

JHARKHAND REAL ESTATE REGULATORY AUTHORITY

IN THE COURT OF CHAIRMAN, JHARERA

Present ----- **Birendra Bhushan**

Dated 7th day of March, 2025

Complaint Case No. 35 of 2018

Ranjit Kumar Gupta, S/o- Sri Ram Narayan Prasad,
R/o- Sahu Mohalla, Purani Bazar, P.O.- Gomoh,
P.S.- Gomoh, District- Dhanbad

..... Complainant

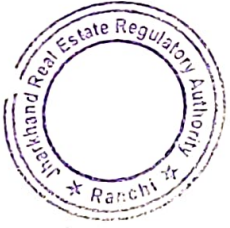
VERSUS

M/s- Nexgen Infra Heights Pvt. Ltd.,
Through its Director- Ravi Kant Singh
Office Address- B-3, Vinita Villa, Sidharath Nagar,
Jaydeo path, Rupuspuz, District- Patna, Bihar
Branch Address- Ganpati Tower Apartment, Basement,
Behind Prabhataun Grand Mall, Dhaiya, Dhanbad

.....Respondent

Complainant represented through Shri Ravi Prakash
Mishra & Shri Saurabh Sharma

Respondent represented through Shri Nitin Kumar
Pasari & Shri Shubham Choudhary



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JUDGEMENT

1. The instant case has been filed by the complainant Ranjit Kumar Gupta against the respondent M/s Nexgen Infra Heights (Pvt.) Ltd. with a prayer to direct the respondent to handover the possession of the flat to the complainant with Completion Certificate issued by the Mineral Area Development Authority (MADA) and setup an enquiry to enquire about use of sub-standard building materials in the construction and also investigate whether the construction has been done as per sanctioned plan.

2. According to complaint petition, it is the case of the complainant that developer had entered into agreement for sale dated- 28.08.2015 for purchase of flat no.- 303 at 3rd floor at Raj Kamal Plaza situated in Gali no.- 01, Jay Prakash Nagar, Dhanbad, at payment of consideration amount of Rs. 33,85,550/- (Thirty three lakh eighty five thousand five hundred fifty) only including Rs. 2,25,000/- (Two lakh twenty five thousand) only for parking. Till 27.06.2017 developer has received a some of Rs. 24,55,758/- (Twenty four lakh fifty five thousand seven hundred fifty eight) only plus service tax with effect from 26.06.2015. Time of completion of the said flat was 36 months as per clause no. 16 of the agreement for sale. The flat was not handed over to the complainant then he served one legal notice on 09.08.2017 and another legal notice on 26.07.2017 to the developer for delivery of possession of the flat and Completion Certificate. The developer also served advocate notice dated- 24.01.2018 which was

replied by the complainant on 10.02.2018. Hence, it has been prayed that developer may be directed to hand over the possession of the flat with completion certificate obtained from MADA within the period of 15 days from the date of the order. It is also prayed that enquiry may be set up above standardization of material used by the developer in the project and also to investigate whether the said construction has been done as per sanctioned plan.

3. In this case, initially Respondent did not appear and vide the Judgment dated 15.07.2019 case was disposed of by the Authority. Respondent preferred appeal against this Judgment before Jharkhand Real Estate Appellate Tribunal, Ranchi vide Appeal No. 05/2021 and the Hon'ble Appellate Tribunal allowed the appeal vide the Judgment date 08.05.2023 and remanded the matter to this Authority for passing fresh order in accordance with law after giving proper opportunity to all the necessary parties.

