

REAL ESTATE REGULATORY AUTHORITY, BIHAR

Before the Bench of Mr R.B. Sinha, Member

Case No.CC/141/2018

Om Prakash & Others.....Complainant

Vs

M/s Meridian Construction Pvt Ltd & Others.....Respondents

Present: For Complainant: Mr Vivek Prasad, Advocate

Mr Sanjay Kumar, Advocate

For Respondent: Mr P.Siddhartha, Adv (Res.2)

Mr BK Sinha, Adv (Res.1)

Md Qamar Husnain, Director

29/04/2021

O R D E R

1. Mr Om Prakash, a resident of 306, S S Vihar, Karbigahia,, Patna, Mr Prashant Kumar, resident of 201, S S Vihar, Karbigahiya, Patna, Smt Rani kumari W/o Amrendra Kumar Srivastava, resident of 406, S S Vihar, Karbigahiya, Patna & Mr Raghwendra Kumar Singh, 304, S S Vihar, Karbigahiya, Patna, have filed a common complaint petition against the Promoter/builder M/s Meridian Construction Pvt Ltd through their CMD Mr Abu Dojana and Land-owner Mr Saurabh Kumar Sharma S/o Late Bipin Behari Das under Section 31 of the Real Estate (Regulation and Development) Act 2016 for completion of the project Swaroop Smriti Vihar as per sanctioned plan within a definite time-frame and hand over complete possession of the common areas to the society of flat-owners. The Complainants have also sought compensation for the inordinate delay in completion of the

project and suitable penal action against the developer. The Complainants have also sought interim relief, pending final decision, to the effect that the developer/land owner be restrained from alienating title or possession of any flat and to deposit rent and usufructs of the land/unsold flats in the Authority.

Case of the Complainant:

2. The complainants in their complaint petition have submitted that the construction work of “Swaroop Smriti Vihar” apartment located at Mauza-Mohammadpur, Karbigahia under the limits of Patna Municipal Corporation, Patna was started in the year 2010 by M/s Meridian Construction Pvt Ltd which commenced booking of flats, based on the registered development agreement executed between the developer and land-owner vide deed number 29193 on 18.02.2010 and sanctioned building map vide Plan Case No-P/Mohammadpur/PCN-7-2010. The map of the plan was sanctioned on 26/03/2010 under Section 314 of Bihar Municipal Act by a Certified Architect with certain conditions that no construction shall be made over the parking area, construction of front boundary wall shall be made after leaving bhutti for widening the road and removal of existing structures on the proposed land. The complainants have further submitted that the project is still incomplete and no completion certificate has been obtained from the competent authority but the builder/land owner have sold about 35% of flats by deceiving the purchasers that registration rate is going to increase and the incomplete works will be finished soon.

3. The complainants have further submitted that as per registered development agreement, 15 kathas of land was to be developed for the project but work has been done in 11.6 kathas of land and the remaining 3.4 kathas are not being developed as per sanctioned plan and major portion of it is still in exclusive possession of the builder/land owner. The existing structure has not yet been removed, rather the builder/land owner are running a hotel in it with three DG sets in front setback area for use in the said hotel along with several mobile towers on the existing structure. The southern boundary wall has not been constructed. The developer in collusion with the landowner has illegally constructed stairs in front setback which lands on Flat No.101 and 102 thereby depriving the flat owners from using their balcony and threatening their privacy and safety. The guard room has not been constructed rather the place has been converted into shops and let out. Installation of lift/stair towards south is incomplete. The builder has encroached the fire escape stair. Fire brigade connector has not been created. The ramp for handicapped persons, which is one of the conditions of sanctioning of map, has not yet been constructed. The common areas of Project/apartment have not yet been handed over to the Society constituted by flat owners.

4. The complainants have further mentioned in their petition that engineers of PMC inspected the site and reported that the project is incomplete and in major deviation of sanctioned map. They have also stated that a vigilance enquiry is also going on against the builder.

5. The complainants have requested that the developer be directed to complete the project by removing illegal constructions and by

developing the site as per sanctioned map in accordance with relevant law, rules and regulations within a definite time-frame and hand over complete possession of the apartment to the Society. The developer be directed to pay adequate compensation to the complainants for inordinate delay in completion of the project even after taking full consideration money.

