

REAL ESTATE REGULATORY AUTHORITY, BIHAR

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

Case No.CC/1618/2020

Mr Nagendra Rai.....Complainant

Vs

M/s Aarini Developers Pvt Ltd.....Respondent

Present: For Complainant: Mr D.K. Roy, Advocate
For Respondent : Mr Manish Kumar Singh, MD
Mr Jairam Singh, Advocate
Mr Mohit Raj, Advocate

26/04/2021

ORDER

1. Nagendra Rai S/o Mr Mahavir Rai, a resident of 120, Tirumala Colony, Ramjaipal Nagar/Gangotri Society, Gola Road, Patna-801503 has filed a complaint petition in October 2020 for cancellation of registration of the Project Aarini Lotus of M/s Aarini Developers Pvt Ltd under Section 7 of the Real Estate (Regulation & Development) Act, 2016 on grounds of misrepresentation, use of unfair practice or irregularities and indulgence in fraudulent practices.

Case of the Complainant:

2. In his Petition, the complainant has submitted that he along with a few other people Mr Siya Ram Singh, Mr Radha Krishna Kinni IPS Rtd, Dr Vivek Kumar, Mr Chandra Kant Jha Pathak, Mr AchutaNand Singh, Dr Gavendra Kumar Singh, Mr Ritesh Kumar Sharma, Mr R N Choudhary etc have been residing in Tirumala Colony which consisted of two societies- Gangotri and Ramjappal Nagar Societies, near Gola Road, Patna. He claimed that these two societies have been managing all amenities and facilities like various connecting roads, street lights etc in the colony. He further claimed that a dispute arose a few years ago, when plot owners of adjacent plots of private

land situated at the rear portion of Tirumala Colony tried to combine their plots together to construct a multi-storied apartments/building but due to pressure from the members of societies, the construction of the multi-storied building was discontinued. However, land-owners have again started construction of the G + 4 multi-storied building consisting of 16 apartments through another promoter and have got registration of their project Aarini Lotus done from RERA most probably based on false, forged, and fabricated documents. He claimed that both societies have never given their consent to the land-owners or promoters for construction of a G + 4 multi-storied building at the site. He claimed that the connecting road to the plot of land/construction site from Gola road was very narrow – less than 14-16 ft. Further, plot number 145 (P) was not mentioned on page 2 of MAP passed by Danapur Nagar Parishad, rather plot no 149 was mentioned as proposed plot. He also claimed that even RERA has granted certificate for the project Aarini Lotus without verifying the site location. He further said that if the society closes its road, then the said plot will be land-locked plot. Therefore, approval given by RERA for construction of apartment was bad in law and liable to be cancelled.

3. The Petitioner has enclosed copies of the MAPs of Gangotri Society and Ramjaipal Nagar Society, MAP of the project sanctioned by the Danapur Nagar Parishad, copy of the Registration certificate issued by RERA, copy of the letter of Secretary, Ramjaipal Nagar Society etc.
4. A notice under Section 31 & 7 of the Real Estate (Regulation & Development) Act, 2016 and Rule 36 of the Bihar Real Estate (Regulation & Development) Rules, 2017 was served on the Respondent to submit their response along with all documents by 18/12/2020.
5. However, the Respondent company didn't furnish any response to the Authority.

Hearings:

6. Hearings were held on 18/01/2021, 29/01/2021, 04/02/2021, 09/02/2021, 25/02/2021, 01/03/2021 and 02/03/2021.
7. In course of hearing, the Learned counsel of the Complainant submitted that he has filed the complaint petition under Section 7 of Real Estate (Regulation and Development), Act 2016, which prohibits the promoters

from involvement in any kind of unfair practice or irregularities and indulgence in any fraudulent practices, with prayer for revocation of the registration certificate of the project Aarini Lotus of the respondent company as the said certificate has allegedly been obtained by misrepresentation and on the basis of false facts. He claimed that the Respondent by suppressing material facts and mentioning wrong plot number got the RERA registration of the project. Learned Counsel stated that there was no clear approach road to the said project from the main road (Gola Road) and the approach road is going through two societies i.e. Ramjaypal Nagar Society and Gangotri society and the road is measuring approx 14 to 16 ft. He further submitted that the respondent is claiming the private road of the society as approach road. However, the society was not ready to allow. He claimed that as per Bihar Building Bye-laws 2014, a G+3 structure only was permissible at the site. He prayed for inspection by the RERA Legal Team and for stay on the construction in course of hearing.