4. When the matter was remanded before the Authority, Respondent duly appeared and filed a Written Statement contesting the case and claim of the Complainant. As per Written Statement, the Respondent is a company incorporated under Companies Act, 1956 and is engaged in business of Real Estate. On 30.07.2014, Complainant entered into development agreement with Respondent Company for construction of multi-storied building over 8.17 Kathas of land out of which an area of

4.5 Katha was owned by Complainant and rest area was owned by another lady named Sita Devi. As per development agreement, 50% of the constructed area was allotted to landowners in proportion of their land sharing ratio and 50% of total constructed area/vacant land was to be retained by the Respondent. Rs. 15,00,000/- (Fifteen lakh) only was to be paid by the Respondent to the landowners each with rider that Rs. 10,00,000/- (Ten lakh) only will be refunded after completion of the project. Subsequent to development agreement, power of attorney was executed on 06.08.2014 by the landowners. Thereafter, sanctioned plan was issued by Mineral Area Development Authority (MADA) and there were certain differences of opinion between Respondent and landowners and then revised plan was submitted by the Respondent in April, 2015 which came to be sanctioned in January, 2016. In December, 2015, an agreement of division was carried out between the parties and recital of this division agreement would transpire that it was to form part of development agreement dated 30.07.2014. Subsequently, this agreement of division was slightly modified in respect of one flat (Flat No. 401) and original division stood changed accordingly by agreement of division dated 14.11.2016. Subsequent to initiation of construction, the landowners wanted to modify the sanctioned development plan to the extent of changing the first floor originally sanctioned for residential purpose into a commercial complex and a result of which



Respondent had to apply for amendment in original development plan. When the application for amendment pending before Mineral Area Development Authority (MADA), construction was put on hold. The malafide of landowner can be manifested from the notice dated 06.02.2017 served upon the Respondent wherein without referring to the re-casting agreement, Respondent was pressurized in terms of original agreement. The amendment in the development plan was duly allowed by MADA in January 2016 and then construction work restarted and it completed in the end of September, 2018. The Complainant being interested in the project, entered into development agreement dated- 28.05.2015 with the respondent for purchase of aforesaid flat. After the sanction plan was issued by the Mineral Area Development Authority (MADA) there are certain differences of opinion between the respondent and the landowners and according to landowner they are entitled for some more space. Hence, the plan was again revised. In December 2015, an agreement of revision was carried out between the parties and subsequently this agreement for revision was slightly modified in respect of one flat (Flat No.- 401) and the original revision stood changed accordingly by the agreement of revision executed on 14.11.2016. Meanwhile when the application for amendment was pending before Mineral Area Development Authority (MADA), construction of the said building was put on hold which could only be restarted



after amendment sought by the landowner and the developer. After January 2016 construction work of the building again started. In the month of September 2018, the construction work was completed and subsequently respondent wrote a letter to the complainant for payment of balance amount within 7 days from the date of issue of the said letter. Pursuant to the above letter, the complainant serve a legal notice dated- 09.08.2017 upon the respondent alleging that he has failed to deliver the possession of the flat according to the terms of agreement. The respondent vide its letter dated- 30.11.2017 informed the complainant about completion of 80% of total work and requested him to pay the outstanding dues. Having received no response to the above letter, respondent served a legal notice dated- 24.01.2018 and 09.06.2018 upon the complainant giving him last chance for payment of dues. Complainant served a legal notice dated- 10.02.2018 on the respondent alleging that he has misappropriated the money given by the complainant. Respondent yet again served legal notice dated- 21.07.2018 to the complainant captioned as "Last reminder" wherein the complainant was informed that construction of the said plan was complete and gave a final opportunity to pay the outstanding dues failing which the agreement for sale will stand cancelled and the amount paid by the complainant will be return to him after forfeiting 25% of the booking amount. Lastly the respondent cancelled the agreement for sale dated-



28.05.2015 which was duly communicated to the complainant vide letter dated- 24.08.2018. Thereafter the amount paid by the complainant was duly credited to his bank account. The complainant vide letter dated- 01.12.2018 and 31.01.2019 objected to cancellation of the agreement for sale. Respondent also informed chief manager, SBI, Hirapur Branch, Dhanbad about cancellation of agreement for sale. Thereafter the complainant instituted the present case against him. It is said that registration of the project could not been done with Real Estate Regulatory Authority as there was no authority functioning at Dhanbad to whom application for registration could be filed within a period of 3 months from the date of commencement of the Act. Plan sanctioning Authority was Mineral Area Development Authority (MADA) but since Dhanbad Municipal Corporation have been constituted Mineral Area Development Authority (MADA) refused to exercise Power under Mineral Area Development Authority (MADA), Act as sanctioning authority. Dhanbad Municipal Corporation took a plea that the project was never sanctioned by it, it will not issue completion and occupancy certificate. It is also said that bare perusal of clause 6 of the sale agreement would transpire that construction is likely to be completed within a period of 6 months of the commencement of construction and subsequent to receive of sanction of building plan and all other necessary approvals. The plea of force majeure has



