

REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR

Before the Bench of Mr. Afzal Amanullah, Chairman and Mr. R.B. Sinha Member

Complainants cases Nos-
CC/396/400/401/402/411/417/418/425/426/429/435/455/456/457/458/477/503/213/216/289/293/310/175/302/275/231/378/111/271/263/352/311/312/267/229/230/225/226/269/270/276/281/284/287/292/306/307/323/363/502/354/373/520/523/526/531/537/545/559/563/575/576/112/532/639/646/649/650/652/653/655/659/660/662/663/664/665/666/668/670/675/676/679/680/682/683/685/686/688/689/690/691/692/693/694/695/697/714/713/716/720/722/725/726/728/730/731/732

Suman Kumari and others..... Complainants

vs.

M/s Agrani Homes Pvt. Ltd. Respondent

15.03.2021 Proceedings

The proceedings were held online through video conferencing mode. Most of the complainants were present. Mr Puneet Sidharth Advocate, Mr Kishore Kunal Advocate, Mr Dheeraj Kumar Rai Advocate and Mr Puneet Kumar Advocate were present on behalf of complainants and represented their clients. Respondent Company was represented by Mr Alok Kumar, Director of the Company and Mr Sanjay Singh Advocate. Mr Apurva Harsh, Advocate represented Mrs Sikha Singh, Ex- Director. Mr Raj Kamal Advocate represented Mr Keshav Shankar ex-Director.

At the outset, the Bench recalled that Learned Counsel of the Respondent Company Mr Sanjay Singh had committed in course of hearing on 18th February to come out with a comprehensive plan that would address the issue of refund of deposits to the complainants in a time-bound manner. The Respondent Company had submitted a plan on 5th March 2021 but Learned Counsel Mr Singh was not present due to certain unavoidable personal reasons to present the plan. Meanwhile, Mr Alok Kumar has submitted a petition through email yesterday, hard copy of which has been submitted just before the commencement of hearing. The Bench therefore gave the floor to the Learned counsel to present the plan submitted by the respondent company.

Mr Sanjay Singh, Advocate stated that the Respondent company has submitted a five pronged plan to refund the deposits to the complainants/allottees in a time-bound manner. He highlighted the salient points of the plan and stated that he has come with a cheque of Rs one crore that can be encashed immediately with inclusion of the name of the payee and date. He stated that under the plan 2, the respondent company has got a buyer for 80 kathas of land at Dhawalpur, South of Bye-Pass, Patna (27 kathas- Registered, 27 Kathas- full money paid and 26 kathas- Agreed) that would fetch 14.40 crores (@Rs 18 lakh per kathas) to the Authority. After adjustment of Rs 3.00 crores towards remaining amount to be paid to farmers/registration charges, the Authority would get Rs 11.40 crores for disbursement amongst the complainants. He stated that the buyer has committed to make payment of entire sale proceeds within 11 months. He stated that under Plan 1, the respondent has agreed to dissolve several development agreements executed with land-owners and get the amount of advance/money deposited with RERA for making payment to the consumers. He assessed that about Rs 13.75 crores would be collected under this plan. Under the Plan 3, the respondent Company proposes to register the plots of land admeasuring 1.3 Bighas in their project Prakriti Vihar to 182 consumers after development of the land from part of the sale proceeds. He claimed that the Authority could get about 8 crores under this plan. Under Plan 4, the Respondent company proposes to commence a few projects so that their business in the real estate sector could again pick up. The Respondent company has requested the Authority to approve the registration of these 7-8 projects, whose applications are pending with the Authority. Under Plan 5, the Respondent Company has requested for adjustment of claims of 27 complainants who has agreed to take plots of land in the project, as requested by Mr Kishore Kunal, Advocate. Learned Counsel Mr Singh stated that to start with, any one plan may be approved by the Authority. He suggested that initially the Plan 2 may be approved by the Bench so that the sale proceeds start flowing into the escrow account to be kept under the control of the Authority. Thereafter, the Bench may consider other plans as per suitability for approval. He also committed that Mr Alok Kumar would come over and establish an office in Patna and personally supervise the implementation of the plans.

The Bench thereafter intervened to say that a cursory look at the plans show variable figures and requested the MD of the Respondent Company to keep his words/promises/commitments as in the past, it was found that his promises have not been fulfilled. The Bench cited the example that under the plan 2, the Respondent company had committed to get Rs16.00 crore only last week when the plan was initially submitted on the last date of hearing but the figure has come down now to Rs14.40 crore i.e. reduction of 10 % within a week. Similarly, the Respondent company had proposed the receipt of Rs 6-8 crores from return of nuns/advances from dissolution of development agreements on 05.03.2021 but now he has proposed receipts of Rs 14 crores, an increase of nearly 100 % in a week. One of the reasons for inflated figure is inclusion of probable receipt of Rs 3.00 crore from the heirs of Late Kunti Devi, the land-owner of Sampatchak land. The Bench recalled that barely a month ago, the promoter had informed that there were heated arguments between promoter and heirs of Late Kunti Devi, the land-owner of Sampatchak land during his last visit to Dhanbad and both sides have filed FIRs/counterFIRs against each other and there was hardly any chance of recovery of remaining amount of nun/ advance from heirs of Late Kunti Devi, the land-owner of Sampatchak land in foreseeable future.

