

Real Estate Regulatory Authority (RERA), Bihar  
6<sup>th</sup> Floor, Bihar State Building Construction Corporation Limited Complex  
Shastri Nagar, Patna-800023

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**Before the Bench of Mr. Afzal Amanullah, Chairman & Sri R.B. Sinha, Member.**

**Complaint Case No: CC/795/2020**

Baptist Union Church, Bakarganj, Patna  
through Rev. Moses V. Thomas, Pastor-cum-  
Priest-Incharge, Baptist Union Church, Bakarganj  
P.S. Pirbahore, District-Patna.

... Complainant

Vs.

M/s Utkarsh Sfatik Limited  
through its Managing Director, Sri Saday Krishna  
Kanoria, Son of Shri Vinod Krishna Kanoria  
resident of Marwari Awas, Fraser Road, P.S. Kotwali  
District- Patna At present Ecospace Business Park  
Block-4B, 6<sup>th</sup> Floor, Premises No.  
IIF/11, Action Area IIm, New Town,  
Kolkata (West Bengal)-700160.

... (O.P. Respondent)

Advocate for the Appellant : Mr. Sanjay Kumar, Advocate

Advocate for the O.P. : Mr. Rakesh Kumar Samrendra,  
(Respondent) Advocate

**ORDER**

16.04.2021                      A Complaint Case No: CC/795/2020 was filed on  
13.12.2019 by Baptist Union Church, Bakerganj, Patna  
through Rev. Moses V. Thomas, Pastor-cum-Priest-Incharge,  
Baptist Union Church, Bakerganj, P.S. Pirbahore, District  
Patna (Complainant) against M/s Utkarsh Sfatik Ltd. through  
its Managing Director, Sri Saday Krishna Kanoria, son of Sri

Vinod Krishna Kanoria, resident of Marwari Awas, Fraser Road, P. S. Kotwali. District Patna (Opposite Party Respondent).

In the Complaint, Complainant has claimed that Opposite Party is not the lawful owner of the land of the Project "The Residency-City Centre" (an ongoing Project) situated in Lodhipur , Budha Marg, Patna (khesra/Plot No. 157, 158, 159 (P), 160, 161, 162, 60 (P), Khata No. 06, Tauzi No:-679, Thana No. 20, Mauza – Adra, District, Patna, here-in-after referred to as the said land and that it was acquired through wrongful means and he also challenged the legality of the title and validity of the transfer of land, competency of the persons involved to execute the deeds of transfer and also legality of the projects plan that was sanctioned. It was also requested that in view of the pendency of many cases in this matter in various other courts, the registration granted by the Real Estate Regulatory Authority, Bihar (RERA) should be cancelled.

Initially inquiry was started by the Authority on the basis of a two page application dated 16.09.2019 of Mr. Moses V. Thomas of Baptist Union Church, Patna praying for either not registering the Project or in case, it has been registered, to

cancel the registration in view of the various cases pending for adjudication in this matter in other courts.

Reply to the said Application dated 16.09.2019 was submitted by the O.P. Respondent on 22.10.2019 while a Counter Affidavit against the formal complaint of Complainant was submitted by the Respondent on 18.02.2020 refuting the allegations of the Petitioner stating therein that frivolous allegations have been levelled having no basis. In the reply, the O.P. Respondent challenged that the Complaint does not come under the purview of section 31 of the RERA Act, 2016 (here-in-after referred as the Act) therefore, the Complaint should not have been entertained and even if the complaint has been accepted for hearing, it is liable to be dismissed at the first instance. It was further stated that the dispute of title and pendency of cases in the Hon'ble Patna High Court are no grounds for maintaining complaint for exercising jurisdiction, under Section 7 of the Act and the issue of title dispute has already been taken care of vide section 18(2) of the Act and the Authority is not the forum to decide right, title, interest and ownership of the land on which the real estate project is being developed but they are simply to direct the Promoter to comply with the mandatory disclosures and accordingly the Authority has granted Registration. It also stated that on the advice of

the Authority, an affidavit detailing the status of pending cases pertaining to the Project had also been submitted.

On 21.11.19, the date fixed for taking up the matter, hearing could not take place as one Member of the Bench Sri S. K. Sinha recused himself from the case. On 19.12.2019 during the next hearing O. P. Respondent objected to the filing of the complaint. However the parties agreed that the matter be recorded as a complaint under section 31 in the hearing held on 23.01.2020. Thereafter, due to the Covid-19 pandemic, lockdown and physical closure of offices and courts, all court cases were put on hold, till the online hearing through video conferencing was started.

