

**Ranchi**

**Before Adjudicating Officer**

**Jharkhand Real Estate Regulatory Authority, Ranchi**

Present ----- Ranjeet Kumar Choudhary

Dated 03<sup>rd</sup> day of February, 2021

**Complaint Case No.- 01/2020**

Mrs. Sharmistha Adhya,

D/o Deepak Kumar,

Office Address – Department of Tourism,

Art Culture, Sports & Youth Affairs,

FFP Building, Room No. 216,

2<sup>nd</sup> Floor, H.E.C. Campus,

Dhurwa, Ranchi – 834 004.

Present Address - Qrt. No.- B/162,

Sector – 3, Dhurwa, Ranchi – 834 004.

--- Complainant

## VERSUS

Shri Fulchand Saw,  
Saket Vihar, Near D.A.V. Kapildeo Road,  
Kadru, Ranchi – 834 001.

--- Respondent

Complainant Represented through --- Self

Respondent --- None

## **ORDER**

1. The instant complaint has been brought by the complainant Sharmistha Adhya against the respondent Fulchand Saw with reliefs that builder/respondent may be directed to give possession of the flat vide Flat 2<sup>nd</sup> Floor, Unit – II/B in Block – C in “**Mangal Enclave**” at Dhela toil, Kokar, Ranchi and get the same registered in her name. Compensation of Rs. 5,00,000 (Five Lakhs) and Litigation Cost of Rs. 1,00,000/-(One Lakh) have also been claimed.

2. As per the complaint petition, it is the case of the complainant that she had made an agreement with Respondent Fulchand Saw on 05.10.2013 to buy Flat in the proposed Mangal Enclave apartment in Block – C, Flat No. – Unit – II B, 2<sup>nd</sup> Floor with parking, generator and meter connection at Dhela Toli, Kokar, Ranchi. An Agreement for Sale was executed on 05.10.2013 and under said Agreement Rs. 8,65,000/- has been paid to the Respondent by taking loan from DHFL against the

total amount of Rs. 9,60,000/- for 600 sq. ft. area. Respondent/Builder increased the area of the flat from 600 sq. ft. to 800 sq. ft. without executing any further agreement for which an additional Rs. 3,70,000/- has been paid by the Complainant. Total Rs. 12,35,000/- has been paid by the Complainant to the Respondent through cheque/IMPS on different dates. The Respondent was supposed to give the possession of the flats within two years and six months from the date of the agreement but till date possession of the flat has not been given to her. Visual Inspection of the flat shows that it is in ready state and minor works are pending. Letters were sent to the Builder for handing over the possession through post but the same were returned unserved. Respondent has given permission to another person to live in this flat and as such the Complainant locked the flat and informed the Sadar Police Station. Hence, it has been prayed that Respondent may be directed to give possession of the flat to the Complainant as soon as possible and get it registered in her name. Compensation of Rs. 5,00,000/- and Litigation Cost of Rs. 1,00,000/- have also been sought.

3. On being noticed through speed post, Respondent did not appear physically in this case and thereafter warrant was issued against him through SSP, Ranchi. No service report of warrant of arrest was received and then paper publication was made in the local news paper for the appearance of the Respondent. Despite that when he did not appear, vide the order dated 06.01.2021, the case record was fixed for Ex-parte hearing.

4. The point for determination arising out of this case that whether the complainant is entitled for reliefs as claimed for?

### **FINDINGS**

5. Complainant herself argued her case. She has submitted that she had booked a flat having an area of 600 sq. ft. in “**Mangal Enclave**”, Dhela Toli, Kokar, Ranchi and in this regard agreement for sale was executed between her and the Respondent on 05.10.2013. Consideration amount was fixed 9,60,000/- and Respondent was supposed to give possession of flat to her within two years and six months from the date of execution of agreement for sale. She has further submitted that previously parking, generator and meter connection charges were not included in this consideration amount but subsequently Respondent included these charges in Consideration amount. She has further submitted that initially area of the flat was 600 sq. ft. but another room was added in her flat without execution of any supplementary agreement for sale and she paid Rs. 3,70,000/- to the Respondent against this added area. She has further submitted that in the Complaint Petition it is written that 12,35,000/- has been paid by her to the Respondent but actually she has paid 12,76,632/- to him. It is her further argument that she has filed documents to established that Rs. 6,46,632/- has been paid to the Respondent by Dewan Housing Finance Corporation Ltd. Ranchi against the loan taken by her and Rs. 6,30,000/- has been paid by her and total amount comes to Rs.

