

with interest and in January, 2016 refunded Rs 4 lakh and again undertook on 27-06-2014 to settle the matter within 10 days. Again on consistent demand, the Director of the respondent company gave an undertaking dated 22-09-2018 to settle the matter within 15 days from 22-09-2018. On his failure, a legal notice dated 28-03-2019 was sent to the Director asking for refund of the money with interest/completion of work.

The complainant sought relief of direction to the Director of the respondent company to refund Rs 35,89,681/- with interest as mentioned in the MoU dated 27-06-2014 for the period of 30-06-2014 till final settlement as also direction to pay the interest for the period 30-06-2014 to January, 2016 of Rs 4 lakh which he paid in January, 2016 to the respondent Director with interest to be calculated as per MoU. He also claimed rent @ Rs 20,000/- per month for the delay from 30-09-2014 till disposal of the matter or final settlement.

Notice dated 04/07/2019 was sent to the respondent company under Section 03, 12, 18 & 19 of the Real Estate (Regulation & Development) Act, 2016 and Rule 36 of the Bihar Real Estate (Regulation & Development) Rules 2017 was sent to the respondent company to file their reply by 19/07/2019. However, the respondent company did not file any reply. The matter was therefore, fixed for hearing on 24-09-2019.

Hearing:

Hearings were held on 31/10/2019, 11/11/2019, 13/12/2019, 23/12/2019, 26/12/2019, 27/12/2019, 15/01/2020, 31/01/2020, 19/02/2020, 21/09/2020, 09/10/2020 and 14/10/2020.

On 11/11/2019 the Bench directed the respondent company to refund Rs 10 lakh as first installment within a week.

On 15/01/2021 the Bench directed the respondent company to get their project registered with RERA.

On 31/01/2020 the Bench directed that the first installment which was ought to be refunded on 27/01/2020 must now be made on 07/02/2020.

On 19/02/2020 the Bench levied Rs 10,000/- fine on the respondent company for non-appearance.

On 21/09/2020 the complainant submitted that the cheques issued by the respondent company were bounced and dishonored since there was no sufficient balance and informed that MD and other Director of the respondent company has sold out their properties and planning to leave the city without handing over the money or the flat to the complainant.

Learned counsel of the respondent company submitted that they have applied for registration of the project with RERA which on verification was found to be false. Since the respondent company did not get their project

registered with RERA in spite of several reminders/directions given by the Bench, last opportunity was given to the respondent company to apply for registration of their project within a week.

On 14/10/2020 the complainant submitted that the respondent company has not applied for registration of the project and that they have not yet refunded the money. However, the flat is ready which may be registered in his name.

Learned counsel of the respondent company submitted that they have initiated the process of registration of the project with RERA. He further stated that the complaint case is not maintainable as the complainant was himself an investor and therefore, a co-promoter.

The Bench directed the learned counsel of the respondent to submit list of assets/immovable property which have been sold by the promoter. The Bench further directed the respondent to apply for registration of the project as also give in writing why this case is not maintainable under RERA. The respondent was also directed to submit the list of registered flats within a week.

On 21/01/2021 learned counsel of the complainant submits that the respondent company has already been struck off from the list of Ministry of Company Affairs but the respondent, in utter violation, is registering the flats in the name of different persons. He further submitted that the respondent has sold the flat in question to a third party named Mrs Abhanjali and prayed for adding her as respondent in the present case.

The Bench directed that Mrs Abhanjali may be added as a party in the case and notice be issued to her to appear on the next date of hearing.

On 09/03/2021 learned counsel of the respondent appearing on behalf of the other Director Mr Kumud Kumar submitted that Mr Ejaz Hussain, Director he has run off from the company and that Mr Kumud Kumar, Director is running the project and managing the project. He further states that there are two Directors of the respondent company and Mr Ejaz Hussain, Director has been entrusted with the responsibilities of the company's affair whereas Mr Kumud Kumar is the other Director. He states that they are trying to revive the company and that the project is 95% complete. He submits that the present case is not maintainable under RERA as the complainant has filed FIR also.

Learned counsel of the complainant, while referring to the provisions of Section 13 of the RERA Act and Rule 8(2) of the RERA Rules, submitted that the claim of the respondent that the complainant is not an allottee is completing incorrect and further submitted that he has made full payment for which the payment details have been submitted and the same has been mentioned in the Agreement for Sale which was registered in June 2014. On pressurizing the respondent, they paid Rs 4 lakh to the complainant in 2016 without informing him and by submitting that the said amount is the interest for one year.

Learned counsel of the added respondent appearing on behalf of Mrs Abhanjali submitted that his client is not aware of previous agreement and prayed that the bank be made a party in the present case. He further states that she purchased the flat in question and sale deed has been executed in her favour and registry and mutation has also been done but possession has not yet been given.

The Bench directed the learned counsel of Mrs Abhanjali to submit his submissions in writing on affidavit with relevant documents.