On 22.09.2020, during hearing learned counsel of the Complainant and O.P. Respondent's learned Counsel made initial remarks that remained inconclusive.

Meanwhile an Amendment Petition dated 08.10.2020 was filed on 12.10.2020 during course of the next hearing by the Complainant adding a third relief for revocation of the RERA registration granted on 13.9.2019 to the Respondent under section 7 of RERA Act, since right, title and interest is pending adjudication before Hon'ble Patna High Court.

In reply to the Amendment Petition, on 02.11.2020 the O.P. Respondent stated that the application for amendment at such a belated stage is not permissible in law and the complainant was trying to expand the scope of the complaint petition in order to overcome lacunae in the case.

After hearing both the parties on 06.11.2020, the Bench allowed the Amendment Petition.

The case of the Complainant in brief is that-

The said land belongs to the complainant / BUC after the original land holder Baptist Missionary Society Corporation (BMSC) shifted its office to London after India's Independence. That the land was purchased by the Baptist Missionary Society (BMS), the Nodal agency of BMSC, for the use of Baptists of Patna Town. That the land was acquired by O.P. Respondent through wrongful means and that the legality of the title, validity of the transfer of Land, competency of the persons involved to execute the deeds of transfer and legality of the building plan sanctioned are all pending for adjudication in other courts. That when the properties of the Baptist Missionaries and Churches were intermeddled by land grabbers and non-Baptist persons, then a Civil Suit was filed before the Hon'ble Delhi High Court bearing T.S. No.

416/1996 wherein the property mentioned in this instant complaint was also included. That vide order dated 16.02.1996 and 22.03.1996 the Defendants of the suit were restrained from transferring, alienating or encumbering the Lands in any manner.

That during pendency of the suit and operation of the order dated 16.02.1996 and 22.03.1996, the property mentioned in this complaint was sold through a registered Sale Deed in favour of the O.P. Respondent by the BMSC/BMS through a Power of Attorney on the basis of mis-representation made before the Reserve Bank of India. The Sale Deed executed by the Power Attorney holder Sri Asit Ghosh was also challenged before the learned Sub-Judge-II, Patna in Title suit No. 562/2012 which was rejected. But it was assailed by the Complainant before the Hon'ble Patna High Court in Civil Misc. Case No. 716/2018 which was heard on 25.06.2018 and the same is pending for adjudication before the Hon'ble Court.

That the O.P. Respondent got the Plan/map sanctioned on 17.01.2011 from Municipal Commissioner, Patna by suppressing the material fact that Title Suit No. 416/96 was pending. That the complainant filed a representation before the Municipal Commisioner, Patna on 20.01.2012. When this was not heard they filed CWJC No.

9159 of 2012 before Hon'ble Patna High Court against the Municipal Commissioner, Patna. The Hon'ble Court vide order dated 18.7.2013 directed the Municipal Commissioner, Patna Municipal Corporation to consider and dispose of the representation dated 20.01.2012 filed by the petitioner claiming that material facts had been concealed. In compliance of this order, the Municipal Commissioner heard the matter and disposed it of on 27.01.2014 and cancelled the map sanctioned earlier on the grounds that material facts were indeed suppressed and directed the Respondent to file a fresh application for sanctioning of map in accordance with building bye laws. Against, the order dated 27.01.2014, Respondent filed Appeal No. 5/2014 before the Municipal Building Tribunal, Patna. Finally on 16.04.2015 the Municipal Building Tribunal remanded the matter back to the Municipal Commissioner for fresh hearing.

The Municipal Commissioner called for a report from the Deputy Director, Town Planning, PMC and on that basis passed an order on 09.03.2016 rejecting the application/ complaint made by the Complainant and re-sanctioned the map contained in plan, which was sanctioned earlier on 17.01.2011.

Against this order dated 09.03.2016, Complainant filed an appeal before the Municipal Building Tribunal, Patna in Appeal No. 5/2016 which was dismissed. Against the dismissal order of Municipal Building Tribunal, Patna the Complainant filed writ petition before Hon'ble Patna High Court bearing CWJC No.-6211/2019, which was heard on 22.11.2019 whereby the Patna Municipal Corporation and the respondent were directed to file counter affidavit and also observed that during pendency of the writ application if the respondent proceeds with the ongoing construction it will be at his own risk.

