

JHARKHAND REAL ESTATE REGULATORY AUTHORITY,
RANCHI

COMPLAINT CASE NO. 104/2019

Uday Kumar Agrawal

--- Complainant

S/o Saket Bihari Agrawal,

R/o Aditya Garden No. – 8, Plot No. – 101,

Adityapur, P.S. – Adityapur, Jamshedpur,

Dist. – East Singhbhum.

-VERSUS-

M/s Optimus Construction A Partnership firm & Others

--- Respondents

S/L, Alishan Tower Phase – 01,

Road No. – 09, P.S. – Mango, Jamshedpur,

Dist. – East Singhbhum.

Complainant represented through

--- Jai Prakash Agrawal, Advocate

Respondent represented through

--- Bishwambhar Shastri, Advocate

Coram:- Hon'ble Chairman Smt. Seema Sinha

JUDGMENT

1. The above named Complainant has filed this Complaint Petition against the Respondents M/s Optimum Construction, a partnership firm at S/L, Alishan Tower Phase – 01, Road No. – 09, P.S. Mango, Jamshedpur, Dist. – East Singhbhum seeking relief that the Respondent may be directed to execute the sale deed in favour of him and he may further be directed to pay the interest of the amount received by them at the rate of bank interest from 30.08.2014 till the payment and compensation of Rs. 10,00,000/- for harassment and mental agony.

2. The brief fact of the case is that the above named Respondents are builder and constructing a multi-storey apartment at New Purulia Road, Mango under Khata No. – 862, New Plot No. – 604, Thana No. 1641, Ward No. 09 at Mango, Dist. – East Singhbhum. It is further stated that the Complainant entered into an agreement on 27.06.2014 to purchase a flat in the said apartment being Flat No. 2B, 2nd Floor, Nisha Apartment at a consideration price of Rs. 33,50,000/-. It is also stated that the Complainant has paid a sum of Rs. 7,00,000/- on 25.06.2014 and Rs. 11,50,000/- on 27.08.2014 in cash and further Rs. 13,00,000/- on 29.08.2014 by cheque issued by Canara Bank, Mango Branch, Jamshedpur, being Cheque No. – 441656 and it is further agreed between both the parties that rest of the amount Rs. 2,00,000/- will be paid at the time of registration of sale deed. It is further stated that till date neither the Respondents have given the possession of flat nor the sale deed was executed in favour of the Complainant. Hence, the Complainant prays that the Respondents may be directed to execute sale deed of the said flat in favour of him and he may also be directed to pay the interest of the amount received by them at the rate of bank interest from 30.08.2014 till the date

of payment and a compensation of Rs. 10,00,000/- may also be given to the Complainant for harassment and mental agony.

The following documents have been filed on behalf of the Complainant in support of his case :-

- (i) An Agreement for Sale dated 27.06.2014 (**Annexure – 1**).
- (ii) Money Receipts dated 25.06.2014, 27.08.2014 & 29.08.2014. (**Annexure – 2 Series**).
- (iii) Photocopy of Petition of C1 Case No. 783/2019. (**Annexure – 3**).
- (iv) Photocopy of Petition of O.A. Case No. 368/2019. (**Annexure – 4**).

3. On the other hand the Respondents appeared in this case after receiving the notice and have filed their written statement stating therein that the Complainant and Respondents are well known to each other and had very good terms between them since long time. It is further stated that the Complainant had taken loan for a sum of Rs. 30,00,000/- from the Respondents for purchasing the flat and on good faith, the Respondents provided a sum of Rs. 30,00,000/- and a Loan Agreement-cum-Mutual Understanding Deed is made between the party on the 28th October, 2014. The Respondents have also denied the statement of Para – 1, 2, 3 & 4 of the Complaint Petition and has further stated that the charges of separate electricity connection have to be borne by the Complainant i.e. Rs. 8,00,000/- has to be paid by the Complainant alongwith the dues amount of Rs. 2,00,000/-.

It has been further stated that Rs. 30,00,000/- in cash has been given to the Complainant in the light of loan agreement for the time period of 1 year as mutually decided between the parties and hence Rs. 30,00,000/- alongwith Rs.

10,00,000/- has to be paid by the Complainant alongwith interest from 28.10.2014 till date of the payment. The Respondent has further stated that the Complainant may be directed to pay Rs. 20,00,000 as compensation for harassment and mental agony. The Respondent has also admitted that he has received Rs. 7,00,000/- from the Complainant on 25.06.2014 and Rs. 11,50,000/- was also received by him on 27.08.2014. The Respondent has further admitted that he has received Rs. 13,00,000/- on 29.08.2014 through cheque of Canara Bank, Mango Branch, Jamshedpur against the house property measuring an area of 1260 sq. ft., Flat No. 2B on 2nd Floor in Nisha Apartment, Purulia Road, Mango, Jamshedpur, District – E. Singhbhum, Jharkhand. Lastly the Respondent prays that Complaint Petition filed by the Complainant is nothing but an eye washing and wants to divert the facts & circumstances of this case and hence the Complainant is not entitle to any relief and the Complaint Petition is liable to be dismissed.

The Respondent has filed only one document in support of his case i.e.

- i) Loan Agreement-cum-Mutual Understanding Agreement dated 28.10.2014.

