

REAL ESTATE REGULATORY AUTHORITY, BIHAR
Before the Double Bench of Mr. Naveen Verma, Chairman
& Mrs. Nupur Banerjee, Member

Case No. CC/626/2021

Shanti Devi.....Complainant

Vs

M/s Nesh India Infrastructure Pvt. Ltd.....Respondent

Project: Tiruvantpuram City

INTERIM ORDER

16-11-2021

21-02-2022 This matter was last heard on 27-10-2021 along with batch of cases before the Double Bench and posted for orders but, unfortunately orders could not be passed.

The complaint has been filed u/s 7, 14, 18 of the Real Estate (Regulation & Development) Act, 2016 read with Section 31 of the Act praying for revocation of registration granted to the respondent company, declaring the development agreement as null and void, compensation and directing the respondent company not to interfere with the possession of land of the complainant.

The complainant has stated that the land in question belonged to Vidyut Nagar Grih Nirman Samiti (A Housing Cooperative Society). The respondent company entered into a development agreement for constructing/developing a modern township with several amenities and facilities such as Mahamaya Temple, Guest House, Community Hall, Children Park, Hospital, Parking Space etc., alongwith multistoreyed residential building in the Mahamaya sector in the shape of modern township/complex known as Tiruvantpuram City Vidyut Nagar, Khagaul Road Danapur Patna on 01.07.2011.

After entering into such agreement respondent company entered into a separate supplementary agreement with the member of the society (who were purchaser from the society) wherein it was agreed that they would construct a flat within three years from the date of approval of construction plan. It was also agreed that before starting the construction the respondent company would submit certified copy of construction plan to the Secretary, VNHCS Ltd., and would obtain No Objection Certificate with the Joint signature of Board of Directors of the society. It has been alleged that the respondent company neither submitted the construction plan nor obtained NOC from the society. Meanwhile, Assistant Registrar Co-operative Society, Danapur Patna, sent a letter No. 465 dated: 13/08/2016 to the Secretary VNHCS Ltd., with direction to stop the construction work by the respondent company as per order of the Hon'ble Patna High Court vide civil writ jurisdiction case number 8152/2013,17179/2013 and16860/2013. Thereafter, the Housing Society including Board of Directors and members held a meeting on 25.09.2016 and a resolution was passed for cancellation of the development agreement and the supplementary agreements and copy was sent to he respondent company.

The complainant has alleged that the respondent company violated the order of the Hon'ble Patna High Court and started construction over the land in question. The complainant has also stated that as per the development agreement, the promoter is liable to pay the land owner a compensation of Rs. 8000/- (eight thousand rupees) per month per flat of the entire share of land owner in the event of delay. It has further been alleged that the agreement was for seven stories residential complex with hundred percent parking space but from the approved map shows approval for eleven stories building which is alteration of the original development agreement. The complainant has further stated that an FIR was also lodged by the Secretary of Mahamaya Sector bearing P.S. Case No. 217/17 dated 16.04.17 in which bail has been granted to the accused but the case is still pending.

Reply has been filed by the respondent company wherein they have raised objection regarding the maintainability of the case. The respondent has relied upon a judgment passed by this Authority in

RERA/CC/63/2018 in which the Bench of Sri R.B. Sinha and Sri S.K. Sinha, Members held that the Authority does not have jurisdiction to entertain matters pertaining to the development agreement between the landowner and the promoter. The respondent company has further relied upon the judgments passed by the Real Estate Appellate Tribunal in REAT Appeal No. 16/21 and 27/21 in which it was again held that the dispute between the landowner and promoter cannot be decided by the Authority.

The respondent company has also stated that they were not a party to the said CWJC and hence they are not covered by the order of the Hon'ble Patna High Court as cited by the complainant as the respondent company.

During the course of hearing, the learned counsel for the complainant countered this and submitted that the order of the Hon'ble Patna High Court was *in rem* and a copy of the said order was also sent to the respondent company.

On the last date of hearing, the learned counsel for the complainant further submitted before the Bench that his only prayer was for cancellation/revocation of registration as the map has not been approved by the competent authority.

On the issue of maintainability, the Bench observes that under the Bihar RERA Regulations, 2021 the landowner is also an allottee, and hence the plea of the respondent that their case with the promoter is not maintainable under the Real Estate (Regulation & Development) Act, 2016 is rejected.

The Bench observes that although the issue of maintainability is settled, the complainant has filed this matter for various reliefs including compensation under different sections of the Act. If the only relief that is being sought is revocation of registration granted by the Authority under Section 7 of the Real Estate (Regulation & Development) Act, 2016, then the complainant would need to amend their application accordingly, on oath. The Bench notes that the issue of registration and related matter cannot be a subject matter of the complaint as the same is considered on the administrative side and the complaint case is a quasi judicial proceedings. The Bench directs that the allegations of the complainant may be examined separately on the file on which the application for registration was considered.

The prayer of the complainant for declaring the development agreement as null and void is beyond the jurisdiction of the Authority. The complainant may approach the competent Civil Court for the same.

The Bench observes that the complainant has alleged that the map is not approved by the competent authority, but they are constructing additional floors beyond the sanctioned plan. The complainant is seeking for revocation of registration, yet he is also claiming compensation. The complainant is given an opportunity to clarify these apparent contradictions and amend their application and specify the relief being sought. In any case the claim for compensation has to be pressed before the Adjudicating Officer.

The respondent is directed to give their written response on the specific allegations levelled against them.

List this matter on 23.2.2022.

Sd/-

(Nupur Banerjee)
Member

Sd/-

(Naveen Verma)
Chairman