6. A notice under the provisions of the Real Estate (Regulation & Development) Act 2016 and Rules of the Real Estate (Regulation & Development) Rules, 2017 was issued to the promoter to submit reply by 31/12/2018. Since the respondent company did not submit any reply, the matter was fixed for hearing on 12/02/2019.

7. In their supplementary petition dated 12/02/2019 while enclosing therewith the inspection report of a technical team of the Executive Engineer, PMC, the complainants have submitted that the builder deviated from the development agreement dated 18/02/2010 and on a complaint by one Mr B. B. Jha & Ors, a Vigilance Case No.26(B)/2018 was registered against the builder/promoter and the site was inspected by a team of engineers of PMC. The Inspecting team found several deviations from the approved plan. As per approved plan, the front road at the southern side was 28.48 feet but on measurement it was found much less than the approved plan. There was deviation of set back at southern, northern, western and eastern side. The height of the building was also exceeded by 2.13 meter and the construction of flats on 7th floor was also found to be against the approved building plan. The respondent company has also compromised the fire safety by raising illegal construction on 7th floor and by not leaving mandated

setbacks at all sides since the fire fighting vehicles cannot have access to the building in case of emergencies for rescue of the occupants.

Reply of the Respondent:

8. The respondent no.1 in its reply dated 12/02/2019 has confirmed that a Development Agreement (Registration Deed No.29193 dated 18/02/2010) was executed between Mr Bipin Behari Das (since dead leaving his son Mr Saurabh Kumar as heir) and the respondent company for development of 15 kathas of land under Mauza-Mohammadpur. In pursuant to the Development Agreement, a plan was sanctioned on 26/03/2010 for construction of a G+5 residential-cum-commercial apartment through a Certified Architect of PMC and the construction as per sanctioned plan was completed in 2016 and majority of the persons along with complainants who booked their flats are residing in their respective flats registered after units were categorized finished after verification by the registration authority.

9. The respondent no.1 also submitted that since the project was sanctioned in 2010, the provisions of the Bihar Building Byelaws 2007 are applicable. The project was completed in 2016 fulfilling all the rights of the allottees completely facilitating the amenities and it is not an ongoing project on the date of commencement of RERA Act.

10. The respondent no.1 claimed that though the map has been sanctioned for 15 kathas but it was the prerogative of the respondent to construct the project over 11 kathas only. Moreover, the landlord has also no objection over it. So far the old structure is concerned, it

belongs to the landowner and the developer cannot interfere with regard to the title of the land.

11. The respondent no.1 has further submitted that some of the flat owners have objected to fixing the gate on entrance of main gate. The boundary wall has already been constructed, stair of the building is already there and no flat owner is deprived of using their balcony, guard room has been constructed in the basement, lift has already been provided and a separate provision has also been shown in the sanctioned plan for providing the lift pit in future, the fire escape stair on the 7th floor is not encroached by the builder rather it has been encroached by one of the flat owners, which the society may decide. Two water tanks have been provided, complete set up of electric meters has been installed in the setback area separated from inside of the building for safety of the flat owners, name of the building and the company's name have already been displayed. So far as ramp is concerned, it is not required as it is not there in the sanctioned plan. The respondent has requested to accept the show cause and drop the proceedings.

12. The respondent no.2 in his reply has submitted that before the development agreement was signed, there was a mill operating under the name of "Bihariji Mill" along with various godowns and work stations on the said land which was rented out by the father of Respondent No.2. While entering into the development agreement between Respondent No.1 and 2 it was duly agreed that the godowns and work stations of Bihariji Mill were to be removed so that the building could be constructed. As per the agreement, those structures