That for the said land, criminal cases were also registered by both the parties against each other, the criminal complaint bearing no. 804/2012 was filed by the complainant against the Respondent and Power of Attorney holder of BMS, Respondents filed quashing application before Hon'ble Patna High Court bearing Cr. Misc. No. 15796/2013 and 36693/2013. Vide order dated 18.04.2019 and 22.04.2019, Hon'ble Court directed the Criminal Investigation Department (CID), Government of Bihar, Patna to investigate and enquire into the matter. The said quashing application is pending adjudication before Hon'ble Patna High Court.



It has also been stated that due to intermeddling of the property of the Baptist Union Church the Complainant had filed CWJC No. 3048/2006 which was heard on 22.02.2011 by Hon'ble Court and a direction was issued to the Competent Authority to redeem the property of the Trust Association as early as possible and enquiry would be conducted by Joint Director (Legal) of the Ministry of Corporate Affairs, which has later been converted to Regional Director, Corporate Affairs, North India. In compliance, Regional Director, Corporate Affairs held enquiry through Asst. Registrar of Companies and found that the properties of the Baptists are indeed being intermeddled by the persons who are not entitled to interfere in the same and submitted his report. This was challenged before the Hon'ble Delhi High Court which, after hearing the parties, remanded the matter back to the Regional Director, Corporate Affairs for re-hearing since the point raised through protest petition dated 17.03.2013 by the BCTA, one of the sister company of BMS, was not dealt with point to point and after remand, again the parties were heard and order was passed by Regional Director, Corporate Affairs on 19.11.2018. Again the aggrieved persons, BCTA, filed WP(c) No 1622/2019 and CM 12757/2019 in the Hon'ble

Delhi High Court against the said order dated 19.11.2018 of Regional Director, Corporate Affairs.

The Complainant has also mentioned that the report of Assistant Registrar of Companies, Northern Region, New Delhi, found that the properties of Baptists are being intermeddled by those persons who are non-Baptists and in this regard a letter was communicated to the Chief Secretary of the State of Bihar for doing needful in this regard and redeeming the properties of the Baptists. When no action was taken by the Chief Secretary, State of Bihar in redeeming the properties of the Baptists, the Complainant filed CWJC No. 19969/2013 before Hon'ble Patna High Court for a direction to the Chief Secretary to act as per the recommendation made by the Regional Director, Corporate Affairs on the report of Asstt. Registrar of Companies, Northern Region. This is pending.

That many litigations are pending for adjudication in different forums but in sum and substance the issue is with regard to intermeddling of properties of the Baptists and the respondent herein is one of the party who is trying to usurp the property in cahoots with those persons who are not associated with the affairs of the Baptists.

That the application filed by the Respondent for granting registration under RERA Act is not at all tenable since it is clouded under litigation at many stages. The construction which is being made by the Respondent is also in violation of the provisions of the Act and the Hon'ble Patna High Court in CWJC No. 6211/2019 directed that any construction made on the property involved in the writ petition would be at the risk of the Respondent. It has also been prayed through Amendment Petition for revocation of the registration granted to the Respondent on 13.09.2019.

Finally, the Complainant prayed for relief(s) that the application filed by the Respondent for registration under RERA may not be allowed and the same should be turned down during pendency of the litigations over the property in question; and that the Authority pass such other order(s) as it may deem fit and proper. Additionally, through Amendment Petition dated 13.09.2020 the Complainant has prayed for revocation of the registration granted to the respondent. Pending final decision on the complaint, the Complainant has also sought interim order that the Respondent should be restrained from creating any third party interest over the property in question.

The case of Opposite Party Respondent is that-

The Project, the Residency-City Centre, Patna is being developed on a portion of the land being 7.52 Acres ( the "SAID LAND") purchased by the Respondent by a Deed of Absolute Sale dated 08-12-2008 for valid consideration from Baptist Missionary Society Corporation ("BMSC")and Baptist Mission Church (BMC) after due clearance from Reserve Bank of India and others statutory authorities. BMSC had purchased this property way back in 1915 on a free hold basis from the then private owners through execution of registered Deed of Conveyance. The Baptist Missionary Society ("BMS"), the nodal body for the BMSC, is the Confirming Party in the Sale Deed .The Said Land has been duly mutated in the name of the Respondent and the Land Possession Certificate has also been issued in favour of the Respondent and the Respondent is the lawful owner of the said land.