12,76,632/-. She has argued that she is ready to pay balance amount to the Respondent as and when required. She has submitted that the Respondent was intending to induct a person in her house and getting this information, she locked her house/flat and accordingly informed the local police and also took some photographs regarding locking of the flat which she has filed in the court. Hence, she has prayed that Respondent may be directed to give formal possession of the flat to her and get the same registered in her name. She has further prayed for compensation and litigation cost.

6. As discussed above, Respondent never physically appeared in this case and no written statement has been filed by him, hence question of argument on his behalf does not arise.

7. Perused the case record and the documents filed by the Complainant. Perusal of agreement for sale dated 05.10.2013 entered between the parties indicates that both the parties had entered into agreement for sale for purchase of Flat No. 2<sup>nd</sup> Floor, Unit – II B having an area of 600 sq. ft. in Mangal Enclave for a consideration amount of Rs. 9,60,000/-. In this agreement for sale it is not mentioned when the possession of the flat will be given by the Respondent to the Complainant but as per submission made by the Complainant, within two years and six months from the date of the agreement, possession of the flat was to be handed over to her. Perusal of statement of account of loan account of the Complainant issued by Dewan Housing Corporation Ltd. Ranchi indicates that altogether Rs. 6,46,632/- has

been paid by this Corporation to the Respondent against the flat purchased by a Complainant. I further find that last payment was made on 21.12.2015. Perusal of Xerox copy of passbook of Savings Bank A/c of the Complainant and also perusal of money receipts issued by the Complainant indicates that Rs. 6,20,000/- has been paid by the Complainant to the Respondent through cheque and IMPS while Rs. 6,46,632/- has been paid to the Respondent by the Financer from housing loan taken by the Complainant. Perusal of agreement for sale indicates that Complainant was intending to purchase flat having an area of 600 sq. ft. on payment of Rs. 9,60,000/- inclusive of parking, generator and meter connection charges. As per submission made by the Complainant without executing any agreement, Respondent agreed to give her one another room on payment of Rs. 3,70,000/-. It means total cost of flat including additional room comes to Rs. 13,30,000/- and against this amount Rs. 12,66,632/- has been paid to the Respondent. Respondent has not come before this court to rebut the submission of the Complainant. As such I am forced to believe the submission made by the Complainant regarding purchase of flat.

8. From above discussion it is clear that Complainant had entered into an agreement for sale with the Respondent for purchase of a flat in Managal Enclave having an area of 800 sq. ft. (600 sq. ft. + 200 sq. ft.). Respondent has not given formal possession of the flat to the Complainant after completing entire work. From perusal of the Xerox copy of Complaint filed by the Complainant with Officer-in-Charge Sadar P.S. Kokar and also from perusal of photographs filed by the

Complainant it is apparent that Complainant has taken possession of the flat forcefully because Respondent was intending to sale this flat to somebody else.

9. I further find that project of the Respondent is not registered with Jharkhand Real Estate Regulatory Authority, Ranchi while this project is still is incomplete and as such it will come under the purview of the ongoing project.

### **ORDER**

10. It is therefore

## **ORDERED**

That the Respondent will **formally** handover the possession of the flat having an area of 800 sq. ft. to the Complainant within two months from the date of this order after removing the defects in the flat and get the same registered in the name of the Complainant after receiving balance consideration amount. If the Respondent fails to do so, the Complainant will be at liberty to file a case before Ranchi Municipal Corporation under Apartment Act for registration of the flat.

11. Since the project of the Respondent is ongoing project and its registration with Real Estate Regulatory Authority, Jharkhand has not been done, u/s 59 (1) of the RERA Act, Respondent is directed to pay penalty of Rs. 3,00,000/- which will be deposited in RERA FUND.

12. Respondent is further directed to give a sum of Rs. 3,00,000/- to the Complainant as compensation because Respondent has failed to handover the flat to the Complainant within reasonable period of time from the date of agreement for sale despite receiving major part of consideration amount

13. It is also ordered that the Respondent will pay Rs. 30,000/- to the complainant as litigation cost

Dictated & Corrected  
by me

Ranjeet Kumar Choudhary,  
Adjudicating Officer,  
JHARERA

Adjudicating Officer  
JHARERA