

IN THE COURT OF ADJUDICATING OFFICER

Exe. Case No.94/2020 [Arising out of original Complaint Case No.RERA/CC/318,333 and 334/2019 RERA/AO/56, 62 and 63/2019]

Sri, Ram Kumar Sharma and Sri Nishant Kumar Singh

Complainants

Vs.

M/s Bharti Project Media and Infratech Pvt. Ltd. Through it's Director, Sri Abhishek Tiwari

Respondents

ORDER

11-06-2021

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The complainant, Sri Abhishek Tiwari in Complaint Case No.RERA/CC/318/AO/56/2019 and Respondent in Complaint Case No.RERA/CC/333/AO/62/2019 and RERA/CC/334/AO/63/2019 and Respondent in the present Execution Case has filed a petition praying therein to add the purchasers of the shops, Sri Rajeev Kumar and Smt. Swarna Kiran, as parties/Respondents in the present Execution Case. Whereon, the present complaint/Executant in this case have filed re-jointer to the above petition of the Respondent, Sri Abhishek Tiwari.

2. The learned lawyer for the Respondent/Developer, Sri Abhishek Tiwari submitted that on 25-07-2019 this Court has directed to the Executant/Respondents, Sri Ram Kumar Sharma and Sri Nishant Kumar Singh to pay outstanding dues Rs.14,20,000/- (Rupees fourteen lacs twenty thousand only) and Rs.16,60,000/- (Rupees sixteen lacs sixty thousand only) respectively with simple interest @ 10% per annum with applicable G.S.T. within 30 (thirty) days and further to pay simple interest @ 10% per annum on other remaining outstanding dues to the present Respondent, Sri Abhishek Tiwari. He further submitted that the present Respondent, Sri Abhishek Tiwari waited for more than



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60 days after the order was passed by this Court and even after sending of reminder to the Executant/complainant, Sri Ram Kumar Sharma and Sri Nishant Kumar Singh, no response has come from their side, then the present Respondent, Sri Abhishek Tiwari due to intense financial crunch, had finally executed Agreement for Sale against the aforementioned shops in favour of the purchasers, Sri Rajeev Kumar and Smt. Swarna Kiran. So these purchasers may be made parties in the present Execution Case and they may be provided an opportunity of being heard.

3. On other hand. learned lawyer for the present Executants/complainants, Sri Ram Kumar Sharma and Sri Nishant Kumar Singh submitted that after order dated 25-09-2020 passed by Hon'ble Real Estate Appellate Tribunal (REAT), Bihar, Patna, the Executants/complainants tried to deposit the amount as per order of this Court, but the bank did not accept payments of the Executants/complainants through R.T.G.S. mode, because at that time the present Respondent, Sri Abhiishek Tiwari had already blocked credit facility accounts of the present Executant/complainants and under such compelling circumstances, the said amount could not be credited in the accounts of the present Respondent, Sri Abhishek Tiwari. He further submitted that the present Executants/complainants should not be kept as sufferer due to mischief of the present Respondent, Sri Abhishek Tiwari. In this way, deliberate preamptive actions of the present Respondent, Sri Abhiishek Tiwari forced the present Executants/complainants to delay in deposit of the consideration amount. Further, on 15-10-2020 and 20-10-2020, Executants/complainants asked Respondent, present the Sri Abhishek Tiwari to furnish his bank account number for the purpose of crediting the balance consideration money. Then, the



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present Respondent, Sri Abhishek Tiwari replied on 24-10-2020, but avoided to receive the balance money for a period of 60 days as order was passed by this Court to deposit the amount within 60 (sixty) days of the order. He further submitted that the Executant/complainants have filed C.W.J.C. No.18637/2019 before the Hon'ble High Court, Patna against part of the order dated 25-07-2019 passed by this Court, which was later on permitted to be withdrawn as per order dated 10-12-2019 of the Hon'ble High Court with liberty to file appeal within the statutory period. It was further observed that if Appeal is filed within one month from the date of the order, then the same shall be considered on merit and disposed of in accordance with Accordingly, the present Executants/complainants have filed law. appeals within time, which were disposed of vide order dated 25-09-2020 affirming the order of this Court. The present Respondent, Sri Abhishek Tiwari was directed to deliver possession of the flats to the present Executants/complainants within 60 (sixty) days, defaulting party will be dealt with in the terms of Section 63 and 67 of RERA Act, 2016. When the statute provides a mode, then that mode itself has to be followed, else the action will be nullified. He further submitted that as per Section-11 (4)(a) of RERA Act, 2016, the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act, which if conjointly and harmoniously read what follows is that the promoter cannot execute Sale Agreement than much less Sale Deed in favour of a third party even if the allottees fail to comply with the orders, decisions or directions of the authority. This is because for each day default penalty has to be charged from the allottee. In view of the aforesaid statutory provisions, the promoter is restrained from executing Sale Agreement and/or Sale Deed in favour of the proposed Respondents. The Sale Agreement executed by the



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present Respondent, Sri Abhishek Tiwari in favour of the proposed Respondents No.2 and 3 are illegal, inoperative, sham and not binding upon the present Executant/complainants. He further submitted that the present Executant/complainants are ready to comply the provisions of Section 67 of the Act, 2016, if they are ultimately held to have failed to comply with the order of this Court. However, the present Executant/complainants state with full conviction that they are not at fault. Rather, the present Respondent, Sri Abhishek Tiwari is at fault following his action to block credit facility in his bank accounts. He further submitted that in view of the aforesaid materials, the proposed Respondents No.2 and 3 are not necessary parties to be impleaded in the proceedings of this case. So, the petition of the present Respondent, Sri Abhishek Tiwari may be rejected.

