REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR

RERA/CC/1221/2021

Bishwanath Yadav …Complainant

Vs.

M/s Kumar Kartikey Construction Pvt. Ltd. …Respondent

Project: - " Sumitra Heights"

ORDER

29.05.2023

30.05.2023

This matter was last heard on 20.04.2023.

2. The case of the complainant is that he had paid Rs. 17.33 lakh to M/S Kumar Kartikey Construction Pvt. Ltd. which is developing projectof Sumitra Heights along with M/s Baidyanath Construction Pvt. Ltd. The total consideration amount was fixed as 25 lakh . The complainant submits that he sold the agricultural land to purchase the said flat. The matter has been filed for handing over possession as also for compensation.

3. The complainant has filed a copy of agreement signed by Dhananjay Kumar on behalf of M/s Kumar Kartikey Construction Pvt. Ltd. for flat no. 8 and copies of receipts issued by M/s Kumar Kartikey Construction Pvt. Ltd., for payment taken in cash on different dates between 5.8.2018 to 10.9.2018; and a copy of brochure titled " KartikeyComplex". He has also filed copy of legal notice dated 30.06.2020 stating that the respondent no.3 Shri Dhananjay Kumar has sold the company and sought to know whether the company has soldhis booked apartment and a copy of the FIR filed on 19.02.2021.

4. This matter was earlier heard by the Conciliation Forum where it was submitted by the learned counsel for the complainant that a new development agreement has been executed between both the companies i.e. the respondent no.1 and 2. The Directors of the Respondent company Shri Mukul Kumar Singh and Shri Daya Shankar Tiwary had appeared in person before the Forum on 25.07.2022 and disputedthat consideration amount has been received by the Company. It has been submitted that the complainants have to prove that they have paid the advance money to the previous company M/s Baidyanath Construction Pvt. Ltd. Therefore, the conciliation process failed and the matter was referred before the Authority.

5. Subsequently, the complainant had filed a copy of the development agreement dated 16.01.2018 executed between the respondent no.1 and 2 and the landowner. He had also filed copy of brochure issued by the respondent no.2 Baidyanath Construction Pvt. Ltd. which is titled as " Sumitra Heights". where the name of both the parties are mentioned and copy of the application form for registration in RERA and the relevant documents submitted by the company during the course of registration.

6. During the course of hearing the Authority observed that money receipts have been issued by M/s Kumar Kartikey Pvt. Ltd for the project Kartikeye Complex without it being registered with it and directed that suo motu proceedings may be initiated against the respondent 1 for violation of section 3 of the RERA Act, 2016.

7. Shri Sumit Kumar, Advocate , who had filed vakalatnama on behalf of the respondent no. 1, Shri Mukul Kumar, Director and the respondent no.2 Shri Daya Shankar Tiwary had submitted during hearing that the documents made by the complainant are fabricated and that the respondent no.1 and 2 had no concern with the respondent no. 3 Shri Dhananjay Kumar who might have signed the deed in his personal capacity.

8. However, subsequently in the written reply filed by respondent no.1 and 2 it was stated that the respondent no. 3 Dhananjay Kumar was Director in the respondent no. 1 company Kumar Kartikey Construction Pvt. Ltd. but had

resigned on 15.09.2018, after all the liabilities had settled. It was submitted that the complainant may explain how he had paid the money in cash and that there is no project titled " Kartikey Complex" registered with RERA and that the complainant is not allottee of the Project "Sumitra Heights". It was also stated in the reply that Shri Anil Kumar Singhwas Directorof both the companies since September, 2018 but the transaction of the complainant respondent no.3 is not admitted.

9. During the course of hearing the learned counsel for the complainant refuted the submission of the respondents counsel that the document was fabricated. He also submitted that the respondents hadbeen earlier denying any relationship with Respondent 3 Dhananjay Kumar but they have now accepted that he was at one time Director in the respondent 1 company.The learned counsel for the respondents reiterated the submissions made in their reply.

