

REAL ESTATE REGULATORY AUTHORITY, BIHAR

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

Case No.CC/375/2019

Sanjay Kumar.....Complainant

Vs

M/s Jascon Interbuild Ltd & Anr.....Respondent

Present: For Complainant: Mr ArbindKumar, Advocate
For Respondent : Mr Punit Kumar, Advocate
Mr Karandeep Kumar, Advocate

31/08/2021

O R D E R

1. 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 Jascon Interbuild Ltd (Respondent No-1) through their Director Mr Shashi Kant, S/o Sri Nilesh Kumar Singh, 315, Maharaja Kameshwar Complex, Fraser Road, Patna -800001 & Mr Gopal Prasad Singh (Respondent No-2) S/o Late Naresh Chandra Singh, a resident of Gola Road, Gajadharchak, Danapur, before the Adjudicating officer of the Real Estate Regulatory Authority, Bihar requesting therein for issuing an interim order restraining the respondent No-1 from any construction/development work on their project “Naresh Chand Jascon Colony” over the plot of land situated at Mouza-Shahzadpur, South of Sainik Colony, Danapur, Patna.

Case of the Complainants :

2. The complainant in his complaint petition dated 14/05/2019 has submitted that his late father Girish Singh had purchased 4.95 acre land along with

other properties from Late Ram Charitra Singh, the maternal grandfather of the Respondent No-2 through registered sale deed dated 11.12.1971/13.12.1971. He further stated that late Ram Charitar Singh vendor of petitioner's father was the grand maternal father of respondent No-2. He claimed that respondent No-2 knowing all the facts executed registered development agreement dated 04/08/2011 in favour of Respondent No-1 i.e. the developer with respect to Survey Plot No.1077. He submitted that the complainant had sent registered legal notice to Respondent no.2 on 30/03/2019 and registered notice to Respondent No-1 on 02/04/2019. The Complainant claimed that the Respondent No-1/promoter indulged in unfair practices and irregularities in collusion with Respondent No-2 causing irreparable loss to the petitioner/complainant and got the allottees of the flats involved in unwarranted litigations. The complainant has requested the Authority to adjudicate in the matter and direct the respondent parties 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 above said project.

3. In pursuance to the receipt of the complaint petition, the Adjudicating officer of the Authority issued a notice in June 2019 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 No-1 M/s Jascon Interbuild Ltd through their Director Mr Shashi Kant & Respondent No-2 Mr Gopal Prasad Singh to submit reply/response within a week.

4. 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 No-1 and Respondent No-2 with a request for relief of stoppage of work of a registered project and for 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.

Reply of the Respondents :

5. Respondent No 1 - M/s JasconInterbuild Ltd in their reply filed on 27/06/2019 has submitted that they had executed a development agreement on 04/08/2011 with the Respondent No 2 by verifying all the documents of the land in question from the competent authorities which lies in favour of Respondent No-2 and subsequently the development agreement was executed. They thereafter started developing the land. Meanwhile, the RERA Act was passed and RERA was constituted in the state. They have therefore applied for registration before the Authority. The respondent has further submitted that the land belongs to ShriGopal Prasad Singh as was evident from the development agreement. It is clear that after partition from the parcener the mutation of the land has already been mutated in favour of the Respondent No-2 and therefore, the Respondent No-2 is absolute owner of the land. The respondent has further submitted that the complainant has every right to prove his title before the competent authority with the Respondent No-2 but Respondent No-1 has every right to develop the whole project as per development agreement and if they are restrained from doing

their work then it will be breach of development agreement towards the land owner inter alia the Respondent No-1 will suffer huge irreparable loss as more than half of the project has been completed.

6. Respondent No-2 – Gopal Prasad Singh in his written statement/reply filed on 27/06/2019 has submitted that this case has been filed for declaration of title which was within the jurisdiction of Civil Court exclusively and not before this Authority and therefore it is not maintainable. The present case has been filed under Clause (A), (B), (C) and (D) of Section 7 of the Real Estate (Regulation & Development) Act 2016 but this case does not come under any of the clauses of the said provision. He further submitted that the said so-called Sale Deed as being claimed by the complainant has not been executed by Ram Charitra Singh nor the name of the complainant was ever mutated on the land allegedly transferred in his favour.

