

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

**RERA Complaint Case No.104/2018
(Adjudicating Officer Case No.09/2018)**

1. Prem Chandra Ram
2. Bhim Sen – Both r/o Adalatganj, Budh Marg, Near ... Complainant(s)
Canara Bank, Patna-800001

Versus

M/s Media Construction Pvt. Ltd. through its
Directors:-

1. Md. Shamsh Hassan, Chaudhary Hotel Gali,
MallikMohalla, Raja Bazar, Patna-800014 and
2. Md. Imtiaz Hassan, S/o Md. Mumtaz Hassan, 2nd
Floor, G.S.R. Residency, Ranipur Main Road, Alwa ... Respondent(s)
Colony, Phulwarisharif, Patna-801505.

Present:

**Sri Ved Prakash
Adjudicating Officer**

Appearance:

- | | |
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| 1. For Complainant(s) | Mr. Ranjeet Kumar,
Advocate |
| 2. For Respondent(s) | Mr. Nadim Seraj,
Advocate |

ORDER

06-03-2019

This complaint petition is filed by the complainants,
Prem Chandra Ram and Bhim Sen against Media
Construction Pvt. Ltd. company and it's Directors,
Md. Shamsh Hassan and Md. Imtiaz Hassan under the

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provisions of Sectionh-31 of Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "RERA Act, 2016") for relief as per Section 18 and 19 of the Act, 2016 for amount of Rs.3,45,000/- along with 8% interest on this amount for the price of excess area in share received by the builder in comparison to land owner. They have further sought relief for rent of Rs.60,000/- per month (@ Rs.10,000/- per flat per month for six flats.). They have further sought relief for compensation of Rs.2.00 crores and interim compensation Rs.13,45,000/- against the respondents.

2. In nutshell, the case of the complainants is that they are owner of land measuring 2 khatha 8 dhur in Thana No.35, Tauzi No.5166, Khatha No.543, Survey Plot No.4242, P.S.-Phulwari Shariff, Mouza-Ranipur, District-Patna. Further, case of the complainant is that the respondents approached to the complainants on 06-05-2012 for construction of Multi-Storied Building on their above land and after oral settlement, a written Development Agreement was executed by both the parties on 22-05-2012 and with the consent of both the parties the project was named and registered as "Manako Estate" in Registry Office Patna. After registration, the land was handed over to the respondents on same day, so that the respondents may complete construction within due time. It was agreed between the parties in Development Agreement that after construction of the

building, the respondents shall hand-over possession of 6 flats (share of the complainants) within 3 years. But, with grace period of 6 months, after lapse of 17 months from land transfer, the respondents only got approved the Map of Project on 28-11-2013 from P.M.C. The project is consisting of 12 flats in 3 floors of G+3 and Both Parties have shares of 6 flats. Later on as written Share Division Agreement dated 03-06-2016 was prepared for deciding the shares of the complainants and respondents. As per Share Division Agreement, the respondents have to pay Rs.3,45,000/- within 3 months for the excess area received by them from the share of the complainants, but the said money was not yet paid by the respondents and they have disobeyed the agreement. In spite of repeated requests of the complainants, the respondents did not deliver the completed 6 flats to the complainants which were allotted in their share. So, there became a mental, physical and economical harassment to the complainants, for which they are entitled for compensation of Rs.2.00 crores along with rent of Rs.60,000/- per month (@ Rs.10,000/- per flat for 6 flats per month) from schedule time of delivery of possession of flats. The respondents may be further directed to pay Rs.10,20,000/- as a rent along with 8% interest on this amount and they are further entitled for Rs.3,45,000/- and 8% interest on this amount, which is the cost of excess area received by the respondents in comparison to the area received by the complainants. The complainants

are also entitled for Rs.13,65,000/- as interim compensation from the respondents.

