

Ranchi

Before Adjudicating Officer

Jharkhand Real Estate Regulatory Authority, Ranchi

Present ----- Ranjeet Kumar Choudhary

Dated 14th day of September, 2022

Complaint Case No.- 09/2020

Mrs. Reena Gupta, W/o Rabindra Kumar,
R/o Flat No. 103, Neha Apartment, Baliguma,
P.O. & P.S.- M.G.M., Mango, Town- Jamshedpur,
District- East Singhbhum, Jharkhand

--- Complainant

VERSUS

1. M/s Kailash Construction,
Having its registered office at Road No. 4,
Sankosai, Dimna Road, Mango, Jamshedpur
2. Rita Kumari (Partner), W/o- Sri Ajay Kumar

3. Ankit Kumar (Partner), S/o- Sri Ajay Kumar

4. Ajay Kumar, S/o Late Mistry Sah,

All are Residents of Bungalow No. 22/C, Tube Colony,

Nildih, P.S.- Golmuri, Town- Jamshedpur,

District- East Singhbhum, Jharkhand

5. Sheo Nandan Sahu (Land Owner), S/o Late Ganpati Sahu,

R/o- Sai Marigold, Opposite Healing Touch Hospital,

Kokane Chown, Pimple Soudagar,

Deepmala Society, Pune- 411 027, Maharashtra

--- Respondents

Complainant Represented through

--- Sri Biswambhar
Shastri, Ld. Advocate

Respondents No. 1 to 5 represented through

--- Miss Divya
Purnima, Ld. Advocate

JUDGMENT

1. The instant complaint has been brought by the Complainant Reena Gupta against the Respondents M/s Kailash Construction & Ors. with

reliefs that on Adjudication, Respondents may be directed to complete the project within 2 months from the date of filing of the case and pay a compensation of Rs. 1 lakh (One lakh) only per year to her till handing over the flat.

2. As per Complaint Petition, it is the case of the Complainant that Respondent No. 4 Ajay Kumar, who is an employee of JUSCO Ltd., Jamshedpur and husband of Respondent No. 2 Reeta Kumari and Respondent No. 3 Ankit Kumar are well acquainted with the husband of the Complainant namely Ravindra Kumar. These Respondents induced the Complainant and her husband to purchase a flat in a multi-purpose building being developed by them at House No. 98, Shiv Path, Kadma, Jamshedpur situated at Mouza- Bhatia, P.S.- Kadma, having an area of 4 Kathas of land. Accordingly, the Complainant booked a Flat bearing No. 302 having an area of 1242 sq. ft. in the said Holding No. 98, Geeta Palace and both the parties entered into agreement for sale dated 22.08.2012 for a total consideration amount of Rs. 23,85,600/- (Twenty three lakhs eighty five thousand six hundred) only and the Complainant paid Rs. 18,00,000/- (Eighteen lakhs) only to the Respondents on

different dates as per their demand. Payment Schedule is given in the Complaint Petition. After receiving the amount, when the Respondents were lingering the matter to deliver the possession of the flat to the Complainant, she sent a legal notice dated 07.10.2013 to the Respondent No. 2 and 3 requesting them to make quick construction and to handover the flat to her after receiving balance amount but Respondents did not reply and kept mum. Respondents again approached the Complainant for Rs. 2,00,000/- (Two lakhs) only for completing the project and she transferred this amount to them through RTGS and as such she paid Rs. 20,00,000/- (Twenty lakhs) only to the Respondents against agreed consideration amount. The Complainant again sent a legal notice dated 25.06.2015 to the Respondents but they did not reply again. Then the Complainant filed a Criminal Case against the Respondents vide Complaint Case No. 684 of 2018. Hence it has been prayed that Respondents may be directed to complete remaining work of the project and handover the flat to the Complainant within 2 months from the date of filing of the case. It has further been prayed that a compensation @ Rs. 1,00,000/- p.a. be given to the Complainant from the side of the Respondents. Xerox copies of several documents have been annexed

with the Complaint Petition. It is also mentioned in the Complaint Petition that Respondents have executed 6 sale deeds in favour of other flat owners.

3. On being noticed Respondent No. 1 to 4 appeared and filed their show cause opposing the case and claim of the Complainant. It would be proper to mention here that this show cause does not bear the signature of any of the Respondents on whose behalf it has been filed. No show cause has been filed on behalf of the Respondent No. 5 although power has been filed on his behalf which is in the record.

