

**Ranchi**

**Before Adjudicating Officer**

**Jharkhand Real Estate Regulatory Authority, Jharkhand, Ranchi**

Present ----- Ranjeet Kumar Choudhary

Dated 04<sup>th</sup> Day of July, 2022

**Complaint Case No. 61/2019**

Mr. Manindra Bhagat,  
Son of Sri Bishwanath Bhagat,  
Resident of Tangra Toli,  
Piska More, P.O.- Hehal, P.S.- Sukhdeonagar,  
District- Ranchi, Jharkhand

--- Complainant

VERSUS

1. **Sri Sudeep Tigga**, Son of Lala Tigga

--- Respondent No. 1

2. **Smt. Kaushalya Devi**, Wife of Lala Tigga both  
resident of Village Tangra Toli, Piska More,  
P.O.- Hehal,, P.S.- Sukhdeonagar,

District- Ranchi, Jharkhand

--- Respondent No. 2

3. **M/s Pink City Developers** a Partnership firm through its partner

- (i) **Nidhi Lakra**, daughter of Lala Tigga,  
Resident of Near Harmu High Court Colony,  
Harmu Road, Ranchi
- (ii) **Smt. Rita Chhawachharia**, W/o Sri Sandeep Chhawachharia,  
Resident of P.N. Bose Compound, Purulia Road, Ranchi
- (iii) **Smt. Anita Agarwal**, Wife of Sri Santosh Agarwal,  
Resident of 64, Vijeta Enclave,  
Piska More, Itki Road, Ranchi
- (iv) **Sri Mukesh Bhartiya** (HUF) of D3, Kaushalaya Apartment,  
Anand Moha Lane, Jivan Gali, Morabadi, Ranchi
- (v) **Smt. Rinki Kumari**, Wife of Sri Vinod Ram,  
Resident of Bokhari Tola, Village- Ghutua,  
Barkakana, Ramgarh, Jharkhand

--- Respondent No. 3

4. **The Branch Manager (L.I.C.)**, Arjan Place, 2<sup>nd</sup> Floor,  
Near Over Bridge, Main Road, Ranchi

--- Respondent No. 4

Complainant Represented through

--- Shri A.K. Pathak, Ld. Advocate

--- Shri P.R. Pathak, Ld. Advocate

Respondent No. 1 to 3 represented through

---Shri K.K. Pathak,  
Ld. Advocate

---Shri Rajesh Kumar,  
Ld. Advocate

Respondent No. 4

--- None

## **ORDER**

1. The instant complaint has been brought by the Complainant Manindra Bhagat with reliefs that Respondent No. 3 may be directed to construct the apartment and after taking permission from the competent Authority transfer the flat to the Complainant or return Rs. 22,96,000/- (Twenty two lakhs ninety six thousand only) with bank interest to the Complainant alongwith damage charge of Rs. 5,00,000/-(Five lakhs only).

2. As per Complaint Petition, it is the case of the Complainant that Respondent are 1 and 2 are the absolute owner of land of Plot No. 543, 542 and 514 apertaining to Khata No. 56 having an area of 96 decimals situated at village- Bariatu, P.S.- Sukhdeo Nagar, Ranchi and they entered into development agreement with Respondent No. 3 for construction of multi-storied building known as Kaushalya Enclave as per sanctioned plan vide B.C. Case No. 36/2011/414. Respondent No. 3 entered into agreement for sale dated 23.12.2015 with the Complainant for sale of one flat vide Flat No. A on 1<sup>st</sup> Floor having super built up area of 1482 sq. ft. in Block-III and one car parking. Initially Complainant paid Rs. 1,30,000/-(One lakh thirty

thousand only) to the Respondent No. 3 through cheque and subsequently further amount was also paid and thereafter the Complainant took loan from LIC, Ranchi worth Rs. 22,00,000/-(Twenty two lakh only) and Respondent No. 4 paid Rs.19,50,000/-(Nineteen lakh and Fifty thousand only) to the Respondent No. 3 out of this loan amount and as such altogether Rs. 22,96,000/-(Twenty two lakh ninety six thousand only) has been paid to the Respondent No. 3 out of total consideration amount of Rs. 34,60,400/-(Thirty four lakh sixty thousand four hundred only). Respondent No. 1 to 3 agreed to take permission from competent Authority under the provisions of CNT Act but they could not do so. Respondents have never fulfilled their contractual obligation of the sale agreement and Complainant is always ready to follow the terms and conditions of this agreement. Complainant sent Pleader's Notice to the Respondents but they could not reply properly. Respondent No. 3 of course sent reply with frivolous allegations. Hence it has been prayed that Respondent No. 3 may be directed to execute sale deed of the said flat in favour of the Complainant or return Rs. 22,96,000/- with bank interest to him alongwith damage charge of Rs. 5,00,000/-.