were removed to facilitate the construction but there was no agreement between Respondent No.1 and 2 for removal of the hotel in question whereas the complainant has not mentioned about the Surya Residency hotel being run by an allottee in the same building. He further submitted that as per the agreement, 50% + 1 share belongs to the answering respondent. In the 5 kathas of land, 3 kathas of land has already been given to the developer on which there is entry road made of the society and thus, Respondent No.2 has already parted away with more than 50% of the land for the benefit of the society. Thus, giving away any more land would be in teeth of the development agreement. Accordingly, Respondent No.1 has already submitted that the hotel land belongs to Respondent No.2 and that he has no title over the same. He further submitted that the complainant preferred a supplementary affidavit wherein he is relying on enquiry report dated 07/05/2018 whereas no show cause or any notice was received by the Respondent No-2 regarding such PMC case or enquiry. The said enquiry report gives findings against the property of Respondent No.2 but he was not provided with any opportunity by PMC to put forward his case. Thus, it lacks the basic principles of natural justice. The said enquiry report is not only passed on the back of Respondent No.2 without following the principles of natural justice but is also hit by the principle *lis pendens*. Aggrieved by the same, he has approached the Hon'ble Patna High Court challenging the enquiry report. The same is pending before the Hon'ble Court.

13. Respondent No.2 further submitted that the credibility of the said enquiry report seems to be highly doubtful considering the fact that

Respondent No.1 has already submitted a revised sanctioned plan/map in the year 2012 but the PMC which has sanctioned the said map, has not mentioned about it in the report which smacks of malafide. Thus the credibility of the report may not be relied upon till adjudication of the same by Hon'ble Patna High Court in CWJC No.6935/2019.

14. He further submitted that the revised plan shows the total number of flats to be 60 whereas there were only 52 flats planned earlier in the society. Thus, it is apparent that wrong calculations have been made on the revised sanctioned map by the PMC. He therefore requested to accept the supplementary show cause and dismiss the complaint.

15. One of the complainants Raghvendra Kumar Singh, in his reply to the show cause filed on behalf of Respondent No.1 has submitted that the Respondent No-1 has failed to respond on any contentious issue and thus this case may be decided on the basis of admitted facts and settled principle of law. He further submitted that development of 4 kathas land towards southern setback area has not yet been completed and old structure over it is still in illegal possession of the landowner (Resp.No.2). Since there is no denial that completion certificate of the project has not yet been taken from PMC, the project is incomplete and the plea of non-application of Real Estate (Regulation & Development) Act 2016 has no basis and is liable to be rejected at the outset. The building was not completed in the year 2016 or afterwards rather it is incomplete as yet and registration of some of the flats before 2016 has no concern with the completion of project. Admittedly the project has not been completed as per

sanctioned map and completion certificate has not been obtained from PMC. The provisions of the Act have been contravened by the developer as the project has not been registered with RERA.

16. He further submitted that only about 11 kathas of land has been developed whereas as per registered development agreement, 15 kathas of land were to be developed as per sanctioned map. After execution of development agreement, the exclusive title of land owner has been jointly vested in all flat owners. The developer is duty bound to remove the old structure and develop the land with construction of southern boundary wall and gate as per sanctioned map. Refuting the submissions of Respondent No.1, the complainant has submitted that the stairs are new and lands on balcony of flat no.202, there is no guard room, the lift is not of quality and both lifts have to be installed, seventh floor has been illegally constructed, fire escape space has been encroached.

17. He further submitted that Annexure 3 of the show cause of Respondent No.1 contradicts his claim that the building was complete in 2016. It shows that on 01/02/2018 only five floors were constructed and construction work of upper floor (6th floor) was in progress. Though the ground floor is commercial but the Respondent No.2 has let out several flats for commercial use. The complainant requested that the show cause of Respondent No.1 is fit to be rejected and the complainants are entitled to get compensation and cost of litigation.

18. In his reply to the show cause filed on behalf of the Respondent No.2, the aforesaid complainant submitted that the language of the development agreement deed is loud and clear that total 15 kathas

land was to be developed and the plea of Respondent No.2 to the contrary is hit by Section 92 of Indian Evidence Act.

