

**REAL ESTATE REGULATORY AUTHORITY, BIHAR**

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

**Case No.CC/374/2019**

**Sanjay Kumar.....Complainant**

**Vs**

**M/s A& A Engicon Pvt Ltd & Anr.....Respondent**

**Present: For Complainant: Mr Arbind Kumar, Advocate**

**For Respondent : Mr Jairam Singh, Advocate**

**Mr Karandeep Kumar, Advocate**

**03/09/2021**

**O R D E R**

1. Mr Sanjay Kumar S/o Late Girish Singh, a resident of Bhikhana Pahari, Bankipur, Pirbahore, Patna-800004 has filed a complaint petition on 10/05/2019 against M/s A & A Engicon Pvt Ltd through their Director Mr Asif Ghafoor and Mr Dhramveer Prasad Singh S/o Late Naresh Chandra Singh before the Adjudicating officer of the Real Estate Regulatory Authority, Bihar under the section 7 read with section 31 of the Real Estate (Regulation and Development) Act 2016 requesting therein for revocation of the RERA Registration number, to direct the developer to produce proof of the ownership of land from the landowner and to stop any construction/development work on their project " Saffron Garden Apartment" situated at Mouza-Shahzadpur, South of Sainik Colony, Danapur, Patna.

### **Case of the Complainants :**

2. In his complaint petition, the complainant has stated that his late father Girish Singh had purchased 1.63 acre of land in survey plot No.1077 along with other properties from Late Ram Charitra Singh, maternal grandfather of Mr Dhramveer Prasad Singh, the respondent no -2, through registered sale deed dated 11.12.1971/ 13.12.1971. He further claimed that the respondent No-2 knowing all the facts, had executed a registered development agreement dated 25/08/2011 in favour of Respondent No-1 i.e. the developer with respect to Survey Plot No.1077. He claimed that the said Respondent No-2 had no right and title to enter into the registered development agreement with the promoter M/s A & A Engicon Pvt Ltd. He further claimed that the developer/promoter M/s A & A Engicon Pvt Ltd had tried to obtain the RERA registration number based on the said illegal development agreement. He claimed that he had sent a registered legal notice to Respondent party no.2 on 30/03/2019 and registered notice to Respondent No-1 on 02/04/2019 requesting them to stop the illegal construction on his land through unfair practice and irregularities in collusion with each other. He had also informed them that both respondents had put the petitioner in irreparable loss and involved in unwarranted litigations with the allottees of the flats.
3. The complainant has requested the Authority to adjudicate in the matter and direct the opposite party to prove their title over the disputed land and to direct the Respondent No-1 to stop the

construction work and to revoke the RERA registration for the aforesaid project.

4. In pursuance to the receipt of the complaint petition, the Adjudicating officer of the Authority issued a notice under various sections of the Real Estate (Regulation & Development) Act 2016 and Rule 36 of the Real Estate (Regulation & Development) Rules 2017 to the respondent company M/s A & A Engicon Pvt Ltd through their Director Mr Asif Ghafoor & Respondent No-2 Mr DhramveerPrasad Singh to submit reply/response.
5. The Case was heard by the Adjudicating officer of the Real Estate Regulatory Authority during June – August 2019. In August 2019, the Adjudicating officer felt that as the complainant has filed the case under section 7 read with the section 31 of the Real Estate (Regulation and Development) Act against the Respondent Company with a request for relief of revocation of the registration of the project with RERA and such relief in his opinion, was out of jurisdiction of his court, he requested the Hon'ble Chairman to transfer the case to the Bench of the Authority. Accordingly, the Hon'ble Chairman transferred the case to the Bench of the Authority in August 2019.

### **Hearing**

6. Hearings were held on 30.08.2019, 23.12.2019, 01.02.2020, 19.02.2020, 21.09.2020, 06.11.2020, 02.02.2021 and 23.02.2021. In course of hearing, the complainant was represented by Mr Arbind Kumar Advocate, Respondent No-1 was represented by Mr

Jairam Singh Advocate and Respondent No-2 was represented by Mr Karadeep Kumar Adocate.

