

JHARKHAND REAL ESTATE REGULATORY AUTHORITY

IN THE COURT OF CHAIRMAN RERA

Present ----- Ranjeet Kumar Choudhary

Dated Ranchi the 29th day of May, 2023

Complaint Case No. 102 of 2019

Shiv Ranjani Housing Welfare Society,
Block- B, Shiv Ranjani Complex,
Tata- Kandra Main Road,
Near Ashiana Trade Centre, Adityapur
District- Seraikela- Kharsawan,
Jharkhand, Pin- 831 013

--- Complainant

VERSUS

1. S.B. Prasad, CMD, Star India Awar Pvt. Ltd.
210, Adarshila Complex,
South Gandhi Maidan,
Patna- 800 001

v.o.d. 20-08-2024

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20/8/24

2. Asha Singh
3. Ram Ayodhya Singh

--- Respondents

Complainant Represented through

--- Self



Respondent No. 1 represented through

--- Mr. Sharad Shekhar,
Ld. Advocate
--- Mr. Bishambhar Shastri,
Ld. Advocate

Respondent No. 2 & 3 represented through

---Mr. Ritesh Singh,
Ld. Advocate

Hon'ble Chairman Shri Ranjeet Kumar Choudhary

JUDGMENT

1. The instant complaint has been brought by the Shiv Ranjani Housing Welfare Society against the Respondents with reliefs that Respondent No. 1 may be directed to provide all common amenities/facilities, do registration of the flats in favour of the allottees, transfer the required land in the name of society and sort out all problems mentioned in the Society Letter. It is stated that construction of the apartment has not been done as per approved plan and actual plot area is much higher than 27,300 sq. ft.

2. This case has been brought by the Housing Welfare Society and not by the any individual allottee. It is said that Respondent No. 1 has constructed Shiv Ranjani Complex on the land of Respondent No. 2 & 3 as per Development Agreement entered between the parties. The project of the Respondent No. 1 is not complete despite the lapse of more than 10 years, encroachment has been done in the corridor and building has not been constructed as per sanctioned plan. Sewerage system has not been constructed properly and Respondent No. 1 has not executed Sale

Deed of the flats in favour of all the allottees. In Block- A, encroachment has been done in reserve parking space and encroaching the common area, Respondent No. 2 & 3 have placed GEN Set and constructed gas godown. Facility of generator has not been provided and land of the society has not been transferred in its favour rather it is in the name of Respondent Smt. Asha Singh. Hence this case.

3. On being noticed, Respondent No. 1 appeared in this case and filed an application for impleading Smt. Asha Singh and Ram Ayodhya Singh as party in this case which was allowed and on their behalf one Rajesh Singh appeared on 03.10.2019 to contest the case.

4. As per written statement filed on behalf of the Respondent No. 1, the case filed by the Complainant is not maintainable and it is highly barred by the law of limitation. It is said that in the year 2015, all the allottees were given possession of their respective flats and they received the same after full satisfaction. It is denied that any encroachment has been done in Block- A and if there is any encroachment, it has been done by the care taker of landlord. It is also denied that there is any deviation of the map in the construction of the building. It is further said that nothing has been written in the Agreement for Sale that Respondent will construct RCC Water Tank. It is denied that construction work of the Block- B is incomplete and no proper sewerage system has been constructed. It is said that due to illegal power revocation by the

landowner, Conveyance Deed of Block- B Flat Owner's is pending. When the building was handed over to the allottees, there was no encroachment and if there is any encroachment it has been done by the landlord. It is also denied that drive way has not been provided to the allottees. So far as installation of generator set is concerned, it is mentioned in the agreement that it will be provided on extra cost for the same and residents have not paid this extra cost. Hence it has been prayed that Complaint brought by the Complainant may kindly be dismissed.

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

FINDINGS

6. Mr. Prafulla Kumar argued this case on behalf of the Complainant on basis of the Authority given by the 'Shiv Ranjani Housing Welfare Society'. He has submitted that construction of the apartment has not been done as per approved plan and there are so may variations in the building plan. In support of his contention, he has filed information obtained by him under Right to Information Act, 2005 from Adityapur Industrial Area Development Authority (AIADA). He has further argued that there is encroachment in common area and despite receiving payment, Respondent No. 1 has not provided generator in the complex. The Respondent has not provided Completion and Occupancy Certificate to the society. There is no arrangement of fire fighting system

and rain water harvesting. North side approach road has not been constructed as per specification. Drive way is not properly levelled. Earthing system is not provided in the building. Individual flat has not been provided with individual electric meter. Hence, he has prayed that necessary directions may be given to Respondents for removal of these defects and they may be suitably punished for above mentioned misdeed committed by them.