That after due scrutiny of Respondent's application and documents, encumbrances in respect of the Project, affidavit detailing the status of pending cases pertaining to the Project, and the revised Agreement For Sale, the Authority, after being satisfied, granted Registration on 13.09.2019 prior to the filing of the Complaint by the Complainant. Cancellation

of registration of the project will certainly jeopardize the interest of the allottees as the Respondents after getting RERA registration, has allotted 115 residential apartments in the real estate project and in terms of Sec. 13(1) of the Act the respective Agreements for Sale of allottees have been registered with the concerned Registrar's office and super structure and finishing work of the real estate project is in progress and will get completion certificate and / or occupancy certificate for the real estate project well within due date.

That the Complaint does not come under the purview of section 31 of the RERA Act, 2016 therefore, the Complaint should not have been entertained and even if it has been accepted to be heard, it is liable to be dismissed at the first instance.

That the Complainant is an unregistered body, and has filed with ulterior motive several petitions, suits, appeal (s) etc. claiming ownership and authority to deal with the said Land before various judicial authorities/ forums. The allegations made in the Complainant's letter dated 16.09.2019 and also in the Complaint no 795/2020 are similar and have all been agitated already in various courts/ forums without any success.

That the facts stated in the complaint petition are basically the subject matter of the cases pending adjudication before the Hon'ble Patna High Court. The Complainant has filed CWJC No. 19969/2013, CWJC No. 6211/2019 and Civil Misc. Case No. 716/2018 and TS No. 562/2012 , Criminal Misc. No. 15795/2013 & 36693/2013 before the Hon'ble Patna High Court, with respect to right, title, interest and ownership of the land in question (the Said Land), sanction of the building plan by the Patna Municipal Corporation, intermeddling with the property of Baptist Trust Church Association by the Non Baptist but the subject matter of CWJC No. 19969/2013 is not related to the property of the Respondent situated at Lodhipur, Patna.

That in one of the writ petitions, being W.P.(C) 7830/2011 and C.M. No. 17706-07/2011 and 18917/17/2011 ( wherein one of the prayers of the plaint questioned the legitimacy of sale deed of the said land) an order dated 15.02.2012 was passed by the Hon'ble Delhi High Court with an observation that the Petitioners are resorting to Forum Shopping. CWJC 1547/2009 filed in Hon'ble High Court Delhi was also dismissed wherein cancellation of instrument executed by BMS/BCTA was prayed. In Title Suit

No. 562/2012 filed by BUC the Court observed that the Plaintiff has no Locus standi / cause of action to file such suit.

That WP© 1622/2019 and CM 12757/2019 is pending in the Hon'ble High Court of Delhi which was filed by the Complainant against the order passed by Regional Director, Ministry of Corporate Affairs on 19.11.2018, in compliance to the order passed in CWJC 4588/2016. Though later on it has been submitted by O.P. Respondent that CM 12757/2019 was disposed of by the Court , staying order dated 19.11.2018 with the direction not to take action against BCTA, however WP© 1622/2019 is still pending. But the Complainant has suppressed the material facts with respect to present status of the report of the Astd. Registrar of companies, Northern Region, New Delhi which has been stayed by the Hon'ble Delhi High Court.

That initially Complainant had filed a writ CWJC 3048/2006 in Patna High Court challenging that Non Baptists are intermeddling with the properties of Baptist Church Trust Association (BCTA). Hon'ble High Court asked the Complainant to represent before Joint Director, Legal, Ministry of Company Affairs, who in turn appointed an Inquiry Officer. Report of the Inquiry Officer was challenged by Complainant

and they moved to Regional Director, Corporate Affairs with Protest. In this matter BCTA engaged in a series of litigation through WC(C) 2097/2014 in Hon'ble Delhi High Court then again NP(C) 4588/2016 in Delhi High Court.

That all the relevant order/ judgments, which have out rightly rejected the claim(s) of the Complainant and have not granted any relief as sought for by the Complainant and all these judgments /orders are in favour of the Respondent make it clear and vindicate the stand of O. P. Respondent.

That the dispute of title and pendency of cases in the Hon'ble Patna High Court are no grounds for maintaining complaint and exercising justification under Section 7 of the Act and the issue of title dispute is taken care of vide section 18(2) of the Act whereby the Authority is not the forum to decide right, title, interest and ownership of the land on which the real estate project is being developed but they are simply to direct the Promoter to comply the disclosures as such Authority has granted Registration. Respondent also stated that on the advice of Authority an affidavit detailing the status of pending cases pertaining to the Project had also been submitted.