4. On the basis of above pleadings the following issues have been framed :-

- (i) Whether the Complaint Petition filed by the Complainant is maintainable in it's present form ?
- (ii) Whether any cause of action arises for the present proceeding ?
- (iii) Whether the Complainant is entitle for relief as claimed for ?

FINDINGS

5. **Issue No. 3** – This issue is main issue, so I would like to discuss it first. The Complainant has filed this case on the ground that he booked a flat in the project of Respondent namely M/s Optimum Construction & Others. On 27.06.2014 in the Nisha Apartment being Flat No. 2B at 2nd Floor at a consideration price of Rs. 33,50,000/- only and accordingly an agreement was executed on the same day i.e. 27.06.2014 between both the parties. The agreement is (Annexure – I). I perused the agreement and I find that at Page No. 4, it has been mentioned that the Complainant has paid Rs. 18,50,000/- towards booking amount and it has been further mentioned on the same page of the agreement at Page – 2 that the rest amount of Rs. 15,00,000/- shall be paid by cash or bank loan before final handover of the said flat. After clearing all payment including electric, generator, parking and other. But at Page – 3 in the said agreement it has been mentioned at last para that the Respondent has agreed and decided to sale the flat to the Complainant for full & final consideration amount of Rs. 33,50,000/- only alongwith car parking except other. The agreement dated 27.06.2014 is on the terms and conditions mentioned at Page – 4 and in the first para of the agreement also says the same thing i.e. the Respondent is agreed to sale the flat for the consideration amount of Rs. 33,50,000/- with car parking except other. It has been also mentioned in the same para that charges of separate electricity connection have to be born by the Complainant. Now I find that the Respondent has admitted that he has received Rs. 7,00,000/- on 25.06.2014 and he further admitted that he has received Rs. 11,50,000/- by the Complainant on 27.08.2014. The Respondent has also admitted that he received Rs. 13,00,000/- on 29.08.2014 through the cheque of Canara Bank, Mango, Jamshedpur (Annexure – II Series). So I find that the Respondent has received Rs. 31,50,000/- out of Rs. 33,50,000/- from the

Complainant in the year August 2014 itself. I also find that at Para – 7 at the Page – 5 of the Agreement dated 27.06.2014, it has been mentioned that the said flat shall be handed over to the Complainant in 5 months but till date the Respondent has neither handed over the said flat to the Complainant nor he has registered the flat in his favour rather the Respondent claimed that the Complainant has to pay Rs. 8,000/- for separate electricity connection and others, but the Respondent has not proved that separate electricity connection has been given in the said flat of the Complainant. The Respondent has also claimed that he has given Rs. 30,00,000/- to the Complainant as a loan amount on mutual understanding and for that one Loan-cum-Mutual Understanding Agreement was executed on 28.10.2014. It has been also submitted by the Respondent that he has given Rs. 30,00,000/- in cash to the Complainant for the period of 1 year only. However, this court is not here to decide the matter in respect of mutual understanding loan agreement. So I find that as per agreement dated 27.06.2014, the Respondent has received Rs. 31,50,000/-. So far, charges for separate electric connection is concerned it has not been proved by the Respondent. However, as per agreement dated 27.06.2014 the Respondent has received Rs. 31,50,000/- from the compliance and only Rs. 2,00,000/- is due which will be paid at the time of Registration of the flat. Thus I find that Complainant has proved his case and he is entitle for the reliefs as claimed for in his Complaint Petition. Accordingly Issue No. 3 is decided in favour of Complainant.

6. Issue No. 1 & 2 – In view of the above facts and discussion I find that the Complaint Petition filed by the Complainant is maintainable and he has cause of action for the present case. Accordingly both the issues are also decided in favour of the Complainant.

CONCLUSION

7. In view of the above discussion on the above issues. I come to conclusion that the Complainant has paid Rs. 31,50,000/- out of full and final consideration amount of Rs. 33,50,000/- for the purchase of flat bearing Flat No. 2B, 2nd Floor in Nisha Apartment, Mango, Jamshedpur and only Rs. 2,00,000/- is due. Accordingly it is hereby ...

ORDERED

- i) That the Respondent is directed to execute sale deed of the Flat No. 2B, 2nd Floor in Nisha Apartment, Mango, Jamshedpur in favour of the Complainant within 30 days from the date of order after receiving the dues amount of Rs. 2,00,000/- from the Complainant, failing which the Respondent is directed to return the advance of Rs. 31,50,000/- alongwith interest at the rate of 12% per month from 30.08.2014 till the date of final payment.
- ii) The Respondent is further directed to pay a sum of Rs. 5,00,000/- to the Complainant as compensation for harassment and mental agony.
- iii) The Respondent is further directed to pay Rs. 30,000/- to the Complainant as litigation cost.
- iv) The Respondent is also directed to Register his project with JHARERA within a month failing which he will be debarred from advertising, marketing, booking, selling or inviting persons to purchase flat in the said apartment and the Respondent shall be also liable to pay a penalty u/s 59 (1) of the RERA Act.

- v) If the Respondent fails to comply with the above order within 30 days from the date of order, the aforesaid order and amounts shall be complied and realized through the process of law.