7. The Ld. Counsel appearing for the Respondent/Builder has submitted otherwise. He has submitted that the Complaint filed by the Complainant is groundless. The Complaint is based on pure conjuncture and surmises. The Complaint is highly barred by limitation. All the residents of A- Block are residing in their respective flats since 2010- 11 and residents of B- Block are residing since 2015. He has further argued that in view of Notification No. 2256 dated 05.09.2020 of Urban Development and Housing Department, Jharkhand, the present case does not come within the purview of Real Estate (Regulation & Development) Act. He has further argued that in favour of most of the allottees, sale deeds have been executed and on the direction of the Authority sale deeds of the remaining flats have been executed in favour of other allottees. He has further argued that honoring the direction of this Authority, Respondent No. 1 has done maintenance and painting of entire project from outside investing lakhs of rupee. He has further

submitted that there was not at all any encroachment when the allottees were given possession of the flats. Hence, he has prayed that case brought by the Complainant may kindly be dismissed.

8. The Ld. Counsel appearing for the Respondent/Landlord has also opposed the contention made by the Complainant. He has submitted that actually the project in question is a hybrid project which consists of residential as well as commercial building. He has argued that it is the society which has put a one steel gate in common area to cause hindrance to the Respondent/Landlord. He has further submitted that there is no encroachment in the driveway. Hence, he has prayed to dismiss this case.

9. Perused the case record and the documents filed by the parties. Also considered the argument adduced by the parties. The proceeding of the case protracted for years because Authority had taken initiative to resolve the matter amicably. On the direction of the Authority in favour of almost all the allottees, registration of the flat was done by the Respondent No. 1. Not only that white washing and repair of entire building was done by the Respondent No. 1 during hearing of this case.

10. There is nothing on the record to show that when the project work was complete, there was any encroachment in the common area. The Complainant in his written argument filed in this case has written that landowner has installed generator in the drive way. So it is clear that at best it is a case of encroachment by the landowner not by the builder.

11. So far as fire fighting system is concerned, admittedly it is not in the building. Rain water harvesting has also not been provided in the building. Section- 5.9 of the Jharkhand Rain Water Harvesting Regulation, 2017 states that ***“it is responsibility of the Builder of the apartment to install rain water harvesting, if the building is constructed on or after 2010 and Occupancy Certificate has not been procured.”***

12. In view of the Notification No. 2256 dated 05.09.2020 of Urban Development and Housing Department, Jharkhand, the present case does not come within the purview of RERA Act because it cannot be termed as ongoing project. But this direction can be given to the Respondent/Builder to provide fire fighting device in the premises and take proper step for manufacturing water harvesting structure. As such Respondent No. 1/Builder is directed to provide fire fighting system and rain water harvesting system in the premises without taking any additional money from the residents within three months from the date of the Order.

13. There is nothing on the record to show that Complainant has not constructed the building as per building plan. If there is any deviation in the construction from building plan, Complainant is at liberty to approach competent Authority for redressal of this grievance.

14. No document has been brought on record to show that actual plot area is much higher than 27,300 sq. ft.

15. So far as installation of generator facility is concerned, Respondent No. 1 has filed a minutes of joint meeting of the management with the allottees held on 18.10.2008 in which this decision was taken that in the society JUSCO electricity connection will be taken and the cost will be borne by the contribution given by the allottees towards generator facility. In this regard, it was pointed out on behalf of the Complainant that cost of taking JUSCO electricity connection was less than contribution amount made towards generator facility. There is nothing on the record to show that how much amount was collected towards generator facility and what amount was spent towards taking JUSCO electricity connection. Both the parties are directed to call a meeting at their own to calculate these figures and if Respondent No. 1 has collected more amount than expenditure, he will refund the balance amount to the society.

16. So far as Completion Certificate and Occupancy Certificate are concerned, certainly it is duty of the builder to provide the same to the society. As such Respondent No. 1 is directed to obtain these certificates from competent person and competent Authority and handover the same to the society within four months from date of this Order.

17. Resultantly the present Complaint Case is disposed of with above directions. Respondent No. 1 is directed to provide rain water harvesting facility in the society and also to provide fire fighting system within three

months from the date of this Order without taking any further contribution from the allottees and provide Completion Certificate and Occupancy Certificate to the society within four months from the date of this Order.