10. Perused the documents filed by the complainant. The development agreement filed by him between the landownersclearly mentions that the land has been given to be developed jointly by both the respondent no. 1 and 2 as a developer. The joint development agreement was executed on 16.01.2018 by Shri Dhananjay Kumar as Director and Shri Sanjay Kumar Pandey. The brochure filed by the complainant mentions that Sumitra Heights is being developed by respondent no.1 and 2.

11. The Authority observes that the agreement signed by Dhananjay Kumar on 15.09.2018 is for flat no. 8 of project of the respondent no.1. The money was paid to him on behalf of respondent no.1 on different dates between 5.8.2018 to 10.09.2018. In the reply filed by the respondents no. 1 and 2 it has been accepted that respondent no.3 Dhananjay Kumar was the Director of the respondent no.1 company till September, 2018. The Authority, therefore, observes that the payment was made to the respondent no.1 while the respondent no.3 was Director of the company and therefore, the argument that the agreement dated05.10.2018 is between the complainant and the Ex.Director cannot be sustained in the absence of any supporting document regarding the date of resignation of respondent no.3 as Director of the respondent company.

12. The Authority observes that this matter is covered under the purview of section 69 of the Act and, therefore, the respondent no.1 company, Kumar Kartikey construction Pvt. Ltd. as well as the then Director Respondent no. 3 are jointly and severally liable for the offence of taking the payment and not giving possession of the apartment.

13. The Authority takes note of the mention in the reply that respondent no.1 is not developing the project but is only taking share in the project. The respondent has also mentioned that the allottee is not the project of Sumitra Heights. The complainant has not filed any evidence to establish that the project Kartikey Complex and Sumitra Heights are one and same project and, therefore, impleading respondent no.2 as a party in this case is not justified. The transaction was admittedly madewith different entity, viz. the respondent no. 1 for which respondent no.2 cannot be held liable.

14. Hence, the Authority directs that no case is made out against the respondent no.2 in this matter.

15. The Authority also observes that the pleading along with the submission of the respondent in paragraph no. 13 of the reply that the respondent no.1 is getting profit in the same project, implies that this company may be getting some share of developed apartments in the project Sumitra Heights. Since the matter has been filed for possession for flat, the Authority cannot give any direction for flat in Sumitra Heights by a different entity except making an observation that if any flat is available in the share of the respondent no.1 they should allot the same to the complainant. In any case the respondent no.1along with respondent no.3 is liable to refund the principal amount and interest and also to pay for any compensation that the Adjudicating Officer may award separately. It is for the present Directorsof respondent no.1 and former Director-respondent 3 to decide how they would like to address the demand of the complainant.

16. In so far as the payment of cash is concerned, this matter has to besettled by the Tax Authorities to whom the parties can approach separately.

The Authority, therefore, holds as follows:-

1. M/s Baidyanath Construction Pvt. Ltd. has no transaction with the complainant, hence impleading as respondent in this case is not tenable and, therefore, no direction is being given to Respondent 2.
2. The Authority finds respondent no.1M/s Kumar Kartikey Construction Pvt. Ltd.and its Director as well as, Shri Dhananajay Kumar Ex. Director of the respondent company respondent no.3 as jointly liable for making payment of principal and interest as well if they are not able to give possession of the flat from their share in the project Sumitra Heights.
3. Suo-motu proceedings under section 59 of the Act may be initiatedaction against the respondent no. 1 for taking booking of project titled "Kartikey complex" without registration with RERA in violation of section 3 of the Act.

17. The Authority, therefore, directs the respondent no.3 to either refund the amount of Rs. 17.33 lakh payment made by the complainant in 2018 along with interest calculated at the rate of marginal cost of fund based lending rates (MCLR) of State Bank of India as applicable for three years plus two percent or can give possession of flat from the date of taking payment till the date of refund within sixty days of issue of this orderor alternatively give flat from their share in the project Sumitra Heights.

18. The complainant is at liberty to press his claim for compensation before the Adjudicating Officer.

19. With these directions and observations, the matter is disposed of.

Sd/-
(Naveen Verma)
Chairman