

REAL ESTATE REGULATORY AUTHORITY, BIHAR
Before the Bench of Mr. Ved Prakash, Senior Legal
Consultant

Exe. Case No - 14/2021

RERA/CC/181/2019

Mr. Shambhu Prasad Jaiswal**Executant(s)**

Vs.

M/s Star India Construction Pvt. Ltd.**Respondent**

PROJECT : Uma Regency

For the complainant : **In person**
For the respondent : **Md. Imtiyaz (Advocate)**

28.02.2023

ORDER

The respondent company has filed a petition mentioning therein that the execution petition is not maintainable as the non applicant has filed the present execution case before the Authority, as he is not an allottee to the project, rather his wife is the allottee under section 18 of the RERA Act, 2016. Learned counsel for the respondent submits that the project was completed prior to the enforcement of RERA Act i.e. 01.05.2017, so the complaint case no. RERA/CC/181/2019 should not have been entertained. He further submits that though the completion certificate is not necessarily required to be filed in each and every case, as has been held by the Hon'ble Patna High Court in CWJC No. 24376/2013 dated 11.12.2013. However, the completion certificate was issued by the Engineer, Shri Shailesh Ranjan on 15.03.2017, which has been filed on record. He further submits that the compensation petition should not have been entertained and allowed by the Authority as it is in the jurisdiction of Adjudicating Officer, which also finds support from the ruling of appeal no. 104 to 107 and 112 of 2019 passed by the Hon'ble

Appellate Tribunal of Maharashtra. He further submits that since the order passed by the authority dated 24.12.2020 in RERA/CC/181/2019 is beyond the jurisdiction of the Authority, so this Bench should not execute the said order, and his contention also finds support from the decision of Full Bench of Hon'ble Patna High Court passed in A.F.A.O No. 353/1961 dated 03.05.1965. He further submits that the respondent has become double sufferer in the present case, hence he is victim of double jeopardy under Article 20 (2) of the Constitution of India. He further submits that the Authority cannot grant compensation which is under the jurisdiction of Adjudicating Officer under section 71 of RERA Act. So, the present execution case arising out of order passed in RERA/CC/181/2019 dated 24.12.2020 is not executable as the actual complainant has already filed a separate case for compensation before the Adjudicating Officer, RERA, Bihar. He further submits that the execution case, being not maintainable, has to be dismissed.

2. On the other hand, the present executant, Shri Shabhu Prasad Jaiswal, the husband of the actual allottee objected to the petition of the respondent and submits that the respondent has already preferred an appeal before the Hon'ble Appellate Tribunal vide REAT Appeal No. 22/2021, which was dismissed on 08.04.2022 with remarks that the promoter has not removed the defects in the Flats. He further submits that the respondent has failed to comply the order dated 24.12.2020 passed by the Authority and did not remove the final defects of the Flat. He further submits that the respondent has neither filed the completion certificate with respect to the project nor paid the

interest amount accrued on the principal amount. So, the petition of the respondent may be dismissed and the order dated 24.12.2020 passed by the Authority may be executed, and the respondent may be directed to pay interest accrued on the principal amount.

3. In the light of petition of the respondent and submissions put forth by both the parties, the following points are formulated to adjudicate in the matter;

- (i) Whether the project, 'Uma Regency' was completed on or before the enforcement of RERA Act on 01.05.2017?
- (ii) Whether the present execution case is maintainable against the respondent?
- (iii) Whether the order dated 24.12.2020 passed by the Authority in RERA/CC/181/2019 is executable?
- (iv) Whether the respondent is liable to pay interest accrued on the principal amount, as per order, to the complainant/executant for delay in making delivery of possession?

Point no. (i)

4. The respondent has claimed that the project was completed prior to the enforcement of RERA Act on 01.05.2017 and in support thereof, the respondent has filed photo copy of Form -12 (certification of completion under bye-law 15 of Bihar Building Bye-laws 2014) issued by empanelled Engineer, Shri Shailesh Ranjan, wherein he has

mentioned that he has supervised the project, 'Uma Regency' which has been completed on dated 15.03.2017, as per the sanctioned plan. But it is a simple notice by the empanelled Engineer, and it is not a completion certificate issued by the competent Authority as bye-law 15 of Bihar Building Bye-laws, 2014, in which the competent authority shall permit an Architect/Engineer, who shall certify completion of building for residential building designated by self or otherwise on a plot size referred to in Bye-laws 8(6). It is also mandatorily required that a team of officials shall visit at the site within 15 days, and if there is no deviation, the occupancy certificate shall be given, and the team will also verify the number of floors, building height etc as mentioned in bye-law 15. In this way, the completion certificate issued by the Engineer is not in consonance with bye-law 15 of Bihar Building Bye-laws, 2014.

