

Ranchi**Before Adjudicating Officer****Jharkhand Real Estate Regulatory Authority, Jharkhand, Ranchi**

Present ----- Ranjeet Kumar Choudhary

Dated 18.12.2019 the Day of December 2019

Complaint case no- 23/2018

Arvind Kumar Baranwal, S/o- Sri Rajendra Prasad Baranwal
C/o Sri Ratan Kumar Gupta, Harmu Housing Colony, House No- H-
172, Ranchi, Jharkhand.

--- Complainant

VERSUS

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
Rajbhawan, Shivshaktinagar, KishorGanj, Harmu Road, P.s-
Sukhdeonagar, Ranchi
3. Shashikant Singh, S/o- Nikhlesh Kumar Singh
501, Jascon Plaza, 44/C, Circular Road, P.o+P.s- lalpur, Ranchi
4. Jai Prakash Choudhary, Lalit Narayan Choudhary, Vivakar
Choudhary & Others, P.o- Old H.B. Road, Kantatoli, Ranchi (Land
Owners)

--- Respondent

Complainant Represented through --- Self
Respondent Represented through ---Sri Uttam Kumar Tibrewal
The learned Advocate.

ORDER

1. The instant complaint has been filed by the complainant Arvind Kumar Baranwal against respondent Dharmendra Kumar Dhiraj, Rajesh Kumar Sinha, Shashikant Singh and Jai Prakash Choudhary with reliefs that direction be given to the builders/opposite party no 1 to 3 to complete pending work of the flat purchased by the complainant and hand over the same to him according to agreement and get it transferred to the complainant by executing sale deed within 4 months.

2. According to complainant petition it is the case of the complainant that he had booked a flat vide flat no-01, 1'st floor in Block-C of Basudeo Regency called Basudeo Nagar, Phase 01 M/s Reblon Impex, Kanta toli Ranchi and vide receipt no- 408 dated 28.03.2008 booking amount worth Rs11,000/- was paid to Reblon Impex out of total consideration amount Rs 16,38,486/- vide cheque number 982422. As per agreement for sale total consideration amount was fixed to be Rs 16,38,486/- out of which Rs 14,94,563/- was paid vide cheques and D.Ds on different dates and on 06.06.2014 last payment of Rs 1,00,000/- was made though fund transfer. Despite several reminders and request builders did not complete work of the flat. Till date project is incomplete and works like car parking, water supply, earth filling in surrounding area, plastering, tiles work, lift work, road, drainage etc are still

incomplete. Hence it has been prayed that builders may be directed to complete arrear work as per agreement and hand over this flat to the complainant within 3 months and execute sale deed of the flat within 4 months.

3. On being noticed, opposite parties appeared and filed show cause dated 16.10.2019. According to show cause the present case is not maintainable and complainant is not entitled for any relief or reliefs. Substantial amount is payable by the complainant with regard to the flat. It is further said the complainant is in illegal possession of the flat. As per agreement, complainant is required to pay RS 16,38,486/- against the said flat out of which Rs1,11,958/- is still due. He is liable to pay interest on due amount also. He is further required to pay Rs5,43,000/- for difference area measuring 181sq.ft. As such, complainant is required to pay Rs6,54,958/- to the opposite parties.

4. In course of hearing, altogether 11 cases filed against same builders were amalgamated but later on this case was separated from other case records.

5. The point of determination is whether the complainant is entitled for reliefs as claimed for.

FINDINGS

6. Complainant himself argued this case on his behalf. He has argued that it is an admitted fact that he had booked a flat in the project of the builders vide flat no-01, 1'st floor in Block-C and he has paid Rs14,94,563/- to the builders towards purchase of this flat.

As per agreement for sale executed between the parties, flat was booked on 28 March, 2008. The area of this flat was 1427 sq.ft. and consideration amount was 16,38,486/-. It is true that time frame for handing over the possession is not mentioned in the agreement for sale but it is an admitted fact that flat was booked in the march 2008 and still its possession has not been given to him. So many works are still pending which have been mentioned in the agreement for sale. He has further stated that he is ready to pay balance amount to the builders if they give possession of the flat to him and execute sale deed with respect to flat after completing arrear works. He has further submitted that he had taken loan from HDFC ltd for purchase of the flat and he is paying interest to the financier also against the loan amount. Hence, he has prayed that necessary direction may be given to opposite party no 1 to 3 builders to complete arrear works of the project and hand over its possession to him and execute sale deed of this flat after receiving balance amount.

