

REAL ESTATE REGULATORY AUTHORITY, BIHAR
2nd Floor, BSNL Telephone Exchange, North Patel Nagar, Road No. 10,
Patna -800023
Before the Single Bench of Mrs. Nupur Banerjee, Member

Complaint Case No.: CC/398/2021

Chandan Rungta.....Complainant

Vs.

M/s ABM Developers Pvt. Ltd.....Respondent

Project: Urban Plaza

ORDER

28-02-2022

The matter was last heard on 31.01.2022. The complaint was filed on 17-03-2021.

The case of the complainant is that on 18-10-1995 a development agreement was executed between the Baptist Church Trust Association, land owner of Plot No.-866&21, Khata No.-137, Jamabandi No.-1027, Circle No.-14, Ward No.-12/6, measuring area of 43 khatas, 7 dhors and M/s ABM Developers Pvt. Ltd , situated Bakarjung road for the development of multi storied commercial building. He further submitted that he had entered into an agreement for sale on 15-09-2016 with respondent company for the purchase of 2150 sq.ft. of built up area in multi storied commercial complex on the ground floor. He further submitted that he had paid 25% of the consideration amount i.e.Rs.46,22,500/- out of total consideration amount of Rs.1,84,90,000/-(One Crore Eighty Four lakhs Ninty Thousand Only) as per the agreement. It has been submitted by the complainant that he is ready to pay the rest amount i.e.75% as per the terms and conditions of the agreement at the time

of delivery of the possession of the agreed commercial area after obtaining the occupancy certificate from the competent authority. He submitted that the complainant had not registered the agreement for sale and has not provided the allotment letter and requested to direct the respondent to execute the agreement for sale and provide the allotment letter.

The Complainant has placed on record Agreement for Sale dt.15-09-2016 in which in Para 2, it is mentioned that the complainant had paid Rs. 46,22,500/-.

On 31-08-2021, the respondent had filed counter affidavit stating therein that the respondent has preliminary objection in respect to maintainability of the case. He further submitted that aforesaid respondent is not promoter and some other company known as Azafla Building Construction Private Ltd., on whose name RERA registration was granted, is the promoter for the aforesaid project. It has been further submitted by the respondent in para 13 of the counter affidavit that answering respondent had inform the complainant to settle the issue amicably in respect to agreement for sale which was enter between them on 15-09-2016. He further submitted that development agreement was executed between Baptist Church Trust Association and A.B.M. Developers Private Ltd., for developing a residential- cum commercial multi-storeyed building but multiple litigations copped up and huge money spent out and thus, the respondent was in crunch of liquid money to proceed with the project in question. There after the respondent decided to enter into M.O.U with Azalfa Building Construction Pvt. Ltd. for plan map, sanction of project and also for construction on the terms and conditions mentioned in the MOU. It has been also submitted by the respondent that company has gone into

management dispute and filed case before N.C.L.T. for the same and is ready to return the money of complainant after the decision of N.C.L.T.

Respondent has filed another reply in respect to rejoinder filed by complainant on 09-09-2021, stating therein that the physical possession of land was handed over to respondent on 19-12-2015 through the process of court in execution of the arbitral award to implement the development agreement dt.18-10-1995. He further submitted that in January, 2013, the father of the complainant Mr. Krishna Kumar Rungta was inducted as shareholder and one of the directors of ABM Developers Pvt. Ltd. on the recommendation of one of the director of the company namely Mr. Gopal Sharan Bhatia. He further submitted that after getting the physical possession of land by the company, Mr. Gopal Sharan Bhatia and Mr. Krishna Kumar Rungta, started fighting for taking over entire control of the company, and in process thereof, on 04-01-2016, Mr. Krishna Kumar Rungta wrote a letter to ABM Developers Pvt. Ltd., through its director Mr. Gopal Sharan Bhatia under copy to other Boards of Directors and further demanded to meet out claims as per M.O.U., which was signed exclusively between the two without the knowledge of the other directors and the M.D and due to the dispute, the work has got seriously obstructed. It is further submitted by the respondent that the payments shown in the agreement for sale by the complainant is internal arrangement between two directors i.e. between Mr. Krishna Kumar Rungta and Mr. Sachida Nand Singh and though the deponent had made payment of entire payable amount for shareholding to Mr. Krishna Kumar Rungta but he did not return the agreement for sale. He further submitted that answering respondent due to financial constraints had decided to

enter into a MOU on 15-09-2016 with Azalfa Building Construction Pvt. Ltd. for development and construction of the commercial building which has been confirmed by the BCTA (the land owner) and accordingly, the map got sanctioned by PMC and project was registered in the name of Azalfa Building Construction Pvt. Ltd. It has been also submitted by the respondent that now ABM Developer Pvt. Ltd. is not a promoter under the RERA Act, 2016 rather Azalfa Building Construction Pvt. Ltd. is the promoter who is developing and constructing the building.

