

Ranchi

Before Adjudicating Officer

Jharkhand Real Estate Regulatory Authority, Ranchi

Present ----- Ranjeet Kumar Choudhary

Dated 19th day of October, 2022

Complaint Case No.- 90/2019

Mr. Prafulla Kumar, S/o Ramchandra Prasad,
Kailash Niwas, River View Colony, Manjhi Tola,
Adityapur, District- Seraikela- Kharsawan,
Jharkhand, Pin- 831 013

--- Complainant

VERSUS

1. S.B. Prasad,
Star India Awas Pvt. Ltd.,
210, Adarshila Complex, South Gandhi Maidan,
Patna- 800 001

2. Asha Singh

3. Ram Ayodhya Singh

--- Respondents

Complainant Represented through --- Self

Respondent No. 1 represented through --- Mr. Sharad
Shekhar, Ld.
Advocate
--- Mr. Bishambhar
Shastri, Ld.
Advocate

Respondent No. 2 & 3 represented through ---Self

JUDGMENT

1. The instant complaint has been brought by the Complainant Prafulla Kumar against the Respondent S.B. Prasad, C.M.D., Awas India Pvt. Ltd. with reliefs that on Adjudication, Respondent/Builder may be directed to provide all amenities in the flat and apartment as per agreement for sale, allot parking and make its approach road and for compensation.

2. Several complaint cases vide Case No. 80, 81, 82, 84, 86, 87, 89, 91, 92, 93 & 94 of the year 2019 were filed by different Allottees against the same Respondent apart from the present complaint case and as such all the cases were heard jointly in Complaint Case No. 80/2019 vide the Order dated 06.08.2019. During analogous hearing

of the cases, Respondent/Land Owner Ram Ayodhya Singh and Asha Singh were made parties in this case and the case proceeded against three Respondents. Again vide the Order dated 01.08.2022 present case was separated from Complaint Case No. 80/2019.

3. As per materials available on the case record, on 29.01.2007 Complainant Prafulla Kumar and one Kamini entered into agreement for sale with M/s Star India Awas Pvt. Ltd for purchase of flat bearing no. 404 having an area of 1171 sq. ft. in the project namely '**Shiv Ranjani Complex**'. The consideration amount was fixed @ Rs. 9,59,810/- (Nine lakhs fifty nine thousand eight hundred ten) only and advance @ Rs. 75,000/- (Seventy thousand) only was paid to the Respondent No. 1. On 12.04.2010, physical possession of the flat was given to the Complainant and on 28.07.2011, Respondent No. 1 executed sale deed of this flat in favour of the Complainant and his wife Smt. Kamini. It is the grievances of the Complainant that project has not been constructed as per sanctioned plan and flat was not handed over to him on agreed time frame. Parking space and its approach road were not delivered to him. Generator facility has not been provided.

4. On being noticed, Respondent No. 1 appeared in this case and filed an application for impleading Smt. Asha Singh and Ram Ayodhya Singh as party in this case which was allowed and on their behalf one Rajesh Singh appeared on 03.10.2019 to contest the case.

5. As per written statement filed on behalf of the Respondent No. 1 in Complaint Case No. 80/2019, the case filed by the Complainant is not maintainable and it is highly barred by the law of limitation. Other contents of the Complaint Petition have been denied. It would be pertinent to mention here that no separate written statement has been filed in the present case.

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

FINDINGS

7. Complainant Prafulla Kumar himself argued his case. He has submitted that he had booked a flat in '**Shiv Ranjani Complex**' belonging to the Respondent No. 1 in the year 2007 and agreement for sale was executed on 29.01.2007. Builder was supposed to handover the possession in June, 2007 but possession was given to him on 12.04.2010. In possession letter dated has been mentioned to

be 03.07.2009. Registration of the flat took place on 28.07.2011 and due to late registration he had to suffer loss of Rs. 50,000/- (Fifty thousand) only. He has further submitted that he has not got parking space with drive way. It is his further argument that Builder has not installed generator set and fire fighting system. Rain Water Harvesting facility has also not provided by him. Construction has not been done as per sanctioned plan. It is his further submission that Respondent R.A. Singh has encroached common area and has installed a generator set there which is meant for commercial shops which is the part of the apartment. Hence he has prayed that Respondent/Builder may be directed to allot parking to him alongwith its number displaying on the parking space. He may further be directed to clear and complete drive way and provide generator and fire fighting system. He may further be directed to provide water harvesting system.