3. On other hand, after appearance, the respondents have filed written statement and denied the allegations of the complainants and have stated that the complaint case brought by the complainants are not maintainable in eye of law as well as fact. The Development Agreement executed by both the parties on 22-05-2012 states in para-21 that in case of dispute the matter shall be referred to an independent Arbitrator under Arbitration Act, 1996 and as such this case should have been referred before an Arbitrator and this case is not maintainable in this Court, as RERA Act, 2016 is not applicable in this matter. It is further case that it has been wrongly stated in the complaint petition that landlord has handed over the possession of their land on 22-05-2012 at the time of execution of Development Agreement, as neither the land was delivered to the respondents on the same day nor relevant papers were handed over to them by the complainants. It is reality that at a very late stage, documents relevant with the lands were handed over to the respondents and that is why, the filing of the Map for approval before the competent authority was delayed. The complainants repeatedly used to reject the plan of Map provided by the respondents and lastly in June, 2013 they agreed to the plan of Map and thereafter the Map was submitted before the Phulwari Nagar Parishad for approval by the Architect. The complainant have agreed in para-9 of the

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Development Agreement that they will give the relevant documents on necessity to the respondents, but the same was not handed over to them at reasonable time. They have created hindrance repeatedly in construction of the building. The complainants have also delayed in handing over of the certified copy of mutation papers and rent receipt and other documents to the respondents and due to their delaying tactics, Map could be approved by the Architect on 28-11-2013. After approval of the Map by the competent authority, the complainants did not execute share distribution of flats of the project within reasonable time. That is why, the construction of the building was delayed and due to non-execution of share division of flats, sanction of loan from Bank was not available to the respondents and customers. The complainants always stated that they should construct the building without loan from Bank and avoided to execute share division of flats and lastly on their repeated requests, the complainants executed Share Division Agreement on 03-06-2016 and pressurised the respondents to get scribed for payment of Rs.3,45,000/- to the complainants for their excess area from the share of the complainants.

Further case is that prior to execution of Development Agreement, the respondent Md. Shamsh Hassan has paid Rs.3,75,000/- as loan to Navin Kumar, son of the complainant Bhim Sen and they have assured that they will return this amount to the respondents before start of construction of the building. The respondents have believed

on their assurance and have paid the above money through cash and cheque. After start of the construction the respondent Md. Shams Hassan demanded the loan amount of Rs.3,75,000/- from Navin Kumar, who always avoided to return. The complainants assured that the money will be refunded, but neither the complainant, Bhim Sen nor his son Navin Kumar return the above money till date. Later on when the legal notice dated 05-10-2017 was sent by the complainant to the respondent, then the said amount Rs.3,45,000/- was not demanded by the complainants from the respondents.

It is further case that after share division agreement, construction of project started, but during this period sale of sand was banned in the State of Bihar on 19-01-2016 by the Government as per order of Hon'ble National Green Tribunal, Eastern Zone, Kolkata. So, the construction work was badly hampered for 2 years, which was beyond control of the respondents.

Both the parties have agreed in para-10 of the Development Agreement dated 22-05-2012 that in case of dispute or order of the Court, if the construction work is hampered and if it is out of the control of builder, then with consent of both the parties, the time of completion of the project may be extended. As such, the construction time agreed by both the parties in Development Agreement is automatically extended due to ban of sale of sand. After lift of ban on sale of sand, the respondents started construction

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work, but during this period the RERA Act, 2016 came into existence, so the construction work was once again stopped. The respondents have applied for registration of the project on 30-04-2018 and on 01-10-2018 Real Estate Regulatory Authority (RERA), Bihar has registered the project with start from 01-10-2018 and with date of end on 10-04-2019. This shows that all the allegations of the complainants are false and fabricated and they have brought this case against the respondents only to snatch the constructed building from the hands of the respondents. They have further alleged that Navin Kumar, son of the complainant always used to misguide the flat purchasers and he used to say that after construction, the whole building will be in their hands. In this way, the intention of the complainants was bad, as since beginning they have not provided relevant documents and land to the respondents and that is why, the construction of the building is delayed. Therefore, one year's time may be provided to the respondents, so that they may build the project. In the above facts and circumstances, the case of the complainants being false and fabricated, may be dismissed with cost.