That the Statement made in the Complaint that the Hon'ble Patna High Court in writ CWJC No. 6211/2019 has directed that, if Respondent proceeds with the ongoing construction, it will be at his own risk, is wrong, misleading and the same is hereby denied. It is specifically stated that the Respondent is constructing the multi-story building on the said land strictly in accordance with the sanctioned building plan and in consonance with the provisions of the Bihar Municipal Act, 2009 and Municipal Building Bye-laws.

That the relief and Interim relief sought for is meaningless, untenable and the same is unsustainable as the Complaint was filed after the project was granted registration, the Complainant has no prima facie case in his favour. The balance of Convenience does not lie in favour of the Complainant rather it is tilted towards the Respondent. The Complainant would also not suffer any irreparable injury in the facts and circumstances of the cases.

That since the facts stated in Complaint Petition are mostly the subject matter of the cases that are pending consideration before the Hon'ble Patna High Court, as such the Complainant has an effective alternative remedy for redressal of his grievances (if any) for which they have already

filed petitions before the Patna High Court where in precisely the same issues involved in the present complaint petition. In this view of the matter the present Complaint Petition is misconceived, motivated and the same is not maintainable.

That the Respondent has not violated any of the conditions stipulated in Sec. 7 of the RERA Act, 2016 which provides ground for revocation of the Registration granted to the Respondent.

Arguments by the Learned Counsel of the Complainant was resumed on 21.01.2021, continued on 27.01.2021 and concluded on 05.02.2021, while the learned Counsel of Opposite Party Respondent argued on 19.02.2021 and 17.03.2021. After the arguments of Opposite Party reply of learned counsel of Complainant was heard. Arguments of both the parties concluded on 17.03.2021. Counsel for both the parties have subsequently submitted written synopsis of the arguments made by them.

During arguments, Complainant's Lawyer stated that the cases are pending in various courts for adjudication on the legality and validity of the title of land, validity of the transfer of land, competency of the persons involved to execute the deed of transfer, legality of the plan sanctioned and argued

that the registration of the project granted for the project on the land to the promoter/respondent needs to be revoked as respondent is involved in unfair practice or irregularity. Counsel of Opposite Party Respondent contested that the grounds for revocation enumerated in Sec 7(1) of RERA Act, 2016 do not exist in the present case. Moreover mandatory requirement prescribed under Sec. 7(2) of RERA Act, 2016 has not been complied. He added that so far as pending cases are concerned they had already acquainted RERA on affidavit before registration was granted. He further asserted that Sec. 18(2) read with Sec. 7(3) of RERA Act, 2016 provide statutory safeguard to protect the interest of the allottees in case the title of the Project's land is found to be defective by the Competent Court.

Counsel for Complainant has argued that case no. 716/2018 is pending for adjudication in the Hon'ble Patna High Court for deciding title of said land which was preferred by Complainant against the order of Sub Judge, Patna passed in case no 562/2012 rejecting complainant's case challenging the Sale Deed.

Counsel of Opposite Party Respondent said that Sub Judge, Patna has already decided the title in favour of opposite

party in case no 562/2012 and since Complainant's case no 716/2018 filed in Hon'ble Patna High Court against this order has, till date, not been altered, pendency of this case does not affect the title of land. He added that the said land is mutated in the name of Opposite Party and they have Certificate of Possession of land. Earlier, the land was mutated in the name of BMSC till the date of purchase by O.P and BUC has no concern with it. Rather Mr. Rajendra Kamal, representative of BUC, had also sought permission on 6.12.2001 from BMS & BMSC to grant permission to sell the said land, proves that the ownership of the land was in favour of BMSC. As the sale proceeds are with BMS, it is up to them to decide how they are going to utilise it for the welfare of Baptists. While Counsel of the Complainant contested that the statement made with regards to Mr. Rajendra Kamal is concerned, he might have written this letter in the individual capacity and he was never an associate of BUC.

Complainant also raised the issue of competency of the person who executed the sale deed and stated that BMSC who was the actual owner of land was no more valid owner as after independence it has become a foreigner and hence has no right to hold the land and on the basis of misrepresentation before RBI, BMSC was successful in transferring the land.

Moreover the Power of Attorney executed by BMSC in England in the name of Asit Ghosh, has not been communicated through Ministry of External Affairs as per our law.

