

JHARKHAND REAL ESTATE REGULATORY AUTHORITY

IN THE COURT OF CHAIRMAN, RERA

Present ----- Ranjeet Kumar Choudhary

Dated Ranchi the 04th day of September, 2023

Complaint Case No. 10 of 2023

Arun Kumar,
S/o- Late Bhagwan Ram,
R/o- Flat No. FTF,
Swagatam Apartment,
Shukla Colony, Hinoo,
P.O. & P.S.- Doranda,
District- Ranchi- 834 002

-----Complainant

-Versus-

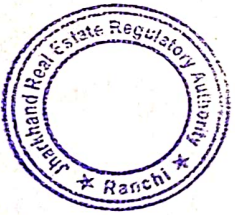
1. M/s Kutir Developers and Infra- Projects,

Developer of Blue Diamond, Donbosco Road,

Hesag, Hatia, P.S.- Jagarnathpur,

Ranchi- 834 003

2. Sumit Agarwal,



S/o- Late Ramawatar Agarwal,

R/o- 83- D1, Krishna Nagar,

Gali No. 3, Safdarganj,

New Delhi

Presently residing at- 203,

Radium Court Building Road, Radium Road,

P.O.- GPO, P.S.- Kotwali,

Ranchi- 834 001

3. Ashraf Khan @ Chunnu Khan,

S/o- Late Sharif Khan,

R/o- Humera Tower, 2nd Street,

Hindpiri P.S.- Hindpiri,

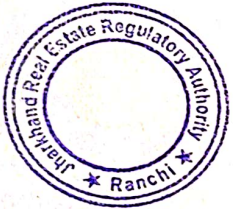
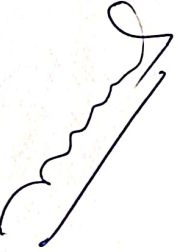
P.O.- GPO, Ranchi- 834 001

4. Nasir Khan @ Mubarak Khan,

S/o- Late Ibrahim Khan,

R/o- Hatia, P.S.- Jagarnathpur,

Ranchi- 834 001, at present



Address- Sudarshan Apartment,
Kachnar Toli, Near Singh More,
P.S.- Jagarnathpur, P.O.- Hatia,
Ranchi- 834 003

5. Bhogendra Jha, S/o- Late Jagdish Jha,

R/o- House No. 130, Basant Vihar,
Road No. 1, Harmu,
P.S.- Argora, Ranchi- 834 002

6. Tapas Kumar Mallick,

S/o- Mr. Jamini Rajan Mallick,
R/o- Nest Apartment, South Office Para,
Doranda, Ranchi,

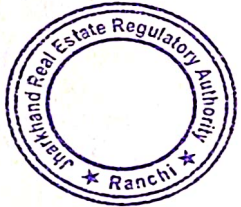
At present resident of 704,

C- Block, 7th Floor,

Sriram Gardens, Kanke Road,

P.O.- Ranchi University,

P.S.- Gonda Town, Ranchi- 834 008



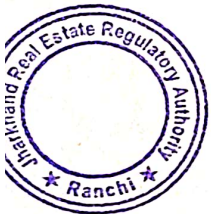
Complainant Represented through --- Respondents
--- Self

Respondents represented through --- Mr. Rohit Ranjan Prasad
---Mr. Jay Prakash Amritosh
---Mr. Ashish
---Mr. Rahul Ranjan
(All Learned Advocates)

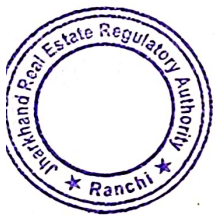
JUDGMENT

1. The instant Complaint has been brought by the Complainant Arun Kumar against the Respondents with reliefs that Respondents may be directed to handover the flat to him (Complainant) as per agreement for sale dated 15.01.2016 with all consequential amenities after receiving balance consideration amount. It has further been prayed that Respondents may be directed to give house rent @ Rs. 11,000/- per month from 15.01.2017 till the registration of the Flat No. 7D situated in **“Diamond Blue Apartment”**. Rs. 10,00,000/- (Ten lakh) only has been claimed on account of mental and physical harassment and as litigation cost. Alternative prayer has been made for refund of entire consideration amount with suitable interests to the Complainant in case Respondents fails to deliver possession of the flat to him.