19. He further submitted that Respondent No.2 has put stress on observations of Hon'ble Supreme Court in its judgment delivered in Faqir Gandhi Gulati Vs Uppal Agencies Pvt Ltd & Anr. Hon'ble Supreme Court in the said judgment considered inter-se relation of land owner and developer by reference of provisions of Consumer Protection Act and held that land owner, entitled to get share in developed project, is also an "allottee" and "consumer" under the provisions of Consumer Protection Act. Moreover, the said ruling also provides that land owner of development agreement has rights available to an allottee of developed project and thus he cannot assert title or exclusive possession over any portion of common area of project. Thus, in view of the admitted facts Respondent No.2 is also "Promoter" in view of Section 2(zk)(i) of RERA Act 2016.

20. He further submitted that the plea of Respondent No.2 that there was intention since beginning that about 4 kathas land shall not be developed in spite of registered agreement amounts to pleading fraud with intended purchasers and municipal corporation. Surprisingly Respondent No.2 who has himself encroached major portion of common area has pleaded equity on false ground. Both the respondents in collusion with each other, have made encroachment in common area.

21. He further submitted that the builder has constructed four illegal flats on the roof of the apartment and thereby deprived the flat owners from half of the common roof area. He has also encroached the fire

escape stairs and has included it in one of the illegal flat constructed at the roof. The common area below fire escape stair at ground floor has been converted into a Reception of a restaurant and an additional door of a shop has been opened in this common area.

22. The Respondent No.2 filed rejoinder to reply of show cause filed on behalf of the complainant. He has submitted that the complainants have kept this Court in dark and have deliberately not brought on record the copy of the complaint filed before PMC but at the same time have brought on record its inspection report. The same has been done only on the pretext of hiding their connivance with the complainants before the PMC. Thus an attempt of forum shopping/bench hunting has been made by the instant complainants to obtain favourable order by way of initiating parallel proceedings which is forbidden by law as well as RERA Act.

23. He has further submitted that it would be apparent that the instant complaint is reiteration/plagiarized form of the complaint before PMC, which was initiated much prior to the complaint made before this Hon'ble Court. Thus, the same speaks volumes of mala fide intention of the instant complainants before this forum, who in connivance of the complainants before PMC are trying to run a parallel proceedings in a venture of forum shopping/bench hunting which is forbidden by law/ RERA Act as well as by a judgment of Hon'ble Supreme Court in the case of Kamini Jaiswal Vs Union of India reported as (2018)1SCC156 and in the case of Udyami Evam Khadi Gramodyog Welfare Sanstha Vs State of UP reported as (2008)1SSC560. He has further submitted that since PMC is already seized of the same issue as brought about

by the complainants herein and for this case, the answering Respondent is facing two cases on the same issue, it is in interest of justice that the instant case before this Hon'ble Court may be dismissed on this ground itself as the complainants could implead themselves as party in the vigilance case which was instituted before PMC much prior to the complaint filed before this Hon'ble Court. The practice of running parallel proceedings has been held to be bad in law by various judgments of the Hon'ble Supreme Court as the same may render to bring different conclusions on the same issue by different forums.

24. He further submitted that completing the project/society is the duty of Respondent No.1 but since the Respondent No.2 denied to succumb to the illegitimate settlement demands of Rs 5/10 crores made by Complainant No.1, the complainant is targeting the Respondent No.2 who has no duty whatsoever to complete the construction of the society. The Respondent no.1 in utter disregard to this forum is not even appearing in the hearing in the instant case and making the Respondent No.2 a scapegoat for the sole reason of extracting money. Respondent No.2 owns many more flats in the society and thus would be much more aggrieved by any discrepancy in the society but the agenda of the complainant is solely to harass the Respondent No.2 to extort money and his property and forgo other illegalities of the society committed by various allottees. The complainant Mr Om Prakash has himself encroached the common area by extending the boundary of his flat and making the said common area as part of his Flat No.306.

25. Respondent No.2 further submitted that there are various third party rights which have been created in the hotel property in dispute which include private persons as well as many eminent companies whose rights are also attracted with the said property and thus they are necessary party. Respondent No.1 in his show cause has also confirmed that the old structure belongs to Respondent No.2 and he has no title over the same.

