

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

1. RERA/CC/318/2019

RERA/AO/56/2019

Sri Abhishek Tiwari, S/o Dr. Vibhuti Tiwari,
Managing Director, Bharti Project Media and
Infra Tech Pvt. Ltd., R/o Mohalla-Bibiganj
Bhagwanpur, District-Muzaffarpur-842001 ... Complainant

Vs.

1. Sri Ram Kumar Sharma, S/o Late Raj Kishore
Sharma, Mohalla-Om Nagar, Road No.1,
Damodarpur, P.S.-Kanti, District-Muzaffarpur-
842001 ... Respondent
2. Sri Nishant Kumar Singh, S/o Sri Shambhu ...
Prasad Singh, Shiv-Ganga, Gyanlok Marg,
Brahmpura, Muzaffarpur-842001

2. RERA/CC/333/2019

RERA/AO/62/2019

Sri Ram Kumar Sharma, S/o Late Raj Kishore
Sharma, Mohalla-Om Nagar, Road No.1,
Damodarpur, P.S.-Kanti, District-Muzaffarpur-
842001. ... Complainant

Vs.

Sri Abhishek Tiwari, S/o Dr. Vibhuti Tiwari,
Managing Director, Bharti Project Media and Infra
Tech Pvt. Ltd., R/o Mohalla-Bibiganj Bhagwanpur, ...
District-Muzaffarpur-84201 Respondent

3. RERA/CC/334/2019

RERA/AO/63/2019

Sri Nishant Kumar Singh, S/o Sri Shambhu ...
Prasad Singh, Shiv-Ganga, Gyanlok Marg,
Brahmpura, Muzaffarpur-842001 Complainant

Vs.

Sri Abhishek Tiwari, S/o Dr. Vibhuti Tiwari,
Managing Director, Bharti Project Media and
Infra Tech Pvt. Ltd., R/o Mohalla-
Bibiganj Bhagwanpur, District-Muzaffarpur- ...
8420021 Respondent

Present:
Sri Ved Prakash
Adjudicating Officer

Appearance:

For Complainant in Case No.RERA/CC 318/2019 and For Respondents in Case No.RERA/CC/333/2019 and No.RERA/CC/334/2019	...	Mr. Sharad Shekhar, Advocate
For Complainants in Case No.RERA/CC/333/2019 and No.RERA/CC/334/2019 and For Respondent in Case No. RERA/CC/318 /2019	...	1. Mr. Shishir Kumar, Advocate 2. Ms. Manju, Advocate 3. Mr. Ravi Kumar Singh, Advocate

ORDER

25-07-2019

The complainant, Abhishek Tiwari, Managing Director, Bharti Project, Media and Infratech Pvt. Ltd. has filed complaint case no.318/2019/A.O. Case No.56/2019 against Respondents, (1) Sri Ram Kumar Sharma and (2) Sri Nishant Kumar Singh u/s 31 read with Section 71 of Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as the 'Act, 2016) for direction to pay part of remaining consideration amount Rs.14,20,000/- and Rs.16,60,000/- respectively out of total consideration amount of Rs.27.00 lacs with accrued interest @ 15% per annum on such amount to the complainant. He has further prayed to direct the Respondent to pay compensation for the loss caused to him due to

non-payment of outstanding dues and also direct to pay Rs.25,000/- as compensation for the mental agony and physical harassment along with litigation cost of Rs.25,000/-.

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The above Respondents (1) Ram Kumar Sharma and (2) Nishant Kumar Singh have also filed separate complaint cases - No.RERA/CC/333/2019, and RERA/CC/334/2019 against Sri Abhishek Tiwari, complainant in Case No.RERA/CC/318/2019 for compensation of Rs.90,000/- per month from the date of handing over of vacant possession of land to Abhishek Tiwari and further to direct him to execute Sale Deed in their favour.

In view of the fact that these three complaint cases relate to the same project of the promoter, Abhishek Tiwari and they have sought relief against each other, so a composite order is being passed in all three cases.