8. Learned counsel of the Complainant was directed by the Bench to approach the Registration Wing of the Authority for redressal of his grievance by filing an application before the administrative side of the Authority. Learned Counsel however informed that the complainant has already filed an application to the Secretary of Urban Development and Housing Department (UDHD) and before the Chairman, RERA regarding the same.
9. Learned counsel of the Complainant submitted that an inspection team of RERA visited the site on 05/02/2021 when the Respondent tried to interfere in the process of inspection. He further submitted that the project was started in 2012, based on a building plan approved by a certified architect but the promoter discontinued the construction after reaching upto pillar/plinth level work. In 2019 the Respondent company got the same map revalidated and claimed fraudulently this ongoing project to be a new project in March 2020 before RERA, Bihar and obtained registration certificate for the ongoing project as a new project. He also stated that the setbacks of the project is much lesser than that mandated/required, width of approach roads less than 14/16 feet and both the entry points through approach roads belonged to Ramjaypal Nagar Society and Gangotri Society.
10. Learned counsel of the complainant while quoting the Preamble of RERA Act stated that RERA has been established for regulation and promotion of

the real estate sector and therefore has the oversight powers over the functioning of municipal /development authorities as regards to approval of MAPs of building/development plans of Multi-storied buildings/townships etc in accordance with Bihar Building Bye-laws. He claimed that Danapur Nagar Parishad has committed grave error in granting two years extension to the original building plan/MAP of the project sanctioned in December 2012 in violation of the provisions (Section 8.1) of the Bihar Building Bye-laws 1981/1993/2014. He has overlooked the provisions of section 8.1 of the old Building Byelaws which stipulate that the validity period of a Plan or MAP can not be extended beyond 5 years from the date of approval of sanctioned plan. Since the original plan of the building was sanctioned on 11.12.2012, the validity of plan under no circumstances can be extended beyond 10.12.2017. Further, provisions related to width of road on which project was being developed, set-back clauses, period of validity of plans/MAPs, height of the project, FAR etc appeared to have been contravened. He further submits that as per law if there is capacity of 25 people in any apartment, then one stair would be suffice but if the capacity is of more than 25 people, two staircases will be needed. He claimed that in the given situation, a G+3 structure was permissible only. Learned counsel of the Complainant prayed that keeping in view the gross violation of the provisions of Bihar Building Bye-laws 1981/1993/2014, the map before RERA may be declared ab-initio void and deserves to be set aside. He also prayed for imposing cost upon the Respondent.

11. Learned counsel of the Complainant cited two judgments of Patna High Court pronounced in SLP 974/2018 and CWJC No.8880/2015. He quoted from the Division Bench Judgment dated 13/08/2018 particularly para 12 of the judgment. After perusal of the same, it would transpire that the issue involved in the case was similar, pertaining to issue of non-existence of 20 ft wide road over which multi-storied building having apartments was being constructed. It was held that only G+3 structure (3 storied building) has to be allowed in such cases. The said Court (D.B.) has ruled that no sympathy should be shown to the promoter who goes contrary to the prescribed norms. He further prays for cancellation of registration of the ongoing project of the promoter.

12. Learned counsel of the Complainant pointed out that there are discrepancies in the two reports i.e. one prepared by RERA Inspection Team and the other prepared by Technical Team of Nagar Parishad, Danapur put forth before the Authority.
13. Learned counsel of complainant vehemently submitted that a message should go to the society, loud and clear that no one was above the law and keeping it in view, the complainant counsel further prays for imposing cost upon the respondent company. The map before RERA may be declared ab-initio void and deserves to be set aside and cancelled in the fact and circumstances of the case