4. On the basis of above facts, the following points are

formulated for adjudication of the case:-

- (i) Whether this case is maintainable under RERA Act, 2016?
- (ii) Whether this case should have been referred before the Arbitrator under the provisions of Arbitration Act, 1996?

- (iii) Whether the complainants are entitled for Rs.3,45,000/- along with 8% interest?
- (iv) Whether the complainants are entitled for rent of Rs.60,000/- @ Rs.10,000/- per flat per month for 6 flats along with 8% interest?
- (v) Whether the complainants are entitled for Interim Compensation of Rs.13,65,000/- against the respondents?
- (vi) Whether the complainants are entitled for compensation of Rs.2.00 crores against respondents?

5. Points No.4(i) and (ii) above:

Learned lawyer for the respondents submitted that as per para-21 of Development Agreement dated 22-05-2012, in case of dispute between the parties, the matter may be referred to an independent Arbitrator under the Indian Arbitration Act, 1940 with amendment of 1996. He further submitted that the complaint should have been lodged before an Arbitrator, but they failed to do so. Hence this case is not maintainable, as this Court has no jurisdiction to entertain the complaint petition of the complainants. On other hand, learned lawyer for the complainants submitted that Section-18 of the RERA Act, 2016 provides that the dispute may be brought up before the relevant local authority formed under the RERA Rules. The RERA Rules supersedes, as it is a special law and has an over-riding effect over the provisions of Arbitration Act, 1996. So, being special law, this Court established under RERA Act, 2016 has jurisdiction to entertain the complaint cases lodged by aggrieved persons.

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He further submitted that learned lawyer for the respondents has submitted half portion of para-21 of the Development Agreement, as the second sentence added in the said para provides that redressal of the dispute between the parties may be settled by the Courts established in Patna. This Court is established for deciding the disputes between the parties in Patna. As such, there is no force in submission of learned lawyer for the respondent and this Court has jurisdiction to entertain the grievances of the complainants.

6. Admittedly, both the parties have referred para-21 of Development Agreement dated 22-05-2012, wherein they have agreed that in case of dispute, the matter may be referred to an Arbitrator under Indian Arbitration Act, 1940 amended in 1996 and further in case of any dispute, the matter may be lodged in the Court established in Patna. Now, the RERA Act, 2016 and Bihar Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the RERA Rules, 2017") have come into existence and this Court has been established u/s 31 and 71 of RERA Act, 2016. It is admitted position that RERA Act, 2016 is a special law for entertaining the complaints of allottees, land owners and developers with respect to their grievances against one and other. It is also clear position that as per Section-12, 14, 18 and 19, the promoters/builders, allottees and land owners have to comply their liabilities against each other. As per Section-18, the builder/promoter has to deliver possession of the building as per agreement and if he fails to build or unable to give

possession of the building/apartment in time, then the allottee may file a complaint against him before this Court under RERA Act, 2016. The RERA Act, 2016 supersedes and has a over-riding effect over the provisions of Arbitration Act, 1996, as RERA Act has been enacted after the said Arbitration Act, 1996. Hence, submission of learned lawyer for the respondent is incorrect in the eye of law and this Court has jurisdiction to entertain the grievances of aggrieved party like developer, land owner and allottee. Accordingly, the point no.(i) is decided in positive in favour of the complainants and against the respondents and point no.(ii) is decided negative and against the respondents and in favour of the complainants.