Mr Kishore Kunal, Advocate supported the views of the Authority, stating that he has gone through the plans submitted by the Respondent company and found that there were differences in the statements/proposals filed on the last date of hearing and that filed today, by the Respondent company. He also requested that the respondent company must adhere to the commitments given by them. He stated that the promoter should have filed an affidavit from the land-owner also in each case under the plan 1. It would have expedited the process. In Plan 2, he suggested the period of payment by the buyer should be reduced. He requested the Authority to get the proper due-diligence done on the proposals so that the Authority get fair value of the assets. Mr Puneet Sidharth, Advocate stated that the MD had committed to the Authority in November 2019 that entire sale proceeds of the Patliputra Property would be kept in a designated bank account for making payment to the complainants but barely one-fourth of the sale proceeds were refunded to the complainants. He requested that the proceedings under sections 60 and 63 of the RERA should be undertaken against the promoter for

repeated violations of the directions/orders of the Bench. He stated that he has filed a petition, contesting the claims of the Respondent company for review of the interim orders issued 10.02.2021. He however supported the present proposal submitted by the Respondent company stating that this was a step in right direction. He cautioned the Authority that necessary due diligence should be exercised before acceptance of the proposal.

Mr Punit Kumar, Advocate stated that the promoter should provide the data of collection of funds Project-wise so that an accurate assessment could be made of the funds that have been diverted. He stated that many allottees of the respondent company have not filed their complaints with the Authority as yet and they may be filing their complaints in future. Hence, the Authority may direct the respondent company to furnish entire information so that a realistic assessment could be made of the requirement of funds for refund to the consumers. Mr Dheeraj Kumar Rai Advocate stated that his client (CC/352) has already been paid the principal amount of deposit and the Authority may issue an order in his client's case so that he could get make an effort to get the amount of interest from the promoter.

The Bench noted that there was no representative of M/s Ruben Hospital present in the hearing. It was also noted that though Learned counsel Mr Navin Kumar Sinha of Ruben Hospital had showed his willingness on the last date of hearing to pay the remaining amount of Rs 1,88,54,098, provided clearance of the home loan account is done by Mr Alok Kumar, the Ruben Hospital has not deposited the remaining amount. Many complainants alleged that the Ruben hospital were already earning revenue from the Residential building by using it as a commercial private hospital. The Bench therefore directs that the Ruben Hospital should pay the remaining amount of Rs 1,88,54,098 without making it contingent upon the clearance of the home loan by Mr Alok Kumar or alternatively Ruben Hospital should open an escrow account for keeping all revenues from the facilities operating at 15, Patliputra Colony premises.

Most of the Complainants however were wary of the Plans submitted by the Learned counsel of the respondent company and said that the promoter (Mr Alok Kumar) was an unreliable person and couldn't be trusted as he has illegally diverted hundreds of crores

of rupees from several Projects without taking any action to complete them. They claimed that he had run away from the state. They stated that the Authority must undertake rigorous due-diligence exercise before accepting any plans submitted by the Promoter. Many complainants demanded that Mr Alok Kumar should also directed to deposit a significant sum from his own resources. Mr Kishori Prasad CC/425 said that he has finally received an email from Mr Alok Kumar regarding a flat in Agrani Ashoka.

After hearing the complainants, the respondents and their lawyers and after due consideration, the Bench orders that:-

- (1) The proposals of the Respondent Company preferably Plan 1 to 3 & 5 should also be examined by the complainants and their counsels. Opinions/views, if any, be made available to us within two weeks.
- (2) Rs 1,07,04,258 received from M/s Ruben Patliputra hospital Pvt Ltd may be paid to the complainants as per the criterion prescribed by the Bench expeditiously.
- (3) The Bench once again directs Ruben Hospital to pay the remaining amount of (Rs 2,95,58,356- Rs1,07,04,258 =) Rs 1,88,54,098 to the Authority without any further delay. The Bench also directs Ruben Hospital to keep the entire receipts from the facilities existing at 15, Patliputra Colony in an escrow account and a fortnightly report be submitted to the Authority regarding the balance available in the account. They should also submit the entire revenues received by them from the said facilities from 1st July 2020 to 31st March 2021 by 7th April 2021.
- (4) Mr Alok Kumar is once again directed to let the Authority know the time-period within which his commitment given to the court vide his petition dated 9.2.2021 for paying back the remaining loan amount to IOB, Kankabagh and obtain a NOC from the Bank for registration of the Property in favour of Ruben Hospital.
- (5) The Bench also noted repeated violations by Mr Alok Kumar, Director of the Respondent Company of its directions to repay Rs 4.31 Crore, the amount diverted by him to adjust the loan of its sister concern Indus ventures (MD- Ms Vijaya Raj Laxmi) and deposit all original deeds of Absolute purchase of plots of land of IOB Nagar, Keshripur, Parivida, Bachhawan and Druva, Darekhu, Varanasi, House No-A/15, Yogipur, Lohyanagar, Kankarbagh, Patna, flat No-

A/403, Awadh Apartment, Bhootnath Road, Kankarbagh, Patna and the plot of 7-8 kathas of land, near Maulana Engineering College, Danapur, Patna with the Authority along with an affidavit that they were surrendering them for auction/sale for refund of the deposits of the complainants. The Bench directs to initiate the proceedings for violation of section 4 (2) (l) (d) under the sections 60 & 63 of the Real estate (Regulation and Development) Act 2016.

Put up on 12.04.2021 at 3.30 PM.

Sd/-

(R.B. Sinha)

Sd/-

(Afzal Amanuallah)