3. On being noticed, Respondent No. 1 to 3 (i to v) appeared before the Court and filed Written Statement but Respondent No. 4 did not appear and the case proceeded against appeared Respondents. According to Written Statement filed by the Respondent No. 1 and 2, the matter in dispute is between Complainant and Respondent No. 3 and Respondent No. 3 is solely liable for the dispute.

4. Separate Written Statement has been filed by the Respondent No. 3 denying the allegations leveled against them. It is stated in the Written Statement that Complainant has defaulted in making payment of the consideration amount on time and this is the reason possession of the flat has not been given to him. Permission from Dy. Commissioner, Ranchi could not be obtained because Complainant failed to pay the balance consideration amount on time. Hence it has been prayed to dismiss this Complaint Case.

5. No Written Statement has been filed on behalf of the Respondent No. 4.

6. The only point arising out of this case for determination is whether the Complainant is entitled to get relief as prayed for or not ?

### **FINDINGS**

7. The Ld. Counsel appearing for the Complainant has submitted that it is an admitted fact that Complainant had entered into agreement for sale with the Respondent No. 3 for purchase of flat vide Flat No. A in Block-111 of Kaushalya Enclave on 23.12.2015 and consideration amount was Rs. 34,60,400/-. It is also an admitted fact that till 31.08.2016 ,Complainant has paid Rs. 22,96,000/- to the Respondent No. 3 which includes payment made by LIC against the loan sanctioned by it to the Complainant. Admittedly LIC has reimbursed Rs. 14,00,000/- vide Cheque No. 55792, Rs. 2,00,000/- vide Cheque No. 58325 and Rs. 3,50,000/- vide Cheque No. 66718. He has further argued that Respondent No. 1 to 3 were supposed to take necessary permission from the Dy. Commissioner, Ranchi for transfer of said flat in

favour of the Complainant as the land upon which the construction work was done, was tribal land but they could not do so. It is his further submission that project of the Respondent No. 3 is also not registered with Jharkhand Real Estate Regulatory Authority (JHARERA) till date. Hence he has prayed that Respondent No. 3 may be directed to return Rs. 22,96,000/- to the Complainant with interest of bank rate and damage charge of Rs. 5,00,000/-

8. The Ld. Counsel appearing for the Respondent No. 3 has submitted that Complainant has defaulted in making payment as per schedule and as such as per Section- 9.1 of the Agreement for Sale, he is liable to pay interest @ 2.5 per month to the Respondent No. 3. He has further argued that actually Complainant has purchased a piece of land at Namkom, Ranchi where he has constructed residential house and this is the reason he is not willing to get possession of the flat. Respondent No. 3 is always ready to give possession of the flat to the Complainant on payment of rest dues amount of consideration money. Hence he has prayed to dismiss the case brought by the Complainant. The Ld. Counsel has pointed out that since the project of the Respondent No. 3 was of the year 2011, there was no need for him to get his project registered with JHARERA.

9. The instant case was running before Authority and vide the Order dated 18.03.2021, the case record was transferred in my file for disposal.

10. Perused the case record and the documents filed by the parties. I find that in this case Branch Manager of LIC of India has also made party as Respondent No. 4 but in my view he was not at all concerned with the case and no relief has been sought against him. I further find that present case has

been instituted on 02.04.2019 and after appearance of Respondent No. 1 to 3 steps were taken for settlement of disputes between the parties. Order dated 09.01.2020 indicates that Authority had directed the Complainant to deposit his Caste Certificate, Residential Certificate and Balance Amount of consideration money to the Respondent No. 3 and in the same order, Respondent No. 3 was directed to complete the construction work of the flat and obtain Occupancy Certificate and thereafter get it registered in favour of the Complainant. Prior to this Order, on 25.07.2019 Authority had directed the Complainant to pay Rs. 10,00,000/- to the Respondent No. 3 and Respondent No. 3 was directed to complete the construction work within 3 months. When the case record was transferred in my file, this Court also took initiative for settlement between the parties but in vain.