2. As per Complaint Petition in nutshell, it is the case of the Complainant that he had booked a flat bearing No. 7D, 6th Floor, Blue Diamond Apartment, Hatia belonging to the Respondents and



consideration amount was Rs. 41,97,600/- (Forty one lakh ninety seven thousand and six hundred) only including the charge of parking. The agreement for sale was executed on 15.01.2016. Out of the fixed consideration amount, Rs. 33,10,000/- (Thirty three lakh and ten thousand) only was paid by the Complainant to the Respondent Company either through cheques or through RTGS. It is said that Respondents did not complete the construction of the said multi-storied building. Respondent No. 1 to 6 withdrew Rs. 5,00,000/- (Five lakh) only from the loan account of the Complainant regarding which Argora P.S. Case No. 110/2017 was instituted by the Complainant. Due to non-handing over the flat by the Respondents, Complainant is residing in rental house and he is paying Rs. 11,000/- per month as house rent. Complainant filed a case against the Respondents before Municipal Corporation, Ranchi vide Case No. JA/REG 6/2017 which was disposed of by the Municipal Authority against which the Complainant preferred Appeal before Commissioner-cum-Appellate Authority, Ranchi vide JAR Appeal No. 14 of 2018. The Ld. Divisional Commissioner-cum-Appellate Authority without considering materials in right perspective disposed of this Appeal against which the Complainant preferred writ petition [W.P.(C) No. 1734 of 2021] before Hon'ble Jharkhand High Court and the Hon'ble Court vide the Order dated 06.07.2022 disposed of this Writ Petition. It is said that Respondents have failed to comply the Order dated 18.01.2021 passed by the Court of Divisional



Commissioner, Ranchi. In the light of liberty given by the Hon'ble Jharkhand High Court, Complainant has filed the present Complaint before this Authority. Hence, it has been prayed that Respondents may be directed to handover the flat in question as per agreement for sale dated 15.01.2016 with all amenities and also to pay house rent @ Rs. 11,000/- per month to him and to pay compensation @ Rs. 10,00,000/- (Ten lakh) only on account of mental and physical harassment as well as litigation cost. If, the Respondents fails to do this, they may be directed to refund the entire amount to the Complainant with interest amounting to Rs. 83,95,200/- (Eighty three lakh ninety five thousand and two hundred) only.

3. On being noticed, the Respondents appeared before the Authority and filed their Written Statement. As per the Written Statement filed by the Respondents, the present case is not maintainable and same has been filed by the Complainant to harass the Respondents. It is said that Complainant has deliberately not paid the balance consideration amount which is clear cut violation of terms of agreement for sale. It is further said that in order to harass the Respondents, Complainant had filed several cases against them and he is not complying the Order passed by the Divisional Commissioner, Ranchi in his Judgment dated 18.01.2021 passed in JAR Appeal No. 14/2018. It is further said that Respondents are ready to comply the terms of agreement of sale, if the Complainant



is going to dispense out the dues on his part. Hence, it has been prayed that case brought by the Complainant may be dismissed.

4. The only point arising out of this case for determination is whether the Complainant is entitled for relief as claimed for ?

FINDINGS

5. Perused the case record and the documents filed by the parties and also considered the arguments adduced by them. The Complainant himself argued his case and he fully supported the case filed by him. The Ld. Counsel Shri Rohit Ranjan Prasad argued the case on behalf of all the Respondents.

6. Perusal of case record and the documents filed by the Complainant clearly indicates that Complainant had booked a flat in the project of the Respondent namely "**Blue Diamond Apartment**". Agreement for sale was executed on 15.01.2016 between the parties with respect to Flat No. 7D, 6th Floor in Blue Diamond Apartment having an super built-up area of 1218 sq. ft. for consideration amount of Rs. 41,97,600/- (Forty one lakh ninety seven thousand and six hundred) only. It is an admitted fact that out of this consideration amount, Rs. 33,10,000/- (Thirty three lakh and ten thousand) only was paid by the Complainant to the Respondents either through cheques or through RTGS payment. As per agreement for sale, Respondents were supposed to give possession of the flat to the Complainant within 2 and half years from the date of the agreement.

