

JHRKHAND REAL ESTATE REGULATORY AUTHORITY

Complaint case no- 24/2018

Shri Ishvinder Chadha and

Shri Karanjit Chadha

--- Complainants

- Versus -

M/s Yashodhara Associates,

Represented by Proprietor Shri Phulchand Saw --- Opposite party

Complainants represented through --- Self

Respondent represented through --- Self

Coram: Hon'ble Chairman ... Shri R.S.Poddar

Hon'ble Member Shri R.P.Sinha

Hon'ble MemberSmt. Seema Sinha

ORDER

1. This complaint case has been filed by Shri Ishvinder Chadha (s/o Late Gurcharan Singh) and Shri Karanjit Chadha, c/o Baba Enterprises, 37, Industrial Area, Kokar, Ranchi – 834001, against M/s Yashodhara Associates, represented by proprietor Phulchand Saw, resident of Saket Vihar, near D.A.V. Kapildeo

_____ Road, Kadru, Ranchi - 834001. The O.P. , a proprietary firm in the business of construction and development of real estate projects, is being represented through its proprietor Shri Phulchand Saw. The complainants, entered into an Agreement (dated 03-01-2015) with the Opposite Party, for the purchase of Flat no. A2 (area of the flat 865 sq.ft.) on first floor in C-Block in the multi-storeyed building named Mangal Enclave Block- C, situated at Dhelatoli, Kokar, Ranchi. The total consideration amount as per the agreement was Rs. 18,80,000/- (Rs. eighteen lakh only) which is inclusive of the charge for parking space.

2. The complainants availed of housing loan from Dewan Housing Finance Ltd. (DHFL) for the purchase of the said flat on the insistence and suggestion of the O.P. The case of the complainants is that, they have paid approximately 93% of the total consideration amount. The time of completion of the flat was stipulated to be one year from the date of agreement with a grace period of six months. But the O.P. (developer) defaulted in completing and handing over possession of the flat to the complainant. The O.P. is allegedly asking for 30% more money than what has been agreed upon in the aforementioned Agreement dated 03-11-2015. The complainant has prayed for direction to the builder (O.P.) to hand over possession and execute registration of sale-deed in respect of the flat, in favour of the complainant.

3. The complainant has filed the following documents in support of his claim:-

(a) A copy of the Agreement dated 03-01-2015.

(b) A copy of the Legal Scrutiny Report in respect of the land submitted by the lawyer of the O.P. to Dewan Housing Finance Corporation Ltd. (DHFL).

(c) Copies of documents/receipts pertaining to payments made by complainant and disbursements released by DHFL to the builder (O.P.) towards the consideration amount of the flat.

(d) A copy of complainant's letter sent to the O.P. informing about delay and default in completing and handing over of the flat in spite of total payment of Rs. 17,40,000/- (93%) against the consideration amount of Rs.18,80,000/-

4. The brief facts of the case are as follows :-

(a) The complainant entered into an Agreement with the O.P. on 03-01-2015 for purchase of a flat (Flat no. A-2 on 1st floor) in the multistoreyed building "Mangal Enclave Block - C" constructed and developed by the O.P. in Dhelatoli, Kokar, Ranchi. The complainant had agreed to purchase the said flat when the O.P. arranged loan for the complainant from DHFL.

(b) The complainant has already paid Rs. 3,60,000/- to the O.P. and DHFL has released Rs. 13,80,000/- to the O.P. **Thus a total amount of Rs. 17,40,000/- has already been paid to the builder(O.P.) till the date of institution of this case.**

(c) The flat is said to be almost complete, except for electrical and sanitary fittings. The builder has been allegedly demanding 30% extra payment for works of common areas like staircase, passages etc., though there was no such condition in the Agreement executed on 03-01-2015. Even after a lapse of

more than four years the flat is yet to be handed over to the complainant.

5. The instant case was instituted in May 2018. Notices were issued to both the parties. Several notices were issued to the O.P. by registered post. The notice sent by speedpost (ref. no. EJ185212068IN dated 15-03-2019) has been refused by the addressee (O.P.). After three notices sent by speedpost having been returned, finally notice was issued through newspapers vide Press Communiqué no. 23/2019 - 318 dated 22-04-2019, which appeared in several newspapers of Jharkhand including the Hindi daily "Hindustan" in its edition of 30-04-2019. Even after this notice published in newspapers, the O.P. did not appear on 14-05-2019 before this Authority. Hence the matter was heard ex-parte on 14-05-2019.

6. We find from the records that the plan of a multi-storeyed G+3 residential building named "Mangal Enclave Block-C" was approved by Ranchi Municipal Corporation vide B.P. Case no. 2012/949 on 30-01-2014. Construction of this multistoreyed building was sanctioned on a piece of land measuring 7 kattha 6 chatak on sub-plot no. 809/J in R.S. plot no. 551 under khata no. 66 of Mauza Tiril, P.S. Ranchi Sadar, District -Ranchi. The land owners of the said piece of land were Smt. Aarti Jha (w/o Dr. Bimleshwar Jha) and Smt. Manjula Jha (w/o Shri Umesh Jha). These two land owners executed a registered deed of Power of Attorney (vide Power no. IV - 3154 dated 26-08-2011 entered in Book no. 72, page no. 63 to 74,

D.S.R., Ranchi) in respect of the said piece of land as also for the proposed multi-storeyed G+3 apartment on the same. The two aforementioned land-owners entered into a Development Agreement on 24-05-2011 with M/s Yashodhara Associates, a proprietorship concern of Fulchand Saw(O.P.), for construction of the G+3 multi-storey building "Mangal Enclave, Block - C" on the said piece of land. As per the approved plan, each of the three floors (First, Second and Third Floors) have 5 units/flats viz. A1, A2, B, C and D. While A1, B, C and D are 2BHK units each, A2 is a 1BHK unit.