Counsel of Opposite party contested that the land was sold by BMSC through Power of Attorney (PoA) holder and BMS was confirming party after the approval of RBI. A PoA was executed by the authorized office bearers of BMSC at Oxfordshire in England and were duly Notarised by Notary Public of England. On receipt of the Notarised PoA at Kolkata, the same were duly stamped and endorsed in the Kolkata Collectorate. USL's Solicitors S. Jalan & Co. had also given their opinion about the steps for validation of the PoA granted by a foreign entity. Moreover, validity of the PoA was already deliberated in CWJC 6519/2010. Although BMSC had a clear and marketable title over the said property, considering the closeness and somewhat overlapping relationship BMSC had its nodal body BMS (which is not only revealed from the Memorandum of Association of BMSC but also the influence of BMS World Mission had over the BMSC) and also considering RBI's direction that the consideration money has to be repatriated directly to BMS's Bank A/c, USL had to include BMS as a Confirming Party in the Deed Of Sale executed for the Said Property. In light of the above, USL requested BMS to

become a confirming Party. BMS thus passed a resolution in their board meeting in England and granted a PoA to Mr. Asit Ghosh to execute the conveyance deed on behalf BMS as the Confirming Party

Counsel for Opposite Party stated that after promulgation of Foreign Exchange Management Act ("FEMA"), 1973, all the foreign companies were required to file Declaration under Section 31(4) to RBI about the ownership of their respective holding of immovable property. In adherence thereof BMSC filed this Declaration to RBI on 25.03.1974 mentioning about its ownership on the Said Premises. The Premises, which was later on found to be measuring 10.412 Acres, but after alienation of some portions in the past and leaving the premises of Lodipur Church, were found to be measuring 7.52 Acres. Accordingly in terms of Foreign Exchange (Compounding Proceedings) Rules 2000 and contravention section 6(5) of the FEMA 1999, Rs. Two lacs was decided as Compounded amount. This order has not been altered by any court.

On the objection of Counsel of Complainant that the above said land was sold on throw away price of Rs. 5 crores while the land is situated in the heart of city and its circle rate

amounts to Rs. 24.86 Crores, Counsel for Opposite party contested that Utkarsh Sfatik Ltd. ("USL") was interested in setting up a large scale real estate project in Patna and came to know about Said Premises in the year 2008. But the Said Premises had several encumbrances like unauthorized occupation by outsiders, existence of several serious litigations etc. The area was surrounded by slums and people of lower income group. Considering all these negativities USL offered a price of Rs.5 Crores. In terms of the FEMA, 1999 the foreign companies need to take RBI permission for sale of properties in India as well as for repatriating the proceeds. Accordingly, BMSC applied to RBI for permitting them to sell the Property. RBI principally allowed the transaction subject to fulfilment of certain conditions vide Memo No.28531 dated 02.06.2008. However, by another Memo No.29574 dated 13.06.2008, RBI informed BMSC that the sale proceeds has to be repatriated and cannot be used locally. But as BMSC did not have bank account in England it requested to RBI to allow the repatriation to its Nodal Body i.e. BMS. In this approval process, RBI took help of valuation report of a registered valuer. The report clearly mentioned about the existence of several impediments and encumbrances on the land. For this the valuer had to reduce the valuation drastically compared to

the normal market value and valued at Rs. 7.81 Crore for 7.52 Acres of land, which valuation is also mentioned in Sale Deed dated 08.12.2008. However, keeping in view the impediments attached with the plot, as a matter of risk perception and commercial expediency, USL did not agree to increase its earlier offer of Rs. 5 Crores and reiterated its stand to BMSC for purchasing the said property at a price of Rs. 5 crores. BMSC cited this offer of USL in its communication with RBI in connection with obtaining the RBI approval, so as to justify the figure of Rs.5 Crores. RBI also took cognizance of this final offer of Rs.5 Crores and finally allowed the sale of the Said Property at a price of Rs.5 Crores and repatriation thereof. He also added that inadequacy of the amount of sale cannot be the reason to end the contract, vide section 25 of the Contract Act.

Counsel for Complainant added that case no. 416/96 is pending where in title is to be decided and orders dated 16.02.96 and 22.3.96 are binding on respondent. Opposite Party contested that BMSC and Opposite Party were not party in this case hence it is not effective on them. The said land in question in this case 416/96 is neither of petitioner nor of respondent, but was owned by BMSC. Moreover Title Suit No. 416/96 was dismissed on 30.01.2015 by the Tees Hazari



Court , Delhi finding that suit filed by unregistered society have no rights in title and ownership of scheduled properties.