also been taken. The work "likely" used in the above clause provides a safeguard to the developer. Due to negligence on the part of the complainant regarding payment of balance consideration amount, the agreement for sale was cancelled by the respondent and hence complainant is not entitled to get any relief as such it has been prayed in this case brought by the complainant.

Findings

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

6. The learned counsel appearing for the complainant fully supported his case. He has submitted admittedly on 28.08.20215 one agreement for sale was executed between the complainant and the respondent regarding purchase of flat no.- 303 in Rajkamal Plaza and price of the flat was Rs. 33,85,500/- (Thirty three lakh eighty five thousand five hundred) only including parking area. It is also an admitted fact that complainant has paid Rs. 24,55,758/- (Twenty four lakh fifty five thousand seven hundred fifty eight) only to the respondent against the consideration amount of the flat. It is also a fact that flat was to be handed over to the complainant by the respondent withing 36 month from the date of execution of sale agreement but the flat was not complete on 28.08.2018. Complainant sent legal notices to the respondent regarding completion of the project and taking



possession of the flat but notices were not replied in correct manner. Respondent also sent legal notice to the complainant requiring him to pay some amount and it was duly replied by the complainant and stating therein that project is not complete and as such the amount in question cannot be given to the respondent. It is a fact that respondent sent last reminder to the complainant threatening him to cancel the sale agreement and this notice was also replied by the complainant but in arbitrary manner respondent canceled the sale agreement and deposited Rs. 10,00,000/- (Ten lakh) only in the loan account of the complainant. It has been prayed that respondent may be directed to hand over the possession of the flat along with completion certificate to the complainant within 15 days from the date of the order passed by the authority. He has also argued that complainant is entitled for some sought of compensation as because flat was not handed over to him within stipulated period as mentioned in the clause 16 of the sale agreement.



7. The learned counsel appearing for the respondent opposed. She has submitted that no doubt on 28.08.2015 a sale agreement was executed between the parties regarding purchase of flat no.- 303 in Rajkamal Plaza belonging to the respondent at the consideration amount of Rs. 33,85,500/- (Thirty three lakh eighty five thousand five hundred) only. It is also an admitted fact that the complainant has made payment of Rs. 24,55,758/-

(Twenty four lakh fifty five thousand seven hundred fifty eight) only. But it is also a fact that payment of the consideration amount has not been done by the complainant as per schedule mentioned in the sale agreement. 80% work in the project was complete and 80% money should have been paid by the complainant to the respondent but he didn't do so and he took excuse that he is not liable to pay further amount till the work is complete. She has also submitted that one Pramila Devi who is land lady of the of land upon which apartment has been constructed, has filed complaint case no. 34/2018 and while disposing of this case, this learned authority has find that there is no delay in the construction of the apartment. She has further argued that sale agreement has already been cancelled by the respondent and Rs. 10,00,000/- (Ten lakh) only has been deposited in the loan account of the complainant after deducting 25% of the paid consideration amount as per sale agreement. She has also argued that the flat in question has already been sold by the respondent to another person and hence, question does not arise regarding giving possession of the flat in question to the complainant. Hence, she has prayed that the case brought by the complainant may kindly be dismissed.



