

REAL ESTATE REGULATORY AUTHORITY, BIHAR

Before the Bench of Hon'ble Chairman, Mr. Naveen Verma, Hon'ble Member, Mr. R.B. Sinha & Hon'ble Member, Mrs. Nupur Banerjee

**Complaint Case No. CC/08/2018; CC/419/2019; CC/1023/2020;
CC/1707/2020; CC/236/2021; CC/341/2021**

Sanjay Kumar/ Anil Kumar/ Mukesh Kumar/ Chandramani Devi/ Abhishek Arun/
Shyama Kumari..... Complainants

Vs

M/s Rukmani Buildtech Pvt. Ltd.....Respondent

Present:

For Complainants: In person

Mr. Dhananjay Kashway, Adv

Mr. Prashant Kumar, Advocate

For Respondent: Mr. Ranjit Kumar, Advocate

Mr. Ajit Azad, Director

21/06/2021

PROCEEDING THROUGH VIDEO CONFERENCING

Hearing taken up through virtual mode. Complainants were present in person. Adv. Dhananjay Kashyap and Adv Prashant Kumar appeared on behalf of the complainants. Mr Ajeet Azad, Director of the respondent company with his counsel Adv. Ranjit Kumar was also present.

Adv. Prashant Kumar appearing on behalf of Mukesh Kumar (CC/1023/2020) submitted that his client is out of station and could not visit the site. He further submitted the respondent has not filed reply even after various directions and no progress report has been served as yet. He further submitted that there is no development in Block B.

Mr. Anil Kumar (CC/419/2019) submitted that the respondent has not done any work in Block B1 for the last six months. He further submitted that only partial casting of roof on 5th floor has been done till now. Adv. Dhananjay Kashyap, complainant counsel submitted that the respondent had accepted that the project will not be completed and he is giving wrong submission about the progress of the work. Mr. Anil Kumar submitted that the work is being completed by the allottees themselves in each blocks such as A, A1 and D block.

The Director of the respondent company clarified that it is a construction linked plan and therefore, he is asking money from the customers. He further submitted that he is undertaking construction work and will hand over the flats to the intending buyers only after its completion. He further submitted that he can produce his bank statements and receipts of the customers wherefrom it would be evident that the materials were purchased by him. He further submitted that he had applied for extension of registration for 1.5 years. It was further submitted by one of the complainants that the plan has lapsed on 31/12/2019.

Adv. Dhanajay Kashyap submitted that in Block B, an ad hoc arrangement has already been made by buyers/allottees who are constructing their own flats.

The Authority requested the allottees to clarify whether they would like that the remaining work be completed under the provisions of Section 8 of the RERA Act as the proposal for extension of registration is still under consideration. It observed that upon lapse of the registration, carrying out of the remaining development works by competent authority or by the association of allottees or in any other manner has to be determined by the Authority in consultation with State Government.

The complainants by and large expressed that they wanted possession of their flats at the earliest.

The Director of the respondent company submitted that they are constructing the building and will complete the project fully. The Bench directed the respondent to submit application regarding the extension of the registration of the aforesaid project.

The Authority quoted Section 15(1) of the Act that the promoter shall not transfer or assign his rights and liabilities to a third party without obtaining prior written consent from two-third allottees and without the prior written approval of the Authority.

Complainant counsel quoted Section 7(4) (c) and (d) of RERA Act stated that accounts of the promoter must be frozen and money must be transferred according to the work done. He further submitted that association of allottees has not been formed as yet. The complainant counsel submitted that more than 80% of amount has been already paid in the single case and that it is for the respondent to intimate how much money will have to be invested in the project for its completion .

Director of the respondent company submitted that copy of the plan has been submitted in RERA.

It was further observed that there are around 450 flats and if 300 allottees agree, only then the remaining construction can be given to a third party with its prior

consent. The Bench directed the promoter/ allottees to form association of allottees.

The Bench directed in reference to provisions of Section 11(1) of RERA Act that a quarterly report must be submitted by the respondent for public viewing on RERA's website.