Counsel for Complainant also stated that entire argument of respondent, Utkarsh Sfatik Limited hinges on the argument, the complainant has no right, title and interest in the property in question neither they are associated with Baptist Missionary Society. In this regard it was highlighted that in the Annual General Meeting of BCTA held on 22nd September 2003, Complainant, Rev. M.V. Thomas was representative of Baptist Missionary Society. Likewise he was invited to attend the meeting of BCTA on 21st July 2004 as his name was recommended to be the BMS representative for the AGM. Likewise Mr. Rajesh Wilson, who was former Secretary of Baptist Union Church was also invited to attend the AGM of BCTA as BMS representative vide letter dated 12.09.2005. So in this view of the matter it cannot be argued that the complainant is alien to the cause of Baptist Missionary Society. Counsel of opposite Party contested that these so-called office bearers had ulterior motives and were searching loopholes so as to arm twist and black mail USL by filing multiple litigations/ complaints in both Criminal and Civil Courts under the garb of protecting the interests of the Baptist Christian community. In order to extract sympathy, they even

started a new coinage i.e. "church property" for this purely private land held and owned by BMSC. On thorough enquiry USL came to know that Baptist Union Church (BUC) is nothing but a loose, unregistered bogus association of persons created with the sole objective to dispose of the land/property in question illegally. Moreover, the complainant i.e. Mr. M.V. Thomas was a terminated pastor of the Bakerganj Church, Patna. The apex body of Baptist Churches i.e. Baptist Mission Society, Baptist Church Trust Association and Baptist Union of North India had derecognized and cancelled the registration of BUC due to illegal activities of its office bearers. The termination of Mr. M. V. Thomas was notified to the public by way of public notice in the local newspaper on 21.04.1994

Counsel of Opposite Party argued that out of 127 residential apartments in the Project, 122 apartments now have already been allotted to different buyers. In this regard the sale agreements have been registered. Their right and interest have accrued in their respective unit in the Project. Before passing any order, all the allottees have right to be heard in consonance of the principle of "natural justice". Counsel of Complainant contested that adding allottees of Project as party now and they being heard is fallacious and ill founded. It is common knowledge that if Hon'ble High Court

passed the order that any construction would be made at the risk of the respondent then in that view of the matter they should not have allotted the flats to 3rd parties. Moreover the respondent did not disclose name of those persons in whose name flats have been allotted so the complainant is unaware about the same and at this stage, addition of their name would be nothing but wastage of time in disposal of this case.

Counsel of Complainant has further informed in the synopsis that the Hon'ble Delhi High Court has passed order on 11.02.2021 in case of Paul N.Prem and others Vs. Baptist Missionary Society(BMS) and others in case No.CS (OS)97/2021 & I.A. 2153-55/2021 that the defendant 3 of the Suit states that without prejudice to all till next date of hearing they have no intention to sell or mortgage the immovable properties as stated in para-3 of the plaint and will maintain status-quo regarding title of the same as of today.

Issues discussed during the hearing are basically about the Intermeddling of the properties of Baptists by the non-Baptists, ownership of the above said land, validity of its transfer and inadequacy of amount, legality of the persons who transferred the land, sanctioning of plan/map on the ground that the land in question does not belong to respondents, registration done by RERA, adding allottees of the project in the case,

compensation of allottees in case of any loss caused to them due to defective title of the land and pendency of cases with regards to most of the above mentioned issues. On the basis of these issues it is to be decided whether relief sought for revocation of the registration of the Project being constructed on above said land is justified or not.

Present position with regards to the Sale Deed executed by the Power Attorney holder Sri Asit Ghosh is that Complainant had challenged it before learned Sub-Judge-II, Patna in Title Suit No. 562/2012 but was rejected by the court. Court had observed that the Plaintiff has no Locus / cause of action to file such suit. Adjudication on this issue is pending in Hon'ble Patna High Court in Civil Misc. Case No. 716/2018 filed by complainant.

Map of Plan case No. PMC/Mauja ADRA/ PCN/ SB+g+17/13/2010, which was sanctioned by the Patna Municipal Commissioner on 17.01.2011 was cancelled on 27.01.2014 . On the appeal the Municipal Board Tribunal remanded the case back to Municipal Commissioner, PMC who re-sanctioned the plan on 09.03.2016. Writ Petition in this matter was filed by complainant before Hon'ble Patna High Court bearing CWJC No.-6211/2019 and on 22.11.2019

the Hon'ble High Court directed the Patna Municipal Corporation and the respondent to file their counter affidavit and it was observed by the Hon'ble High Court that during pendency of the writ application, if the respondent proceeds with the ongoing construction it will be at his own risk. This case is pending.

