

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

**RERA ComplaintCaseNo.316/2019
(Adjudicating Officer Case No.48/2019)**

1. Sri Amar Deo Prasad
2. Sri Jwala Rai
3. Sri Mohan Kumar
4. Sri Hriday Narayan Rai

-All R/o Vill-Tarachak, Ward No.08, Danapur
Cantt., Patna-801503.

... Complainant(s)

Versus

M/s Aastik Buildcon Pvt. Ltd. through its
Director Sri Kaushar Khan and Others,
R/o Nankut Pahalwan Complex, Saguna More,
Khagaul Road, Danapur, Patna-801503.

... Respondent(s)

Present:

**Sri Ved Prakash
Adjudicating Officer**

Appearance:

For Complainant(s) : In person

For Respondent(s) : Sri Manoj Kumjar Singh, Advocate
Sri Rakesh Roshan Singh, Advocate

ORDER

22-07-2019 This complaint petition is filed by the complainant, Amar Deo Prasad, Jwala Rai, Mohan Kumar and Hriday Narayan Rai u/s 31 read with Section 71 of Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "Act, 2016") against the Respondent

22-07-2019
CONTINUED

M/s Aastik Buildcon Pvt. Ltd. through its Directors, Jitendra Kumar Singh, Ajay Kumar and Kaushar Khan for reliefs of 50% share in developed multi-storied complex "Sai Vatika Phool Kunwar Palace".

2. In Nutshell, the case of the complainants is that the Developers/Respondents namely, Jitendra Kumar and others executed Development Agreements with complainant/landlords Amar Deo Prasad and Mohan Kumar on 26-02-2013, Hriday Narayan Rai on 15-09-2014, Jwala Rai on 14-12-2012 for 11 Kahta, 7 Dhur, 4 Dhurki land bearing Thana No.35, Touzi No.5061 Khata No.108, Survey Plot No.105 and Khata No.110, Survey Plot No.107 situated in Moh-R.K. Puram, Mouza-Babakkarpur, Pargana-Phulwari, P.S.-Danapur, District-Patna for construction of multi-storied building "SaiVatika Phool Kunwar Palace", in which both the parties were entitled for 50% share after completion of the project. Later on, Respondents/Developers had also executed Share Distribution Deeds with Amar Deo Prasad on 25-10-2016, Mohan Kumar, Hriday Narayan Rai and Jwala Prasad on 19-10-2016. Jwala Rai received Rs.5,12,000/- on 25-01-2017, Hriday Narayan Rai received Rs.6,37,000/- on 25-02-2017, Amar De Prasad received Rs.5,40,000/- on 25-10-2016 and Mohan Kumar also received (amount not disclosed) as consideration from the Respondent/Builder in lieu of excess area gone in their share from the share of complainant. Further case is that the developers have not given their 50% share in share distribution deeds executed on basis of registered Development

Agreements. Therefore, the complainants may be allowed 50% shares in the completed building, "Sai Vatika Phool Kunwar Palace" equal to shares of Respondents/Developers.

22-07-2019
CONTINUED

3. After appearance, the Respondents have filed their reply wherein they have denied allegations of complainants and stated that with mutual consents of both the sides, Share Division Agreement was executed. It is admitted that Development Agreements with Amar Deo Prasad and others were executed for the development of above land, but it is false that on completion of the project, shares were not handed over to them by the Respondents. It is further stated that some little portions of shares of landlords/complainants have fallen in the share of Developers-/Respondents, for which they have been paid reasonable considerations, which are detailed in the Share Distribution Deeds. The complainants are not entitled to file complaint case against the Respondents, as they have got their shares as per Development Agreement and share distribution deeds, but they have filed this case without cogent evidence against them. However, if any kind of dispute has arisen, the complainants should have referred the matter before the Arbitrators under Arbitration Act, 1996 as per para-24 of the Development Agreements. It is further stated that the land owners are trying to knock the door of RERA like allottee, which is not their case as particularly they come under the purview of promoter under clause (zk) of Section- 2 of Act, 2016. As such this

case is not maintainable in the eye of law, hence, the complaint case may be dismissed with cost.

22-07-2019
CONTINUED

4. Now I have to see as to whether this Court has jurisdiction to entertain the complaint case of the complainants against the Respondents and grant reliefs as claimed?

