REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR
Before the Single Bench of Mrs. Nupur Banerjee, Member

Case No: RERA/CC/908/2021

Sai Kusum Infinity (Owner Association) represented by the President Anuj Kumar & Anr. ...Complainant

Vs.

M/s Sai Kripa Real Estate Pvt. Ltd. ...Respondent

Project: Sai Kusum Infinity

Present: For Complainant: Mr. Bhola Shankar, Advocate

For Respondent: Mr. Praveen Kumar, Advocate

05/07/2023 **ORDER**

This matter was last heard on 14.02.2023 and was fixed for orders on 28.04.2023. However, due to pre- occupation of the Bench in other matter, order could not be pronounced on the date fixed.

The complainant has prayed for the following reliefs:

A. To direct the respondent to complete the left overwork of the said project as per specification mentioned in the Agreement for Sale and the Absolute Sale deed.
B. To direct the respondent to refund Rs.2.50 lakh along with 18% interest from the date it was due, which was collected by way of security deposit from the members of the complainant association till its realization to each of Flat Owners.
C. To direct the opposite party to pay the rent of common area of commercial part to the petitioner society, as he is collecting rent of the same and the property belongs to petitioner society, alternatively during pendency of the case same may be deposited in the court or a separate account.
D. To direct the opposite party to vacate the car parking area completely and also to remove 19 rooms constructed in the parking area or to hand over the rooms to the Association.
E. To direct removal of structure made on common area for commercial activity or to hand over the possession of the said construction to the flat owners for their common use which would be in the interest of the Apartment along with rent collected thereon.
F. To direct the respondent to pay Rs.1,00,000/- by way of compensation to the complainant association for the financial loss incurred, mental torture, mental and physical harassment caused to its members.
G. To direct the opposite party to pay the litigation cost i.e. the amount of Rs.50,000/-.
H. Any other costs as the competent authority deems fit.

The facts of the case, in short, are that believing upon the promises made by the developer, the members of the complainant association entered into an agreement with the respondent to purchase the flat through the registered agreement for sale on various dates while complainant no.2 executed agreement for sale dated 04.03.2014 and subsequently, after making full payment on 10.08.2017, deed of Absolute Deed has also been executed by the builder in his favour. It is stated that on 28.06.2014 the possession certificate has been issued and possession of several flats were handed over to the members of the complainant association. In spite of that, the promises made by the builder have not been fulfilled as yet and several works found to be either incomplete or different from the specification made in the agreement. After much persuasion the builder competed the work of installation of lift and gym facility but swimming pool was not handed over in functional condition. It is further stated that the developer has failed to fulfil his promise to form an association/ Co-operative society for the purpose of handling the affairs of the apartment. In compulsion the flat owners form an association and had applied for its registration under the Society Registration Act. It is also stated that a sum of Rs.2.5 lakh has been collected by the developer by way of security deposit in the year 2017 itself from each of the flat owners and the developer promised to transfer the same to the association after its formation but the developer has taken no interest in formation of association with the sole object to misappropriate the entire amount collected from the members of the complainant association. Thus, the security deposit so collected from about 112 flat owners i.e. Rs.2,80,00,000/- are lying with the developer, which is required to refund the same along with interest.

It is further stated that as per Agreement for Sale the developer has failed to appoint maintenance agency but the members of the association have appointed 14 security guards for maintenance of the building. It is stated that each of the flat owners had made payment for their respective shares but the commercial shops have been constructed and running on the land falling in the share of the land owners, which is not permissible in law. Not only this, even the electricity connection has been given to the said common area of commercial part which is in violation of the Electricity Act. It is also stated that the maintenance charge paid is being illegally retained by the developer. Video Door phone has not been installed even after lapse of about three years from handing over of the possession. The developer has completely obstructed the exit gate of the apartment by placing the generator near the gate which is not only violation of the sanctioned map but also in contravention of fire safety norms. It is also stated that the developer in complete contravention of the sanctioned map has constructed 19 rooms in the car parking area and has illegally occupied the said rooms. The members of the association requested to complete the left over work but the respondent did not pay any heed to the said request. The complainant as a President of the Association has sent a legal notice on 01.06.2021for rectifying the irregularities but they failed to take any steps till date. In this way the respondent has acted in complete contravention of the terms stipulated in the agreement for sale. Hence, this complaint.

The complainant has placed on record the copy of the registered Agreement for Sale dated 04.03.2014, Chart showing total land area and possession of flat owners and the formation of association.

A counter affidavit has been filed on behalf of the respondent in which the respondent raised a preliminary objection to the complaint which was filed by the President of the owners' Association. The respondent asserted that the complainant is not a proper person to file the present complaint nor he is duly authorized to institute and maintain the present complaint and thus, the present complaint is not maintainable. All the allegations of the complainant are specifically denied and disputed. The respondent has made his submissions countering the claim of the complainant. It is also stated that the issues raised in the complaint petition do not warrant any interference by the learned Authority and hence, it is fit to be dismissed in limine.

Learned counsel for the complainant has submitted that the dispute between the parties has already been settled between the parties and only Rs.2.50 lakh has to be given by the promoter to the allottee association. Learned counsel for the respondent agreed to the said submission of the complainant and submitted that the respondent has already given 56 flats. The maintenance has to be given by the allottees. The allottees have not paid the maintenance from the day one. It is also submitted that one allottee has not paid the due amount, so he is unable to pay that amount.

In the light of the submissions advanced by learned counsel for the parties and documents placed, the Bench observes that in the greater interest of the allottees of the Real Estate Sector and to show justice to the aggrieved persons, RERA may hear the case and come to a logical conclusion. Hence, the Bench directs the respondent to pay Rs. 2.50 lakh to the complainant association.

Since the matter has been amicably settled between the parties, the matter is disposed of in terms of the settlement made and the direction made above.

Sd/-
(Nupur Banerjee)
Member