Complainant had filed another reply in respect to counter affidavit filed by the respondent on 09-09-2021, stating therein that the respondent has recently executed several sale for agreements to other allottee but not executing agreement for sale to him. He further submitted that the development agreement dt.18-10-1995 was executed between concerned land owners and the respondent for developing the land as commercial complex but on that plot how the promoter is constructing the building and prays to direct the respondent to execute agreement for sale and made Azalfa Building Construction Pvt. Ltd also party in present case.

On 07-02-2022, the respondent had filed written argument stating therein that complainant is mutualizing the agreement for sale dated 15.09.2016 which executed between the complainant and respondent company, which was brought into existence by way of internal management in the company for transfer of shareholding of Mr. Krishna Kumar Rungta (Father of complainant) in the company. He further submitted that from the perusal of letter dated 04.02.2016 written by Krishna Kumar Rungta to Gopal Saran Bhartia, it clearly emerges that Krishna Kumar Rungta was insisting for enhancing his shareholding in the company by making specific statement that only

30% shareholding have been transferred in his favour although as per resolution of the board of directors he was regularly approaching for transfer of remaining 20 more shareholding in his favour as well as for induction of 3 more directors of his group since only one director of his group has been inducted i.e. himself. It has been further submitted by the respondent that Krishna Kumar Rungta negotiated with the MD of the company namely Mr. Sachidanand Singh regarding his share holdings and resignation from the directorship of the ABM developers private Ltd. company and on 17-11-2016 a Memorandum of Understanding (MOU) for sale and purchase of 1500 shares of ABM Developers Pvt. Ltd. on face value of Rs.1 lakh fifty thousand only or Rs.4,15,50,000/- was signed. Accordingly, Mr. Krishna Kumar Rungta received Rs. 4 crore 15 lakhs 50 thousands from Sachidanand and sold his shareholding. It has been further submitted that negotiation for sale of shareholding is going on by and between the father of complainant namely Mr. K.K. Rungta and Mr. Sachidanand Singh, a condition precedent was put by Mr. Rungta which was by way of security measure to the extent that the MD, of the company will have to get the agreement for sale executed in favour of his sons to deliver six thousand square feet of built-up area of the building to be constructed on the said land along with reserved parking after completion of the project. It is further submitted that it was agreed between them that as soon as Sachidanand Singh will pay the entire consideration money of share holdings, Mr. Krishna will return back the agreements for sale executed by the company in favour of his sons, who are complainants in present complaint case and for giving shape of agreement for sale, some money was transferred to the company by the sons of Krishna Kumar Rungta. It was further submitted that the

value of shareholding as well as amount paid at the time of execution of agreement for sale dated 15.09.2016 was adjusted and accordingly it was accounted as full and final settlement for Rs.4,15,50,000/- which has been paid to Mr. Krishna Kumar Rungta by the MD of the company. It has also been submitted by the complainant that the agreement for sale dated 15.09.2016 of the complainant brought on record is internal arrangement between Krishna Kumar Rungta and Mr. Sachidanad Singh and Mr. Sachidanad Singh, MD of the company has made payment of entire payable amount for shareholding of Mr. Krishna Kumar Rungta including the payments shown in agreement for sale dated 15.09.2016, part by RTGS and rest by cash, which fact has not been disputed by Mr. Krishna Kumar Rungta at any point of time till date. However, Mr. Krishna Kumar Rungta as per internal agreement/understanding did not return the agreement for sale dated 15.09.2016 which was brought into existence by way of security measure at the time of transfer of shareholding in the company i.e. ABM Developers Pvt. Ltd.

The Respondent has placed on record letter dated 04-02-2016, Memorandum of Understanding dated 17-11-2016 and Account Statement, issued by Indian Bank, Patna Branch of different dates.

On 15-02-2022, the complainant has filed written statement praying for directing the respondent to execute the registered sale agreement.

On the basis of the submissions and taking into consideration the documents filed by both the Parties, the bench is at the view that the present case relates to issue pertaining to internal dispute between the directors of the company and complainant in present case is one of the son of the ex-director of the company. The Bench

is also of the view that the project Urban Plaza is also not register against present respondent, hence, the bench observed that complainant can press his claim in respect to sale agreement in dispute before the appropriate forum.

The Bench also gives liberty to complainant to file fresh case against present promoter for the aforesaid project, if any claim made out.

With these directions and observations, the matter is disposed of.

Sd/-
Nupur Banerjee
Member