2. In nutshell, the case of the complainant (No.RERA/CC/318/2019/RERA/AO/56/2019) is that developer/complainant, Abhishek Tiwari has executed the Development Agreement Deed on 18-04-2016 with Usha Gupta (land owner) for construction of a Residential-cum-Commercial Complex in the name and style as "Usha Bharti project". The Respondents, Ram Kumar Sharma and Nishant Kumar Singh were also running business of medicine as tenants in the same premises. Hence, keeping in mind the interest of the Respondents, the complainant

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has committed to give them preference in allotment of the Shops in the said "Usha Bharti Project". Thereafter, separate Agreements for Sale were executed on 24-02-2017 between the complainant and the Respondents. Respondent No.1 has paid Rs.2.00 lacs as booking amount. Later on, separate registered Agreements were also executed between the parties on 15-11-2017. Respondent No.1, Ram Kumar Sharma has paid Rs.7,40,000/- out of total consideration of Rs.27.00 lacs. Respondent No.2, Nishant Kumar Singh has paid Rs.1.00 lac as booking amount on 24-02-2017 and Rs.5.00 lacs paid on 15-11-2017 at the time of registered Agreement, out of total consideration of Rs.27.00 lacs. Later on, in spite of notices, these Respondents have not paid further amount towards the remaining consideration, which was to be paid as per Sale Agreement Deeds payment schedule. Due to non-payment, construction of the Shops delayed and the complainant has suffered heavy financial loss over the construction materials; iron rods, sand, cement etc. It is further case that the Respondents have vacated the Shops in December, 2017 and prior to that period in May, 2017 to September, 2017 rafting of lower basement in 3/4th of the structure was formed. It is further case that on 30-10-2017, the Respondent had filed a complaint petition against the complainant in the Court of S.D.O., Muzaffarpur (East) alleging that the promoter has forcefully hampered their business, which resulted in delay of the construction

work. Later, on 21st July, 2018 the Respondents have withdrawn their case with compromise and handed over the vacant possession of the Shops on 14-12-2017. When the complainant was making construction in full swing, again the Respondents have filed a complaint before local M.L.A. for stoppage of the construction work of the project. However, when the complainant narrated the real story to the concerned M.L.A., he understood the matter and thereafter sent a withdrawal letter to the Municipal Commissioner, Muzaffarpur. These actions of the Respondents show that they have created repeated hurdles in the construction work. As such, work could not be completed timely. The other beneficiaries/purchasers of the project have appreciated the work of the complainant mentioning that he was doing construction work from his own fund. Hence, in these circumstances, the Respondents may be directed to pay their outstanding dues with interest @15% per annum with compensation and litigation cost.

3. On appearance, both the Respondents, Ram Kumar Sharma and Nishant Kumar Singh have denied the allegations of the complainant. They have stated that admittedly the complainant has executed Development Agreement with the land owner, Usha Gupta to construct the project and later on the complainant has allotted the Shops to them in preference to others and Agreements for Sale were also signed with them on 24-02-2017 by the complainant and they

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have also paid the booking amount. It is further case that the first instalment of Rs.14,20,000/- and Rs.16,60,000/- respectively has to be paid by them to the complainant after completion of the ground floor and since construction was not completed up to such stage that is why they have not paid the amount to the complainant. The project is lagging behind the schedule and the Respondents are facing several financial and mental harassment, so they may be paid Rs.90,000/- per month as compensation. The Respondents have also issued notices to the complainant for completion of the project, but the complainant has never replied to their notices. Rather, repeatedly sent Demand Notices to the Respondents. The loan of the Respondents was sanctioned by the Bank, but in spite of request, the complainant has not supplied RERA, Bihar Registration Number for releasing the loan from the Bank. The project was to be completed within 130 days, but still it is incomplete, so the complainant, Abhishek Tiwari may be directed to pay compensation Rs.90,000/- per month and also to execute Sale Deed in their favour.

