

REAL ESTATE REGULATORY AUTHORITY, BIHAR

Before the Bench of

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

RERA/CC/527/2022

Mrs. Manju Kumari Complainant

Vs.

M/s Geetanjali Vatika Pvt. Ltd. Respondent

For the complainant: Mr. Punit Kumar, Advocate

For the Respondent: Mr. Mohit Raj, Advocate

Project:- GEETANJALI VATIKA GREEN CITY

ORDER

03.07.2024 This case was last heard on 25.06.2024 and the order was reserved. Mr. Punit Kumar, Advocate, appeared and defended the case of the complainant. Mr. Mohit Raj, Advocate, appeared and defended the case of the respondent. The Authority vide proceeding dated 25.06.2024 directed the Monitoring Wing, RERA, to submit a report within one week mentioning, inter alia, the details of total number of apartments (category-wise) as per the QPR of the said project, which has been submitted on 02.07.2024, which would be dealt with at the appropriate place here-in-below. The order is being delivered today i.e. 03.07.2024.

2. Learned counsel for the complainant submitted that the complainant, who is the landowner, has filed this case for handing over possession and demarcation of parking area in the project 'Geetanjali Vatika Green City' of the respondent situated at Illahibagh, Phulwari Sharif, Patna, and to pay compensation. He has further stated that the complainant's share is 48% comprising of four flats in view of the Development Agreement dated 31.05.2015 executed between Mr. Santosh Kumar, Managing Director of the respondent – company, and the complainant and the Share Partition Agreement dated 18.03.2021 was also executed between Mr. Santosh Kumar, Managing Director

of the respondent - company , and the complainant, but till date the respondent has not delivered possession of four flats of her share, for which she had also sent legal notice.

3. Learned counsel for the respondent submitted that the Development Agreement was executed between the complainant and the respondent – promoter on 31.08.2015 but the Share Division Agreement between the parties was not executed on 18.03.2021 and the said document is forged and fabricated. He also submitted that the land of the complainant, over which the duplexes have been developed, bears Khata no.18 and Khesra no. 31, which find mention in rent receipt at Annexure -2 to the 2nd supplementary affidavit dated 15.02.2024. As per Agreement, out of the total constructed carpet area the total share of landowner was 48% and 52% of the promoter. The complainant wants to get two flats constructed over Khata no.8 and Khesra no.46, which is not possible as over her land bearing Khata no.18 & Khesra no.31 only duplexes have been constructed due to obstructions on account of only 3 katha of land and the respondent – promoter is willing to handover two duplexes according to the share of the complainant as the project has already been completed and possession to one of the allottees has already been delivered on 29.06.2018 but the complainant wants more than her share, which is 4200 sq. ft. in place of 1954.84 sq. ft.

4. Learned counsel for the complainant submitted that the Development Agreement executed between Mr. Santosh Kumar and the complainant Mrs. Manju Kumari on 31.08.2015 was for construction of multistoried building and not for duplex and Share Distribution Agreement was also executed between Mr. Santosh Kumar and the complainant Mrs. Manju Kumari on 18.03.2021 delineating her entitlements of flats Block-wise i.e. 1st floor, 3rd floor, 6th & 7th floor in Block – B,D,H and, thus, the submission of the respondent that the Share Distribution Agreement dated 18.03.2021 is forged has no reason to believe. He

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also submitted that as per clause 5 of the Agreement, the complainant was accorded the right to select 48% of her share at her discretion. Further, as per clause 2(k) of the Agreement, in case of delay beyond the agreed period i.e. September, 2019 from the date of Agreement, the respondent had agreed to pay penalty to the complainant @ Rs.10,000/- per month but the respondent – promoter has not honoured his commitment. He also submitted that the respondent has not followed Sections 11, 13 & 14 of the RERA Act, 2016, which say that developers cannot register their project if they have not agreed on share distribution with the landowners. The respondent - promoter has also breached the Development Agreement because as per the Agreement he was to develop multistoried building over the land of the complainant but without her consent he shifted on his own from multistoried building to duplex. However, the complainant is willing to accept two duplexes no.9 & 10 with alternative two more flats.

5. The Monitoring Wing, RERA, in its report dated 02.07.2024 has stated that Geetanjali Vatika Green City Phase - 2 consists of 175 Flats (3BH-98, 2BHK -63, Duplex -14) and Geetanjali Vatika Green City Phase -3 consists of 98 Flats (3BHK -70, 2BHK -28).

