

JHARKHAND REAL ESTATE REGULATORY AUTHORITY

Complaint case no- 38/2018

Ravi kant Sharma

Duplex no- S/101, Sri Sai baba Enclave,

Near Vastu Vihar, luptya, Adityapur-2,

Dist- Saraikela Kharsawa, Jharkhand- 831013 ----- Complainant

- Versus -

Abhishek Kumar Singh

H.No- 87, C- Road, West layout,

kagalnagar, Soni, Jamshedpur,

Dist- East Singhbhum, Jarkhand. ----- Respondent

Complainants Represented through ----- Self

Respondent represented through ----- Not Represented

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

Hon'ble Member Shri R. P. Sinha

Hon'ble Member Smt. Secma Sinha

ORDER

1. This complaint petition has been filed by Shri Ravi Kant Sharma S/O Shri Raj Ballabh Sharma, against Shri Abhishek Kumar Singh (S/O Late Bharat Mani Singh) who is the proprietor of M/s

H.S. Infratech, a proprietary firm in the business of promoting and developing real estate projects. The complainant has prayed that the opposite party be directed to construct park, community hall, road and gate, as per the approved plan of the project Sai Baba Enclave, developed and built by the Opposite Party (O.P.). The petitioner has further prayed for direction to the opposite party to pay to the complainant a sum of Rs. 4,40,606/- , (being the total cumulative amount of E.M.I.'s for 34 months) which the complainant claims to be due to him (complainant) in view of the delay in handing over possession by the builder. The complainant's contention is that the builder must compensate him (complainant) for the E.M.I.'s (at the rate of Rs. 12,959/- per months) paid by the complainant for 34 months beyond the committed period of completion and handing over possession.

2. The facts in brief are as follows. The complainant booked on 22-06-2012 a residential duplex named and numbered as SAI SARVA, S/101, having land area 1100 sq.ft. and super built-up area of 1681 sq.ft. in the project SAI BABA ENCLAVE, being developed by opposite party in new plot No. 1649 of new khata no. *

178 in Mauza Kuluptanga, P.S. - RIT, Adityapur. An agreement was executed between the complainant and the opposite party on 22-06-2012 for total consideration amount of Rs. 18,25,000/-. It was agreed between the parties that the opposite party would complete and hand over the duplex by the end of month of November 2013. The Complainant applied for a Home Loan from Jamshedpur RACPC branch of State Bank of India for the purchase of the above mentioned duplex. Home Loan of Rs. 14,64,000/- (inclusive of insurance charge of Rs. 64000/-) was sanctioned on 06-11-2012 at the interest rate of 10% p.a. in favour of the complainant and repayment was stipulated to be done through Equalised Monthly Installments (E.M.I.) of Rs.12959/-per month till the complete extinguishment of the outstanding in the loan account.

3. The opposite party failed to complete the project by the stipulated date of completion i.e. by November 2013. Hence a fresh agreement was executed between them on 15-07-2014 in which the builder stipulated a new date of completion that is 31st October 2014. In this new agreement the builder (Opposite Party) also committed to pay the E.M.I.'s of Rs. 12,959/- per

month to the Bank if he fails to handover the booked duplex to the complainant within stipulated time i.e on or before 31'st October 2014. The builder again defaulted and failed to complete and hand over of possession even on the new date of completion as per the revised Agreement. On top of it, the builder avoided paying the EMI's as per his own commitment in the revised agreement. The builder (O.P.) actually delivered possession of the duplex to the complainant on 22-08-2016 i.e. after a delay of almost 34 months. However the O.P.is yet to pay the sum of accumulated amount of EMI's of 34 months, which comes to Rs.4,40,606/-.

4. It has been further stated that the Municipal Corporation, Adityapur, Jamshedpur has sanctioned the MAP of the project vide sanction no- 742 dated 01.06.2012 and the Municipal Corporation had given clear direction to the builder (opposite party) to complete the project within 2 years and obtain completion certificate immediately thereafter. The opposite party failed to comply with this direction too. The opposite party has also failed to construct several other items of work as provided in the

[REDACTED]

sanctioned plan. Thus construction of boundary wall, common entrance gate, internal roads within the project area, community hall, park and rain water harvesting system is yet to be done. Further, important common facilities like generator facility and transformer for the duplex houses of the project have also not been provided so far. To top it all, the opposite party has also sold part of the project land situated on the southern side of complainant's duplex no. S/101.

5. It has also been stated that the builder has not got this project registered with JHARERA, though this project is still an incomplete ongoing project. The opposite party has handed over the complainant's duplex to him on 22.08.2016 but he has not paid the E.M.I.'s of 34 months (from November 2013 to August 2016) at the rate of Rs. 12,959/- per month. The cumulative amount of due for 34 months comes to Rs. 4,40,606/- which is yet to be paid by the O.P. to the complainant.

6. The complainant has filed the following documents in support of his case-

- (i) A copy of the original Agreement dated 22-06-2012 and that of the revised Agreement dated 15.07.2014.
- (ii) Copy of letter from State Bank of India regarding sanction of home loan..
- (iii) A copy of the possession letter dated 22.08.2016 in respect of complainant's duplex no. S/101.
- (iv) A copy of the sanction letter dated 15.10.2013, issued by Municipal Corporation, Adityapur in respect of the project SAI BABA ENCLAVE.
- (v) A copy of notice dated 07.03.2018 issued by Municipal Corporation, Adityapur to opposite party Abhishek Kumar Singh asking him to stop the construction of the project as the stipulated time of three years for completion of the Project (sanctioned vide Permit no. 742 dated 01-06-2012) had already expired.
- (vi) A copy each of the written complaints sent to Deputy Commissioner, Saraikela Kharsawan, to Executive Officer of Municipal Corporation, Adityapur, to Anchal Adhikari, Gamhariya Anchal and to Officer in-Charge, of Police Station RIT Adityapur, regarding

encroachment and illegal construction by the O.P. in violation of the approved Map and Plan of the project SAI BABA ENCLAVE.