4. Both the Respondents with the same facts have filed separate complaint Cases No.RERA/CC/333/2019 and RERA/CC/334/2019 against the present complainant, Abhishek Tiwari for direction to pay compensation, provide RERA, Bihar Registration Number and also to execute Sale Deeds for Shops allotted in their favour.

5. On the basis of pleadings and submission of the parties, the following points are formulated for adjudication of the case:-

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- (1) Whether the Respondents, Ram Kumar Sharma and Nishant Kumar Singh are responsible for delay in construction of the project?
- (2) Whether the complainant is entitled for remaining consideration and compensation against the Respondent along with accrued interest and G.S.T.?
- (3) Whether the Respondents are entitled for compensation of Rs.90,000/- per month from the complainant, Abhishek Tiwari?
- (4) Whether the delivery of possession may be handed over to the Respondent by the complainant at the earliest?

6. Points Nos.1, 2 and 3:

Admittedly, the complainant, Abhishek Tiwari has executed Development Agreement on 18-04-2016 with the land lord, Usha Gupta for construction of Residential-cum-Commercial Complex in the name and style of "Usha Bharti project", for which BRERA Registration No.BRERAP00597-1/541/R-432/2019 was issued by RERA, Bihar and the project has to be completed till 09-09-2020. It is also admitted case

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that the Respondents Ram Kumar Sharma and Nishant Kumar Singh were carrying medicine business as tenants in the same premises. They were allotted Shops by the complainant, Abhishek Tiwari on the basis of preference. On 24-02-2017 Agreement for Sale was executed between both the sides. The Respondent No.1, Ram Kumar Sharma has paid Rs.2.00 lacs as booking amount and has further paid total Rs.7,40,000/- to the complainant, Abhishek Tiwari at the time of registered Agreement Deed dated 15-11-2017. Respondent No.2, Nishant Kumar Singh has also paid Rfs.1.00 lac as booking amount and later on paid Rs.5.00 lacs out of total consideration of Rs.27.00 lacs. Both the Respondents have not paid their remaining amount Rs.14,20,000/- and Rs.16,60,000/- respectively out of total consideration Rs.27.00 lacs for purchasing their Shops. As per Agreement dated 15-11-2017, the construction of the project has to be completed within 130 days from the date of vacant possession of the land by the Respondents, which ends on 25-04-2018. It is also admitted case that on 14-12-2017 the Respondents have vacated the Shops of the land. It was agreed between both the sides that there will be no hindrance created by the Respondents. It was also agreed that on late handing over possession of Shops, the construction cost will be more than estimated earlier. Hence, the Respondents have to pay

15% per annum on the remaining consideration amount as penalty. The complainant has filed Annexure-5 series, which shows that the ground floor was concreted on 19-04-2018, whereon the learned lawyer for the Respondents submitted that the Certificate dated 10-06-2019 has been issued by one Mukesh Kumar, who is none, but employee of the complainant, Abhishek Tiwari, who may get any type of Certificate from him as he is interested person of the complainant. I think, it was also duty of the Respondents to bring any documentary evidence to nullify the claim of the complainant, in which they have completely failed. The complainant has also filed Annexure-7 series, which is a petition dated 21-07-2018 filed by the Respondents before the S.D.O., Muzaffarpur, East wherein they have stated that they had filed a petition on 30-10-2017 with making complaint against the complainant, Abhishek Tiwari and had requested to stay the construction work, but now as they are satisfied with the works of the complainant on the site and have resolved the dispute. Further, they have stated that the complainant was constructing the project with his own fund and that is why they may be permitted to withdraw the complainant petition from the Court (S.D.O., Muzaffarpur). It shows that the Respondents have well tried to hamper the construction work of the complainant, later on they

