

Ranchi

Before Adjudicating Officer

Jhrkhand Real Estate Regulatory Authority, Ranchi

Present ----- Ranjeet Kumar Choudhary

Dated 06th day of April, 2022

Complaint Case No.- 15/2018

Smt. Renu Devi, W/o Shri Binod Prasad,

G.T. Road, Barhi, District- Hazaribagh,

Pin Code- 825 405

--- Complainant

VERSUS

M/s Rebloon Impex,

Builder & Developer A partnership Firm

Partners

1 Dharmendra Kumar Dhiraj, S/o- Sri Bishwanath Kumar
Add- Flat No- 503, Jascon Plaza, 44/C, Circular Road, P.O. + P.S.-Lalpur,
Ranchi

2. Rajesh Kumar Sinha, S/o- Kameshwar Sinha

Rajbhav, Shiv Shakti Nagar, Kishorganj, Harmu Road, P.S.- Sukhdeo Nagar,
Ranchi

3. Shashikant Singh, S/o- Nikhilesh Kumar Singh

605, Nandan Niketan, Bishnupuri Marg, Burdman Compound, Ranchi

4. Jai Prakash Choudhary, Lalit Narayan Choudhary, Vibhakar Choudhary
& Ors., Old H.B. Road, Kanta Toli, Ranchi (Land Owners)

--- Respondents

Complainant Represented through --- Shri K. Kumar, Ld. Advocate
Respondent No. 1 to 3 represented through ---Shri Vikramaditya Roy,
the learned Advocate.

---Sri Uttam Kumar Tibrewal,
the learned Advocate.

Respondent No. 4

--- None

ORDER

• The instant complaint has been brought by the complainant Smt. Renu Devi against the respondents Dharmendra Kumar Dhiraj, Shashi Kant Singh and Rajesh Kumar Sinha, who are Directors of the M/s Rebloon Impex, Builders & Developers, and Jai Prakash Choudhary & Others, who are Land Owners, with reliefs that builders may directed to complete pending work of the project in which Complainant has booked her flat within time bound programme and handover its possession to her and execute registered sale deed of the flat in her favour.

2. As per the complaint petition, it is the case of the complainant that she had booked Flat No. 3, 4th Floor in Block- F of Basudev Regency Phase-

I, Kanta Toli, Ranchi with a booking amount of Rs. 2,00,000/-. Allotment letter for the above mentioned Flat No. 3 was issued in her favour on 09.04.2007 showing payment details and agreement paper was executed for Rs. 27,77,057/- measuring an area of 2110 sq. ft. Complainant paid money through/cheque/DD/cash on different occasion as per demand of the builder. Till date the project is incomplete without proper stair case, water supply, parking, swimming pool, club house etc. Overhead tank, external water supply, new bore hole with electric motor are also required. Hence it has been prayed that within a time frame Builders/Respondent No. 1, 2 & 3 may be directed to complete the project and handover its possession to her and get the sale deed of the flat executed in her favour.

3. On being noticed, Respondents appeared before this court to contest the case but no show cause was filed on their behalf. It would be pertinent to mention here that several cases were filed by the different complainants against the same respondents and as such all together 11 cases filed against the respondents were amalgamated but subsequently other cases were separated one by one for the sake of disposal and vide order dated 28.08.2019, the present case was also separated from main case record which is Complaint Case No. 14/2018. Later on case record of Complaint Case No. 23/2018 was again separated and the present case proceeded independently.

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

FINDINGS

5. The Ld. Counsel appearing for the Complainant has submitted that on the basis of advertisement published by Respondent Company, the Complainant alongwith her husband visited the office of the Respondent No. 1 to 3 and after going through the terms & conditions, she book Flat No. 3 at 4th Floor in Block- F, Basudev Regency, Kanta Toli, Ranchi. The super built-up area of the flat is 2110.43. sq. ft. and cost of the flat was Rs. 27,77,057/-. Complainant paid booking amount of Rs. 2,00,000/- to the Builders vide cheque no. 011421 dated 09.04.2007. After receiving the booking amount, Respondent No. 1 to 3 issued allotment letter for this flat, thereafter on 10.04.2007 Rs. 1,00,000/- was paid to the Builders in cash. Thereafter again on 18.04.2004 Rs. 1,00,000/- was paid to the Builder. Thereafter Builders demanded another amount of Rs. 2,33,129/- which was paid by the Complainant on 14.01.2008. Again Respondent No. 1 to 3 demanded Rs. 2,14,755/- and Rs. 2,11,626/- was paid to the Respondents on 31.08.2008. Then Respondent No. 1 to 3 again sent a letter requiring the Complainant to pay Rs. 2,56,380/- and on 14.09.2008 she paid Rs. 1,75,000/- to them. It is utter surprise to the Complainant that, Respondent No. 1 to 3 sent another letter to her stating therein that total cost of flat comes to Rs. 39,05,057/- and requested her to pay Rs. 7,41,014/-. It was mentioned in this reminder that total area of the flat booked by her has increased by 376 sq. ft. and she will have to pay price against this increased area. Thereafter Complainant stopped making payment of balance amount. He has submitted that Complainant is ready to pay cost of increased area of the flat at old agreed rate between the

parties if after completion of the flat while doing measurement it is found so. The Ld. Counsel filed photographs of the project to show that only structure of the apartment has been erected and even no brick work has been done. Hence he has prayed that necessary direction may be given to the Builders to complete the project including external common work and handover its possession to her within a fixed time frame. Complainant is ready to pay the remaining balance amount to the Respondent No. 1 to 3 as and when she gets possession of the flat. He has also submitted that Complainant has nothing to do with the Respondent No. 4 who are Land Owners.