8. Perused the case record, the documents filed by both the parties and also perused the case record of case no 34/2018 filed by land lady Pramila Devi against this respondent. Complaint case no. 34/2018 has already been

allowed by the authority vide the judgement dated- 29.12.2023. No doubt on 28.08.2015 a sale agreement was executed between the parties whereby and whereunder the complainant agreed to purchase flat no 303 at 3rd floor in the Rajkamal Plaza situated at Gali no 01, Jay Prakash Nagar, Dhanbad at the cost of Rs. 33,85,500/- (Thirty three lakh eighty five thousand five hundred) only including the parking charges. Rs. 24,55,758/- (Twenty four lakh fifty five thousand seven hundred fifty eight) only has been paid by the complainant to the respondent on different dates. As per sale agreement (Xerox copy of the same is on the record) **within 36 months from the date of commencement of construction the project was to be completed.** It appears that due to dispute between the land lady namely Pramila Devi and the respondent, the building plan was revised by the MADA on 10.01.2016 and obviously after revision of the plan the period of 36 month will be calculated. If this date is considered as the date of sanction of the plan, there is no delay on the part of the respondent in construction of the apartment. From perusal of the documents particularly the xerox copy of the pleaders notice and xerox of its reply filed and the xerox copy of the notice sent by the respondent and its reply filed by the complainant, it appears that complainant wanted possession of his flat calculating the 36 month time from the date passing of the original plan. Not only that complainant demanded Rs. 15,000/- (Fifteen thousand)



only per month from the respondent against the monthly rent along with bank interest charges because of delay in handing over the project. As per complainant on 01.08.2017 respondent was liable to hand over the possession of the flat to the complainant and as such a demand of Rs. 25,000/- (Twenty five thousand) only per month was made by the complainant from the respondent till getting the actual physical possession of the flat. Respondent always deny this fact that he demanded more money from the complainant in view of the provisions mentioned in sale agreement. Perusal of payment schedule indicates that after completion of 80% work complainant was supposed to pay 80% amount of the total consideration money. But complainant deny to make this payment because in his view the project was to be completed by 01.08.2017 and it is respondent who has committed the fault. Finally after giving last reminder to the complainant, the respondent cancelled the sale agreement and deposited only 10,00,000/- (Ten lakh) only in his loan account while Rs. 24,55,758/- (Twenty four lakh fifty five thousand seven hundred fifty eight) only was received by him till the cancellation of sale agreement. No doubt the building plan was revised by the Mineral Area Development Authority (MADA) on 10.01.2016 but complainant was not informed by the respondent regarding revision of the building plan so he was in the impression that period of 36 months of completion of the project will be computed from the



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passing of original plan by the Mineral Area Development Authority (MADA). It appears to me that there was a communication gap between both the parties due to which the complainant could not deposit some more amount to the respondent against the consideration amount. Out of total consideration amount of Rs. 33,85,500/- (Thirty three lakh eighty five thousand five hundred) only he has deposited 24,55,758/- (Twenty four lakh fifty five thousand seven hundred fifty eight) only and there after he stopped further payment. It means that major share of the consideration amount have been paid by the complainant to the respondent. But now the situation has completely changed. As per submission respondents has sold this flat to some other person and hence question of giving possession of this flat to the complainant does not arise. But in my view complainant is certainly entitled for refund of his money. He has got only 10,00,000/- (Ten lakh) only from the respondent against the paid consideration amount but in my view he has entitled for entire paid consideration amount i.e. Rs. 24,55,758/- (Twenty four lakh fifty five thousand seven hundred fifty eight) only.

9. So far as after the relief sought by the complainant are concerned, it has been held in complaint case no. 34/2018 that these reliefs cannot be given to the complainant. The reliefs are set-up of enquiry above standardization of the materials used by the developer in

the project and investigation regarding construction of the apartment as per sanction plan.

10. In the aforesaid circumstances I come to this conclusion that no relief sought by the complainant can be given to him because his first relief is regarding possession of the flat along with Completion Certificate obtain from MADA. But the complainant is certainly entitled for refund of entire money which he has paid to the respondent against the consideration amount only 10,00,000/- (Ten lakh) only has been paid the respondent to the complainant against the consideration amount respondent has received from him. As such respondent is directed to pay Rs. 14,55,758/- (Fourteen lakh fifty five thousand seven hundred fifty eight) only to the complainant along with 7% interest Per annum within 3 month from the date of this order.

11. Accordingly the case brought by the complainant instance dismissed with above mentioned direction regarding payment of balance amount by the respondent to the complainant within the stipulated period.

