

66

**JHRKHAND REAL ESTATE REGULATORY AUTHORITY**  
**RANCHI**

**Complaint case no- 54/2019**

Abhishek Gupta --- Complainant

- Versus -

Raman Kumar Sharma --- Respondent

Complainants Represented through --- Self

Respondent represented through --- Self

Coram: Hon'ble Chairman Shri R.S.Poddar  
Hon'ble Member Shri R.P.Sinha

**ORDER**

9  
1. This complaint case has been filed by Shri Abhishek Gupta, the complainant, against Raman Kumar Sharma, who is the builder/developer of of the project named "Aman

Apartment” alias “Aman Arcade”, situated at Harmu Road, Ranchi. The complainant has sought the following reliefs :-

(a) Forming a society of flat-owners/allottes for running and maintaining the common amenities and for the maintenance activities of the apartment/building.

(b) Providing and maintaining the guard room properly for security staff, in the interest of the security of the premises.

(c) Providing for a common toilet in common area on the ground floor for security staff and other persons engaged in the maintenance of the common amenities.

(d) Providing for proper fire safety system for the apartment/ building in general.

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

(a) The complainant Abhishek Gupta has purchased a flat (Flat no. 4B in Aman Arcade also called Aman Apartment), after full payment of entire consideration amount (as per the agreement executed between them) from the opposite party(O.P.). The O.P. is the developer and proprietor of M/s R.A. Constructions, Harmu, Ranchi of the multi-storeyed residential-cum-commercial building complex

named "Aman Apartment". This building called "Aman Arcade alias Aman Apartment" is constructed on 1009.26 square meter area, situated on M.S. plot no. 188, sub-plots numbered 188A & 188B under khata no. 77 on Harmu Road, Ranchi. The complainant is in possession of his flat since 2011.

- (b) The agreement between the complainant and developer clearly stipulates the formation of a society for all flat owners to look after the maintenance of the building and other common amenities for the allottees/residents of the Apartment. But till date no society has been formed and the developer is collecting maintenance charges without giving details of expenditure while using the revenues collected (in the name of maintenance charges) for his personal use.
- (c) It is further stated that guard room on the ground floor is also used for commercial purpose by the developer as godown, and that no common toilet in common space area has been provided on ground floor, although it is mentioned in the brochure. It is also stated that fire safety system has not been commissioned till date.

3. After registration of this case, notices were served on the opposite party(O.P.) and the O.P. has appeared and filed his reply. In his reply, the O.P. contends that the present complaint case is not

maintainable under the Real Estate (Regulation and Development) Act [ RERA Act, in short] and has prayed for dismissal of the case with cost. It has also been submitted that the residential -cum-commercial building complex has been constructed on the basis of building plan sanctioned by RRDA Ranchi. The complainant Abhishek Gupta entered into an agreement on 24-03-2010, for the purchase of flat no- 4B on the 4<sup>th</sup> floor having super built-up area of 1790 sq. ft. The said flat was transferred in the name of Shri Abhishek Kumar Gupta s/o Shri Jaiprakash Gupta through registered deed of sale bearing Deed no. 27559 dated 29-12-2010 and the purchaser has been residing in the said flat.

4. The respondent maintains that since the plan of the building was sanctioned in the year 2004 and building was constructed in the year 2007-08, the present case filed under RERA Act is not maintainable and liable to be dismissed with cost. The respondent O.P. has further submitted that the complainant purchased the said flat after being fully satisfied with the construction including fire fighting arrangement, guard room and facilities in common area. As regards maintenance, it has been submitted that a society is already functioning in the said apartment and it is wrong to say that no society

has been formed. The O.P. maintains that the society of the flat-owners are maintaining the book/register of the meetings of the society of flat owners and that proper account of income and expenditure of the maintenance charges is also being maintained to the full knowledge of all occupants including the complainant. The respondent has denied using the guard room for commercial purpose; according to the respondent, the guard room has been constructed and is being used only as guard room meant for security purpose. As regards the construction of wash room in common area, it has been submitted that there was no provision for such wash room in common area in the sanctioned plan and hence the question of construction of wash room does not arise. It has further been submitted that fire safety kit is in workable condition since 2010 and the demonstration is being made from time to time to the full notice and knowledge of the complainant and hence the complainant is not entitled for any relief as claimed.