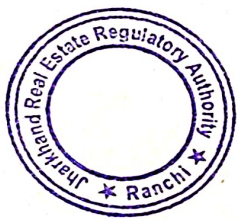


Respondents failed to give possession of the flat to the Complainant within stipulated period and then Complainant filed a case before Municipal Corporation, Ranchi under the provisions of Jharkhand Apartments (Flat) Ownership Act, 2011 and hearing both the parties, vide the Order dated 07.02.2018, Ld. Municipal Commissioner dismissed the case (Annexure- 9). Against this Order, Complainant preferred JAR Appeal No. 14/2018 before Appellate Authority-cum-Divisional Commissioner, South Chhotanagpur, Commissionery, Ranchi (Annexure- 10). The Ld. Divisional Commissioner, South Chhotanagpur, Commissionery, Ranchi disposed of this Appeal vide the Order dated 18.01.2021 (Annexure- 12). In the Page 5 of this Order, the Ld. Commissioner observed as under:-

“Quote

Having regard to the aforesaid facts and circumstances in the interest of justice, respondent no 1 (promoter) is directed to complete the flat in question within six months if the appellant (Allottee) given an undertaking to make entire payment to the promoter as per the agreement and on the completion of flat the competent authority will issue after due enquiry completion certificate. The parties are also directed to abide the provisions made in the Jharkhand Apartment Ownership Act, 2011.”

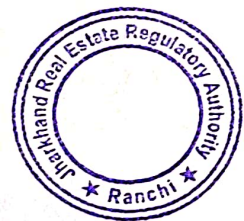
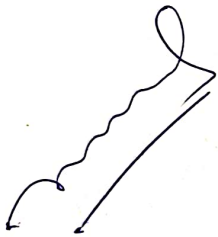
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Then the Complainant took the matter to the Hon'ble Jharkhand High Court vide W.P. (C) No. 1734 of 2021 and the Hon'ble Court vide the Order dated 06.07.2022 disposed of this W.P. (C) with liberty to the Complainant to take appropriate recourse under the provisions of the law. Then, the Complainant filed the Complaint case against the Respondents before this Authority.

7. During course of the arguments, the Ld. Counsel for the Respondents submitted that if the Complainant pays balance amount to the Respondents, they will give possession of the flat to him within one month from the date of receipt of the balance money. The Complainant submitted that he is ready to pay the balance amount if the Respondents agree to give possession of the flat with all amenities and provide Occupancy Certificate to him. Respondents are ready for this also.

8. In the aforesaid circumstances, I do not find any impediment in allowing the case filed by the Complainant. Complainant is supposed to pay balance amount of Rs. 8,87,600/- (Eight lakh eighty-seven thousand and six hundred) only to the Respondents within one month from the date of this Order. Complainant will pay Rs. 6,00,000/- (Six lakh) only to the Respondents against balance consideration amount and within 45 days from receipt of this amount, Respondents will complete the flat of the Complainant in all aspects and handover its possession to him. Thereafter, balance amount of Rs. 2,87,600/- (Two lakh eighty-seven



thousand and six hundred) only will be paid by the Complainant to the Respondents at the time of registration of the flat in his name.

9. So far as relief of payment of house rent @ Rs. 11,000/- per month from 15.01.2017 till the date of registration is concerned, I don't feel that this relief can be given to the Complainant. If, there is delay in giving possession of the flat to the Complainant, the reason can be attributed to the Complainant also because instead of making payment of balance amount in terms of agreement for sale, he opted to pull the Respondents in litigation before several Authorities. The Complainant is also not entitled to any compensation because Respondents have also gone through mental and physical harassment due to filing of the cases by the Complainant. However, litigation cost of Rs. 15,000/- (Fifteen thousand) only is awarded to the Complainant.

10. In the circumstances, the case brought by the Complainant is partly allowed. Both the parties are directed to comply the observation made in Para- 8 of this Judgment.