7. Points No.4(iii) above:

The learned lawyer for the complainants submitted that in Share Division Agreement dated 03-06-2016, there was differences in area of flats between the builder and land owner and builder has got 150 sq.fts. more area than complainants, accordingly, Rs.3,45,000/- has to be paid by the respondents to the complainants/land owner within 3 months from the date of above Agreement dated 03-06-2016. In spite of repeated demands, the respondents failed to pay the said amount and now they have come with the false plea that the respondent Shamsh Hassan has paid Rs.3,75,000/- as a loan prior to the Development Agreement dated

22-05-2012 to Navin Kumar, son of respondent Bhim Sen and he used to demand the said money, but the complainant always stated that the money will be returned within a short span of time and in this way, the complainants have avoided to pay the said amount. On this point learned lawyer on behalf of the respondents denied the allegations and submitted that loan of Rs.3,75,000/- was paid to Navin Kumar and intention of the complainant was bad from very beginning, so they avoided to pay the money and Navin Kumar, son of the complainant always used to say that one day all the building will be in their possession. Hence, the respondents are not liable to pay the above amount Rs.3,45,000/- to the complainants.

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8. Share Division Agreement is not registered, so it has no legal value. It can be used for collateral purposes. However, it appears that Share Division Agreement was executed between both the parties on 03-06-2016 and at the bottom of the above agreement it has been described that the builder will get 150 sq.fts more area than the land owner/complainant and the said area was valued for Rs.3,45,000/- and this amount was to be paid to the complainant/land owner within 3 months from the date of Share Division. This position is also available on the spot, as the respondents have not denied it. Admittedly, till date the respondents have not paid the said amount to the complainants. Now the respondents have pleaded that the respondent Shamsh Hassan has paid

Rs.3,75,000/- as loan amount to Navin Kumar, son of complainant Bhim Sen prior to execution of Development Agreement dated 22-05-2012 and Navin Kumar as well as his father Bhim Sen has assured to pay the said amount prior to start of construction, but the respondents have not filed any chit or document to support their claim of payment of said amount of loan to Navin Kumar, except a AXIS Bank statement issued by the Manager on 24-12-2018, wherein it has been shown that Shamsh Hassan has paid Rs.58,000/- on 22-05-2012 to Navin Kumar. This statement does not show as to why Shamsh Hassan has paid Rs.58,000/- to Navin Kumar. The respondent has not filed any document, which may show that Shamsh Hassan has paid Rs.3,75,000/- to Navin Kumar and his father Bhim Sen countersigned on the said paper, which may support that Bhim Sen was aware about the loan and he has become a guarantor of the loan amount. If any loan was tendered by the respondent Shamsh Hassan to Navin Kumar, who is an adult, then it is open to the respondent Shamsh Hassan to claim the said amount from him in any Court of law and for that loan amount, legally the complainant cannot be held liable. The respondents have still not paid the above amount of Rs.3,45,000/- to the complainants and this liability cannot be shifted to any other person. Accordingly, the respondents are liable to pay Rs.3,45,000/- to the complainants, to which they

have failed to pay since 03-06-2016, so, the respondents are also liable to pay interest accrued on this amount.

9. As per Rules 17, 18 of RERA, Bihar Rules, 2017, I was inclined to pay the interest @ 8+2 total 10% on the above amount of Rs.3,45,000/-, but since the complainant has claimed only 8% interest on the said amount, so I find and hold that the complainant is entitled to 8% interest on the amount of Rs.3,45,000/-. Accordingly, point no.(iii) is decided in positive in favour of the complainant and against the respondents.

10. Point No.(iv) to (vi) above:

Learned lawyer for the complainants submitted that as per Development Agreement, the land was handed over to the respondents on the same day for construction of the multi-story building, which they have to complete within 3½ years from the date of approval of Map. The Map was approved on 28-11-2013, so the respondents should have completed the project on 28-05-2017. In para-13 of the Development Agreement, it was agreed between the parties that if the project is not completed within the stipulated time, then the respondents will pay rent of the 6 flats allotted in share of the complainants and they shall also pay compensation along with rent. Due to non-payment of rent, there became mental, physical and economical harassment to the complainants, for which they have also filed Complaint Case No.1055(C)/2018 and have also issued notices for payment. In spite of all

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efforts, the respondents failed to pay the rent and compensation and now the liability still rests with them. So, they may be directed to pay rent of Rs.10,000/- (Rupees ten thousand only) per flat per month since 28-05-2017 along with compensation of Rs.2.00 crores.

