

REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR
Before the Single Bench of Mr. Naveen Verma, Chairman

Case No. RERA/CC/527/2021

Sanjay Sinha, M/s Anchita Developers Pvt Ltd.....Complainant
Vs

Pramilla Devi & Vijay Nath.....Respondents

Project: -RAM ENCLAVE

INTERIM ORDER

5-10-2021
24-2-2022

The matter was last heard on 10-09-2021 and posted for orders but, unfortunately orders could not be passed.

The complainant and respondents entered into a development agreement dated 07.12.2011 for the land situated at Mauja- Danapur Sani k Colony Gola Road, Thana Code- 118, Thana No- 21, Tauzi No- 5399, khata No-2 11, khesra (Survey Plot No- 1163) of Patna Municipal Corporation measuring an area of 9 katha within the limit of Patna Regional Development Authority/Patna Municipal Corporation. The complainant has alleged that the respondents apart from executing development agreement, also received a sum of Rs. 18,00,000/- (Eighteen Lakhs) as compensation amount for rendering Power of Attorney. That as per the agreement, the share of the respondents was 45% and that of the complainant was 55% of the super built up area along with the car parking space. The complainant has stated that he followed the legal parameters of the development agreement but in the year 2012 Urban Development and Housing Development restrained all the approval of new projects. It has been stated that the complainant tried his best to get the map sanctioned but in vain as the government strictly put a ban on the map approval process. That further in the year 2014 to 2016 several orders were passed by the Government of Bihar to demolish the building and the approval of map for construction of building was not allowed by PRDA. It has been alleged that respondents were informed about all the difficulties and the respondents agreed but demanded extra compensatory amount and therefore in the year 2019, the complainant rendered an additional amount contrary to the development agreement.

The complainant has further stated that complainant complied with all the legal formalities of the Real Estate (Regulation & Development) Act, 2016 and obtained RERA Registration in the year 2020 and when the complainant started carrying out the work at the site, the respondents started creating hindrances in construction of the project and issued a legal notice dated 09.02.2021 terminating the agreement. The complainant has stated that a reply to such legal notice was sent on 22.03.2021. That it has also been stated as per the provision of the development agreement the project was to be completed within 4 years from the date of passing of sanctioned map from competent authority and the complainant is trying to complete the project within 2024 but the respondents are not allowing him to proceed.

Therefore, the complaint has been filed praying for stopping the construction with immediate effect, issuing a letter to the S.H.O Danapur and D.S.P to ensure that no hindrance is created during construction and restraining the respondents from their greedy act and any order which the Learned Authority deems fit.

Reply has been filed by the respondents wherein they have denied every statement of the complainant. The respondents have state that the prayer of the complainant to allow the construction as per the development agreement has no basis. The respondents have further alleged that the complainant has violated the terms of the agreement and has applied for approval of map in 2020 without obtaining signature of the respondents. It has further been alleged that a case bearing RERA/CC/730/2021 was filed by the complainant before the Authority as land remained idle for almost 10 years and heavy financial loss was caused to the respondents. The respondents have further stated in their reply that upon filing of RTI with the Public Information Officer, Danapur Nizamat, the respondents were informed that no maps for multi-storey building have been passed in the years 2013-2014 and 2014-2015 and only 8 maps in 2016 and 85 maps in 2017 were passed. The respondents have further alleged that no work has been done by the complainant and instead the complainant has defrauded the respondents. The respondents have further stated that the agreement has become redundant, and the respondents have right to terminate the agreement and they are also entitled to receive compensation for the loss incurred.

The respondents in their reply have further state that the complainant has constructed a room and a toilet without the consent of the complainant. The respondents have prayed for declaring the development agreement as cancelled and also direct the complainant to compensate the respondent for the loss incurred and also for the litigation expenses incurred.

A supplementary affidavit was filed by the complainant u/s 39 of the Real Estate (Regulation & Development) Act, 2016 in which error in the order dated 02-08-2021 were pointed out. On the other hand, written notes of argument have been filed by the respondents.

Perused the records of the case. During the last hearing, the complainant orally submitted that landowners are promoters however have admitted that the landowners have not applied as co-promoters in the application for registration of the project. The Bench reiterates that landowners are allottees as per Regulation no. 6(3) of the Bihar Real Estate Regulatory Authority (General) Regulations, 2021 and as long as the development agreement is valid and is not declared as null and void by Civil Court, the landowner will be an allottee under the Real Estate (Regulation & Development) Act, 2016. The respondents, on the other hand, raised questions on the share distribution between the parties and submitted that the respondents are owners of 9 kathas of land whereas only 7 flats have been allotted in their favor. The Bench observes that the dispute pertaining to the share distribution has to be settled by the court of competent civil jurisdiction.

The Bench also observes that the issue of termination of development agreement has to be decided by the Civil Court or from the Office of the District Sub-Registrar. Since registration has been obtained for the project from the Authority it is obligatory on the part of the complainant- promoter to complete the construction of the building.

The relief sought by the promoter who is the complainant has to be within the parameters of the Real Estate (Regulation and Development) Act, 2016, the Bihar RERA Rules, 2017 and the Bihar RERA Regulations, 2021. The respondent -landowner allottees – also need to clarify whether they are seeking revocation of registration as the development agreement cannot be cancelled by the Authority. The Bench provides an opportunity to both the parties to clarify their submissions and the relief being sought.

List this matter for hearing on 4.4.2022 so that these issues are clarified. Meanwhile it directs the complainant to continue with the construction of the project. The Bench directs the respondents who are landowner allottees not to obstruct the construction process. Let a copy of this order be sent to both the parties by email as well as by registered post.

Sd/-
Naveen Verma
Chairman