4. Perused the record. Admittedly on 25-07-2019 this Court has directed to the Executant/complainants, Sri Ram Kumar Sharma and Sri Nishant Kumar Singh to pay the outstanding dues Rs.14,20,000/-(Rupees fourteen lacs twenty thousand only) and Rs.16,60,000/-(Rupees sixteen lacs sixty thousand only) respectively along with simple interest @ 10% per annum since 25-04-2018 and applicable G.S.T. to the complainant within 30 (thirty) days. They were further directed to pay interest @ 10% per annum on other remaining outstanding dues, which has to be paid by them to the present Respondent, Sri Abhishek out of total consideration. The present Respondent, Sri Abhishek Tiwari was also directed to deliver possession of the shops to these present Executant/complainants completed in all respect as per Agreement for Sale dated 15-11-2017 and also to execute Sale Deed within 60 (sixty) days and it was further directed that if Sri Abhishek Tiwari fails to deliver possession and execute Sale Deed within such period, then he shall pay rent @ Rs,15,000/- per month to each of the



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present Executants/complainants.

5. The present Executants/complainants have claimed that after order dated 25-09-2020 passed by Hon'ble Real Estate Appellate Tribunal (REAT), Patna, they tried to comply the order dated 25-07-2019 passed by this Court and deposit the amounts as per order, but the bank did not accept both the aforesaid payments through R.T.G.S. mode, because by that time the present Respondent, Sri Abhishek Tiwari had already blocked credit facility accounts of the present Executant/complainants and under such compelling circumstances, the said amounts could not be credited. They have further stated that they cannot be made to suffer for the mischief of the present Respondent, Sri Abhishek Tiwari, as due to deliberate preamptive action of Sri Abhishek Tiwari forced these Executants/complainants to delay the deposit of balance consideration money. They have further stated that on 15-10-2020 and 20-10-2020 they have asked the present Respondent, Sri Abhishek Tiwari to furnish bank account details for the purpose of crediting the balance consideration, to which he replied on 24-10-2020, but he avoided to receive the balance consideration for a period of 60 (sixty) days, as directed in the order of this Court on 25-07-2019. They have further stated that if they are found defaulter, then they are ready to pay the penalty as per provisions of Section 63 and 67 of RERA Act, 2016. However, they have reiterated that they are not at fault. They have further stated that the present Respondent, Sri Abhishek Tiwari is responsible for all obligations, responsibilities and functions under the provisions of Section 11(4)(a) of the Act, 2016 and he cannot execute Sale Agreement/Sale Deed in favour of any third person, even the allottees fail to comply any order or direction of the authority, as for each default penalty has to be charged from the allottees. They have



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further stated that the Sale Agreement executed by the present Respondent, Sri Abhishek Tiwari in favour of the proposed Respondents No.2 and 3 are illegal, inoperative and not binding of them. So, these purchasers/proposed Respondents being not necessary parties may not be impleaded as Respondents in this case. On the other hand, the present Respondent has stated that he waited for more than 60 (sixty) days after the order passed by this Court on 25-07-2019 and when even after reminder by him to the Executant/complainants, no response was received from them, then due to financial crunch finally he executed Agreement for Sale against the aforesaid shops in favour of the proposed Respondents No.2 and 3 respectively in November-December, 2020. So, the proposed Respondents No.2 and 3 being necessary parties, may be added in the Execution Petition.

6. On rival claims of both parties, it is required during the Execution proceedings, to enquire as to which version of the parties is It is fact that Executant/complainants, Sri Ram Kumar correct? Sharma and Sri Nishant Kumar Singh have failed to deposit the required amount as per order dated 25-07-2019 passed by this Court. It is also a fact that whatever reasons may be, the present Respondent, Sri Abhishek Tiwari had executed Agreement for Sale with other purchasers namely; Sri Rajeev Kumar and Smt. Swarna Kiran with respect to the aforesaid shops. The present Executant/complainants have preferred Writ Appeal No.17/2019, 10/2020 and 11/2020 before the Hon'ble REAT, Bihar, wherein they had made parties to these purchasers, Sri Rajeev Kumar and Smt. Swarna Kiran, then why they presently opposing impleading of these are proposed Respondents/purchasers as parties in the present Execution Case, is not understandable. Now, since these purchasers will be affected due



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to order of this Court, so they being necessary parties have to be added as Respondents No.2 and 3 in proceedings of this Execution Case. Accordingly, petition of the present Respondent, Sri Abhishek Tiwari is allowed on contest, but in the circumstances without any cost and new purchasers of the shops namely; Sri Rajeev Kumar and Smt. Swarna Kiran shall be added as Respondents No.2 and 3. Accordingly the Execution Petition be amended.

Sd/-Adjudicating Officer RERA, Bihar, Patna 11-06-2021