8. The Ld. Counsel appearing for the Respondent/Builder had submitted otherwise he has submitted that Complainant has been given possession of the flat way back in the year 2009 and the registration of his flat has taken place on 28.07.2011. After such a long time of registration of the flat, the Complainant has raised his

grievances which is not tenable. He has further submitted that the Complainant has been given parking space in which his tenant is parking his vehicle right from very beginning without any obstacle. So far as installation of generator set is concerned, on 18.10.2008, a meeting was called in which it was agreed that in the premises JUSCO Electricity Line will be taken and the money deposited by allottees towards installation of generator set will be adjusted towards payment to the JUSCO amounting to Rs. 14,08,750/- (Fourteen lakhs eight thousand seven hundred fifty) only. It is his further argument that before coming into force of RERA Act, the project was complete and as such present case will not come within the purview of Real Estate Authority. He has further submitted that no encroachment has been done upon the common area by the Respondent/Builder and if the landowner has installed generator set in common area, the Respondent/Builder cannot be held liable for it. Hence, he has prayed that the case brought by the Complainant may kindly be dismissed.

9. The Ld. Counsel appearing for the Respondent/Landlord has also opposed the contention made by the Complainant. He has submitted that actually the project in question is a hybrid project which consists of residential as well as commercial building. He has

argued that it is the Complainant who has put a one steel gate in common area to cause hindrance to the Respondent/Landlord. He has further submitted that there is no encroachment in the drive way. Hence he has prayed to dismiss this case.

10. Perused the case record and the documents filed by the parties. Also considered the argument adduced by the parties. There is no dispute that Complainant had booked a flat in the project of Respondent No. 1 namely '**Shiv Ranjani Complex**' in the year 2007. As per own submission of the Complainant, he got possession of the flat in the year 2010 while he was supposed to get possession in the year 2007 itself. Sale deed of the flat has been executed on 28.07.2011. The Complainant never raised his grievances before any Authority regarding delayed handing over the flat and losses caused to him and after a gap of several years he filed this case before this Authority on 11.07.2019. Complainant has no grievance regarding construction of his flat and the facilities provided inside the flat. He has no grievance that construction of the flat is not proper and building material is sub-standard. Admittedly the Complainant has ventilated his grievances after gap of more than 5 years of getting possession of the flat while Section- 14(3) of the Real Estate (Regulation &

Development) Act, 2016 states that *“Allottees can brought to the notice of the Promoter in defect in the building within five years from the date of the possession”*.

11. So far as parking space is concerned, Complainant has himself admitted that he has let out his flat to a tenant and tenant is parking his vehicle in parking space whose number is 26. His grievance is that Respondent/Builder has not put number on the parking space. In this regard Ld. Counsel for the Respondent/Builder submitted that number was given to the parking space which vanished due to passage of time. I feel that Complainant can himself write number on his parking space.

12. There is nothing on the record to show that when the project work was complete, there was any encroachment in the common area. The Complainant in his written argument filed in this case has written that landowner has installed generator in the drive way. So it is clear that at best it is a case of encroachment by the landowner not by the builder.

13. So far as fire fighting system is concerned, admittedly it is not in the building. Rain water harvesting has also not been provided in

the building. Section- 5.9 of the Jharkhand Rain Water Harvesting Regulation, 2017 states that ***“it is responsibility of the Builder of the apartment to install rain water harvesting, if the building is constructed on or after 2010 and Occupancy Certificate has not been procured.”***

14. In view of the Notification No. 2256 dated 05.09.2020 of Urban Development and Housing Department, Jharkhand, the present case doesn't come within the purview of RERA Act because it cannot be termed as ongoing project. But this direction can be given to the Respondent/Builder to provide fire fighting device in the premises and take proper step for manufacturing water harvesting structure.

15. Resultantly the present Complaint Case is disposed of with above directions. Complainant is not entitled for relief of compensation as claimed for.

Dictated & Corrected
by me

Ranjeet Kumar Choudhary
Adjudicating Officer
JHARERA

Adjudicating Officer
JHARERA