Hearing:

26. Hearings were held on 12/02/2019, 13/03/2019, 09/04/2019, 06/05/2019, 08/07/2019, 20/08/2019, 20/12/2019, 06/02/2020, 20/02/2020, 10/09/2020, 25/09/2020, 14/10/2020, 21.01.2021 and 03.02.2021.

27. On the first date of hearing, the respondent No-1 submitted their response when they were asked to furnish the revised map and video of the entire complex on the next date. The complainants also submitted a supplementary petition.

28. On 13/03/2019 it was found from the Inspection Report of the PMC filed along with supplementary petition of the complainants that the project is incomplete and no completion (CC)/occupancy certificate (OC) has been issued by the competent authority. Thus it is clear that the project "Swaroop Smiriti Vihar" was an ongoing project as on 01/05/2017 and required to be registered with the Authority.

29. In course of hearing, Mr Qamar Hasnain, Director of the respondent company submitted a No objection Certificate (NOC) dated 11.03.2019 issued by the Fire Officer, Kankarbagh, Patna. He was

directed to submit all the outstanding records/documents/visuals of the entire complex within a fortnight. The respondent no.2 i.e. the landowner was directed to submit his observation on the complaint petition.

30. On 09/04/2019 respondent no.2 submitted his response, a copy of which was handed over to the learned counsel of the complainant who sought time to reply. On 06/05/2019 supplementary petitions were filed on behalf of the complainant and respondent no.2. The Bench directed both the parties to file their agreed petition for making reference to the PMC and Fire Office. Learned counsel for respondent no.2 filed his rejoinder to the supplementary petition of the complainant in course of hearing.

31. On 10/09/2020 the Bench directed that the respondent should inform the Bench about the present status of the case against the respondent company related to the Vigilance Case with PMC on the next date.

32. On 25/09/2020 learned counsel of respondent no.1 while admitting that the allottees were facing difficulties, submitted that the promoter has no objection to demolition of the old structure, if the Bench so desires. Learned counsel of the promoter/builder was directed to submit an affidavit with regard to his statement regarding willingness to demolish the old structure. He was further directed to state on affidavit that while approving the building map for the project, the competent authority had taken the area of old building into consideration while determining the FAR of the project.

33. On 14/10/2020 learned counsel of the complainants submitted that though the complainant got his flat registered on 02/03/2017 before commencement of the RERA Act, the project has not yet been completed as per sanctioned plan and therefore, the Authority has a major role to play under Section 14 of the Act to ensure that the project is completed as per sanctioned plan to safeguard the interest of the buyers by demolition of the old existing structure.

34. The Bench however, felt that under the provisions of the Section 17 of the RERA Act, the registration of the apartment/common areas was required to be done only after completion of the project and issue of Completion Certificate (CC)/Occupancy Certificate(OC) by the competent authority. The Bench held that it was the responsibility of the PMC to approve the building plan, monitor the construction of the building and issue of CC/OC after the project is completed as per sanctioned plan. The Bench directed the respondent to file affidavit and to obtain completion certificate from PMC.

Issues for Consideration :

35. There are following issues for consideration before the Bench. : -

1. Whether the project “Swaroop Smriti Vihar” was an ongoing project as on 1.5.2017, the date on which all provisions of the Real Estate (Regulation and Development) Act 2016 came into operation;
2. Whether the promoter is mandated under section 14 of the Real Estate (Regulation and Development) Act 2016 to develop and complete the project as per the sanctioned plan, layout plans and specifications as approved by the competent authorities;

3. Whether the Promoter and land owner are free to unilaterally alter the sanctioned plan and provisions of the Development agreement after the promoter has created third party interests in the project by making bookings of the flats and taking advances from the allottees;
4. Whether the deviations made in the sanctioned plan as regards to set backs, changes made in stairs/ balconies, unauthorized constructions on 7th floor, use of residential apartment as hotel etc are required to be looked into by the PMC under the provisions of Bihar Municipal Act 2007 and take appropriate remedial action under the law;
5. Whether the promoter was bound to share the additional flats, if any, constructed within permissible deviations allowed by the municipal authority, beyond the numbers of flats proposed in the development agreement with the land owners based on formula agreed to in the Development agreement.