5. Admittedly, the complainants are land owners and Respondents are Developers/Builders and separate registered Development Agreements have been executed between each complainant with the Respondents. As per Section 5 (1) of the Bihar Apartment Ownership Act, 2006, the Respondents have executed registered Development Agreement with Amar Deo Prasad and Mohan Kumar on 26-02-2013, Jwala Rai on 14-12-2012 and with Hriday Narayan Rai on 15-09-2014. Later on, Share Distribution Agreement Deeds were also executed between Respondents and Amar Deo Prasad on 25-10-2016 and Mohan Kumar, Hriday Narayan Rai and Jwala Rai on 19-10-2016 for flats and Car parking spaces in the project. Para 4(6), (6) of the Development Agreements of each owner with Developer shows that 50% share will be allotted in the share of Developer and 50% will be given in the share of land owners on completion of the project. The complainants, Amar Deo Prasad and Mohan Kumar each have got 12265 sq.ft. and their total share has come to 24530 sq.ft. and the Developer got 43735 sq.ft. in their share. On calculation the Respondents / Developers have got excess share of 19205

22-07-2019
CONTINUED

sq.ft. In like manner, Jwala Rai has got 24815 sq.ft. and the Respondents/Developers have got 47525 sq.ft., so the Developers have got 22710 sq.ft. excess area in comparison to Jwala Rai. The complainant, Hriday Narayan Rai has got 21950 sq.ft, while the Developers have got 22885 sq.ft. in their share. On calculation it will appear that the Developers have got 935 sq.ft. excess area than Hriday Narayan Rai. It shows that the Developers have got 42850 sq.ft. excess area in their share in comparison to landlords/complainant's share.

6. The complainants submitted that in belief and good faith, they have blindly put their signatures in Share Distribution Deeds along with the Respondents without reading and understanding the contents. Later on they learnt that they have got less share than 50% what was to be allotted to them as per Development Agreement Deeds. On other hand, the learned lawyer for the Respondents submitted that without any cogent evidence the complainants are claiming that they have put their signatures without reading and understanding the contents of the Deeds, while it will appear from Share Distribution Deeds that they have got scribed that with mutual consent of both the parties they have put their signatures with good health, mind and body in presence of the witnesses. So, the contentions of the

22-07-2019
CONTINUED

complainants is totally incorrect and they have got their shares as per Development Agreements. It is quite clear that they have no substance in their case. Hence, the case may be dismissed.

7. On going through the record, it is clear that though in the Development Agreements the complainants and Developers have got scribed in para 4(6),(6) that 50% share will be allotted to each side after completion of the project. It appears that during execution of Share Distribution Deeds, some excess area has gone in the share of the Developers/Respondents from the share of landlords/complainants, for which it has been written in these Deeds that reasonable consideration is paid for that excess area of land by the Developers to the landlords/complainants. Share distribution deeds show that Rs.5,40,000/- paid to Amar Deo Prasad, Rs. (amount not written) to Mohan Kumar. In like manner, the Developers paid Rs.6,37,000/- to Hriday Narayan Rai, Rs.5,12,000 to Jwala Rai for excess area, which may/may not be reasonable consideration.

8. This Court has jurisdiction to entertain cases falling u/s 12, 14, 18 and 19 of the Act, 2016. The complainants have not come simply to demand relief for their flats from the Developers/Respondents, rather they sought relief for 50% share in completed project on the basis of executed Development

22-07-2019
CONTINUED

Agreements between both the parties. It also shows that they are not satisfied with shares allotted in share distribution deeds. In this way, they have challenged the validity of Share Distribution Deeds executed between the parties, in garb of demand of share, which is beyond the jurisdiction of this Court, as this Court cannot cancel any Deed. As per section 31 to 33 of Specific Relief Act, 1963 any void or voidable instrument may be cancelled, but such right vest with Civil Court and if so advised, either the complainants may file suit before the Civil Court for cancellation of Share Distribution Deeds or as per para 24 of the Development Agreement Deeds, they may refer the case before the Arbitrator under the Arbitration Act, 1996. Since this Court has no jurisdiction to cancel the said Distribution Deeds executed between both the parties, this complaint case cannot be entertained by this Court. Hence, this Court cannot grant reliefs to the complainants as prayed by them. Accordingly there is no need to make further enquiry by this Court. Therefore, in light of above observations, this complaint case of the complainants is hereby disposed off.

Sd/-
(Ved Prakash)
Adjudicating Officer
22-07-2019