Adv. Dhananjay Kashyap, appeared on behalf of Mr. Anil Kumar (CC/419/2019) prayed for directing the respondent to submit the plan of work with time schedule for Block B1 and how much money he will invest in the project so that the block is completed. He further submitted that the completion date was in May 2016 and 75% of money has been paid to the respondent since 2013- 2017. The Director assured that he will hand over the flats in Block B1 within 10 months.

Mr. Sanjay Kumar (CC/08/2018) submitted that number of flats were registered prior to 2018 in Block A and A1. He further submitted that he visited the site of A1 yesterday and found that the area for lift is not even covered which can cause accident. He further submitted that he visited 3 more towers but the condition is same. He further prayed for inspection of the site.

The Bench reminded the respondent company of his responsibility to maintain safety and cover the lift area and to ensure there is no structural defect or any other defect in workmanship, quality or provision of services as per the agreement for sale.

Mr. Abhishek Arun (CC/236/2021) submitted that his flat is in Block G and the respondent was supposed to hand over the possession of flat in 2017. He further submitted that he had paid Rs. 9,00,000/- and further prayed for refund of his money. The respondent submitted that casting of ground floor for Block G has been undertaken.

Adv. Prashant Kumar appearing on behalf of Mr Mukesh Kumar (CC/1023/2020) submitted that he had taken a housing loan, which has been sanctioned but has not been disbursed as yet, as they are not confident that the respondent company would use it to complete his flat.

The Bench suggested that in another matter, given the atmosphere of distrust between the allottees and the promoter, a special arrangement, wherein separate bank accounts are being opened for each block and demand drafts in the name of the promoter would be submitted to RERA was mutually agreed. The bank drafts would be released to the promoter on the report if the work done as assessed by a

chartered accountant, civil engineer and architect. If the complainants have reservations in paying directly to the respondent company and if the complainants and respondent company are agreeable to a similar arrangement, RERA can keep their drafts in safe custody.

Director of the respondent company submitted that the total cost of the project is Rs. 70 Crores and Rs. 12 crores is further needed excluding the development of Block G. He further submitted that the allottees have outstanding dues more than the amount required to complete the project and that Block B and E will be completed in 2 months and that work has resumed in Block A and A1. The Bench was informed, in response to a query that out of 224 flats, 6-7 flats are unsold.

Mr Anjani Kumar on behalf of Shyama Kumari (CC/341/2021) submitted that they booked the flat in G Block in 2015 and had paid Rs 11 lakh. The completion date was 2017 but as no work has been initiated, he wanted refund of money.

The Bench directed the respondent to submit the progress report at the earliest. The Promoter clarified that G block is part of the overall project . So far 16 flats have been booked against their share and 28 flats are in the share of the landowner against a total of 60 flats in a G+7 structure.

Mr Romit, appearing on behalf of Mrs Chandramani Devi (CC/1707/2020) , an allottee in Block A 1, submitted that he had paid Rs 30 lakhs taking a bank loan in 2018 because A 1 tower was 80% completed and wanted to know the time limit by which the respondent would be able to complete the project. He further submitted that there is no progress in work and construction is being done by the complainants and hence wanted refund of the money.

The Full Bench observed that the Director of the respondent company is taking time since March on one or other grounds and that no work has been done and the plan for completion has also not been submitted as yet.

The Director of the respondent company submitted that due to Covid-19, work was not in progress but since last 15 days work in each blocks i.e. Block A, A1, B, E etc is in progress except for Block B1 and G for which work will start at the earliest. He assured that he would satisfy the customers with the work after visiting the site. He further submitted that the progress report with the photographs will also be submitted immediately.

The Full Bench functioning as Authority under the Act directed the respondent to submit schedule of work within 48 hours stating clearly the date of completion of

each tower. Even if the schedule is not submitted, keeping in view the various orders passed by the Single Bench and the status of compliance, the Authority will issue directions under Section 37 of the Act with time frame to complete the work failing which penalty prescribed under Section 63 would be imposed.