36. As regards the first issue, the complainant has claimed that the Project S S Vihar has not yet been completed as per sanctioned plan and the registered development agreement executed between developer and land owner. The CC/OC of the Project has not yet been obtained and handed over to the allottees. Though the Respondent No-1 claimed that many flats were completed and registration of the conveyance deeds done prior to 1.5.2017, they have conceded that they have not completed the project as per sanctioned plan on 15 kathas of land till date. Even Respondent No-2 has admitted that the development agreement was executed for 15 kathas of land and the

project was constructed on 11 kathas only. Therefore, it is established beyond doubt that the project S S Vihar was an ongoing project, keeping in view the sanctioned plan approved by the competent authority, as on 1.5.2017, the date on which the provisions of Real Estate (Regulation and Development) Act 2016 came into operation. Thus, the Promoter is required to register their ongoing project S S Vihar with the Authority as required under Section 3 of the Act.

37. So far as 2nd issue is concerned, Section 14 of the RERA Act 2016 states as under :

14. (1) The proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities.

*(2) Notwithstanding anything contained in any law, contract or agreement, after the sanctioned plans, layout plans and specifications and the nature of the fixtures, fittings, amenities and common areas, of the apartment, plot or building, as the case may be, as approved by the competent authority, **are disclosed or furnished to the person who agree to take one or more of the said apartment, plot or building, as the case may be, the promoter shall not make— (i) any additions and alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, as the case may be, which are agreed to be taken, without the previous consent of that person:***

Provided that the promoter may make such minor additions or alterations as may be required by the allottee, or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by an authorised Architect or Engineer after proper declaration and intimation to the allottee.

Explanation.—For the purpose of this clause, "minor additions or alterations" excludes structural change including an addition to the area or change in height, or the removal of part of a building, or any change to the structure, such as the construction or removal or cutting into of any

wall or a part of a wall, partition, column, beam, joist, floor including a mezzanine floor or other support, or a change to or closing of any required means of access ingress or egress or a change to the fixtures or equipment, etc.

(ii) any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building.

Explanation.—For the purpose of this clause, the allottees, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, etc., by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only

38. Thus it is held that the promoter is duty-bound and mandated under section 14 of the Real Estate (Regulation and Development) Act 2016 to develop and complete the project as per the sanctioned plan, layout plans and specifications as approved by the competent authorities and if they intend to make any major change in the sanctioned plan, it could be done only with the previous written consent of at least two-thirds of the allottees.

39. As regards third issue, the promoter in his response to the complainant's petition has admitted that building has been constructed on the basis of registered development agreement Deed No-29192 dated 18.02.2010 executed between the promoter and land owner over 15 kathas of land under Mauza- Mohammadpur (Municipal Plot No 410 & 411). They have further admitted that the certified architect had sanctioned plan vide Plan Case No P/ Mohammadpur/PCN-7-2010 dated 26.03.2010 for the Project S S Vihar on 15 kathas of plot

of land but they have constructed the project on 11 kathas of land only as they claimed that it was their prerogative and they were not bound to construct the building over the total plot of land. They claimed that the land-owner also had no objection on this issue. They further asked the complainant to contact the land-owner for removal of the old structure from the remaining plot of land as it belonged to the land-owner and developer can not interfere with the title of the land.

40. The Land-owner in his response also claimed that remaining five katha of land was owned by him and he produced a will of the owner to show that this land was willed separately to his son. The Land owner however didn't dispute the registered development agreement executed between the promoter and the land owner for development of multi-storied building over 15 kathas of land and sanctioned plan approved by the Certified Architect on 15 katha of land.

41. It would be evident from the claims made by the complainants that the Promoter had done the bookings for the flats in 2010 based on the registered development agreement and sanctioned plan – both of them had indicated the development of the project on 15 kathas of land. Thus it is apparent that development of the project on 10 kathas of land instead of 15 kathas of land for which registered development agreement had been executed and approval of the plan had also been taken, was an after thought and a later development. As per Section 14 (2) (ii) of the Act, such major alteration in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project **was not permitted** without the previous written consent of at least two-thirds of the allottees, other than the promoter,

who have agreed to take apartments in such building. It is therefore, held that the alteration in the sanctioned plan by the promoter in apparent collusion with landowner, after third parties interest had been created in form of booking of the flats in favour of allottees was illegal and in contravention of the Section 14 (2) (ii) of the Act.