(vii) A copy of the general specification of flats and duplex houses of SAI BABA ENCLAVE.

(viii) A copy of the status report pertaining to the online complaint (about the deviations and violations committed by the O.P. in the project) filed to Urban Development and Housing Department, Govt. of Jharkhand.

(ix) A copy of the sanctioned plan and MAP of the project.

7. This complaint case has been filed in this Authority in September 2018. Notices were issued to both the parties. Notice to the opposite party was sent both by speedpost as well as by e-mail. In spite of repeated notices through post and e-mail, when the O.P. failed to appear, **finally notice was published in newspapers which appeared in almost all dailies of Jharkhand on 16-03-2019.** Even then the O.P. avoided

appearance on subsequent dates viz. 26-03-2019, 11-04-2019 and 14-05-2019. Sufficient opportunity was given to the O.P. to appear and reply, but O.P. neither appeared nor replied. Hence the matter was heard ex-parte on 14-05-2019.

8. Now the point for consideration is whether the complainant has been able to establish his case and whether he is entitled for the reliefs as claimed. We have heard the complainant and we have also perused the documents filed by the him. We find that the complainant entered into an Agreement with the opposite party on 22.06.2012 for purchase of a duplex house numbered S/101 in the O.P.'s project named Sai Baba Enclave. As per the Agreement, the total consideration amount for the said duplex was Rs. 18,25,000/-. The time for completion and handing over of the said duplex house to the complainant, as per para-6 of the said Agreement, was end of November 2013. As the O.P. failed to deliver possession by November 2013, another new Agreement was executed between the complainant and opposite party on 15.07.2014. **In terms of this new (revised) Agreement of 15-07-2014, the complainant paid an additional sum of Rs.**

2,00,000/- to the builder and the builder committed to handover the said Duplex to the complainant on or before 31.10.2014.

From a perusal of the new Agreement, we find that the opposite party has admitted to have taken additional Rs. 2,00,000/- from the complainant. Paragraph-4 of the said agreement clearly stipulates that if the opposite party failed to handover possession of the duplex house to the complainant in the committed time frame, the builder shall pay the E.M.I.'s to the bank till handing over of possession of the duplex house to the complainant. It is clear that possession of the duplex house was handed over to the complainant only on 22.08.2016. This proves the statement of the complainant that the opposite party failed to comply with the terms and conditions of the agreement dated 15.07.2014.

9. Section 18(1) of Real Estate (Regulation and Development) Act [RERA Act in short], stipulates that **if the promoter/builder fails to complete or is unable to give possession of apartment or building,**

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein;

(b) due to discontinuance of his business as a developer, on account of suspension or revocation of the registration under this Act or for any other reason;

he shall be liable on demand of the allottee, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

Thus, in the instant matter, we find that the complainant is entitled to receive the E.M.I of Rs. 12,959/- per months with

[REDACTED]
interest thereon from November 2013 onwards, till the handing over of possession of the duplex in question to the complainant.

10. We also find that a notice has been issued on 07-03-2018, by Executive officer of Municipal Corporation, Adityapur, to the opposite party asking him to stop the illegal construction being done in the project even after the time for completion of the project (as per sanctioned plan) had expired way back on 01.06.2015. Section 14 of the Act clearly states that a project shall be developed and completed by the promoter in accordance with the sanctioned plan. From perusal of the documents we find that the opposite party has violated the terms and conditions of the sanctioned plan. We also find that the project of the opposite party has not been registered with JHARERA as yet, although it was an incomplete ongoing project even in the month of March 2018. It is still an incomplete ongoing project. Thus the complainant has been fully able to establish the case in his favour.

11. 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. 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.

12. 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. 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. As regards **illegal construction in violation of the sanctioned plan**, it is incumbent upon Municipal Corporation, Adityapur to get the matter thoroughly enquired and remove and demolish any such encroachment and illegal construction immediately. In view of all the facts and circumstances discussed above, order is being passed as follows::

(a) The opposite party is directed to get his project registered with Jharkhand Real Estate Regulatory Authority (JHARERA for short) 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 or any duplex house in the project SAI BABA ENCLAVE 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 complete the construction of the remaining items of work viz. construction of boundary wall, common entrance gate, internal roads within the project area, community hall, park and rain water harvesting system (as per the sanctioned plan of the project SAI BABA ENCLAVE), within three months. Thereafter the O.P. shall obtain completion certificate and occupancy certificate from Municipal Corporation, Adityapur and submit compliance report to this Authority within four months from this order.

(d) The O.P. is directed to pay a sum of Rs.4,40,606/- (Rs. four lakh forty thousand six hundred six only) in terms of

[REDACTED]

the Agreement dated 15-07-2014, to the complainant immediately.

(e) Municipal Corporation, Adityapur shall comply with the direction given in paragraph 12 above and submit compliance report to this Authority within a period of three months.

A copy of this order should also be sent to Municipal Commissioner of Adityapur Municipal Corporation.