

REAL ESTATE REGULATORY AUTHORITY, BIHAR

**Before the Division Bench of Mr. Navin Verma, Chairman & Mr. S.D. Jha,
Member, (RERA) Bihar.**

Complaint Case No. RERA/CC/1015 of 2021

Diwakar SinghComplainant

Vs.

M/s Dream Heaven Pvt. Ltd.Respondent

PROJECT: APNA BASERA

11/11/2022

INTERIM ORDER

The matter was last heard on 17-10-2022.

The case of the complainant is that he booked a Duplex bungalow in the project Apna Basera on 2.3.2014 to be handed over to complainant in 1.5 years from the date of agreement by the respondent. He further submitted that the total cost of the Duplex was Rs.22,80,625, out of which he had paid Rs.17,15,000/- to the respondent-company and on 25-03-2013, the respondent has executed registered sale deed of land in his favor and the cost for executing sale deed was borne by him. However, after undertaking some work of construction at the project site, the respondent abandoned the project leaving the work pending. He has submitted that upon contacting the respondent and enquiring about the completion of the project, respondent used to ask for payment of additional amounts.

It has been further submitted by the complainant that a legal notice has been received by him from the landowner and upon receipt of the same when he enquired, he came to know that the director of the respondent company has fraudulently registered the land in his favor as he was not authorized to execute the registered sale deed of land. Hence, the present complaint has been filed seeking refund of the amount paid along with interest or to handover the duplex booked with all the amenities.

The complainant has placed on record the money receipts duly issued and acknowledged by the respondent along with deed of Agreement for Sale and Sale Deed.

The respondent has filed a petition raising objection on the maintainability of the present complaint. It has been submitted that the present complaint is not legally maintainable and the complainant has no right to file this complaint before the Authority as she was aware that a civil suit is already pending. It has also been submitted that the Authority has no jurisdiction to entertain the complaint in case of unregistered project. Further, it has been submitted that a Title Suit no.552/2017 is filed by the landowner in the court of learned Sub-Judge- I, Ara at Bhojpur against the respondent where this complainant is also a party as respondent and hence the matter is not maintainable.

The complainant had filed a rejoinder on 17-10-2022 stating therein that the respondent has not registered the project though the same falls under the planning area. It has further been submitted that due to non- discharge of obligation by the respondent as per the agreement, the landowner has approached the court. On 08-11-2022, the complainant had filed a petition stating therein that pendency of the title suit before the competent civil court does not bar the complainant to approach this Authority in view of the provisions of the section 79 of the Act. He has submitted copies of orders passed by the Authority in other matters where title suits were pending.

During the last hearing after hearing both the parties at length, the matter was fixed for order on the issue of maintainability of this case.

The Authority observes that in the case of M/s Newtech Promoters & Developers Pvt. Ltd. Vs State of U.P & Ors. [2022] (1) RCR (Civil) 357, where the Hon'ble Supreme Court has observed that the Act is not retrospective in nature, rather it is retroactive because it affects the existing rights of the persons mentioned in the Act like promoter, allottee etc. The intent of legislature was to include all ongoing projects which commenced prior to the commencement of the Act.

In the light of submissions made and after the perusal of documents placed, the Authority observes that the matter is

maintainable because the project was incomplete at the time of the commencement of The Real Estate (Regulation and Development) Act, 2016. Therefore, this project will be considered as an ongoing project and is liable to be registered as per 1st Proviso of Section 3 of the Act. The respondent should have registered the project within 3 months and as they failed to do so, a Suo-Moto proceeding for violation of section 3 of the Act, bearing case no. SM/3555/2019, has already been initiated against the promoter.

The Authority also takes note of the title suit filed by the landowner, and observes that the Act provides that the promoter would compensate the allottees for any defect in title. If due to any defect in title the promoter is not able to give possession of Duplex bungalow (which they are under obligation to provide as per the Agreement for Sale), they have to refund the principal and interest on deposit to the allottee.

The Authority directs the respondent to register the project immediately. The SM proceedings referred above may be clubbed with this matter.

List this matter for hearing on 15.12.2022.

Sd/-

**S.D. Jha
Member**

Sd/-

**Naveen Verma
Chairman**