42. In so far as 4th issue is concerned, the Complainants have alleged that the deviations have been made in the sanctioned plan as regards to set backs, changes have been made in stairs/ balconies, unauthorized constructions on 7th floor, use of one residential apartment as hotel etc. They have stated that an inspection team of vigilance wing of the Patna Municipal Corporation had inspected the project site and submitted a report indicating the violations of Bihar Building Byelaws and the provisions of Bihar Municipal Act 2007. They have informed that the vigilance case against the project /promoter is still pending. Learned counsel of the Land owner /Respondent No-2 has also submitted that the said inspection was done by the PMC without informing the land owners and thus principle of natural justice has been violated. He stated that he had since filed a petition before the concerned authority of the PMC. He further informed that he had filed a writ petition before the Hon'ble Patna High Court and Hon'ble Court has since directed the PMC to examine the petition of the Respondent No-2 before finalizing their report. The Respondent No-2 has also alleged that the complainants have not come with clean hand before the Authority as a few of their colleagues have filed similar case before the PMC, well before filing their case before the RERA. He alleged that the complainants are therefore

indulging in forum shopping which is prima-facie illegal, as decided in the case of Kamini Jaiswal Vs Union of India reported as (2018)1SCC156 and in the case of Udyami Evam Khadi Gramodyog Welfare Sanstha Vs State of UP reported as (2008)1SSC56.by Hon'ble Supreme Court. He claimed that as the same issue was pending before PMC, the Authority has been misled into admitting the case. He requested that the case be dismissed by the Bench.

43. There is substance in the submission made by the respondent No-2. The PMC is the final plan sanctioning authority of any project in the Patna Municipal area and mandated with the monitoring of the construction of the building/project until completion of the project and also issues CC/OC of the projects. Since there is a vigilance case already pending in the PMC, it is imperative that the complainants should wait till submission of the report.

44. Last but not the least important is the fifth issue i.e. share distribution between land owner and developer. The Registered development agreement executed between the promoter and land owner envisaged that the land owner would get 50 % share + 1 flat from the total flat constructed in the project, Learned counsel of the Respondent No-2 has submitted that the number of flats in the project has increased from 51 to 60 due to construction made in 6th& 7th floor. However, the land owner has been given only 26 flats. He requested that the share of the land-owner should be increased to 31. It is however not evident whether construction of the additional flats has been permitted/regularized by the PMC. If the construction of additional flats is permitted by the PMC under the law, the claim of the

Respondent No -2 would be justified. In the eventuality of regularization of construction of additional flats by the PMC, the promoter should increase the share of the land-owner on proportionate basis to 50 % +1 of the total constructed flats.

Order

45 In view of the fact stated above, the Bench orders that

1. The Project Swaroop Smriti Vihar was an on-going project as on 1.5.2017, the date on which the provisions of the RERA Act 2016 came into operation. The Promoter is therefore directed to apply for registration of their ongoing project S S Vihar with the Authority within thirty days of issue of this order, failing which the Authority may initiate proceedings under Section 59 of the Act.
2. The promoter is directed to complete the project as per sanctioned plan approved by the competent authority within 90 days, after demolishing the old structure within thirty days of issue of this order. If the promoter fails to complete the project within 120 days from issue of this order, the promoter/land-owners will be restrained from registering any flats/shops in favour of any allottees and all rents of flats/shops and usufructs of the land /unsold flats will be deposited in the Authority until further orders.
3. The Patna Municipal Corporation (PMC) is directed to complete their vigilance investigation and submit their vigilance report within three months and take necessary action in pursuance thereto within three months of issue of the report.

4. The Promoter is directed to hand over the share of the land-owners on proportionate basis, as per formula stipulated in the registered development agreement executed between land owner and the developer, if the construction of additional flats is approved/regularized by the competent authority under the law.

Date : 29.04.2021

**Sd/-
R.B. Sinha
Member**