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have further filed a petition before the local M.L.A., Avinash Kunwar with request to stop the construction work of project, who on request the Respondents have written to the District Magistrate, Muzaffarpur on 14-07-2017 to stop the construction work being done by the complainant, but later on when the complainant persuaded him and shown the papers as well as the construction site, he became satisfied and has requested the Municipal Commissioner, Muzaffarpur to vacate the stay of the construction work. It shows that till July, 2018 the Respondents have tried their best to get stopped the construction works without any reason or rhyme. In this way, the Respondents have created hindrances not only in papers, but also on the site of the project, as previously they have not vacated the Shop premises in spite of knowledge of the fact the other shop-keepers have already vacated the premises to make preparation for the construction of the project. It also appears that due to rigid behavior of the Respondents, the complainant has executed twice the Agreement for Sale with them, once unregistered and later on registered, which support that the Respondents were agreed to support construction only in case the complainant was ready to accept their terms and conditions. This observation also find support from exhibit 10 series filed on behalf of the complainant, wherein some shop-

keepers/purchasers of the Complex have given written statement on 25-06-2019 that the complainant is constructing the project with his own fund and these two renters (Respondents) were creating problems from very beginning. These Respondents have also filed notices and legal notices issued to complainant for completion of the project and handing over of possession as well as requesting for execution of Sale Deeds. On other hand, the complainant has filed Demand Notice for demanding remaining outstanding dues from the Respondents, so that the construction work may be continued in full swing. It is best known to the Respondents as to why they were creating hurdles by not vacating the premises and also filing petitions before the authorities for stay of the work, while they were also issuing notices to handing over the constructed shops and also requesting to execute the Sale Deeds in their favour. I think, two things cannot run together. Either they should have timely vacated the premises, cooperated in construction work, paid the outstanding dues and then demanded their shops in complete form and thereafter they should have requested for execution of Sale Deeds or should have filed allegation petitions and made hindrances at project site etc. In this way, it is clear that the Respondents are

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more responsible persons for delaying the construction work of the project in many ways.

7. Agreement for Sale Deeds of both the Respondents, Ram Kumar Sharma and Nishant Kumar Singh were executed by the complainant for the consideration of Rs.27.00 lacs each. The Respondent No.1, Ram Kumar Sharma had paid booking amount Rs,2.00 lacs and total paid Rs.7,40,000/- to the complainant and Respondent No.,2, Nishant Kumar Singh had paid Rs.1.00 lac as booking amount and also paid Rs.5.00 lacs. In this way, Rs.14,20,000/- was dues with Ram Kumar Sharma and Rs,16,60,000/- was due with Nishant Kumar Singh till time of casting of ground floor, to which they for one or other reasons have not paid to the complainant. Now as stated above, RERA Registration Number has also been issued by RERA, Bihar and photocopy of RERA Registration Certificate is attached along with Record, but still they are waiting for order of the Court for making payment to complainant. Hence, it appears that they are not coming with clean hand, otherwise they would have paid the amount without delay. Hence, the Respondents must pay atonce the remaining dues Rs.14,20,000/- and Rs.16,60,000/- respectively along with applicable G.S.T. and interest accrued on said amount.

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8. The complainant has claimed interest @ 15% per annum on the basis of hike in the cost of construction materials like sand, bricks, iron rods etc., which has occurred due to delay in construction of the project created by the Respondents. But such high rate of interest cannot be granted to the complainant as the Respondents are also suffering financial loss due to non-availability of ready shops, as their business is also upset (see Respondents Income Tax Returns). But since price of the construction materials has gone high, so hike rate/revised rate may be allowed to the complainant, as admittedly the cost of construction has been borne by the complainant. It is pertinent to note that material cost rate has not been filed on the record from either side. So, instead of 15% hike on the remaining dues, I think, 10% interest per annum will justify the end, which will make equilibrium between both the sides. In this way, the complainant, Abhishek Tiwari is entitled for simple interest @ 10% interest per annum on the outstanding dues Rs.14,20,000/- and Rs.16,60,000/-. Since G.S.T. is Government tax, which is levied on any purchaser, these Respondents should also pay the applicable G.S.T. on purchase amount.