Response of the Respondent Company

14. Mr Manish Kumar Singh, Director of the Respondent company submitted that the map of the project was approved by a certified architect in December, 2012 and construction was taken up by another builder. He claimed that the complainant was a notorious criminal who demanded extortion money from the said builder due to which the then builder abandoned the project. When contacted by the land owner in 2018-19, he (the present promoter/builder) agreed to take up the project in 2019, based on revalidation of the original plan by Danapur Nagar Parishad in July 2019. He further claimed that the Complainant with his goon associates visited the project site to stop the construction work against which a FIR on 18/09/2020 has been filed in the Rupaspur PS. He further prays for penalizing the complainant for mental harassment.
15. Learned counsel of the Respondent submitted that the Respondent has not violated any of the clauses of Section 7 of the Act. He claimed that the promoter was a law-abiding citizen and submitted that when the inspection team of RERA visited the construction site on 05.02.2021, only one person from the Respondent side was present but the Complainant brought 30/40 people at the site.
16. Learned counsel of the Respondent vehemently claimed that the case was not maintainable under RERA Act as the Complainant was neither a Promoter nor an allottee or an agent and hence, cannot file a complaint as a third party by quoting Section 31 of the RERA Act. Respondent counsel by quoting Section 31 of RERA, Act submitted that the complaint doesn't come

under the said provision. He further submits that the complainant is nowhere linked to the project and thus, he cannot file a case against the respondent company before RERA against the said project. The Promoter claimed that if such complaints are entertained by the RERA, it will open a flood-gate of cases, leading to rampant extortion and blackmailing of the honest and hard-working promoters

17. While quoting Section 04 of the Bihar Building Bye-laws 2014, Learned Counsel of the Respondent submitted that earlier a development agreement was executed by another builder with the land owners and the map was got sanctioned in 2012 i.e. 8/9 years back and since the map was already sanctioned, according to Section 4 of Bihar Building Bye-laws 2014, the previous map would only be applicable.
18. Learned counsel of the Respondent Company further argued that the Respondent company had submitted all the documents required for registration with the Authority and has not violated any provisions of the Act. He further claimed that as regards complaint against width of the road, it was not maintainable under RERA Act and comes under the Municipal Act. He argued that RERA cannot revoke the sanctioned map of the competent Authority.
19. Learned Counsel vehemently claimed that the map was duly sanctioned by the competent authority i.e. Executive Officer, Danapur Nagar Parishad after due consultation with Urban Development and Housing Department (UDHD) and the sketch map clearly shows that except only two plots, all the plots fall on 20 ft wide road and therefore, the promoter has not flouted any provision of RERA Act or any civil law on the subject. The map duly sanctioned by the competent authority has been filed before RERA and as per Section 5 of the RERA Act, the Authority has rightly ordered registration of the project. The promoter has followed Section 4 and 5 of the RERA Act in letter and spirit and the promoter has not flouted any provisions of Section 7 of the Act in any manner. He further prayed for ignoring the mistake committed by the promoter on humanitarian ground and allowing the respondent company to carry out construction work after declaring the complaint of the complainant ab-initio void. Learned counsel of the Respondent prayed for imposition of heaviest cost upon the Complainant for filing the frivolous complaint petition before this Bench.

20. The learned counsel of the respondent submits that RERA is very much competent to resolve issues and decide the same in terms of relevant provisions of RERA Act.

Executive Officer

21. In course of hearing on 04.02.2021, the Bench directed the Executive Officer, Nagar Parishad, Danapur to be present on the next date i.e. 09.02.2021 and thereafter. He attended the hearing on 09.02.2021, 01.03.2021 & 02.03.2021. In course of hearing, the EO, Danapur Nagar Parishad was requested to clarify as to-

1.) how the map was revalidated and extended for two years, after 7 years of sanction of the original MAP in violation of the provisions of section 8.1 of the old Building bye-laws;

2.) how was G+4 structure sanctioned when the width of the approach road was only 14/16 ft wide and in violation of the Provisions of the then Bihar Building Bye-laws;

3.) the conditions required for revalidation of the map where building is not constructed and where the width of the road has been reduced either due to encroachment or sheer increased density of the population.

4.) whether housing societies have been given rights under the laws to deny permission of access to an individual or group of individuals wishing to construct a multi storied building on their plots of land.

22. The Executive Officer in his deposition on 09.02.2021 submitted that the map (Building Plan Case No.40/19-20 of Project “Aarini Lotus” of the M/s Aarini Developers Pvt Ltd.) was originally approved in 2011-2012 by a certified architect Pradip Kumar Sinha and till 2018, only the pillar work had been done on old plan and at some places, construction had been done upto plinth level. **Though the validity of the plan expired in December 2015, the promoter didn’t apply for extension of the validity of the plan before expiry of the plan in December 2015.** He stated that the new plan/MAP of the project would have been subject to the provisions of the Bihar Building Bye-laws 2014. However, Ms Seema Dubey land-owner applied for revalidation of the original sanctioned plan in September 2018 under old Bye-laws. As the EO

was not clear as to how to deal with the request of the land-owner, he sought the advice and guidance of Urban Development Housing Department (UDHD) to process the proposal. The revalidation of the map was done based on consultation done with the UDHD by his office. He was directed to produce within two weeks all the correspondences made with UDHD for revalidation of the MAP/Plan of this project. He was also directed to go through the report of the inspection team of RERA and give his comments and also make an inspection of the site.

