

**IN THE COURT OF ADJUDICATING OFFICER
REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR, PATNA**

RERA/CC/313/2019

RERA/AO/52/2019

Sri Brajesh Kumar Singh, S/o Jawahar Prasad Singh, Flat No.102, Palm Block, Anand Green Apartment, Khagaul Road, Phulwari Sharif, Patna-801505 ... Complainant

Vs.

M/s Newton Builders Pvt. Ltd.,
Through:- Director, Sri Satish Kumar Roy, S/o Late Sobh Nath Roy, R/o Village-Lodipur, P.O.-Kamla Gopalpur, P.S-Maner, District-Patna, Bihar. Presently residing at Flat No.G-1, Block-B-2, Narayan Shree Apartment, MazarGali,Patel Path, Sheikhpura, Patna-800014. ... Respondent

Present:
Sri Ved Prakash
Adjudicating Officer

Appearance:

For Complainant	...	Mr. Sidharth Singh, Advocate
For Respondent	...	Mr. Dharmendra Kumar Singh, Advocate Mr. Manoj Kumar, Advocate

ORDER

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The complainant, Brajesh Kumar Singh has filed this complaint case against M/s Newton Builders Pvt. Ltd. through its Director, Sri Satish Kumar Roy u/s 31 read with Section 71 of Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as the 'Act, 2016') for reliefs of rent till

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delivery of possession of his share along with compensation of Rs.40.00 lacs for loss of rent of the Shops and Flats. He has further sought relief for direction to maintain quality of construction materials as per Development Agreement and also for delivery of possession of the Shops and Flats after completion. Further sought relief for direction to complete the construction as per plan without any alteration and to remove the water logging in the constructed portion of the complainant.

2. In nutshell, the case of the complainant is that a Development Agreement was executed on 20-12-2011 with the Developer/Respondent for construction of Shops and Flats on 7.03125 decimals land bearing Tauzi No.5486, Khata No.645, C.S. Plot No.110, Thana No.38 situated at Mauza-Nohsha, P.S.-Phulwari Sharif, District-Patna, which have to be completed within 4 years without grace period. It was also agreed that if development work will not be completed within the aforesaid period, the Developer will pay Rs.5,000/- per month to the land owner/complainant as compensation till handing over of the possession of his completed share. Later on, Rent Agreement was also executed on 04-03-2016 between both the parties and it was agreed that with effect from March, 2016 till 18 months rent @ Rs.10,000/- per month will be paid

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by the Developer/Respondent to the landlord/complainant on revised rate and if construction work is not completed within next 18 months, there will be per year hike in rent by 25% till delivery of completed share of the complainant. But, neither the Respondent has completed the project nor paid the revised rent to the complainant. Now he has stopped the payment of rent for last 36 months. There is also water logging in the constructed portion of the complainant's share, which shows that quality of construction is very bad, which should be removed atonce. The complainant is in heavy loss due to non-delivery of the possession of shares of his shops and flats. As such, the Respondent may be directed to deliver the share of complainant of completed project and also to pay compensation Rs.40.00 lacs for the loss of rent of flats and shops and also to remove/repair the water logging in the constructed portion of the complainant.

3. On appearance, the Respondent has filed reply pleading *inter-alia* that the allegation of the complainant about the delay in construction is incorrect. The delay occurred due to non-co-operation of the complainant, as he has not timely handed over the vacant possession of the land and anyhow on request he delivered land to the Respondent and then he started construction work, but in middle of the construction

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there became acute crisis of sand in the year 2017, due to which the progress of work hampered. It is further case that on oral as well as written request of the Respondent for execution of share distribution of flats and shops, the land owner/complainant escaped himself for doing the same, so the Respondent became in trouble and suffered financial loss, hence the work could not be started in full swing. On several requests, the land owner/complainant executed the Share Distribution Deed on 04-03-2016 along with Rent Agreement Deed after lapse of six years of execution of Development Agreement. It is further case that the complainant has got his share as per Share Distribution Deed and has also performed *puja* . The Respondent has to make interior work with POP, but he has used superior quality wall-putty in place of POP. Now, the building is almost ready for delivery of possession and it will take only nearly 5-6 months for delivery of possession to the complainant and others. In light of above facts, after imposing heavy cost on the complainant, the case may be quashed.

4. On the basis of above materials and submissions of learned lawyers, the following points are formulated for adjudication of the case:-

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- (1) Whether the complainant is entitled for rent on higher rate than fixed in the Development Agreement?
- (2) Whether the complainant is entitled for compensation of Rs.40.00 lacs for loss of rent of flats and shops from the Respondent?
- (3) Whether construction has been done with inferior quality materials?
- (4) Whether there is any water logging in share portion of the complainant and the same may be removed by the Respondent?
- (5) Whether the project is still incomplete?
- (6) Whether the delivery of possession may be given by the Respondent to the complainant within 31-12-2019?

