

REAL ESTATE REGULATORY AUTHORITY, BIHAR

Before the Bench of Mr. Naveen Verma, Chairman

Complaint Case Nos. CC/1060/2021

Nawal Kishore JhaComplainant

Vs

M/s Anumeha Construction & Developers Pvt. Ltd.....Respondents

Project: Jagdeo-Ashiyana Apartment

29/08/2022

20/09/2022

ORDER

The case of the complainant is that his mother Mrs. Mahalaxmi Devi had booked Flat No. 102 and 104 in 2002 and the respondents were supposed to complete the construction of the building and execute the registered sale deed latest by August, 2003. However, they failed to complete it on time and communicated to the parents of the complainant to take possession of the flat upon which his father asked them to complete the building in all respect. Thereafter, the respondents became traceless and closed their office. On being asked to take the flats in same condition his parents took the possession of the flat and started residing therein but when asked to execute the sale deed, respondent demanded Rs.4 lakhs. The parent of the complainant had paid Rs. 13 lakh out of the total consideration of Rs. 15.05 lakh. It is further stated that after taking possession of the flat, his parents spent in finishing work of the flats. The parents of the complainant tried to approach the respondents but failed and in the meantime, his father died on 12.07.2008 and his mother died on 13.04.2021.

The complainant stated that after the death of his parents, he came to know that the respondents were in Ranchi. As the respondent have not adhered to the terms and conditions of the agreement and without completing the building they went away, the complainant approached them to complete the building in all respect and execute the sale deed in his favour but all in vain. Hence, this complainant has filed the complaint case, seeking following reliefs:-

- (i) for direction to the respondent to complete the construction of the building in all respect and obtain relevant certificate/ Clearance/ NOC from the respective Authority after completion;
- (ii) for direction to the respondent to execute the registered sale deed with respect to Flat No.102 & 104 in favour of the complainant;
- (iii) for direction to the respondent to not disturb the peaceful possession of the complainant; and
- (iv) For direction to the respondent to pay Rs.2.50 lakh as penalty towards their wrong and misconduct, Rs.5 lakh for mental and physical harassment, Rs.1.50 lakh towards litigation cost.

The respondent no. 3 and 4 have filed their reply stating that the complainant has no locus standi to file the present complaint before this Authority . Further the Authority has no jurisdiction to hear this complaint which is filed by a non-allottee. It is stated that the flats in question was constructed in 2002-03 and the project was already completed in 2003 and registered sale deed was executed in favor of other allottees and they are enjoying without any complaint. It is further stated that the complainant was neither an allottee nor essential party to the agreement for sale. The respondent company has entered into an agreement to sale against the flat in question in the name of Mrs. Mahalaxmi Devi which was executed in 2002 and at that time, the respondent has received only Rs. 8.50 lakh and the remaining Rs. 6.50 lakh was to be paid to the respondent company. It is stated that on her request, the respondent company had already given physical possession in the year 2003 to

Mrs. Mahalaxmi Devi on completion of the construction work on their assurance that remaining outstanding would be paid at the time of registration. On request for payment and registration, she refused to pay the outstanding amount and get registration done the respondent is still ready for execution of registration of the sale deed on the remaining payment done.

The complainant has placed on record Deed of Agreement dated 29/05/2002, money receipts for Rs. 13,00,000/-, death certificate of shri Krishnadeo Jha.

On hearing dated 14.02.2022, learned counsel for the complainant reiterated his submission and on his prayer, an interim order was passed restraining the respondent from selling and registering any flat till the pendency of the instant complaint case. On 31.05.2022, learned counsel for the respondent submitted that this petition is not filed by the allottee and he has a preliminary objection that this petition is not maintainable in the light of Section 31 of the RERA Act.

The Authority notes that the respondent has offered to execute the deed of conveyance if the heirs of the original allottee pay the balance amount of consideration and interest. It is also evident from the deed of agreement that the total consideration of both the flat no. 102 and 104 was Rs. 15,05,000 out of the allottee has paid Rs. 13,00,000/- as per the money receipts filed on record. The claim for interest may be settled between the complainant and respondent as per terms of the agreement.

The Real Estate (Regulation and Development Act) 2016 makes registration mandatory for such projects that are on-going and do not have completion certificate at the time of the commencement of the Act. The statute does not envisage bringing such projects under its ambit that have been handed over quite some time back. Admittedly the parents of the complainant were in possession of the flat since 2003. In this matter the family of the complainant is residing in the said flat for more than a decade.

The Authority observes that the complainant has not filed any evidence to support the averment that the project is incomplete.

The Authority cannot entertain such cases merely on the ground that completion certificate has not been provided unless the complainant establishes that the said building is incomplete. In any event, the Authority is not the competent forum to adjudicate on the entitlement of the complainant and other legal heirs of the deceased allottee.

With these observations the matter is disposed of.

Sd/-

Naveen Verma
Chairman