment of her share of tax liability of Rs.7,47,630/- as per Agreement in the capacity of being a co-promoter along with the respondent – promoter.

f. During negotiations and execution of the Development Agreement, the complainant demanded a sum of Rs.28,00,000/- from the respondent as a loan for personal need, which was meant to be adjusted from the share of the complainant.

5. The Authority has considered all the aforesaid five points separately and observed here-in-below:

(i) There is no provision in the RERA Act, 2016, which bars filing of a complaint on the ground of limitation. Hence, the point no. 4(a) stands rejected.

(ii) The arbitration clause would not attract in a case where work of the project was continuing after coming into force of the RERA Act, 2016, which is a Special Act on the subject. Hence, the point no. 4 (b) stands rejected

(iii) In view of the Hon'ble Supreme Court in M/s Newtech Promoters and Developers Pvt. Ltd ... Appellant (s) Versus State of UP & Ors. Etc., ... Respondent(s), wherein it has been observed that provision of the Act is retroactive in nature and that the Statute primarily aims to protect the right of the home buyers. Hence, the point no. 4(c) is not tenable and the same stands rejected,

(iv) Where the Development Agreement executed between the parties itself states that the complainant would be entitled to get compensation in case of delay in delivering possession of flats at the rate of Rs.2000/- per day from the date of expiry of period of Agreement i.e. 18.10.2016, the complainant is entitled to get compensation. Hence, the point no. 4(d) regarding denying compensation stands rejected.

(v) The complainant is liable to make payment of tax as per Agreement in the capacity of being a co-promoter along with the respondent – promoter and, accordingly, she is directed to make payment of her share of tax liability of Rs.7,47,630/-. Hence, the point no. 4(e) stands allowed.

(vi) Neither the Development Agreement nor any other document on the record shows that Rs.28,00,000/- was paid to the complainant as loan with condition that the said

amount would be adjusted against the share of the complainant. Hence, the point no.4(f) also stands rejected.

6. Taking into consideration the aforesaid facts, the respondent – company and its Director Mr. Ashok Kumar is directed to deliver possession of remaining one flat of the complainant within two months from the date of issue of this order after getting payment of tax liability of the share of the complainant. The Complainant is at liberty to move the Adjudicating Officer, RERA, for claiming compensation for delay in delivery of possession of the flats.

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

**Sd/-
S.D. Jha,
Member**