7. The complainant entered into an **Agreement with the O.P. on 03-01-2015** for purchase of flat no. A2 on first floor in Mangal Enclave Block-C. The Development Agreement between the land owners and the builder (O.P.) has been referred to as the Principal Agreement in the Agreement of 03-01-2015 between the builder (O.P.) and the purchaser of the flat (complainant). In this document, the consideration amount for the flat in question has been categorically mentioned as Rs, 18.80 lakhs. We find that condition no. 9 of the agreement clearly stipulates that the builder shall complete the complex and hand over possession of the flat to the buyers subject to timely payment by the flat buyer. Schedule - 2 of the Agreement is the schedule of payments. **While the schedule of payments by the purchaser has been clearly articulated in the Agreement, the information about the time schedule of stage wise completion of the project has not been mentioned. Sub-section 3(b) of**

section 11 of the Act, clearly mandates that the promoter/builder, at the time of booking a flat, must provide clear cut information to the purchaser, about the stage wise time schedule of completion of the project, including the time schedule of provisions for civic infrastructure like water supply, sanitation and electricity. Sub section 4(b) the same section 11 of the Act clearly mentions that the builder/promoter shall be responsible for obtaining completion certificate and occupancy certificate from competent authority and make the same available to the allottees. The O.P. builder has miserably failed on both these counts.

8. We find that the complainant has already paid Rs. 17,40,000/- to the builder O.P. against the agreed consideration amount of Rs. 18,80,000/-. The complainant has taken housing loan from M/s DHFL and has been paying interest to M/s DHFL for the past four years. As per the Agreement, no additional payment can be demanded by the builder for handing over possession except for sale/purchase tax (GST) or any other government duty or any tax chargeable by government or the local authority. From the Agreement, we find that the time period for completion and handing over possession of the flat was one year from the date of the Agreement. The O.P. is clearly in default in-as-much-as he has failed to give possession of the flat in spite of a lapse of more than four years. We also find that the building project (Mangal Enclave Block - C) is still an

ongoing project and clearly comes under the purview of Real Estate (Regulation and Development) Act, 2016 [RERA Act for short]. The builder O.P. is clearly in default as regards the completion of the project as also with regard to handing over possession of the flat to the complainant.

9. Section 17(1) of the Act, stipulates that the builder/promoter shall execute a registered deed of conveyance in favour of the allottee within three months after obtaining occupancy certificate. Section 19(10) makes it clear that within two months after the occupancy certificate, the allottee is entitled to get possession of the flat. On the other hand, section 18 of the RERA Act clearly provides that if the builder/promoter fails to complete construction or hand over possession to the allottee within the stipulated time frame, he shall pay interest to the allottee for every month of delay till handing over of possession, at such rate as may be prescribed.

10. We find that the O.P. is in default also on account of having failed to get the project registered with Jharkhand RERA (JHARERA for short) till date. It is clear from the proviso to section 3(1) of the Act that all ongoing projects for which completion certificate and/or occupancy certificate have not been obtained till the date of commencement of RERA Act, shall have to be registered with the concerned Real Estate Regulatory Authority. If completion certificate

and/or occupancy certificate has not been obtained in respect of a project from the competent authority, it would be deemed to be an incomplete ongoing project under RERA Act. This Act came into force w.e.f. 01st May 2016. In Jharkhand, the Jharkhand Real Estate (Regulation and Development) Rules were notified on 18th May 2017 and a press communiqué was published on 27th July 2017 in all newspapers of Jharkhand, directing developers, promoters and builders of all ongoing projects to register their projects with Jharkhand Real Estate Regulatory Authority (JHARERA for short) within a period of 3 months. In spite of this general notice issued through newspapers, the O.P. failed to get his project registered with JHARERA.

11. We find that the O.P. is in continuing violation of the mandatory requirements of section 3(1) of the Act and hence is liable for punishment under section 59(1) and 59(2). The Act makes it clear that penalty under section 59(1) may extend up to 10% of the estimated cost of the real estate project in question. In view of all the facts and circumstances discussed above, order is being passed as follows ; -

(a) The opposite party is 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 O.P. shall not sell, book, offer for sale or invite persons to purchase any flat in the project Mangal Enclave Block - C until the project is registered with JHARERA.

(b) On account of violation of section 3(1) of the Real Estate (Regulation and Development) Act, the builder (O.P.) shall pay a fine of Rs. 250000/- (Rs. two lakh fifty thousand only) in terms of section 59(1) and 59(2) for continued violation of section 3 of the Act.

(c) The O.P. is directed to obtain completion certificate and occupancy certificate from Municipal Corporation, Ranchi within two months from the date of this order, and hand over physical possession of the flat to the complainant and submit compliance report to this Authority within three months.

(d) The complainant is directed to pay the remaining amount of Rs. 1,40,000/- (Rs. one lakh forty thousand only) in terms of the Agreement dated 03-01-2015, to the O.P. at the time of possession.

(e) The Opposite Party is further directed to pay Rs. 30,000/- (Rs. thirty thousand only) by way of litigation cost to the complainant.