

REAL ESTATE REGULATORY AUTHORITY, BIHAR

Before the Bench of

Hon'ble Member Mr. S.D. Jha, RERA, Bihar,

RERA/CC/646/2022

Purushottam Kumar Tiwari and Anr Complainant

Vs.

M/s Vikramshila Developers Pvt. Ltd. Respondent

For the complainant: Mr. Ram Babu Sah, Advocate

For the Respondent: Mr. Mukesh Kumar, Advocate

Project: - JAGDISH NIKETAN

ORDER

07.12.2023 This case was last heard and order was reserved on 28.11.2023. Mr. Ram Babu Sah, Advocate, appeared and defended the case of the complainant. Mr. Mukesh Kumar Advocate, appeared and defended the case of the respondent. The order is being passed today 07.12.2023.

2 (i). Learned counsel for the complainant submitted that an Agreement For Sale was executed between the complainant and the respondent on 5th August, 2017 to purchase Flat no.5A of 1772 sq. ft. on 5th floor with car parking space on consideration amount of Rs.49,00,000/-, which was paid by the complainant and thereafter a Conveyance Deed was executed on 7.5.2019 and possession of the flat was handed over to the complainant but possession of car parking space was not handed over.

(ii) He also submitted that as per Agreement other amenities, like, Community Hall, Gymnasium etc. have not been provided as per Agreement. The Community Hall was to be constructed on the ground floor but the same has been constructed on 6th floor which is contrary to the sanctioned plan. The roof of the Gymnasium's room has been made of asbestos which becomes too much hot in summer season. He also submits that as per provision of Section 11(4) of the RERA Act, 2016, copy of sanctioned plan, layout plan, completion and occupation certificates are to be provided to the complainant by the promoter but the same have not been provided so far. Hence,

this complaint has been filed for allotment of car parking , to provide Community Hall on the ground floor at any place within or adjacent to the campus of the project and to get roof of the Gymnasium concreted.

3. Learned counsel for the respondent submitted that vide Conveyance Deed dated 7.5.2019 the complainant has been handed over possession of the flat along with car parking as well as all amenities (Community Hall, Gymnasium etc.) as promised in the Agreement For Sale dated 5.8.2017. He further submitted that Community Hall has been provided on the top of the floor as it is not possible to provide the same on the ground floor or to the adjoining area of the apartment.

4. It is relevant to mention that vide proceeding dated 28.11.2023 learned counsel for the respondent was directed to file fresh counter affidavit with documentary evidence on the point that all amenities along with car parking have been provided to the allottees including the complainant, but the same has not been filed. Consequently, the complainant, who was directed to file rejoinder, if any, within a week after serving of the counter affidavit upon him by the respondent, has also not been filed. While granting time to file counter affidavit, the Authority observed that in case of non-compliance, an order will be passed on merit on the basis of material available on the record.

5 Perused the record. (i) The Authority notes that the complainant booked Flat no.5A of 1772 sq. ft. on 5th floor with parking space on consideration amount of Rs.49,00,000/- and on being paid the consideration amount Conveyance Deed was executed on 7.5.2019 incorporation therein in Schedule –II that “All that piece and parcel of residential **Flat on Fifth Floor** in “**JagdishNiketan**”, bearing **Flat no.5A** Measuring super Built up area **1772 sq. ft** along with **One reserve car parking space on Basement**, which shall be aggregate of proportionate share in common space in the building.....”

(ii) The Authority further notes that possession of the flat has been handed over to the complainant but possession of car parking space, other amenities like Community Hall, Gymnasium etc. as per Agreement and documents, which are required to be handed over to the allottees as per provision of Section 11(4) of the RERA Act, 2016, have not been provided as claimed by the complainant. The Authority, therefore, vide proceeding dated 28.11.2023 directed the respondent to file fresh counter affidavit along with documentary evidence to contradict the claim of the complainant within a week but the same has not been filed.

(iii) The Authority also observes that though the respondent's counsel claims that car parking and other amenities have already been provided to the complainant and other allottees of the apartment, he could not justify his said submission by producing documentary evidence in spite of opportunity given to him vide proceeding dated 28.11.2023 to file fresh counter along with documentary evidence to establish his aforesaid claim.

6. After taking into consideration the aforesaid facts, the Authority directs the respondent – Company and its Director Ratan Kumar Santhalia to hand over possession of the Car parking space in the basement to the complainant, as mentioned in the Absolute Sale Deed with parking allotment letter as has been issued to other allottees as claimed, to get the roof of Gymnasium concreted, to make available Community Hall on the ground floor, if possible, and to provide all the documents to the complainant which are mandatorily required to be provided to him as per provision of Section 11(4) of the RERA Act, 2016, within two months from the date of issue of this order.

With the aforesaid observation and directions, this case is disposed of.

**Sd/-
S.D. Jha,
Member**