

REAL ESTATE REGULATORY AUTHORITY, BIHAR

2nd Floor, BSNL Telephone Exchange Bldg, Patel Nagar, Patna-800 023

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

Complaint Case No.: CC/326/2019

Shamimul Haque.....Complainant

Vs.

M/s Ramadan Construction Pvt. Ltd.....Respondent

Present: For Complainant: Kumar Chandra Shekhar, Advocate

For Respondent: Punit Kumar, Advocate

31/08/2021

O R D E R

1. Shamimul Haque, S/o Mumtazul Haque, resident of Nohsa, Phulwari Sharif, Patna has filed a complaint petition on 2nd April 2019 against M/s Ramadan Construction Pvt. Ltd. through their partner MD.SAHIL RIZWI under section 31 of Real Estate (Regulation and Development) Act 2016 for stoppage of the construction work of the project of the respondent company on the disputed land.
2. The complainant, Shamimul Haque, has submitted complaint petition along with copy of Judgement and decree of civil suit no. 94 of 1932.

FACTS OF THE CASE

3. In his complaint petition, the Complainant has stated that a land of Tauzi No. 5260/15329, Khata No. 48, C.S. Plot no. 748, Area 12.75 Decimal out of total area 17 decimal land situated at Thana No. 38, at Mauza- Nohsa, P.S. Phulwari Sharif, District Patna along with other land was the ancestral property of the complainant acquired by Sheikh Zainul Haque and others, the forefather and ancestor of the complainant by the judgement and decree of Title Suit No. 94 of 1932 passed by the learned court of Munsif- III, Patna on 15/03/1933. He further stated that the title suit no. 482/2006 was going on in

the court of Sub Judge XVII, Patna and case no. 7 of 2017 was also going in the Court of D.C.L.R in respect of the land of Khata No. 48, C.S. Plot no. 748, and area 17 decimal.

4. The complainant claimed that he was the absolute owner of the said land and did not execute any deed or deeds in favour of the respondent company. During the pendency of the aforesaid case, the respondent company has illegally built 6 storied (Manzila) building by violating the sanctioned plan and they have not left the requisite set back over the land of Khata no. 48, C.S. plot no. 748, area 12.75 decimal land. The respondent company also did not seek permission from the Air Port Authority and Fire NoC from the competent Authority regarding the same and hence the said structure was liable to be demolished.
5. The complainant prayed for inquiry about the violation and contravention of the provisions of the RERA Act. The complainant further prays to restrain the work of construction over the land of Khata no. 48, C.S. plot no. 748, area 12.75 decimal land.
6. In pursuance to the receipt of Complaint petition, a notice was issued by the Authority to the respondent company to furnish their reply within a fortnight.

RESPONSE OF THE RESPONDENT

7. In their response, the respondent company stated that complaint application was completely vague and malicious statements have been made against the promoter, which are incorrect. The Respondent Company claimed that the project was to be developed on the total area of 17 decimal situated at thana no. 38, khata no. 48, survey plot no. 748, tauzi no. 5260 against which the development agreement dated 30/07/2013 was executed between the landowner namely Md. Shariful Haque, Ishrat Jahan wife of Late Sharfuddin and Zubaida Khatoon wife of Late Israil after verifying all the documents related to land. Later on, the balance 4.25 decimal of land was situated at thana no. 38, khata no. 48, survey plot no. 748, tauzi no. 5260 against which the development agreement dated 18/09/2013 was made between the other landowner namely Ashraf Alam s/o late Shaiful Haque and the respondent company.

8. They claimed that the statement made by the complainant regarding illegal construction was completely wrong and without any iota of truth. He claimed that without sanction of a plan by the competent authority, there can be no construction of a multi-storeyed building and in respect of the present construction, all the statutory approvals have been granted by the competent authorities and also the project has been approved by Bihar Real Estate Regulation Authority for which a xerox of the approved application was also annexed.
9. The Respondent Company submitted that Ramadan Construction transferred the development of the project to the present developer M/s Limra Developers through an agreement on 06/07/2015. Accordingly, the new promoter was currently developing the project. As per agreement dated 06/07/2015 it is clearly mentioned in *para 6* that the first party assigned the development work of the said land by constructing multi-storeyed building to the second party by the consent of the landowners. In *para 9* it is mentioned that second party i.e. M/s Limra Developers represented by its partners shall be duly authorized to deal with all the monetary transactions. In *para 22* it is mentioned that all the terms and conditions laid down in two registered Development Agreement i.e. first development agreement dated 30.07.2013 and second development agreement dated 18.09.2013, both registered at Patna Registry Office duly executed by the landowners and the present developer/second party M/s Limra Developers will be entitled to perform everything under section 05 clause 1 of the Bihar Apartment Ownership Act 2006. In *para 23* it is mentioned that the Ramadan Construction has no right to enter into any agreement with any other company/partners after execution of deed of assignment for which a photocopy of the agreement has been annexed.
10. The Respondent stated that the claim of the petitioner was unjust, improper, incorrect and not sustainable in the eye of law and fit to be rejected with heavy cost.

HEARING

Hearings were held on 19/10/2019; 19/12/2019; 22/01/2020; 24/02/2020; 28/02/2020 and 02/02/2021.

11. On the first date of hearing, no one appeared on behalf of both the parties. On 19/12/2019, complainant was present in person and no one turned up on behalf of the respondent and the Bench directed to issue notice to the Director of the respondent company for his personal appearance. In pursuance of order dated 19/12/2019, a notice was issued to the Director of respondent company for appearance before the Bench. On 24/02/2020, respondent counsel, Mr. Punit Kumar, prayed for time to file reply. Reply was filed by respondent counsel on behalf of the respondent on 28/02/2020.
12. On 28/02/2020, complainant sought time to file his counter reply. Since the case was next listed on 31/03/2020 but due to outbreak of Covid-19 and National Lockdown, the case was next put up on 02/02/2021.
13. On 02/02/2021, Kumar Chandra Shekhar, complainant counsel was present and prayed for one month more time to file his submission. However the respondent counsel argued that the case is fit to be dismissed. The Bench observed that the case was not maintainable under RERA and RERA is only for promoter/allottees/agents and the complainant is neither of these. The Bench further directs both the parties to file their final written brief of submission by 28th February 2021 positively.
14. On 26/02/2021, a withdrawal petition was filed on behalf of the complainant stating that the complainant has filed the title suit no. 261/2020 in the court of Sub Judge- 1st Patna against the respondent opposite party and others. The court has passed the order of injunction directing the parties of the suit to maintain the status quo. It was further mentioned that the complaint filed on 03/04/2019 was not covered under the provision of the RERA.
15. The complainant further prayed and sought permission to withdraw the case.

ORDER

16. The Bench allowed the complainant to withdraw the petition. Accordingly, the case is disposed off. No Cost is allowed.

Sd/-
R.B. SINHA
(Member)