6. Heard learned counsels for the parties and perused the record including the Development Agreement dated 31.08.2015 as well as the Share Distribution Agreement dated 18.03.2021.

(A) The Authority notes that the complainant's counsel has raised following points including, inter alia, the points raised in his notes of argument dated 06.05.2024 during course of the proceedings in support of the reliefs sought for by the complainant:

(i) As per Development Agreement dated 31.08.2015 as well as the Share Distribution Agreement dated 18.03.2021 (executed between Mr. Santosh Kumar, Managing Director of the respondent – company, and the complainant –

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landlady Mrs. Manju Kumari), which delineates her entitlements of four flats Block-wise i.e. 1st floor, 3rd floor, 6th & 7th floor in Block – B,D & H, the respondent is liable to handover four flats to the complainant as per the Development Agreement or two duplexes with alternative two more flats.

(ii) As per Development Agreement dated 31.08.2015, the respondent was to develop multistoried over the land of the complainant. Constructing duplexes over her land without her consent is the breach of the Agreement, for which the respondent is liable to compensate the complainant.

(iii) As per clause 2(k) of the Agreement which says that in case of delay beyond the agreed period i.e. September, 2019 from the date of Agreement, the respondent is liable to pay penalty to the complainant @ Rs.10,000/- per month.

B. Learned counsel for the respondent raised following points including, inter alia, points raised in his third supplementary counter affidavit submitted on 30.04.2024 while opposing the reliefs sought for by the complainant:

(i) The Share Division Agreement dated 18.03.2021 is forged and fabricated.

(ii) The respondent is willing to hand over two duplexes with all amenities to the complainant as per her 48% share and would not give two more flats to the complainant constructed over Khata no.8 and Khesra no.46. The complainant's land bears Khata no.18 & Khesra no.31, over which duplexes have been constructed due to obstructions on account of only 3 katha of land.

(iii) The project was already completed in the year 2018 as per the Agreement but the complainant did not take possession of her share in spite of calls made by the respondent to the complainant. She wants to take flats which have been constructed over the land of other landowners. Hence, the complainant is not entitled to claim for compensation in view of clause 2(k) of the Agreement.

7. The Authority considered each of the points raised by the parties and observes as follows:

(a) The Development Agreement dated 31.08.2015, and the Share Division Agreement dated 18.03.2021 both were executed between Mr. Santosh Kumar, Managing Director of the respondent – company, and the complainant – landlady Mrs. Manju Kumari, delineating her entitlements of four flats Block-wise i.e. 1st floor, 3rd floor, 6th & 7th floor in Block – B, D & H. If the Development Agreement is genuine then there is no reason to disbelieve the Share Division Agreement dated 18.03.2021 created on the company's letter pad and was signed by the same parties. Hence, the plea taken by the respondent that the Share Division Agreement dated 18.03.2021 is forged would not be appropriate to be accepted and, accordingly, the point at 5(B)(i) stands rejected.

(b) The Development Agreement dated 31.08.2015 nowhere states about construction of duplex over the land of the landowner, rather it states about construction multistoried building and the share between the complainant – landowner and the respondent – promoter was in 48:52 ratio. The respondent appears to have deviated the plan from the multistoried building to duplex without consent of the complainant – landowner in breach of the Agreement. However, in the changed situation, it would be advisable for the complainant to accept two duplexes of dimension equal to 48% of the total built up area made over the complainant's land along with amenities, as offered by the respondent, and for the rest claim of two more flats she may move the appropriate forum for compensation.

(c) The respondent has not brought on record the completion certificate/ occupancy certificate to establish that the project was completed as per the Agreement in September, 2019. Hence, the Authority observes that the complainant is entitled to get compensation as per clause 2(k) of the Agreement till the

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possession is handed over to the complainant with all amenities. Accordingly, the point at 5(B)(iii) stands rejected.

8. Taking into consideration the aforesaid facts, the Authority directs the respondent – company and its Director Mr. Santosh Bhardwaj to deliver possession of two duplexes of dimension equal to 48% of total built up area made over the complainant's land along with amenities within two months from the date of issue of this order.

9. The complainant – landowner is at liberty to move the appropriate forum for compensation for delay in delivery of possession of her share.

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

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