23. In his response, the Executive Officer, Nagar Parishad, Danapur submitted that prior to 12th December, 2012, empanelled Certified Architects were empowered for sanctioning of map and accordingly the building plan for a G+4 structure was allowed on 20 ft road in 2012 but as per new law (Bihar Building Bye-laws 2014) only G+3 was permissible and in that case the land-owner Ms Seema Dubey was facing loss of one floor. He further assured that he will submit copy of old sanctioned plan of 2012 and there was no variation in it. On a query that since there was no difference between Section 8 of the Old Bye-laws and Section 9 of the New Bye-laws as regards validity of the Building plans/MAPs as both the Bye-laws provide for revalidation of building plan/map up to 5 years only from the date of approval, then how could the plan was revalidated and extension granted for the building plan by two years in July 2019 after nearly 7 years of approval of the original plan, the Executive Officer cited the clarification issued by the Special Secretary, Urban Development & Housing Department (UDHD) and stated that extension of two years was given under Section 4 of the New Bihar Bye-laws of 2014 which states as under:

4 : Deemed Permission – (1) The construction of any building in respect of which the permission has been issued before coming into force of these by-laws, shall so far as it is not inconsistent with the provisions of the old Bye-laws, continue to be validly made and the said permission shall be deemed to have been issued under the corresponding provisions of those bye laws.

(2) Where any building has been constructed before the notification of these byelaws with deviation of an approved plan, the provisions old Byelaws shall be insisted upon.

(3) Where any building has been constructed without an approved plan, the provisions of these byelaws shall be insisted upon.

24. It is evident from above that the Section 4 of the Bihar Building Byelaws 2014 only mandates the applicability of the provision of old Byelaws, if the MAP/Plan has been sanctioned before coming into force of these by-laws. Thus, in such cases, all old byelaws were to be followed meticulously.

25. In this connection, attention is also invited to the Section 8 of the old Building Byelaws, which states as under:

8 Duration of Sanction:-

8.1 The sanction once accorded shall remain valid upto three years during which a completion certificate shall have to be submitted by the party concerned and if this is not done, the building/development permit shall be got revalidated before expiry of this period. Revalidation shall be subject to the rules then in force and shall be valid for a further period of two years. The Revalidation fee shall be 10 percent of the full fee in force at the time of application for revalidation. The Revalidation application shall be accompanied by a PRDA receipt of deposit of revalidation fee, as stated above.

26. If the building/development works are not completed within the above stated five years period, the owner has to apply for a new building/development permit. The fee for this new permits shall be the full fee in force at the time of application. The application for new permit shall be accompanied by a PRDA receipt of deposit of the fees, as stated above.

27. Therefore, the Bench observed that Section 4 of the new Bye-laws (Bihar Building Byelaws 2014) only permits continuation of the construction of any building in respect of which the permission has been issued before coming into force of these by-laws under with the provisions of the old Bye-laws and does not override any old byelaws including Section 8 of the old Bye-laws and hence extension of plan, sanctioned in December 2012, by two years in July 2019 is absolutely irregular, and in contravention of Section 8.1 of old Bye-laws.

28. The Executive officer (EO) also furnished the correspondence with UDHD, site inspection report of his technical team, which confirmed that though there

was 20 feet road in front of the plot of the land on two sides, both roads were 15-17 feet wide at other places, just beyond the site of the plot of land. Further, the set backs on all sides were lower than that required under the Bihar Building Bye-laws 2014. The EO also confirmed that the construction site of the project Aarini Lotus is not part of any society. The EO also submitted the copy of the application of Ms Seema Dubey dated 19.09.2018 regarding revalidation of the sanctioned building plan under old byelaws.

29. The EO however didn't clarify the reasons for not following the section 8.1 of the old byelaws, when specifically enquired by the Bench. He also couldn't give any answer as under which section of the old byelaws, he gave the extension of the old sanctioned plan by two years. The EO, Nagar Parishad, Danapur was also asked whether extension of the map/plan can be amended/modified or the construction plan can be altered in the changed situation.