**11.** It is well proved that Complainant had booked a flat in Kaushalya Enclave belonging to Respondent No. 3 for a consideration amount of Rs. 34,60,400/-. It is also well established that Complainant had taken loan of Rs. 22,00,000/- from LIC of India out of which Rs. 19,50,000/- was disbursed by the LIC in favour of the Respondent No. 3. It is an undisputed fact Respondent No. 3 has received altogether Rs. 22,96,000/- against the consideration amount.

**12.** Perusal of Order Sheet of case record and documentary evidences available on case record indicate that after institution of the case Respondent No. 3 was ready to complete the construction work of the flat of the Complainant with a condition that he will pay remaining balance amount of Rs. 10,00,000/- to them. I find that JHARERA Authority vide the Order

dated 25.07.2019 directed the Complainant to pay this amount to Respondent No. 3 and Respondent No. 3 was directed to complete the construction work of the flat of the Complainant within 3 months provided Complainant to pay this amount of Rs. 10,00,000/- to him. Again vide Order dated 09.01.2020 Complainant was directed to pay Rs. 10,00,000/- to the Respondent No. 3/Builder and Respondent No 3./Builder was directed to handover the flat to the Complainant within one month. I find that Complainant did not take pain to obey this Order of the JHARERA Authority. His this conduct indicates that Complainant was not inclined to take possession of the flat. It has been submitted on behalf of the Respondents that Complainant has purchased a piece of land in Namkom locality and he has constructed a house there and this is the reason he is not inclined to take possession of the flat. The Ld. Counsel for the Complainant admitted that Complainant has constructed a house in Namkom locality. I am convinced that construction of a house by the Complainant is one of the reason for his not showing inclination to get possession of the flat. When this fact came before the Court that project of the Respondent No. 3 is not registered with JHARERA, a Complainant started to take plea that due to non-registration of the project with JHARERA he is not inclined to take possession of the flat rather he wants refund of the money. From perusal of the agreement for sale it is apparent that Respondent No. 1 to 3 were required to obtain necessary permission under section 46 of CNT Act in favour of the Purchaser (Article 5.1 of the agreement for sale). I find that nothing has been brought on record on behalf of the Respondents that such permission was obtained by the Respondents from the Dy. Commissioner, Ranchi as required u/s 46 of the CNT Act. If the Complainant

is hammering this lacunae of the Respondents, he is correct. It has been submitted on behalf of the Respondents that Complainant is backtracking from the terms of agreement for sale and as such Respondent No. 3 is entitled for interest @ 2.5 % per month on the sum which is due. In my opinion due to some valid reasons Complainant is not making further payment towards consideration amount and as such he cannot be held liable to pay interest @ 2.5 % per month .

**13.** In the present case, on the direction of the Court, Respondent No. 3 was ready to give possession of the flat to the Complainant but he was not ready to take this possession because he has already constructed a house. Hence I feel that of course Complainant is entitled for refund of paid money but he is not entitled for any other charges or interests on this amount except some notional compensation.

**14.** In the facts and circumstance of the case I do feel that present case must succeed. As such, it is hereby...

## **ORDERED**

Respondent No. 3 will repay Rs. 22,96,000/- to the Complainant within two months from the date of this Order. I further award Rs. 75,000/- to the Complainant as compensation payable by the Respondent No. 3. If the Respondent No. 3 fails to make payment of this money to the Complainant within stipulated period of time, he will have to pay this amount with 9% interest per annum till the actual payment is made by him. Complainant is at

liberty to realize this amount from the Respondent No. 3 through process of the Court, if the Respondents No. 3 fails to obey this Order.

**15.** Admittedly the project of the Respondents is not registered with JHARERA. This plea has been taken by the Respondents that when the RERA [Real Estate (Regulation & Development)] Act came into force, project of the Respondents was running and it was on the verge of completion. As such RERA registration of the project is not required. In the present case I find that Completion Certificate has been filed by the Respondents and its perusal shows that the project of the Respondents completed in January, 2021. It is clear that when the RERA Act came into force, the project of the Respondents was running and it was certainly ongoing project. Hence in my view Respondents were required to get their project registered with RERA, and by not doing so he has committed offence u/s 59 of the RERA Act. As such Respondent No. 3 is hereby directed to deposit Rs. 2,00,000/- as penalty for committing offence u/s 59(1) of the RERA Act. They are further advised to get the project registered with JHARERA and pay this penalty amount within two months from the date of this Order.

Dictated & Corrected  
By me

Ranjeet Kumar Choudhary  
Adjudicating Officer  
JHARERA

Adjudicating Officer  
JHARERA