4. As per show cause, it is the case of the Respondent No. 1 to 4 that present case is not maintainable and it has been filed by the Complainant playing fraud with the Court. It is said that prior to filing of this case the Complainant has filed the Complaint Case against the Respondents in Civil Court, Jamshedpur vide Complaint Case No. 825 of 2016 which has been sent by the Court to Kadma P.S. u/s 156(3) of the Cr. P.C. for institution and investigation of this case and Kadma Police instituted Kadma P.S. Case No. 144/2016 (G.R. No. 2358 of 2016) against the Respondents under different sections of the IPC. During investigation

police found that husband of the Complainant had given certain loan to the Respondent No. 2 and 3 and he retained certain blank signed documents and signed cheques and subsequently Respondents liquidated entire loan amount. The Kadma Police found the case filed by the Complainant is of civil nature. After submission of final report by the police, the Complainant cooked up this false case. It is further said that on the protest filed by the Complainant's husband, SDJM, Jamshedpur took cognizance of the case and this case was registered as Complaint Case No. 684 of 2018. The Respondents have filed Cr. M.P. No. 2111 of 2019 before the Hon'ble Jharkhand High Court for quashing of criminal proceeding of Complaint Case No. 684 of 2018. The Hon'ble Court has been please to stay further proceeding of criminal case pending in the court of SDJM, Jamshedpur. Thereafter the Complainant filed the Complaint Case against the Respondents before this Authority. It is further stated that in the para- 26 of the agreement for sale that this agreement will be valid only when the 2nd party will return all the signed documents and cheques to the 1st party. Since these documents and cheques have not been returned, this agreement for sale is itself invalid. Hence it has been prayed to dismiss this case.

5. The only point arising out of this case for determination is whether the Complainant is entitled for reliefs as claimed for ?

FINDINGS

6. Perused the case record. I find that on 15.12.2021, Respondents filed a petition regarding preliminary objection with respect to maintainability of this case and vide the Order dated 28.03.2022, this petition was rejected by this Court holding that project of the Respondents comes within the purview of '**ongoing project**' as defined in the Act and the case is very much maintainable.

7. I further find that the conducting lawyer of the Respondents informed this Court that he doesn't want to do pairwi on behalf of the Respondents. Then on 18.04.2022 again the notice was sent to the Respondents seeking their appearances and accordingly they appeared and contested this case and fresh power was filed by another lawyer.

8. The Ld. Counsel appearing on behalf of the Complainant submitted that the Complainant had entered into development agreement with Respondent No. 2 and 3, who are Managing Partners of Respondent No. 1 Company, for purchase of a flat in the project of the Respondents

namely '**Geeta Palace**'. This agreement was with respect to purchase of flat bearing Flat No. 302 having an area of 1242 sq. ft. and the consideration amount was Rs. 23,85,600/- (Twenty three lakhs eighty five thousand six hundred) only. The Complainant has been able to established that altogether Rs. 18,00,000/- (Eighteen lakhs) only was paid to the Respondents by the Complainant on different dates and Rs. 2,00,000/- (Two lakhs) only was subsequently paid through the RTGS in the bank account of Respondent No. 4 Ajay Kumar on the request of the Respondents for early completion of the flat. Still Respondents have not completed the project particularly the flat of the Complainant and its possession has not been deliver to her while the agreement for sale was executed in the year 2012 and possession of the flat was to be delivered within 24 months from the date of the agreement i.e. 22.08.2012. Hence, he has prayed that Respondents may be directed to complete the construction work and furnishing work of the flat of the Complainant and handover its possession to her after receiving balance amount and execute sale deed in her favour. For delay in handing over the flat, suitable compensation may be give to the Complainant. It is his further

argument that the agreement for sale is not void from any angle as argued by lawyer of the Respondents.

9. The Ld. Counsel appearing for the Respondents submitted otherwise. She has submitted that case of the Complainant is not maintainable in view of Notification dated 15.09.2020 issued by Urban Development Department, Govt of Jharkhand. She has further argued that case is liable to be dismissed as the Complainant has suppressed material facts while filing of this case before this Authority. In support of her argument she has placed her reliance upon the judgment of the Hon'ble Apex Court delivered in a case between Bijay Kumar Ghai Vs. The State of West Bengal [Criminal Appeal No. 463 of 2022 pertaining to S.L.P. (Criminal) No. 10951/2019]. She has further submitted that before filing of the present case, the Complainant had filed criminal case against the Respondents vide Complaint Case No. 825/2016 which was registered by the Kadma Police Station vide Kadma P.S. Case No. 144/2016 when the Court sent the Complaint to Kadma Police u/s 156(3) of Cr. P.C. The police after investigation found the case of civil nature and submitted final report. The Complainant filed Protest Petition before

the Court below and Complaint Case No. 684/2018 initiated against the Respondents. The Ld. SDJM, Jamshedpur took cognizance of the case and Respondents filed Cr. M.P. No. 2111/2019 before the Hon'ble Jharkhand High Court and Hon'ble Court has been pleased to stay further proceeding in Complaint Case No. 684/2018. As per Ld. Lawyer, the present Complaint tantamount to contempt of Court. It is her further argument that in the agreement for sale, it is clearly written that this agreement will be valid only when 2nd Party (Complainant) will return all signed document and cheques to the 1st Party. Since the documents and cheques have not be returned to the Respondents, this case is not maintainable because agreement for sale becomes void.