11. On other hand, the learned lawyer on behalf of the respondents submitted that the concerned land was not delivered on the day of execution of the Development Agreement as it will appear from para-3 of the Deed that within a week from approval of the Map, land shall be handed-over to the respondents after vacating all the materials existing thereon. He further submitted that for about 2 years (2015 to 2017) the excavation and sale of sand was banned in the State of Bihar, so the sand was not available to the respondents and that is why there became delay in start of construction of the building. He further submitted that the complainants have also delayed in delivery of required papers/documents, which were essential for construction of the building. When the materials like sand, iron etc. were available, the respondents started construction works speedily and now roof casting of the 2nd floor of the building has been done. They will complete the project by the end of 2019. He further submitted that RERA, Bihar has also issued Registration Certificate in favour of the project and there is no hindrance in construction of the building, except the hindrance created by the complainant and his son Navin

Kumar, who are still involved in different types of tactics, so that the project may not complete within time and they may claim the rent, interest and compensation from the respondents. In view of the above matters, there is no substance in submission of the learned lawyer for the complainants and the complainants are not entitled for any rent, interest and compensation, as the respondents are ready to complete the project and deliver the completed building by the end of 2019.

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12. The complainants have not delivered at once the vacant possession of their land to the respondents for construction of the building, as in para-3 of the Development Agreement dated 22-05-2012, it has been mentioned that the complainants shall hand over the vacant possession of the land to the respondents within one week of the execution of Agreement. This case has been brought by the complainants, so there is burden on their shoulders to prove that the land was delivered to the respondents on the day of the execution of Development Agreement, but they have failed to do so through any document that they have delivered the vacant possession of the land on the date of execution of the Deed. The respondents have also failed to prove that how much the complainants have delayed delivery of the possession of land. However, from the documents it is clear that they have agreed in para-13 of the Deed of Agreement that the respondents will complete the project within 3½ years from date of approval of Map and if they failed in completion of the project within the

stipulated time, they will pay reasonable rent along with compensation to the complainants. It is also agreed in para-10 of the Development Agreement that in case of dispute or order of the Court or any situation which is beyond the control of the respondents, the completion period of the project may be extended with the consent of both the parties. Though it is clear that the complainants have not tendered their consent for extension of the completion of the project, but admittedly still the project is being constructed by the respondents.

13. The respondents have filed photocopy of letter no.404/M/Patna dated 09-02-2016 issued by the Chief Secretary, Government of Bihar, which shows that the sale of sand was banned in the State since 19-01-2016 as per order of Hon'ble National Green Tribunal, Eastern Zone, Kolkata. It has not come from both the sides as to when this ban was lifted. Photo copies of News Papers have been filed on behalf of respondents. News Paper dated 03-03-2016 shows that the matter of ban on sale of sand was raised in Bihar Legislative Council, wherein it was stated that the sale of sand is banned in the State for 3 months and problem is being faced by suppliers and consumers. It may be presumed that after March, 2016 the ban was lifted for sale of sand. Photocopy of a news clip of Dainik Jagran dated 06-12-2016 is filed on behalf of the respondents, wherein it has been published that 6 months prior to 31st December, 2016, sale of sand in the State was banned. The respondents have further filed

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newspaper clip of Hindustan dated 09-10-2017, wherein it has been published that for 3 months sale of sand was banned and they have further filed newspaper clip of Hindustan dated 19-12-2017, wherein it has been published that due to ban on sale of sand, the consumers are being harassed. From all these newspaper cuttings, it appears that in the first stage, sale of sand was banned from January, 2016 to March, 2016, in the second time sale of sand was banned from July, 2016 to December, 2016. Thereafter, the sale of sand was banned from July, 2017 to December, 2017. In this way, total ban on sale of sand is about one year and three months, during the period January, 2016 to December, 2017. The project, as per agreement was to be completed on 28-05-2017 and if this period of one year and six months is deducted, then naturally the period of completion of the project shall extend up to 28-08-2018, as the project has to be completed within 3 years and 6 months. Accordingly, after 28-08-2018, the respondents have to pay rent of six flats, which has come in the share of the complainants.