5. On the other hand, learned counsel has emphasised that there is no need for completion certificate in each and every building, for which he has cited the order dated 11.12.2013 of the Hon'ble Patna High Court in CWJC No. 24376/2013. The Hon'ble Supreme Court recently, in civil appeal no. 3343/2020 (Debashish Sinha and Others vs. M/s R.N.R. Enterprises and Others), has held that the possession should not have been taken without the completion certificate. However, this was not a valid ground not to direct the respondent to apply for and obtain a completion certificate as required by Bye-laws. Hence, in all the cases, prior to or after the delivery of possession,

completion certificate has to be obtained by the promoter and it should have been handed over to the allottees. Hence, the submission of learned counsel for the respondent is not tenable in the eye of law. On the other hand, the para 9 of the order dated 24.12.2020 passed by the Authority in RERA/CC/181/2019 shows that the possession of Flat has been taken by the allottee in May, 2017 after due physical verification and registration of the conveyance deed of the Flat has also been done in March, 2018. So, it is clear from the factual as well as legal point of view that the project was incomplete at the time of enforcement of RERA Act on 01.05.2017. Hence, the project, 'Uma Regency' has been treated as an ongoing, and that is why the Hon'ble Members of the Authority has entertained the complaint case of the complainant. In this view of the matter, the point no. (I) is decided in negative and against the respondent.

point no (ii)

6. The respondent has strongly raised an objection that since the complaint petition is filed by Shri Shambhu Prasad Jaiswal, husband of the actual allottee, this case is not maintainable as he has no general or special power of attorney from the actual allottee. Such point was also raised by the respondent before the Authority during the pendency of the complaint case no. RERA/CC/181/2019, but the Members of the Hon'ble Authority have not decided this point and passed the order against the respondent. Learned counsel further submits that the actual allottee has already filed a separate

complaint case before the Adjudicating Officer, RERA for compensation, so also, this execution case is not maintainable. He further submits that the Authority has no power to pass the order on compensation as has been decided by the Hon'ble Supreme Court in M/s New Tech Promoters and developers Pvt. Ltd. vs. State of U.P. He further submits that this Bench is not bound to execute the order passed by the Authority on 24.12.2020 in RERA/CC/181/2019, as the said order has been passed for compensation, which is beyond the jurisdiction. The Hon'ble Patna High Court, in A.F.A.O no. 353/1961 passed on 03.05.1965, has held that the executing court should have held that the decree and sale were void, hence not executable. Hence the execution petition on the present ground is also not maintainable.

7. On the other hand, the complainant/executant submits that the actual allottee is his wife, and she is residing with him, and he has filed the present execution case with her consent, and the amount of interest shall be paid to her and not to him. He further submits that his wife has filed a complaint case before the Adjudicating Officer, RERA, Bihar for compensation as the respondent has mentally and physically harassed his wife as well as the whole family, and due to inferior quality of works, they have suffered a lot. Hence, the execution case is maintainable, and the interest for delay in delivery of Flat may be paid by the respondent.

8. The present execution case has been filed due to non-compliance of order dated 24.12.2020 passed in

RERA/CC/181/2019 by Hon'ble Members of the Hon'ble Authority wherein they have directed the respondent company to pay interest at the rate of 6% p.a on deposits made by the allottee till 30th June, 2015 for a period of six months within 60 days of the issue of the order. The Hon'ble Members of the Authority has passed this order for payment of interest by the respondent to the complainant due to delay in delivery of possession of Flat. The Hon'ble Supreme Court, in the above cited judgment of M/s New Tech, has very well held that the payment of interest for delay in delivery of possession or penalty and interest thereon, it is the regulatory authority to examine and determine the outcome of the complaint. At the same time, when it comes to question of seeking relief of adjudging compensation and interest thereon under section 12, 14, 18 and 19, the Adjudicating Officer has exclusive power to determine. Hence, the submission of learned counsel for respondent appears legally not sound, as the ruling of the Hon'ble Supreme Court does not support his contention, as it is a case for payment of interest on the principal amount for delay in delivery of possession of Flat and not for compensation, as claimed by him. It is further to be added that the order of the Hon'ble Members of the Authority are within the purview of the law, and the Authority has power to decide payment of interest to the allottee by the promoter for delay in delivery of possession and as such, the ruling cited by learned counsel for respondent passed by the Hon'ble Patna High Court in the case of A.F.A.O no. 353/1961 dated 03.05.1961, (Awadh Bihari Tiwari and others vs. Sudarshan Rai and Ors) is not applicable in the present case.