10. Perused the case record, documents filed by the parties and other materials on the record and also considered the argument adduced by the parties. There is no denial that agreement for sale dated 22.08.2012 was executed between the parties by which the Complainant was supposed to purchase Flat No. 302 having an area of 1242 sq. ft. in Geeta Palace which was being developed by the Respondents. The consideration amount was Rs. 23,85,600/- (Twenty three lakhs eighty five thousand six

hundred) only. Perusal of xerox copy of different money receipts issued by the Respondent No. 1 company indicates that right from 25.09.2012 till 20.10.2013, the total amount of Rs. 18,00,000/- (Eighteen lakhs) only was paid by the Complainant against the consideration amount. There is no denial that subsequently Rs. 2,00,000/- (Two lakhs) only was transferred by the Complainant in the account of Respondent No. 4, Ajay Kumar through RTGS. Hence it is established that out of total consideration amount of Rs. 23,85,600/- (Twenty three lakhs eighty five thousand six hundred) only, Rs. 20,00,000/- (Twenty lakhs) only has been paid by the Complainant and meagre amount of Rs. 3,85,600/- (Three lakhs eighty five thousand six hundred) only is due to be paid. The agreement for sale was executed on 22.08.2012 and as per Para- 7 of the agreement, construction work was to be completed within 24 months from the date of the agreement but still the flat has not been handed over to the Complainant.

11. It is true that the Complainant had filed Criminal Case against the Respondents and presently the matter is sub judice before the Hon'ble Jharkhand High Court vide Cr. M.P. No. 2111/2019 and the Hon'ble

Court has stayed the proceeding of the Criminal Case pending in Jamshedpur Court. The criminal case was instituted by the Complainant against the Respondents for committing alleged Criminal Act by them. Present case has been filed under RERA Act for getting possession of the flat. This argument is not at all admissible that filing of present case before this Authority tantamount to contempt of Court. Also perused the decision of the Hon'ble Apex Court. There is no application of this judgment so far as present case is concerned. Filing of criminal case does not bar the Complainant to file present case before Jharkhand Real Estate Regulatory Authority (JHARERA).

12. This point has been raised by the Ld. Counsel of the Respondent that agreement for sale is void because signed documents and cheques have not been returned by the Complainant to the Respondents but in the present case I find that Respondents have not been able to establish as to when and how they gave documents and cheques to the Complainant and what type of documents these were ? There was no occasion for the Respondents to issue any cheques in favour of the Complainant. I don't feel that on this score agreement can be termed void.

13. So far as maintainability of the case is concerned, I find that this issue has already been settled vide the Order dated 28.03.2022 and this Order has not been challenged either before Appellate Tribunal or before Hon'ble High Court. So, there is no need to give any fresh finding on this issue. It has already been held by this Court that the project of the Respondents comes within the purview of ongoing project.

14. In the circumstances I come to the conclusion that Respondents have committed wrong by not giving possession of the flat to the Complainant despite receiving Rs. 20,00,000/- (Twenty lakhs) only from her out of total consideration amount of Rs. 23,85,600/- (Twenty three lakhs eighty five thousand six hundred) only. There is evidence of the record that Respondents have executed sale deeds in favour of other purchasers. Hence, Respondents are directed to give possession of the flat bearing No. 302 in Geeta Palace to the Complainant within 2 months from the date of this Order after receiving balance amount of Rs. 3,85,600/- (Three lakhs eighty-five thousand six hundred) only from her. Thereafter Respondents will take step for registration of the flat in her favour.

15. From perusal of the materials available on the case record, I find that on or before 11.11.2013 Rs. 18,00,000/- (Eighteen lakhs) only was paid by the Complainants to the Respondents and before 25.06.2015, another Rs. 2,00,000/- (Two lakhs) only was paid to the Respondents. There is no denial on the part of the Respondents regarding receipt of this money from the Complainant. For the last 7 years, Respondents are sitting over this money. They were bound to give possession of the flat to the Complainant within 24 months from the date of execution of agreement for sale i.e. 22.08.2012. Hence, Complainant is really entitled for some sort of compensation. Respondent No. 2 and 3 are directed to give 2% more bank interest of Fixed Deposit interest rate on Rs. 20,00,000/- (Twenty lakhs) only right from July, 2015 till date. They are also directed to give Rs. 25,000/- (Twenty five thousand) only to the Complainant as litigation cost.

16. Accordingly, the present case filed by the Complainant succeeds. Respondent No. 2 and 3 are directed to comply aforesaid Orders passed by this Court within 2 months from the date of this Order failing which

Complainant will be at liberty to get the Order executed through process of the Court.

Dictated & Corrected
by me

Ranjeet Kumar Choudhary
Adjudicating Officer
JHARERA

Adjudicating Officer
JHARERA