

REAL ESTATE REGULATORY AUTHORITY, BIHAR

Before the Bench of

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

RERA/CC/68/2023

Nirlesh Anand Complainant

Vs.

M/s DDL Infratech Pvt. Ltd. Respondent

For the complainant: Mr. Sumit Kumar, Advocate

For the Respondent: Mr. Rabindra Kumar, Advocate

Project:– AGRANI FIRST CITY

ORDER

12.06.2024 This case was last heard on 10.06.2024 and the order was reserved with mutual consent of the parties. Mr. Sumit Kumar, Advocate, appeared and defended the case of the complainant whereas Mr. Rabindra Kumar, Advocate, appeared and defended the case of the respondent. The order is being passed today i.e. 12.06.2024

2. Learned counsel for the complainant submitted that an Agreement For Sale was executed between the complainant and the respondent on 5.8.2010 to purchase Plot no.169 of 4800 sq. ft. in the project "Agrani First City" situated at Mauza Dayalpur Daulatpur, Bihta, Patna, on consideration amount of Rs.10,00,000/- which was partially paid by the complainant at the time of the Agreement and remaining at the time of registration of the plot. The Absolute Sale Deed of the plot was executed on 01.09.2010 but still possession of the plot has not been handed over to the complainant. The complainant has filed this complaint for handing over possession of the land with demarcation.

3 (i). Learned counsel for the respondent by filing written reply through mail dated 23.12.2023 and replication petition dated 08.04.2024 submitted that the Authority has got no jurisdiction to entertain this case as the project is not registered project with RERA. He further submits that the

respondent could not make available the plot to the complainant because some of the raiyats did not provide their land which causes non-shaping up the project as per plan. However, the respondent – company was trying to make alternative arrangements to deliver plots to the allottees but suddenly RERA Act, 2016 came into force and several allottees filed cases before the Authority and in compliance of the directions of the Authority in those cases, the respondent – company made available land to some of the allottees and in some of the cases the respondent refunded money to the allottees. In this case also the respondent is willing to refund the money.

(ii) He further submitted that the complainant nowhere in his rejoinder has specifically disclosed the plot which the respondent holds and is not allotting that plot to him. He also submitted that when the Sale Deed was executed the development of the project had not been started. At the time of execution of Sale Deed there was no plotting, no demarcation of road and only on paper the complainant got the Sale Deed executed.

4. Learned counsel for the complainant by filing rejoinder dated 06.03.2024 submitted that the project in question was an ongoing project on the date of application dated 04.03.2020 filed by the respondent for registration of the project, which was rejected on 31.03.2022. Not only this, now the said project comes under the Planning Area of Bihta Nagar Parishad. He further submitted that the respondent had executed Absolute Sale Deed on 01.09.2020 in favour of the complainant with full description, dimension, demarcation and boundary of land as mentioned under para -5 of the Deed. He also submitted that the present complainant is not interested in getting back his money along with interest. The complainant has already modified his prayer to the extent that either to provide alternative plot

with same demarcation, description, dimension and amenities in its another project "Agrani Woods at Bihar" or to its any RERA Registered Project in Patna/Bihta.

5. Having gone through the records, the Authority notes that the respondent has raised following four points while opposing the relief sought for by the complainant:

(a) The Authority has no jurisdiction to entertain this complaint as the project in question was not registered with RERA.

(b) The respondent is ready to refund the principal amount of the complainant along with interest as the respondent - promoter has no land to provide the complainant. Further, the complainant also has not disclosed in his rejoinder specifically the plot which the respondent holds and is not willing to allot him that plot.

(c) At the time of execution of Sale Deed there was no plotting, no demarcation of road and only on paper the complainant got the Sale Deed executed which is mistake on the part of both the parties.

(d) There is a decision of Hon'ble Patna High Court in the case of Awadh Bihari Ojha Vs. The Bihar State Housing Board & Ors., reported in 2013 (1)PLJR page 128, wherein it has been observed that there is no doubt that "no right accrued to the petitioner's mother by her mere application for allotment of plot and the constraints of the government for allotments of plots cannot be ignored."

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

(i) The project in question would be treated as an ongoing project because after coming into effect of the RERA Act, 2016 the respondent had made application on 04.03.2020 for registration of the project, which was rejected on 31.03.2022.

Moreover, there is a decision 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 plea that the Authority has no jurisdiction on the ground that the project is not registered with the Authority is not tenable and, accordingly, the plea at para 5(a) above stands rejected.

(ii) In this case the respondent had executed the Registered Sale Deed in favour of the complainant on 01.09.2010 after getting payment of entire consideration amount. The complainant is not willing to accept the offer of the respondent to refund of his money. The complainant wants possession of the plot with alternative prayer either to provide plot with same demarcation, description, dimension and amenities in its another project "Agrani Woods, Bihta" or to any RERA Registered Project in Patna/Bihta. The said prayer cannot be said to be inappropriate because of the fact that the complainant got the plot booked and registered much earlier by making payment of entire consideration amount. If there was any issue with the farmers in making available the land, he should have refunded the entire amount along with interest to the complainant in the year, 2010 or 2011 itself, but the respondent -promoter sat over the matter for a longer time and has been using money of the complainant for personal benefits. Hence, the plea at para 5(b) above for refund of money instead of providing plot stands rejected.

(iii) It is wrongly stated by the respondent that at the time of execution of Sale Deed there was no plotting, no demarcation of road and only on paper the complainant got the Sale Deed executed because of the fact that paragraph -5 of the Registered Sale Deed dated 01.09.2020 itself mentions about full

description, dimension, demarcation and boundary of the plot. Hence, the plea at para 5 (c) also stands rejected.

(iv) In the case of Awadh Bihari Ojha (supra), an application was given to the Bihar State Housing Board for allotment of plot but in this case the respondent has already executed Sale Deed in favour of the complainant with specification of plot number and other descriptions of the plot. Hence, the ratio of the above referred cases does not apply to the instant case. Moreover, the order in the above referred case was passed on 27.02.2012, which is much before coming into force of the RERA Act, 2016. Therefore, the point raised at para 5(d) above is not sustainable and is rejected accordingly.

7. Taking into consideration the facts and observations made above, the Authority directs the respondent – company and its Directors Sri Shiv Kumar to either hand over delivery of possession of the plot mentioned in the Registered Sale Deed or any other plot of the same dimension with all amenities as per Agreement dated 05.08.2010 in another project namely Agrani Woods, Bihta” or any other registered project in Patna/Bihta within two months from the date of issue of this order. In case of allotment of another plot in any other project of “Agrani Woods, Bihta”, the respondent would execute fresh Conveyance Deed in favour of the complainant accordingly.

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

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