14. No party can claim legal right on basis of Share Division Agreement. However, when the share of both the parties is 50% in project as per para-6 of Development Agreement, hence, only 6 out of 12 flats of the projects will go to the complainants. The complainants have got total six flats in their share wherein two flats are 2 BHK, 2 flats are 1 BHK and 2 flats are 3 BHK. The complainants have claimed rent of Rs.10,000/- per flat per month, but when the flats allotted to

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the complainants are in different area and number of rooms, then rent of all the flats cannot be the same at the rate of Rs.10,000/- per month. They have to be separately charged as per their area and number of rooms. I presume as per locality the rate of rent of 1 BHK may be Rs.4,000/- per month, rent of 2 BHK Rs.6,000/- per month and rent of 3 BHK may be Rs.8,000/- per month. If it is calculated as per appropriate rent mentioned above total rent per month will be $Rs.4,000 \times 2 = \mathbf{Rs.8,000} + (Rs.6,000 \times 2) = \mathbf{Rs.12,000} + (Rs.8,000 \times 2) = \mathbf{16,000}$, **total Rs.36,000/-** per month for 6 flats from September, 2018. Therefore, it is clear that the respondents should pay Rs.36,000/- per month as rent for 6 flats allotted in the share of the complainants since September, 2018 till delivery of the completed project.

15. The complainants have claimed interim compensation of Rs.13,65,000/- during hearing of the proceeding of this case and Rs.2.00 crores at the time of delivery of possession of the project for mental and physical harassment, which has been denied by the respondents. The learned lawyer for the complainant as well as the complainants themselves have not pressed for interim compensation during the hearing of the proceeding. So, the claim of interim compensation at fag end of the case is unreasonable and cannot be legally sustained. Accordingly, the respondents cannot be directed to pay interim compensation to the complainants.

16. A huge amount of compensation of Rs.2.00 crores without any reasons and rhyme cannot be justified, which

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appears to be a wasteful thought and cannot be accepted. However, without filing of this case, automatically neither the respondents have completed the project nor paid rent claimed by the complainants. So, naturally, some mental and physical harassment must have occurred to them, which may be compensated in terms of money. Accordingly, on going through the circumstances of the case, I think, a lump sum amount of Rs.1.00 lakh will justify the end.

17. From the above discussions, it is apparently clear that the complainants are entitled for rent of Rs.36,000/- per month for 6 flats allotted in their share from the respondents. They are also entitled for compensation of lump sum Rs.1.00 lakh, but they are not entitled for interim compensation. The complainants are also entitled for Rs.3,45,000/- for excess area of flats allotted to respondents in comparison to complainants. Accordingly, point no.(iv) and (vi) are decided in positive in favour of the complainants and against the respondents, but point no.(v) is decided in negative against the complainants and in favour of the respondents.

18. On the basis of evidences produced on behalf of both the parties, this complaint petition may be allowed and all reliefs as discussed may also be allowed. In addition to the above reliefs, the complainants are also entitled for litigation cost of Rs.10,000/-.

Therefore, the complaint case of the complainants is allowed on contest with litigation cost of Rs.10,000/-. The respondents are directed to pay Rs.3,45,000/- along with 8%

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interest to the complainants for receipt of excess area of shares in flats in comparison to complainants. They are further directed to pay Rs.36,000/- per month as a rent since September, 2018 for 6 flats falling in the share of complainants till delivery of these flats. The respondents are further directed to pay Rs.1.00 lakh as compensation to the complainants. The respondents are directed to pay 8% interest to complainants in case of delay in payment of rent and compensation. The respondents are further directed to comply this order within 60 (sixty) days and if they fail in the compliance, then complainants are entitled to get enforce the order through process of the Court.

Sd/-
(Ved Prakash)
Adjudicating Officer
06-03-2019