

JHARKHAND REAL ESTATE REGULATORY AUTHORITY

IN THE COURT OF CHAIRMAN, RERA

Present ----- Ranjeet Kumar Choudhary

Dated Ranchi the 14th day of August, 2023

Complaint Case No. 15 of 2021

Sangita Sharma,

W/o- Mr. Sudhir,

R/o- Flat No. 3A, Block-B,

Maa Sharda Kutir,

Premnagar, Road No. 6,

Latma Road, Hesag,

Hatia, Ranchi

-----Complainant

-Versus-

Nasir Khan,

Kutir Developers & Infra Project Pvt. Ltd.,

102, Sudarshan Apartment,

Kachnar Toli, Hesag,

P.O.- Hatia, P.S.- Jagarnathpur, Ranchi

--- Respondent

Complainant Represented through --- Mr. Kundan Kumar Verma,
Ld. Advocate
--- Mr. Mukul Kumar,
Ld. Advocate

Respondent represented through --- Mr. Rupesh Kumar
Ld. Advocate
--- Mr. Ishan Jha
Ld. Advocate

JUDGMENT

1. The instant Complaint has been brought by Complainant Sangita Sharma against the Respondent Nasir Khan with a prayer to direct the Respondent/Builder to give possession letter to her and allot parking space to her and provide lift facility. It has further been prayed that Respondent/Builder may be directed to construct proper boundary wall. It is further said that Complainant had booked Flat No. 1 GB, Block- C but Respondent/Builder changed the flat and did registration of Flat No. 3A, Block- B on the 4th Floor. Compensation worth Rs. 12,76,000/- (Twelve lakh and seventy six thousand) only has also been claimed.

2. It is case of the Complainant that vide the agreement for sale dated 06.07.2018, she booked a flat in the project of the Respondent namely "Maa Sharda Kutir", vide Flat No. 3A, 3rd Floor having an area of 1400 sq. ft. The consideration amount was Rs. 38,28,000/- (Thirty eight lakh and twenty eight thousand) only. On 11.01.2021, sale deed of the flat

was executed. Possession of the flat was given to the Complainant on 11.01.2021 in Block- B without any allotment letter. This flat was not on the ground floor rather it was on 4th Floor while Complainant had booked her flat in Block- C on ground floor. Respondent/Builder gave possession of the flat to the Complainant after a delay of 1 year and 09 months. Complainant had to accept the flat on 4th floor under compulsion. No parking space has been allotted to her and no possession letter has been given to her. Materials used in construction is sub-standard. Hence this case. It has been prayed that Respondent/Builder may be directed to provide lift facility in the apartment and provide parking space to her. It has further been prayed that Respondent/Builder may be directed to give compensation worth Rs. 12,76,000/- (Twelve lakh and seventy six thousand) only to her also and possession letter of the flat to her.

3. On being noticed, Respondent/Builder appeared before the Authority and filed Written Statement. It is said that Complaint brought by the Complainant is not maintainable and she has no cause of action for this case. Respondent/Builder allotted Flat No. 3A on 3rd Floor having an area of 1400 sq. ft. in “**Maa Sharda Kutir**” to the Complainant and consideration amount was fixed for Rs. 38,28,000/- (Thirty eight lakh and twenty eight thousand) only. Advance of Rs. 5,51,000/- (Five lakh and fifty one thousand) only was paid and no

payment was made on the date of execution of agreement for sale. Due to demonetization and irregular payment made by the allottees, there was some delay in the completion of the apartment. On 11.01.2021, Respondent/Builder executed sale deed in favour of the Complainant without receiving full amount. Part payments were made by the Complainant through different cheques drawn on State Bank of India, Harmu Housing Colony Branch but these cheques were dishonoured. When the Respondent/Builder sent Legal Notice to the Complainant on 22.04.2021, this case was filed by the Complainant before this Authority on 28.06.2021. Respondent/Builder filed Complaint Case No. 3130/2021 before the Court of Miss Anamika Kisku, The Ld. Judicial Magistrate, 1st Class, Ranchi. The possession letter is ready to be > delivered to the Complainant but she will have to clear all the dues before receiving this possession letter. Lift has already been installed in the apartment. Hence, it has been prayed that the 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. Also heard the argument adduced by the Ld. Counsel for both the parties.

I find that Complainant has filed xerox copy of agreement for sale dated 06.07.2018 and according to this document, she had booked Flat No. 3A on 3rd Floor, Block- B with car parking space and consideration amount was Rs. 38,28,000/- (Thirty eight lakh and twenty eight thousand) only. Respondent/Builder has also filed xerox copy of undated agreement for sale which although bear the signatures of both the parties but signatures of witnesses are missing. In this agreement for sale, there is mention of Flat No. 3A on 3rd Floor, Block- B with a car parking space. Perusal of xerox copy of sale deed dated 11.01.2021 indicates that Respondent/Builder has executed sale deed in favour of the Complainant with respect to same flat with one car parking space. I fail to understand how the Complainant is claiming that she had booked a flat in Block- C at ground floor bearing Flat No. 1 GB.

6. So far as lift facility in the apartment is concerned, photographs of the apartment have been filed which indicates that lift is installed in the apartment. So far as allotment letter is concerned, Respondent/Builder has filed original allotment letter before the Court and his lawyer submitted that since the payment against the flat is dues, it has not been handed over to the Complainant. This allotment letter indicates that reference of one car parking space in basement floor is mentioned in this letter. So far as incomplete boundary wall is concerned, perusal of photographs indicates that boundary wall is situated around the

apartment but it is damaged somewhere. Respondent/Builder is directed to repair the boundary wall.

7. So far as claim of compensation is concerned, with respect to handing over the flat within time, I find that there is certainly some delay in handing over the flat but it is also a fact that due to Corona Pandemic the work of several project hampered. Despite that in my view Complainant is entitled for some sort of compensation for which she can file a fresh case before Adjudicating Officer for compensation.

8. Xerox copy of Complaint Case filed by the Respondent/Builder against the Complainant and her husband indicates that he has filed this case due to wrongful loss of tune of Rs. 7,27,000/- has been caused to him due to dishonour of several cheques issued by the Complainant at the time of registration of the flat.

9. On enquiry from the registration section of the office, it was found that project of the Respondent/Builder is not registered with Jharkhand Real Estate Regulatory Authority (JHARERA). This Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as RERD Act, 2016) came into effect from 01.05.2016 and it is operation since 2017. When this RERD Act became operational, the project of the Respondent/Builder was ongoing project. I fail to understand why the

Respondent/Builder did not take pain to register his project with JHARERA. He deserves punishment for this act.

10. In the circumstances, the present case filed by the Complainant succeeds partly on contest. She is directed to pay Rs. 7,27,000/- (Seven lakh and twenty seven thousand) only to the Respondent/Builder alongwith 6% interest Per Annum since the date of dishonour of the cheques and receive possession letter from him alongwith car parking. Respondent/Builder is directed to repair the boundary wall of the apartment and get his project registered within three months from the date of this Order. A penalty of Rs. 3,00,000/- (Three lakh) only is imposed upon the Respondent/Builder for doing construction and sale of the flats without registration of the project with JHARERA u/s 59(1) of the RERD Act.