9. Admittedly, the respondent has put forth his point before the Hon'ble Members of the Authority that the complaint case no. RERA/CC/181/2019 was not filed by the actual allottee, rather by Shri Shailendra Pd. Jaiswal, who is the husband of the actual allottee. Non-discussion of this point by the Hon'ble Members of the Authority shows that they were convinced that Shri Shambhu Prasad Jaiswal is also beneficiary, and residing along with the actual allottee, and he has filed the complaint as well as execution case with consent and for the benefit of the actual allottee, i.e his wife. The implied consent of actual allottee to her husband makes filing of complaint case a legal one as at last the benefit will go to her by way of interest due to delay in delivery of Flat. Hence, the present execution case is maintainable and point no. (ii) is decided in positive and against the respondent.

Point no. (iii) & (iv)

10. The execution means the process for enforcing or giving effect to the judgment of the court. The implementation of fruits of litigation is known as execution. The decree will come into existence where civil litigation is ended with judgment. The executing court cannot travel beyond the order or decree under execution, it gets its jurisdiction only to execute the order in accordance with procedures laid down under order 21 of CPC. The Hon'ble Supreme Court, in Rameshwar Das Gupta vs. State of U.P and Others (1996) 5 SCC 728, has held that *"it is well settled that the executing court cannot travel beyond the order or outcome under execution"*. The executing court cannot question the validity of

decree. It has to take the decree as it stands and has to execute it according to its terms. However, there are three type of cases where the executing court can go behind the decree, and they are as under:-

- (i) where the decree is a nullity;
- (ii) where the decree is ambiguous;
- (iii) where the decree has been made by a court without jurisdiction.

11. The order dated 24.12.2020 passed by the Hon'ble Member of the Authority in RERA/CC/181/2019 is confined to the direction upon the respondent company to pay interest at the rate of 6 % p.a on the deposits made by the allottee till 30.06.2015 for a period of six months within 60 days of issue of the order. The copies of payment receipts filed by the executant shows that the allottee, Mrs. Ragini Jaiswal, wife of the complainant, Shri Shambhu Prasad Jaiswal has paid Rs. 2,00,000/- on 20.03.2013, Rs. 3,10,458/- on 20.03.2013, Rs. 3,20,042/- on 25.03.2013, Rs. 25,662/- on 04.02.2014, Rs. 2,00,000/- on 25.03.2014, Rs.1,00,000/- on 30.09.2014, and Rs. 10,00,000/- through loan from the SBI, Patna on 25.02.2015, totalling to Rs. 21,56,162/-, and as per direction of the Hon'ble Members of the Authority, the respondent has to pay interest at the rate of 6 per cent p.a on the deposits made by the allottee till 30.06.2015 for a period of six month. The deposits by the allottee, Ragini Jaiswal was naturally before the 30th June, 2015. So, the interest has to be calculated on the total amount of Rs.

21,56,162/-. On calculation, the accrued interest on the principal amount of Rs. 21,56,162/- comes to Rs. 64,685/- for six months. In view of the order passed by the Authority as well as submission of the parties, it is clear that the order of the Hon'ble Members of the Authority is neither a nullity nor ambiguous nor without jurisdiction, rather it is well within jurisdiction and clear in all respect, hence it is executable in the eye of law, and the respondent has to pay the total interest amount to the tune of Rs. 64,685/- on the above principal amount of Rs. 21,56,162/- . Accordingly, the issue nos. (iii) and (iv) are decided in positive in favour of the complainant/ executant and against the respondent.

12. On the basis of order dated 24.12.2020 and documents filed by the parties as well as submissions thereof, it is established that there is no substance in the petition of the respondent, and hence, it is rejected, and the respondent has to pay interest of Rs. 64,685/- for delay in delivery of possession of the Flat to the allottee, as per order of the Hon'ble Authority passed on 24.12.2020 in RERA/CC/181/2018. Therefore, the respondent is directed to pay Rs. 64,685/- by way of interest to the allottee, Mrs. Ragini Jaiswal within 15 days, failing which coercive step will be taken against him.

Put up on 17.03.2023 for further hearing.

Sd/-

(Ved Prakash)
Senior Legal Consultant
RERA, Bihar