So far as intermeddling of properties by non-Baptists is concerned, WP(c) No 1622/2019 is pending in the Hon'ble Delhi High Court. The subject matter of CWJC No. 19969/2013 is related to Intermeddling with the property of Baptist Trust Church Association by the Non Baptist but not with the instant property situated at Lodhipur, Patna. CWJC No 3048/2006 in Patna High court for redeeming the properties of BCTA is also related to intermeddling of Baptists property and is pending for adjudication.

So far as the validity of Power of Attorney holder and the inadequacy of amount of sale is concerned, Patna High Court while hearing on 18.04.2019 the cases C.M No.36693/2013 (Asit Ghosh Vs State of Bihar and M.V Thomas and Ors.) CM No- 15796/2013 (Saday Krishna V/s State of Bihar and Ors), CM No 5496/2014 (Rajesh Wilson and Ors. V/s State of Bihar & Ors), and CM No 6946/2014

(Rajendra Kamal and Ors V/s State of Bihar and Ors.) observed that the above said land Prima facie appears to be transferred on throw away price, while the land 7.52 acres is situated in the heart of city of Patna. Court also observed that owner of the land being BMSC but the money transferred directly into the account of BMS, which is a completely separate legal entity in London and not only that, in the indemnity portion the entire liability being taken by the BMSC and it appears to be fraudulent and collusive. Subsequently the Hon'ble Court took a decision to entrust Sri Vinay Kumar, the Additional Director General of Crime Investigation Department (ADG, C.I.D). with the responsibility of a comprehensive enquiry. It was revealed that the report of the ADG, CID in a sealed cover has been submitted to the High Court some time back. Matter is pending.

So far as registration and revocation of the project on above said land is concerned, Registration has been done as required under the Act and Rules on the disclosures of necessary details/ information and litigations pending in courts and no evidence of unfair trade practice or irregularity has been submitted against it. However, RERA is competent to take decisions any time under section 7 of RERA Act, 2016 and can

also impose further terms and conditions as it thinks fit to protect the interest of the allottees on receipt of any complaint.

In case the title of the Respondent is found defective by any competent court of law, there are provisions under Sec.18 (2) of the RERA Act as to what procedure would be followed by the Authority to secure the rights of the allottees of a particular real estate project registered with the Authority. Sec. 18 (2) of the Act provides that “The Promoter shall compensate the allottee in case of any loss caused to him due to defective title of the land on which the project is being developed or has been developed in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided by any law for the time being in force.” Moreover duly notarised Affidavit has been submitted by the Respondent on 05.09.2019 to the Authority affirming that in case of any adverse order passed in the disclosed cases in Schedule- “F” of the draft Agreement For Sale the Promoter, i. e. the Respondent herein would secure the rights of the allottees as directed by the competent court(s) or as may be directed by the Authority.

Provisions of the Act make it clear that the Authority is not the forum to decide right, title, interest and ownership of

the land on which the real estate project is being developed but they are to direct the Promoter to comply with the disclosures with regard to their right, title and interest in the land on which the Promoter is planning to develop the real estate project and in case, in case the title is found defective and the allottee has incurred any loss due to such defective title the Promoter is liable to compensate as provided under the Act.

We have carefully gone through the records of this case, examined the papers and documents submitted and heard the arguments of the Learned Lawyers of both parties.

It is clear that there has been a series of litigation relating to the land in question and that a number of cases are still pending adjudication. It is also clear that a detailed enquiry has been done in the matter on orders of the Patna High Court and report has been submitted to the Hon'ble High Court in sealed cover by the enquiry officer, the ADG, CID. Further, the sale of 7.52 acres of land in the heart of Patna town for a mere Rs.Five Crores and the repatriation of this money to England into an unrelated entity's account, the issue of legitimacy and competency of the sale of the 7.52 acres,



sanction of map etc. are all issues to be decided by competent courts.

After careful consideration, we feel that since the O.P. Respondent had disclosed about the pending litigation and that the constructions are at an advanced stage, we should permit the RERA registration granted to the O.P. Respondent to remain in force till its due date. Further, with a view to protect the interests of the consumers, we find it necessary to act under section 7 (3) of the RERA Act, 2016, and we order that NO REGISTRATION SHALL BE DONE OF ANY PROPERTIES, CONSTRUCTED OR SITUATED ON THE SAID 7.52 ACRES OF LAND till such time as the issues of the title and legitimacy of sale are finally decided by the Honourable Courts where these matters are pending.

Sd/-

**(R. B. Sinha)**  
Member

Sd/-

**(Afzal Amanullah)**  
Chairman