5. Having heard the parties and considering the facts and documents on record, we find that the complainant is residing in the said flat since 2011. Though the opposite party (O.P.) denies each and every allegation raised by the complainant, he has not filed any

documents to substantiate his claims. We have perused the sanctioned plan of the building and we find that there is provision for a guard room and it is an admitted fact that guard room has already been constructed. If the guard room has been constructed on the ground floor, then construction of a wash room for use of the guard(s) and security staff is an essential and natural part of the guard-room. Thus constructing a wash room, which may or may not be attached with the guard room, should be a part and parcel of the guard-room. Thus we hold that it is the duty of the builder/opposite party to construct a wash room along with the guard room because there is no need to take separate permission for constructing wash room attached with the guard room.

6. We also find that **the project Aman Apartment in which the complainant has booked his apartment, has not yet been registered under section 3 (1) of Real Estate (Regulation and Development) Act, which is a mandatory requirement for all ongoing projects which had not been completed on the date of commencement of the said Act. This Act came into force w.e.f. 01<sup>st</sup> May 2016. In Jharkhand, the Jharkhand Real Estate (Regulation and Development) Rules were notified on 18<sup>th</sup> May 2017 and a notice**

was published on 27<sup>th</sup> July 2017 in all newspapers 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. Thus the O.P. has violated the mandatory provisions 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. For continued violation, the builder/promoter is punishable with imprisonment for a term which may extend up to three years or with fine up to further 10% of the project cost.

7. Considering the entire facts and circumstances of the case we find that the major allegation, as alleged against the opposite party is a matter which has to be solved among the flats owners and the builder after forming the society/association of flat-owners i.e. allottees. Under section 11(4)(e) of the RERA Act, the builder/developer is duty-bound to enable the formation of a proper

association or society of the allottees and hand over the maintenance of the flats to this association/society. The opposite party has claimed that the society has already been formed and is functioning since 2010. However, we find that the O.P. builder himself too is one of the flat-owners and he resides in flat no. 5A in the same building that is Aman Arcade. This fact of the O.P. builder also having the status of being one of the flat-owners/allottees in the same apartment project (Aman Apartment) does not entitle the O.P. to usurp the role and function of the society of the flat-owners/allottees in the project. Be it as it may, the builder O.P. is directed to produce the original documents pertaining to the formation of the society since 2010 as also the yearly decisions regarding the office bearers of the society from year to year.

8. The original orders of the fire safety certificates and renewal thereof of every year since 2010 issued by the competent authority, should also be produced by the O.P. The opposite party is also directed to provide all amenities as per the sanctioned plan, including operationalization of the lift. The opposite party has not produced any **completion certificate or occupancy certificate**

70

issued by Ranchi Municipal Corporation for the project in question. Hence, as per provisions of section 3 of the RERA Act, the developer/builder must get the project registered with Jharkhand RERA i.e. JHARERA. The builder O.P. has failed to comply with this mandatory requirement. Clearly the case is maintainable.

9. In view of all the facts and circumstances discussed in the foregoing paragraphs 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.
- (b) On account of violation of section 3(1) of the Real Estate (Regulation and Development) Act, the punishment of a fine of Rs. 200000/- (Rs. two lakhs only) in terms of section 59(1) and 59(2) for continued violation of section 3 of the Act, ~~CR.2~~ has already been awarded to this same builder for the same project in another case (Case no. 53/2019). Hence no separate punishment is proposed on this account.
- (c) The builder O.P. is further directed to comply with the directions given in paragraphs 7 and 8 above and submit



compliance report along with the relevant original documents to this Authority, failing which further punitive action may be taken in accordance with Law.