6. The Ld. Counsel appearing for the Respondent No. 1 to 3 submitted that this case is not maintainable because no agreement to sale has been executed between the parties. He has also drawn attention of this Court towards allotment letter and has argued that in para- 4 of this allotment letter dated 09.04.2007, it is very much mentioned that at the time of final measurement after completion of the building if there is any difference is found price will be adjusted accordingly. He has submitted that after measurement the super built-up area increased and due to this reason letter was sent to the Complainant to pay additional amount and she declined to do so and stopped making further payment. He has further argued that if the Complainant is ready to pay balance consideration amount at present market rate, Respondent Company is ready to give her flat. Hence it has been prayed to dismiss this case.

7. Nobody argued on behalf of the Respondent No. 4. I feel that there was no necessity to implead to Land Owners as party in the present case.

8. Perused the case record and the documents filed by the parties. Also considered the arguments adduced by the parties. From perusal of the allotment letter dated 09.04.2007, it appears that Respondent No. 1 to 3 had agreed to allot Flat No. 3, 4th Floor, Block- F, Basudev Nagar having super built-up area of 2110.43 sq. ft. in Basudev Regency project on payment of Rs. 27,77,057/- which includes generator and lift charges, legal fee, maintenance deposit, electrical connection, parking charges etc. There is no denial that no agreement for sale agreement was executed between the parties. It is also admitted facts that Respondent No. 1 to 3 had received altogether Rs. 10,19,755/- from the Complainant against sale of aforesaid flat. It is true that no agreement for sale has been executed between the parties but issuance of allotment letter dated 09.04.2007 clearly indicates that certainly there was oral agreement between the parties for sale of the aforesaid flat. In my view, non execution of written agreement for sale does not weaken the case of the Complainant. Receipt of payment made by the Complainant against the purchase of the flat by the Respondent No. 1 to 3 clearly indicates that they were agreed to sale the aforesaid flat to the Complainant on payment of Rs. 27,77,057/-.

9. This plea has been taken by the Respondent No. 1 to 3 that in the allotment letter itself it was mentioned that in case any difference be found in the super built-up area, difference in price will be adjusted accordingly.

The Ld. Counsel submitted that when after measurement an increase of 376 sq. ft. was found, the Complainant was informed to pay another Rs. 11,28,000/- for this increased area, but she stopped making further payment. If the Complainant pays charges of increased 376 sq. ft. area at present market value, Respondents are ready to execute sale deed in her favour after giving possession of the flat. Perused the allotment letter (provisional). In Para- 4 of this allotment letter it is mentioned that in case any difference be found in the area at the time of taking final measurement after completion of the building, difference in price will be adjusted accordingly. Complainant has filed some photographs of the project which clearly shows that only structure of the project has been erected and no brick work has been done. I fail to understand when the project was incomplete, why the Respondents go for re-measurement of the super built-up area. At the cost of repetition I would like to say that in the allotment letter it is very much mentioned that after **completion of the building** final measurement will be taken and if there is any difference in area, price will be adjusted accordingly. Moreover Complainant is ready to pay the difference of super built-up area if after completion of the project there is any difference in it. In my view Respondent No. 1 to 3 should go for re-measurement of the project when it is complete and then if any difference is found in super built-up area, they can charge additional amount from the Complainant for increased area but not at present value of the project.

10. I find that Complainant is still ready to purchase the flat from Respondent No. 1 to 3 and she has made payment of Rs. 10,19,755/- to the Respondents and last payment was made by her way back on 13.09.2008.

She stopped making further payment against consideration amount when the Respondent No. 1 to 3 demanded additional payment of Rs. 11,28,000/- due to increase in super built-up area. Her Rs. 10,19,755/- is blocked for the last more than 11 years and still she is ready to purchase the flat and she is ready to pay price for increased area but at agreed rate.

Conclusion

11. In the circumstances, I come to this conclusion that respondents/builders have committed wrong by not giving possession of the flat to the complainant despite receiving substantive amount of consideration money from her. I further come to this conclusion that respondents/builders are liable to provide basic amenities and facilities in the project in which the complainant has purchased the flat.

12. It is hereby

ORDERED

- That Respondent No. 1 to 3 shall hand over the flat in question to the Complainant after doing entire internal and external work and also providing amenities and facilities mentioned in the allotment letter dated 09.04.2007 within 4 months from the date of this order and Complainant shall make payment of balanced consideration amount to the Respondent No. 1 to 3 just before getting possession of the flat. If after measurement there is any increase in the super built-up area, Complainant shall pay price for increased area at the same price which was agreed between them at the time of issuance of allotment letter by the Respondent No. 1 to 3. If the Respondent No. 1 to 3 fail to comply the order of the Court within stipulated

period, they shall be liable to pay Rs. 100/- per day as fine till the date when possession is given to the Complainant.

- Respondent No. 1 to 3 are directed to pay Rs. 2,00,000/- to the Complainant as compensation for undergoing mental stress and pain for not getting the flat in question within reasonable period of time.

- Respondent No. 1 to 3 are directed to pay Rs. 30,000/- to the Complainant as litigation cost.

13. Accordingly the present succeeds on contest.

Dictated & Corrected

By me

Adjudicating Officer
JHARERA

Ranjeet Kumar Choudhary
Adjudicating Officer
JHARERA