9. From the discussions it is established that the activities of the Respondents No.1, Ram Kumar Sharma and No.2,

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Nishant Kumar Singh are main ingredients for delay in construction of the project. As such, at this stage, these Respondents are not entitled for compensation of Rs.90,000/- per month from the complainant. Accordingly, the point no.1 and 2 is decided positive in favour of the complainant and against the Respondents, Ram Kumar Sharma and Nishant Kumar Singh and point no.3 is decided in negative and against the Respondent and in favour of the complainant.

10. Point No.4:

Photographs of the ongoing project are filed on the record on behalf of both the sides, which show that structure of the project is completed and only finishing work is due, which may, if the complainant tries his best, be completed at the earliest. The Annexures-10 series of the complainant shows that tiling and electricity works in two floors are already completed and Shutters have also been fitted in other shops of the shop-keepers and they can complete interior works themselves. Now these works in the shops of the Respondents; Ram Kumar Sharma and Nishant Kumar Singh may also be completed as soon as possible with their cooperation as previously they were not cooperating in construction work. Though RERA Registration Number has also been issued with

direction to complete the project till 09-09-2020, but the same can be completed prior to said period. Therefore, the point no.4 is decided in positive.

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11. On the basis of above materials, it is categorically established that the Respondents have not cooperated, rather created hindrances in construction of the project, so they are neither entitled for rent nor for compensation as claimed by them in their complaint case No.RERA/CC/333/2019/A.O. Case No.62/2019 and RERA/CC/334/2019/A.O. Case No.63/2019. However, the complainant has to make all efforts to complete the project at earliest, so that delivery of possession may be given to the Respondents complete in all respect, as per registered Agreement for Sale. In this way, the complainant may be directed to hand over the possession of shops complete in all respect to the Respondents within 60 (sixty) days, so that Respondents may not be put in further loss and if the complainant fails in the aim, the Respondents may be entitled for rent @ Rs.15,000/- per month, after expiry of sixty days. Hence, both the above complainant cases No.RERA/CC/333/2019 and RERA/CC/334/2019 may be allowed to the extent of delivery of the possession within sixty days and on failure, the complainant may be made liable to pay rent @ Rs.15,000/- per month to each of the Respondents. It

may also be made clear that both the sides will bear their cost of the litigation, as both of the parties have come for reliefs from this Court.

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Therefore, the complaint case No. RERA / CC / 318 / 2019/A.O. Case No.56/2019 of the complainant, Abhishek Tiwari is allowed on contest, but without cost. The Respondents; Ram Kumar Sharma and Nishant Kumar Singh are directed to pay the outstanding dues Rs.14,20,000/- and Rs.16,60,000/- 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 are further directed to pay 10% per annum simple interest on other remaining outstanding dues, which has to be paid by them to the complainant, out of total consideration.

The complaint Case No.RERA/CC/333/2019/A.O. Case No.62/2019 and Case No.RERA/CC/334/2019/A.O. Case No.63/2019 filed by the Respondents, (1) Ram Kumar Sharma and (2) Nishant Kumar Singh are also allowed only to the extent of delivery of possession of their respective shops. Therefore, Respondent, Abhishek Tiwari is directed to deliver the possession of shops to these complainants, completed in all respect, as per Agreement for Sale dated 15-11-2017 and also to

execute Sale Deed within 60 (sixty) days. It is, further, directed that if Respondent Abhishek Tiwari fails to deliver possession and execute Sale Deeds within such period, then he shall pay rent @Rs.15,000/- per month to each of the complainants.

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It is further directed that both the parties shall bear their own cost and they shall comply the order within the stipulated period, failing which they may enforce the order through process of the Court.

Sd/-
(Ved Prakash)
Adjudicating Officer
Real Estate Regulatory Authority, Bihar
25-07-2019