Points No.1 and 2:

Admittedly, the registered Development Agreement dated 20-12-2011 was executed between both the parties for construction of multi-storied commercial building in the name and style as "Dwarika Newton Complex", wherein it was agreed

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that after completion of the construction 58% share will be allotted to the land owner/complainant and 42% share will be given in the share of Builder/Respondent. It was also agreed in the Development Agreement Deed (para-13) that after construction with all amenities, the possession will be delivered to the owner/complainant within 4 years without grace period. But, if development work is not completed within the stipulated period, the developer will pay Rs.5,000/- per month to the land owner/complainant till delivery of possession and in case of any accidental or such happening, which are beyond the control of developer, such as fire etc., the land will belong to the owner/complainant. Later on, 04-03-2016 a deed for Rent Agreement executed between both the sides, wherein it was mutually agreed and signed with the contents that revised rent @ Rs.10,000/- per month with effect from March, 2016 up to 18 months will be paid to the complainant/land owner and if construction work is not completed within the said period, there will be yearly hike of 25% in the rent till handing over of possession to the land owner/complainant.

5. Learned lawyer for Respondent submitted that non co-operation of the land owner/complainant started just after execution the Development Agreement, as on repeated oral and

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written requests, he was not ready to execute Share Division Agreement and due to non-execution of this Deed, the Respondent could not sell his portion of share to the purchasers, hence, they became heavy financial loss to him. He further submitted that during this period land owner was making pressure to revise and give rent at higher rate than what was written in the Development Agreement, for which the Respondent was not ready, but when he has realised that the complainant may not execute the Share Division Deed without acceptance of his terms and conditions, he became ready to give rent on higher rate and that is why the rent already fixed was revised under pressure and Deed of Rent executed on 04-03-2016. It also find support from the Development Agreement, where it was not written in any clause/proviso to revise the rent at certain intervals. In this way, the complainant has exploited the Respondent on financial points and due to his adamant behavior, though he has constructed several buildings in Bihar. But due to indifferent attitude of complainant, has left the continuation of construction of buildings. He further submitted that due to Government Policy, there was acute shortage of sand in this market and it has also made the construction work slow.

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6. On other hand, learned lawyer for the complainant opposed the submission of the Respondents and submitted that the complainant is not a technical expert and there was no clause written in the Development Agreement, even then he co-operated and executed the Share Division and Rent Agreement. In spite of this fact, the Respondent has much delayed the construction of the building. He further submitted that the complainant is not concerned as to whether there is any profit or loss to the Respondent due to execution of Rent Agreement, as he has executed the same, willfully with mutual consent. He further submitted that there is water logging in the share of the complainant, which shows use of very inferior quality of materials by the Respondent for construction of the building. However, he may be directed to remove the same atonce and complete the construction work of the building and deliver the possession at earliest, so that the complainant may not be put in further loss.

7. The Respondent has not challenged anywhere the execution of Rent Agreement Deed, which clarifies that he has admitted the execution of the Deed wilfully and with mutual consent, so the complainant can claim rent as per Rent Agreement Deed dated 04-03-2016. This Deed shows that the

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Respondent has paid rent Rs.2,40,000/- till February, 2016 @ Rs.5,000/- per month and he had further paid rent @ Rs.10,000/- per month from March, 2016 to August, 2017 on basis of same Deed dated 04-03-2016. Now, the Respondent on the basis of said Deed should pay rent from September, 2017 @ 25% of 10,000/-, which will come Rs.12,500/- per month and from September, 2017 to August, 2018 the total amount will come Rs.1,50,000/-. It is further to be added that as per terms of Rent Deed, rate of rent will again be revised @ 25% on Rs.12,500/- from September, 2018 to August, 2019. but August 2018 has not come, so it may be calculated only for 11 months on Rs.15,625/- per month and this total amount is Rs.1,71,875/-. Accordingly, total amount to be paid by the Respondent from September, 2017 to July, 2019 will be Rs.3,21,875/-. It is also to be mentioned that the flat is not going to be delivered in August, 2019, so rent Rs.15,625/- will be added in this amount for August, 2019. After August, 2019, this amount will again be revised @ 25% on Rs.15,625/- which will come Rs.19,531.25 per month. So from September, 2019 till delivery of possession of flat, shops and car parking spaces, the rate of rent will be Rs.19,531/- per month.