30. The said project Aarini Lotus is registered under RERA as a new project. The Respondent Counsel has submitted a copy of the registered development agreement dated 23.11.2019 executed with the land-owners, a copy of the extension of the sanctioned MAP/plan of the Project, a copy of the registration certificate issued by the RERA etc. Learned counsel of the Authority also furnished the registration file of the promoter, which included hard-copies of the application along with relevant documents submitted by the promoter as required under section 4 of the RERA Act 2016. A careful examination of the these documents revealed that :

1. The development agreement executed between the promoter and land-owners on 23.11.2019 envisaged that the entire work of the proposed residential complex as per approved construction plan would be completed within a period of 36 months with a grace period of six months whereas the EO, Danapur Nagar Parishad had given extension of the sanction plan upto 18.08.2021 only. Thus the promoter had a time period of 21 months only to complete the project as against requirement of a minimum 36 months..
2. The approval letter of the Building plan issued vide memo no 40 dated 19.7.2019 states that the proposed construction site will be accessed by approach road with width of 6.10 metre (20 ft) but technical officials of

Danapur Nazarat Nagar Parishad have since confirmed that approach road in front of construction site only is 20 ft wide which reduces to 15-17 ft beyond the plot of construction. It is therefore evident that technical report submitted by the Amin and OE on 13.12.2008 had hidden and suppressed the fact that the approach road to the construction site was less than 20 ft wide throughout the length of the road except in front of the project site, up to main road (Gola Road). These same officials (Same Amin and OE) only have shown the width of approach road as 15-17 ft beyond the construction plot in course of their inspection done on 28.02.2021.

3. The Technical report of EO dated 28.02.21 also confirms that the promoter has not left requisite set backs on any side of the project .
4. RERA had however given registration certificate up to 10.03.2024, apparently based on time period desired by the promoter to complete the project without keeping in view the fact that the plan sanctioning authority has given extension upto 18.08.2021 only and notwithstanding the fact that Bihar Building Byelaws both old as well as new one have already been contravened and do not have any provision of further extension of the sanctioned plan.
5. Further, RERA has given the registration certificate for a new project to the Aarini Lotus, whereas respondent company Counsel, EO Danapur Nazarat Nagar Parishad and Manish Singh, Director of the Company all have confirmed that the project was started in 2012 only and therefore this project was an ongoing project as on date of submission (04.03.2020) of the application to RERA and the Respondent company suppressed this fact before the Authority.
6. The promoter had been given two years extension of sanctioned plan and was permitted by the Plan sanctioning Authority (EO, Danapur Nazarat) to complete the project by 18.7.2021 but he sought 4 years time to complete the project in his application before RERA on 4.3.2021, thereby misrepresenting the facts before the RERA so as to get registration certificate for longer time.

Issues for Consideration :

31. There are following issues for consideration before the Bench :

1. Whether the Complainant has right to file a complaint petition before the RERA under section 31 and 7 of the Real Estate (Regulation and Development) Act 2016, though he is neither a promoter nor an agent or an allottee in the project;
2. A. Whether the RERA being regulator of the real estate sector has the mandate to look into apparent violations of the Bihar Building Bye-laws by the competent Plan Sanctioning Authority;

B. What is the course before the Bench if a Plan Sanctioning Authority has apparently violated the provisions of the Bihar Building Bye-laws.
3. a. Whether the application of the land-owner Ms Seema Dubey dated 19.09.2018 before the Executive Officer, Danapur Nagar Parishad for revalidation the building plan dated 11.12.2012 was ab-initio not permissible either under the old Bihar Building Bye-laws or new Bihar Building Bye-laws 2014;
b. Whether Section 4 of the Bihar Building Bye-laws over-rides the Section 8 of the old bye-laws ;
c. Whether the mandated width of road has to be throughout the road or just before the site of the project was deemed sufficient; Wherever prescribed set-backs on front or back or other two sides have not been followed, what is the role of the competent municipal authority;
4. a. Whether the claim of promoter in his application for registration of the Aarini Lotus with the RERA as a new project commencing on 20.03.2020 before the Authority was a deliberate mis-representation of facts to avoid the payment of higher fee, attracts the provisions of section 7 of the Act;
b. Whether the promoter has done bookings, as reflected in the audited annual accounts of the Respondent company for the financial years 2017-18 and 2018-19 in violation of section 3 of the Act prior to registration of the project with the Authority;
32. As regards the first issue, it is a fact that the complainant is neither a promoter nor an allottee or an agent and hence in no way directly connected