7. In course of hearing, the Learned Counsel of Complainant claimed that father of the complainant Late Girish Singh had purchased the 4.95 acres of land from Late Ram Charitar Singh, maternal grandfather of the Respondent No -2 Mr Dhramveer Pd Singh in 1971 and registered the sale deed at Kolkata. Learned counsel claimed that as Late Girish Singh was working at Kolkata, he had made the Late Ram Charitar Singh as caretaker of the land to be used for agricultural purpose and the agricultural produce was shared by Late Ram Charitar Singh with the Late Girish Singh. Even after the death of Late Girish Singh in 1988, Late Ram Charitar singh used to share the agricultural produce with the legal heirs of Late Girish Singh. Learned counsel claimed that when the complainant returned in 2017, he came to know about the illegal activities of Late Ram Charitar Singh, his daughter and her two sons. Thereafter, he got the mutation of 1.24 acres done and filed case for cancellation of the mutation of the balance area of land done by others illegally. Learned Counsel further claimed that the Respondent No-2 Mr Dhramveer Pd Singh was fully aware of these facts and even then, he has illegally executed the development agreement with the Respondent no-1, the developer in August 2011.
8. Learned counsel of Respondent No-1 i.e. the Developer and Learned counsel of Respondent No-2 i.e. the Landowner vehemently contested the claim of the complainant and stated that this was not a proper forum to adjudicate on the title of the land

and that the respondent no-2 was one of the legal heirs of the Late Ram Charitar Singh who had got 9.45 acres of land on family partition, through a registered deed of partition in 1969. They stated that the entire land was mutated in favour of Mr Dhramveer Pd Singh on which the development agreement was executed with the developer. They claimed that if the complainant has any issue regarding the title of the land on which the project Saffron Enclave was being constructed, the complainant should file a title suit before the competent civil court and obtain a decree in his favour.

9. Learned Counsel of the Respondent No-1 stated that the development agreement was executed in August 2011 and the building plan was sanctioned on survey plot/Khesra No- 836 (p), Khata No-836/741, thana No-21, Mauza- Sahjadpur, Danapur by the certified Architect of Danapur Nagar Parishad on 12.12.2012 vide plan case no- DNP/Sahjadpur/Res/G+5/182/2012. He further stated that the project was ongoing and in advanced state of construction when RERA Act came into operation. Accordingly he filed the application for registration of the project Saffron Garden before the RERA, Bihar on 28.02.2019 and was granted the RERA registration certificate on 14<sup>th</sup> June 2019.

### **Issues for consideration**

10. There is a dispute between the complainant and respondents over the piece of land which was claimed to have been purchased by the complainant's father in 1971 from the maternal grandfather of the Respondent No-2. The claim of the complainant has been vehemently refuted by the Respondent No-2 who has the

mutation over the land over which the promoter is developing the project. The Complainant has not even filed a title suit over the land in the competent civil court.

11. The development agreement between the Respondent No-1 /Developer and Respondent No-2/landowner was executed in August 2011 and the sanctioned plan was approved by the certified architect of Nagar Parishad, Danapur Nizamat in December 2012. The construction work was stated to be in the advanced stage when the RERA Act came into operation in May 2017 and the promoter applied for registration for their project Saffron Garden in February 2019 and registration certificate was issued by the Authority in June 2019.
12. The Complainant has filed their application online on 10<sup>th</sup> May 2019 and submitted hard-copy of the petition on 14<sup>th</sup> May in the office of the Authority. As the project was launched several years ago, large number of bookings have been done and third parties interests of the allottees have already been created. As the dispute on the ownership of the land can not be settled in this court, it is not practically feasible to accede to any relief sought for by the complainant in this case, at this juncture keeping in view the interests of allottees.

### **Order**

13. The Bench holds that the settlement of dispute over the ownership of the land /title suits are beyond the jurisdiction of the mandate of Real Estate Regulatory Authority under Real Estate (Regulation and Development) Act 2016 and therefore, the complainant may

approach, if they wish so, the competent civil court for resolution of the issue.

14. However, in order to protect the interest of the allottees, the developer is directed to submit an affidavit to the effect that the promoter shall compensate the allottees in case of any loss caused to them due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force, as stipulated under section 18 ( 2) of the RERA Act 2016.
  
15. The Promoter is also directed to inform each allottee (Present or prospective), regarding the dispute and their commitment under section 18 (2) of the Act, under intimation to the Authority within sixty days of the issue of the order, to enable the allottees to take an informed decision.

**Sd /-  
R B Sinha  
Member**