8. The claim of compensation of Rs.40.00 lacs by the complainant from the Respondent has to be analysed very carefully. It is a fact that Share Division Agreement was also executed on 04-03-2016 just along with Rent Agreement Deed, whereas the Development Agreement was executed on 20-12-2011. Thus, the complainant has taken more than 5 years to execute the Share Distribution Deed, which should have been executed on priority basis. These circumstances show that the complainant was not active in executing the Share Division Deed, otherwise he would not have taken such long period to execute this Deed. This delay of execution has naturally caused financial loss to the Respondent. Secondly, the Rent Agreement also shows that the complainant has got rent @ Rs.5,000/- per month as compensation from the Respondent since the date of execution of Development Agreement, which was later on revised @ Rs.10,000/- per month, Rs.12,500/- per months respectively and after completion of one year, it is further revised @ 25% on Rs.12,500/- and thereafter it will be revised @ 25% on Rs.15,625/- per month. Thirdly, the complainant has got 58% share in the project, whereas the Respondent has been allotted 42% share in the whole completed project, so naturally the complainant has got loins share in completed project, whereas

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the Respondent has got less share. Fourthly, the sand availability was not proper during the period of the year 2016-17, which has also caused delay in completion of the project. Hence, in view of the above discussions, separate allotment of Rs.40.00 lacs as compensation to the complainant by the Respondent will not justify the end, as already compensation as rent, as per Development Agreement/Rent Agreement Deed has been paid/being paid by the Respondent. So, Point No.1 is decided in positive in favour of the complainant and against the Respondent. But, Point No.2 is decided in negative against the complainant and in favour of the Respondent.

Point No.3 to 6:

9. These points being inter-related are taken-up together for discussion. The complainant has not brought any evidence on the record, which may support his claim that low quality materials have been used in the construction of building and proper construction work as per Map and Development Agreement has not been done by the Respondent. On other hand, the Respondent has stated that the construction work is done with quality materials, as per Plan and Development Agreement. In this way, in lack of evidence, which was to be

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produced by the complainant, it is established that the quality of work is not inferior, as alleged by the complainant in the construction of this project, rather it is constructed as per Development Agreement.

10. The complainant has also alleged that there is water logging in his share portion, which has not been rebutted in reply by the Respondent. I think, if it is so, the same has to be removed till the time of delivery of possession to the complainant, so that the share portion of the complainant in the building may not be damaged.
11. The Respondent has admitted in his reply (para-15) that the building is almost ready for delivery of possession and it will take only 5-6 months for delivery. The Respondent has also obtained RERA registration No.BRERAP00392-1/473/R-380/2018, wherein he has been directed to complete the project till 31-12-2019. So it is well established that still the project is incomplete and the same may be completed till 31-12-2019, which may follow the delivery of possession to the complainant. Accordingly, Point No.3 is decided in negative against the complainant and in favour of the Respondent. Point No.4 is decided in positive in favour of the complainant and against the

Respondent. Point No.5 and are 6 is decided in positive in favour of complainant and against the Respondent.

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12. On the basis of above discussions, it is apparently clear that the complainant has well established that he is entitled for yearly enhanced rent @ 25% from August, 2017 to July, 2019 and this amount will be Rs.3,21,875/- and since delivery could not be done in July, 2019, so August 2019 will also be added. So, this amount will come Rs.3,37,500/-. Hence, rent payable from September, 2019 till delivery of possession will come Rs.19,531/- per month. In addition to the above relief, the complainant is entitled for removal of water logging of his share, shops, flats and car parking spaces. The Respondent is ready to complete the construction of shops and flats etc. till 31-12-2019 and he may also deliver the same till December, 2019.
13. The complainant has made repeated requests to the respondent to remove the water logging and to pay rent as per Agreement for Rent, but he paid no heed. So, the complainant has become bound to file complaint case against the Respondent. So, litigation cost Rs.10,000/- may also be allowed, which he might have incurred in conveyance to the office of the Respondent, documentation of papers, attending this Court in RERA, Bihar.

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Therefore, the complaint case of the complainant is allowed on contest with cost of Rs.10,000/-. The Respondent is directed to pay Rs.3,37,500/- to the complainant as a rent from September, 2017 to August, 2019 within 60 (sixty) days. He is further directed to pay rent on hike rate @ 25% on Rs.15,625/- since September, 2019 till delivery of possession of completed shops, flats and car parking spaces falling in the share of the complainant. The Respondent is further directed to deliver the possession of these shops, flats etc. to complainant till 31st December, 2019 after removing water logging in such area. The Respondent is further directed to comply the order within the stipulated period, failing which the complainant is entitled to enforce the order through process of the Court.

Sd/-
(Ved Prakash)
Adjudicating Officer
Real Estate Regulatory Authority, Bihar