7. The respondent no.2 further submitted that the complainant by manipulation and fraud got a parallel jamabandi recently created in his favour in respect of 1.24 acre but the moment it came to the notice of the authorities, they have initiated a proceeding for cancellation of said jamabandi vide Jamabandi Cancellation Case No.1/2019 which was pending for adjudication. That the complainant by wrongful method has been trying to create an evidence by misusing the process of law and by practicing fraud against which an FIR has been lodged against the complainant vide Danapur PS Case No.282/2019 dated 11/04/2019.

8. Learned counsel of the complainant submitted on affidavit that the opposite parties have not complied with the provisions of Section 4(l)(A&B) of the RERA Act and therefore, under Section 7(a) of the Act, the Authority

has power to revoke the registration of the project. The promoter has not complied with the provisions as contained in Section 11 of the Act. He further submitted that the complainant has filed petition on 28/09/2020 annexing two documents – one issued by the Registrar of Assurance, Kolkata vide Memo No.16/RAREC dated 22/01/2020. The Registrar verified and found that the Sale Deed No.4799/1971 under Book No.1 matches with the copy of the deed supplied by the petitioner to SHO, Danapur PS in connection with a Criminal Case vide Danapur PS Case No.282/2019 and the another document was order dated 04/09/2020 passed by the Executive Officer, Danapur Nagar Parishad. He further submitted that the complainant has annexed the Malguzari Receipt issued in his favour with respect to the land covered in the aforesaid sale deed on the basis of order passed by the Addl Collector, Patna in Jamabandi Cancellation Case No.22/2019-20 vide order dated 23/01/2021. The Malguzari Receipt only covers 1.24 acre land and for the rest land, the petitioner has filed a Mutation case No.7475/2020-21 before the Circle Officer, Danapur in which the land in question is also involved.

Hearing :

9. 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.

10. On 21/09/2020 during the course of hearing learned counsel of the complainant submitted that the respondent No-1 have concealed the fact that they have contravened the provisions of the Section 4 sub-section (i) of RERA Act 2016 to which the Bench directed the learned counsel of the respondent No-1 to file an affidavit in this regard.

11. Learned counsel of the respondent No-1 claimed that they have valid development agreement with the land owner and there was no dispute about the ownership of the land at the time of signing of the agreement. The Bench directed the learned counsel to file an affidavit in this regard too.

12. On 06/11/2020 learned counsel of the complainant submitted that they have filed affidavit on 04/11/2020 and informed that the case of mutation is still going on the land and cancellation has not been done yet. It was observed that both the parties have not filed mutation of the said land.

13. Learned counsel of the respondent No-2 submitted that there is no mutation of the complainant on the land in question. The mutation of the complainant is on some other property. He further submitted that there is no title suit case filed on the said property and the complainant is misleading the court by misrepresenting the facts. The Bench directed the learned counsel of the complainant to file his reply on affidavit regarding the mutation case and whether he has got the mutation of the same plot of land on which the project was being developed.

14. On 02/02/2021 learned counsel of the complainant submitted that they have filed affidavit on 04/11/2020 in which it has been mentioned that the promoter obtained RERA registration no. without complying with the provisions of RERA and violated Section 4 of RERA Act. He further submitted that a case was going on before the Additional Collector with regard to mutation of land which was decided in favour of the complainant on 23/01/2021 to which the Bench directed to submit copy of the same. He further submitted that the respondent No-1 did not inform about the dispute over the said land at the time of registration of their project with RERA.

15. Learned counsel of the respondent no.2 (land owner) submitted that the complainant is making false statement about mutation of the said land in his own name.

16. On 23/02/2021 learned counsel of the respondent No-1 submitted that the respondent has filed all the concerned petitions as instructed by the Bench in RERA office from where learned counsel of the complainant can obtain a copy of the same.

Issues for consideration

17. There is a dispute between the complainant and respondents over a 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 filed a title suit over the land in the competent civil court. 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, DanapurNizamat in May 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 Naresh Chand Jascon Colony in September 2018 and registration certificate was issued by the Authority in July 2019.

18. The Complainant has filed their application online on 10th May 2019 and submitted hard-copy of the petition on 14th 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

19. 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 the competent civil court for resolution of the issue.

20. 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 him 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.

21. 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 to enable the allottee to take an informed decision.

Sd/-
R.B. Sinha
Member