Since then the Authority has received an e-mail communication from Mr Ayush Mishra, who on behalf the Respondent company, has submitted an unsigned progress report of the project stating the following:

Block D has been completed and handed over to customers;
Block F is likely to be handed over to 31st August 2021;
Block B will be completed by 31st October 2021;
Blocks A, A1, C & E will be completed by 31st December 2021;

However, Block B1 & Block G will be completed by 31.12 .2022.

The Authority directs the respondent company to arrange for the necessary funds and resume construction in all blocks in the right earnest.

The Authority observed that the allottees have to abide by the provisions of Section 19(6) of RERA Act which states that every allottee shall be responsible to make necessary payments as specified in the agreement for sale . It reiterated that under Section 37 of RERA Act that directions given by the Authority are binding on both the parties and must be complied with in the given time frame failing which parties shall be liable to penalty for everyday up to 5% of the estimated cost of the real estate project.

The Authority directs the allottees to make arrangements for the remaining funds which they were required to pay to the promoter as per the agreement.

The Authority directs the Registration Wing to immediately process the matter of extension of registration. The Authority pointed out that in no case extension would be permissible beyond one year.

The Authority noted the work done so far in G Block which is be part of the same project. The Respondent Company is directed to file an affidavit stating that they would not be complete the work in Block G and Block B1 even if the period of registration is extended by one year, which they have sought.

The Bench further directed the respondent company to arrange resources for those complainants of Block G who are seeking refund of their investment. The issue of paying interest and compensation to allottees will be adjudicated by the learned Adjudicating Officer after the project is completed.

After hearing the complainants, their learned advocates and the respondent company, the Full Bench functioning as Authority directs the respondent company under Section 37 of the Act as under:

1. The respondent company will complete six Blocks (A, A1, B, C, E & F) by the stipulated dates positively failing which the each directors of the respondent company individually as well as collectively will be responsible for payment of penalty of Re one lakh for the delay of each week for every block under section 63 of the Real Estate (Regulation and Development) Act 2016;
2. As regards the other two blocks (Block B1 & G), the promoter will take the approval of at least two-third allottees to their plan and submit a common proposal to the Authority for approval within four weeks of issue of this order.
3. The Allottees will form an association of allottees as soon as possible and get it registered. The Allottees will also have to make payment up to 90 percent of the estimated cost of the flat. Considering the trust-deficit between the allottees and the promoters, the Authority allows the allottees in case they desire to send their Demand Draft/ Bankers cheque in the name of Promoter in RERA office. Mr. Rajesh Thadani, Officer on Special Duty will keep those Demand Drafts/ Bankers cheques, in safe custody.
4. The promoter will prepare an assessment of the work till date, which will be verified by a team consisting of Civil Engineer, Architect and Chartered Accountant and submit the same to the Authority and to the association of allottees. After fresh construction work, the promoter will get it verified by an independent team consisting of Civil Engineer, Architect and Chartered Accountant, which will submit a report to OSD, RERA, who on perusal of the report would release Demand Draft/ Bankers cheque sent by the allottees to the promoter in proportion to the work done as certified by them. The promoter will place it on the website and web page of the RERA site.

5. The respondent company will not sell any unsold flats in any Blocks without obtaining No objection certificate from the RERA, Bihar. IG Registration may kindly be requested to direct DSR, Patna to stop registration of the sale of any flat of the Project Chhtrapati Shivajee Greens by the promoter/respondent company with immediate effect. OSD, RERA will ensure compliance to this direction with immediate effect.
6. All directors will submit on affidavit showing details of their assets (moveable as well as immovable) and liabilities, copies of their income tax returns filed from 2012 till date to the Authority within two weeks of issue of this order.

The case is transferred to the Double Bench of Hon'ble Member, Shri R B Sinha and Hon'ble Member, Smt. Nupur Banerjee for monitoring progress, compliance of its orders and for further directions.

Sd/-
R.B. Sinha
(Member)

Sd/-
Naveen Verma
(Chairman)

Sd/-
Nupur Banerjee
(Member)