Learned counsel appearing on behalf of the respondent Mr Ejaz Hussain, Director submitted that this case is not maintainable because it is a matter of the company law and the complainant was only an investor in the company and therefore, the complainant is not an allottee.

The Bench directed all the parties to file petition within two weeks and each party must file their counter reply if any, within the next two weeks.

On 29/09/2021 learned counsel of the complainant submitted that as per the agreement for sale executed between the promoter and the allottee, the complainant was to pay the full and final consideration amount and the respondent will give possession but in case of cancellation, the refund of the amount will be made in 120 days from the date of cancellation/withdrawal and prayed that the respondent be directed to complete the internal work of the flat, obtained the occupancy certificate and execute the absolute sale deed in favour of the complainant.

Learned counsel of the respondent Mr Ejaz Hussain reiterated his stand that the present case is not maintainable and stated that the complainant has kept the physical possession of the flat and thus the case is not maintainable.

The Bench observed that the promoter is liable to get the project registered with RERA under Section 3 of the RERA Act as it was an ongoing project as on 01.05.2021, the day on which the RERA Act came into operation and both the promoters, in their disposition, have repeatedly claimed that the project was incomplete and significant part of it has been completed during the course of hearing of the case.

Learned counsel of the respondent Mr Kumud Kumar submitted that he has filed his reply and that fabricated documents have been produced before the Bench and while referring to some judgement of the Hon'ble Supreme Court, submitted that on that basis this case must be dismissed. He further submitted that the flat in question has since been registered in the name of Mrs Abhanjali., who is sister of Mr Kumud Kumar, Director. He also stated that the company was struck off from the records of the Registrar of Company Affairs in 2014-15. The Bench while directing the learned counsel to file the documents in this regard, observed that as of now the company does not exist and if anything is

signed in the name of the company after 2014, it is completely an illegal document. He further states that six cheques were given by Mr Ejaz Hussain on behalf of the respondent company to the complainant and prayed for time to produce the MoU to prove that Mr Ejaz Hussain took the money from the complainant and stated that the complainant is not an allottee.

The Bench observed that the said MoU is not in its jurisdiction but RERA's jurisdiction comes into picture when the Agreement for Sale was signed. The Bench further observed that Mr Kumud Kumar, Director has accepted that the construction work in the project was ongoing. The Bench directed the learned counsel of Mr Kumud Kumar to submit all relevant evidences in favour of his contention. The Bench further directed both the learned counsel to ensure the presence of their clients i.e. Mr Ejaz Hussain and Mr Kumud Kumar on the next date.

On 13/12/2021 learned counsel of both the parties advanced their argument at length.

On 31/01/2022 the complainant submitted that the agreement for sale was signed on a consideration amount of Rs 23 lakh and that Bench, in previous hearing, had directed the respondent to give possession and execute sale deed.

Mr Kumud Kumar, Director submitted that agreement was signed between the complainant and the Director (Respondent No.1) who had given cheque to the complainant on behalf of the respondent company and the complainant had filed Kotwali PS Case against Respondent No.1 who has midway left the company. He admitted that some of the amount has been deposited in the company's account and that the project is complete. He further states that he has filed reply and submitted that the company is not in existence and therefore, they cannot register the project with RERA.

The Bench observed that since the complainant made payment to the respondent company and since the flat has been sold out, the complainant is entitled for refund of the deposited money which is the liability of both the Directors to make refund to the complainant.

Since the complainant made payment to the respondent company and not to an individual for the booked flat no.402 on a consideration amount of Rs 39,89,681/- and entered into an agreement and further signed MoU with the respondent company and since the Director (Respondent No.1) has left the company but the other Director (Respondent No.2) has admitted that the Respondent No.1 was looking after the affairs of the respondent company and he himself (Respondent No.2) was looking after the project work and has claimed that he himself has completed the project after the departure of the Respondent No.1 and also the fact that the flat in question has been sold to a third party, there is only one course of action to decide i.e. refunding the deposited money with interest to the complainant. It is clear that the

responsibility of refunding the money to the complainant lies on the respondent company of which both the Respondents No.1 & 2 were the Directors. It is for consideration as to how the total consideration money already paid by the complainant on 27/06/2014 with interest has to be refunded to the complainant and what share of responsibilities lies on the two Directors.

While going through the records of the case, it appears that the flat in question which is being claimed by the complainant has already been registered way back in the name of Adv. Abhanjali and the complainant is also not an allottee of the said project rather he has investor in the said project. Thus, the claim of the complainant for getting flat is now not maintainable before the Authority and the respondent company is directed to refund the principal amount along with interest at the rate of Marginal cost of lending rate (MCLR) as applicable for three years plus Two percent from the date of deposit to the date of refund within sixty days of issue of this order.

The respondent company is also directed to register its project with the Authority within 15 days of issue of this order. If the respondent company fails to register its project, then in that case, Registration wing is directed to issue suo-motu under Section- 3 of the Act.

Sd/-

**Nupur Banerjee,
Member**