with the project. Learned Counsel of the Respondent company therefore claimed that the complainant has no locus-standi in the project and hence, cannot file a complaint case as a third party. He quoted the term “any aggrieved person” mentioned in Section 31 of the RERA Act, to point out that only those persons who are aggrieved with any promoter, allottee or agent, as the case may be, may file the complaint under this section for any violation or contravention of the provisions of the Act or rules and regulations made thereunder. Learned Counsel of the Complainant however cited the preamble of the Act to state that RERA has been established for regulation and promotion of the real estate sector and to ensure efficiency and transparency in sale of the apartments/building in the sector. He cited the definition of “person” in section 2(zg) and the explanation below section 31 to highlight that there was no bar for any citizen of the society to file a complaint against any promoter if there is any violation or contravention of the provisions of the Act or rules and regulations made thereunder. The Bench feels that Section 31 doesn’t bar any aggrieved citizen from filing a complaint against any promoter for violation or contravention of the provisions of the Act or rules and regulations made thereunder. One of the functions of the Authority as prescribed in Section 32 of the Act is to **facilitate the growth and promotion of a healthy, transparent, efficient and competitive real estate sector** and as stated in Section 34 of the Act, is to **ensure compliance of the obligations cast upon the promoters under the Act, or rules and regulations made thereunder**. Further, Learned counsel of the Complainants had stated that the complainant had filed the complaint under section 7 of the Act which prohibits the promoters from involvement in any kind of unfair practice or irregularities and indulgence in any fraudulent practices. He claimed that the registration certificate has been obtained by misrepresentation and on the basis of false facts. He claimed that the Respondent by suppressing material facts and mentioning wrong plot number got the RERA registration of the project. It is therefore felt that the complainant has the right to file a complaint petition against the promoter for any violation or contravention of the provisions of the Act or rules and regulations made thereunder

33. So far as the 2nd issue is concerned, Learned Counsel of the Respondent company in his deposition, vehemently stated that Executive officer of Danapur

Nagar Parishad was the competent authority under Bihar Municipal Act 2007, to sanction MAP/building plans of a building in the designated area and he has given extension to the original sanctioned plan by two years in July 2019 in consultation with the UDHD. He claimed that RERA has no powers under the Bihar Municipal Act 2007 to cancel a sanctioned plan. Learned counsel of the complainants however contested the stand taken by the Respondent counsel and stated that Parliament of India has passed the Real Estate (Regulation and Development) Act 2016 in March 2016, notwithstanding the fact that the every state has municipal Act and much after passage of the Bihar Municipal Act 2007. Therefore, a Real Estate Regulatory Authority has been established in Bihar in March 2018 to regulate and promote the real estate sector in the state. He invited the attention of the Bench to the preamble of the Act to enforce his views and propounded that RERA will have oversight functions over all agencies viz plan sanctioning agencies, architects, chartered accountants, structural engineers, registration agencies etc related to registered projects, working in the real estate sector.

34. Learned Counsel of Complainant stated that RERA has full powers to direct the plan sanctioning authorities to follow the provisions of the law(Bihar Municipal Act 2007, Bihar Building Byelaws etc) meticulously and review its decision of giving extension to the original sanctioned plan as five years validity period of the original plan has expired on 10th December 2017. He requested the Bench to direct the EO, Danapur Nazarat Nagar Parishad to review its decision of giving extension in view of section 8 of the Bihar Building Byelaws 1981/1993 and withdraw the extension given to the promoter and consider approval of a new plan under Bihar Building Byelaws 2014. He claimed that now the new plan for the building/project can only be approved in accordance with the Bihar Building Byelaws 2014. The Bench is inclined to accept the view of the learned counsel of complainant as the decision of the EO to grant extension by two years is in contravention of the Provision of Rule 313 & 315 of the Bihar Municipal Act read with Section 8 of the Bihar Building Byelaws 1981/1993.

