

**REAL ESTATE REGULATORY AUTHORITY, BIHAR**

**Before the Double Bench of Mr. Naveen Verma, Hon'ble Chairman, &**

**Mrs. Nupur Banerjee, Hon'ble Member**

**Case No. CC/1736/2020**

**Gyan Kaushik, Partner at Sri Krishna Homes .....Complainant**

**Vs**

**Ram Ishwar Rai.....Respondent**

**Project: Ram Ishwar Tower**

**ORDER**

**15/03/2022**

**05/04/2022**

The matter was posted on orders on 15-03-2022. However, due to other preoccupation, the Bench did not sit on that date and order could not be passed.

The case of the complainant is that he is one of the partners of Shree Krishna Homes, a registered partnership firm having its registered office at Bidya Tower, Sheikhpura, opposite pillar no- 79, Bailey Road, Patna – 800014. The complainant has alleged that on 20.06.2017 a development agreement was executed between the complainant and respondent (Land Owner) for development of multi storied building upon the land of respondent. The complainant has stated that the map of said building was sanctioned by the Nagar Parishad Danapur Nizamat vide building plan 27/18-19 on 03.05.2018 and the complainant obtained registration of the project with Real Estate Regulatory Authority on 26.02.2019 bearing Registration no-BRERA P00863-1/614/R-456/2019.

The complainant has stated that construction commenced in May 2019, and a deed of distribution of flats of the said project was sent to respondent for execution but no response has been received from the respondent. The complainant has alleged that due to this he has not been able to sell and create any third party interest in the project. It has been alleged that when the construction was going on, the respondent along with other persons came at the site and created hindrance in the construction process due to which the complainant is facing difficulty in completing the said project on time as per the Real Estate (Regulation & Development) Act, 2016. Therefore, the complaint has been filed praying for issuance of direction to finalize the distribution deed and direction to pay appropriate compensation amount

regarding disturbance in the construction work by respondent and also for the non-finalization the distribution deed.

The complainant has placed on record the development agreement dated 20.06.2017 and copy of registration certificate issued by the Authority.

Reply has been filed by the respondent wherein preliminary objection has been raised with respect to the maintainability of the case. The respondent has stated that the present case is not maintainable under section 31 of Real Estate (Regulation & Development) Act, 2016 as the issue which has been raised is regarding the share distribution between the landowner and the promoter and the Authority is not competent to adjudicate upon the said issue. The respondent has further stated that the Development Agreement was executed under the signatory authority of 2 partners of the Firm, namely Gyan Kaushik and Tabrez Sultan with the respondent, wherein it is specifically mentioned under the Clause 5 of the Development Agreement that the share distribution will be 50 – 50 percent. The respondent has further raised question on the issue of share distribution list proposed earlier by one of the partner of the Firm, Gyan Kaushik without following the quorum of the Firm. That it is has also been stated by the respondent that Tabrez Sultan, one of the Partners of M/s Sri Krishna Homes intimated the respondent through a legal notice dated 01.09.2021 that the complainant namely Gyan Kaushik is not authorized to take any managerial decisions or any legal documentation on behalf of the Firm unilaterally. It has also been informed that any operation such as execution of Agreement, Registry or any related work regard of the Firm, namely, M/s Krishna Homes shall be performed through joint signature of both the partners, namely Gyan Kaushik and Tabrez Sultan. In its reply, the respondent has also alleged that the complainant has neither handed over the Map Plan to the respondent nor has updated the latest information of the Firm on the website of the Authority regarding the amendment in the Partnership deed. The respondent has also alleged that the complainant has also not updated latest audit report, map plan, details of stage of construction.

During the course of hearing, the Bench was informed that out of 3 partners, 2 partners are ready to sign the share distribution agreement to which the respondent also agreed. The Bench has also been informed that the work is in progress and no flat has been sold till now. An opportunity to settle the matter amicably was given to both the parties; however, it seems that even after handing over of duly signed share distribution agreement to the respondent, the respondent is not inclined towards signing the share agreement. The respondent has reiterated his prayer to dismiss the complaint as the two partners who have signed the share distribution agreement are not authorized to decide the share with the land owner and operate the bank account.

On perusal of the record of the case, the Bench observes that the question of whether the landowner is an allottee or not in the absence of duly executed share distribution agreement has to be considered in the larger interest of the project and the allottees since the registration for the project has been obtained and has been duly extended u/s 6 of the Act and the work in the project is in progress.

Admittedly, there is a dispute between the partners of the Firm M/s Sri Krishna Homes. The main issue here is with respect to the share distribution agreement. Notwithstanding the fact that the object of the Real Estate (Regulation & Development) Act, 2016 is to promote the growth of real estate sector and protect the interest of the allottees, the Authority is not vested with the power to adjudicate upon the share distribution agreement and the legality of authorization of the two partners with respect to carrying out the affairs of the partnership firm as the same vests with the court of competent jurisdiction.

The Bench also notes that on one hand, the respondent is disputing the share distribution agreement and the authority of the two partners, and on the contrary the respondent is alleging non provision of map plan, latest audit report and details of stage of construction. It seems that the respondent is willing to proceed with the project if the aforementioned details are furnished by the promoter.

Under these circumstances, directions are issued to the complainant-promoter to provide copies of the approved maps and specifications to the respondent. both the parties. The complainant is directed to upload the progress report every quarter in compliance of section 11 of the Act. The respondent - landowner /allottee is directed not to create any obstructions in the construction of the project.

The parties are advised to settle the matter mutually as it would protect the interest of the promoter, the landowner as well as other allottees within two months. No third party rights would be created till the issue of share distribution is settled and in the event of the inability of the promoters to come to an amicable settlement, the Authority would be constrained to initiate the process of revocation of the registration of the project.

With these observations, the matters stands disposed of.

Sd/-  
**(Nupur Banerjee)**  
**Member**

Sd/-  
**(Naveen Verma)**  
**Chairman**