7. Land owner/opposite party submitted that claim of the complainant is correct and she is entitled to get relief.

8. In this case, initially opposite parties no 1 to 3 were not appearing physically and then this court imposed Rs 25,000/- as cost upon the opposite party when analogous hearing of 11 cases were going on and then opposite parties appeared physically but they did not deposit the cost amount. After that they left taking step in this case and no argument was done on their behalf.

9. Perused the case record. It is an admitted position that complainant had booked a flat in a project of the opposite parties no 1

to 3/builders namely Basudev Regency and as per allotment letter and agreement for sale total consideration amount of the flat including miscellaneous charges was Rs 16,38,486/- and out of this amount total sum of Rs 14,94,563/- has been paid by the complainant through cheques, D.D, Fund transfer and cash on different dates. It is not denied by the opposite party no 1 to 3 that he has not received this amount rather in the show cause this fact has been admitted by them because in the para 5 of the show cause it is mentioned that on 06.09.2014 last payment was made by the complainant and Rs 1,11,958/- is due upon him. As per show cause, total carpet area increased by 181 sq.ft. for which complainant is liable to pay additional Rs 5,43,000/-. But no evidence has been brought on the record by the O.P no 1 to 3/builder regarding increase in carpet area of the flat booked in the project of the builders. Hence, I feel that complainant cannot be compelled to pay additional Rs 5,43,000/- to the O.P no 1 to 3/builders.

10. From the evidence available on the record it can be gathered that complainant is not in possession of the flat in question.

11. It transpires from the material available on the record the opposite parties/builders have not provided amenities and facilities like Garage, Lift, Generator in the flat of the complainant or say in the apartment in which complainant has purchased one flat.

12. From perusal of the agreement for sale, it appears that on 28th march 2008 it was executed between the complainant and builders. It is nowhere mentioned in this document as to when the flat will be handed over to the complainant. From perusal of the

show cause of the builders it is apparent that last payment was made by the complainant on 06.09.2014. It means that out of total consideration amount of Rs 16,38,486/-, till 06.09.2014 complainant has paid Rs 14,94,563/-. Admittedly a meagre amount of Rs 1,11,958/- in to be paid by the complainant against the flat which he was intending to purchase. It is clear that despite payment of major amount, complainant has not been given possession of the flat. Complainant is ready to pay balance amount as and when possession of the flat is given to him and its registration is done in his name after completing remaining common work.

13. In course of hearing of this case, this fact come into light that project of the opposite parties is not registered with RERA. I find that direction has been given to the O.P/builders to do the same but they failed to do so.

CONCLUSION

14. In the circumstances, I come to this conclusion that opposite parties/builder have committed wrong by not giving possession of the flat to the complainant despite receipt of major portion of the consideration amount from him. I further come to this conclusion that demand of the opposite parties regarding payment of charge of additional 181 sq.ft. is not genuine and not based on solid evidence. Further I find that opposite parties/builder have not provided basic amenities in the project in which complainant has purchased a flat and inordinate delay has been caused in handing over the flat to the complainant.

It is thereby

ORDERED

That (a) The opposite parties are directed to get the project registered with JhaRERA (along with late fine as applicable) within a period of two weeks after this order. It is further directed that the opposite party shall not sell, book, offer for sale or invite persons to purchase any flat in the project Basudeo Regency until the project is registered with JhaRERA.

(b) Since same builders have already been punished to pay Rs. 5,00,000/- (Rs Five lakhs only) in terms of section 59(1) and 59(2) of the Act for continued violation of section 3 of the Act in complaint case no 22/2018 for same project, no penalty is being imposed upon them in this case.

(c) Opposite parties are further directed to hand over the flat in question to the complainant within two months of this order after completing remaining internal work. Thereafter they will execute a sale deed in favour of the complainant after receiving balance amount from her when the project is registered with JhaRERA. As soon as basic facilities and amenities are provided by the opposite party, in proportionate remaining amount will be paid by the complainant.

(d) Opposite parties are further directed to give Rs 30,000/- to the complainant as litigation cost.

(e) Opposite parties are further directed to give Rs 1,00,000/- to the complainant by way of compensation for sitting

over the consideration money of the complainant and not completing and handing over the flat to him.

(f) The cost and penalty amount will be deposited by the opposite parties within 60 days of this order failing which they will be liable to pay compound interest on these amounts @ 9% per annum till the deposit of the amount.

Dictated & Corrected
by me

Ranjeet Kumar Choudhary
Adjudicating Officer
JhaRERA

Adjudicating Officer
JhaRERA