35. In so far as third issue is concerned, the application of the land-owner Ms Seema Dubey on 20.09.2018 for revalidation of the plan no NPON- CP-DHANAUT-033RAC/24.03.2011 under the old Byelaws was ab-initio

inconsistent with the Section 8.1 of the old Byelaws as the maximum period of validity of a Plan/MAP i.e. five year period of validity of Plan/Map had expired on 10.12.2007 and hence was liable to be rejected by the Plan Sanctioning Authority i.e. EO, Danapur Nazarat Nagar Parishad, Danapur. This fact should have been brought out by the UDHD also in their response to the EO but they quoted Byelaws 4.1 and 4.2 of the Bihar Building Byelaws 2014 which permits processing of the building plan under old building byelaws, provided the building plan/map was sanctioned before commencement of Bihar Building Byelaws 2014. However as maximum period of five years validity of the old plan, as provided in Byelaw 8.1 of old Building byelaws, had expired before the application for revalidation was submitted by Ms Seema Dubey on 20.09.2018, her request for extension of plan was liable to be outright rejected. Further, it is evident that Byelaws 4.1 & 4.2 of the Bihar Building Byelaws 2014 doesn't supercede any prescribed byelaws of old Byelaws. It only permits processing of the building plan under old building byelaws, provided the building plan/map was sanctioned before commencement of Bihar Building Byelaws 2014. As regards the width of the connecting road on which the project was being concerned, the technical team of Danapur Nagar Parishad has confirmed in their report dated 28.02.2021 that the width of the road is ranging from 15-17 ft i.e. below 6 meters beyond the plot of construction and in such cases, the buildings of more than 11 meters of height shall not be allowed as required under Note (11) below Byelaws 19 of the Old Building Byelaws.

36. As regards the 4th issue, the application for registration of the project submitted by the promoter on 04.03.2021 confirms unequivocally that the promoter has misrepresented before the Authority that they have applied for registration of a new project, construction of which will commence on 20.3.2020. As a matter of fact, Manish Singh Director of the Respondent Company in his deposition before the Bench admitted that the original plan was approved in December 2012 by the empanelled certified architect Pradeep Kumar Sinha under the then prevailing Bye-laws for G+4 structure for a period of three years. However, the multi-storied building was not completed within stipulated period. The Promoter also didn't seek any extension of the validity of the Plan before expiry of the validity period, as permissible under Section 8.1 of the old Building Bye-laws. Hence it was proved beyond any iota of doubt that

the promoter had misrepresented the fact by claiming an ongoing project as a new project before the Authority. The EO had also submitted a copy of the application dated 20.09.2018 of the landowner for revalidation of the original sanctioned plan. Further, EO had also accorded extension of the sanctioned plan by two years only which conclusively proves that the promoter had made a fraudulent claim before the Authority. Further, the Promoter had submitted audited annual accounts of the Respondent company for the financial years 2018-2019 and 2017-18, which confirms that the respondent company had done bookings and advertisements during 2017-19 in violation of Section 3 of the RERA Act 2016. It also proved that the project was an ongoing project rather than a new project.

Order

37. In view of the aforesaid findings, the Bench orders that

1. the application of Ms Seema Dubey, land-owner dated 20.09.2018 for revalidation of sanctioned plan (Plan Case No-NPON-CP-DHANAUT-033RAC/24/03/2011) under old Byelaws was ab-initio irregular, not in order and in contravention of the Byelaw 8.1 of the Old Building Byelaws 1981/1993 and hence liable to be outright rejected.
2. the Executive officer of Danapur Nazarat Nagar Parishad may review his decision of grant of extension of two years to the original sanctioned plan (Plan Case No-NPON-CP-DHANAUT-033RAC/24/03/2011) of the project on 19.7.2019 after lapse of the maximum five year period of validity of the Plan, within sixty days of issue of this order and take corrective action after hearing the respondent company and the complainants, keeping in view the facts brought out by the technical report submitted by the Amin and OE on 28.02.2021. He may also investigate and fix responsibility on the technical officials for wide divergence in the technical reports of Amin and OE for the project Aarini Lotus submitted on 13.12.2018, 26.02.2021 and 28.02.2021.
3. The Authority may issue a show-cause notice under section 7 (2) of the Real Estate (Regulation and Development) Act 2016 against the promoter for revocation of the registration granted to Project Aarini Lotus under 7 (1) (c) and

7 (1) (d) of the Real Estate (Regulation and Development) Act 2016 and take appropriate action.

Date : 26.04.2021

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