

REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR
Before the Single Bench of Mrs. Nupur Banerjee, Member

Case No: RERA/CC/1197/2021

Mohammad Muslim Rahman

...Complainant

Vs.

M/s ABM Developers Pvt. Ltd. & Anr.

...Respondent

27/02/2023

ORDER

This complaint petition has been filed seeking relief to direct the respondent to provide physical possession of the shop in question with demarcated dimensions and location according to agreement for sale (M.O.U.) as per the sanctioned map. The complainant also seeks to direct the respondent concerned to provide all the amenities as committed under the terms of Agreement for Sale (M.O.U.) dated 22.12.2015 and to register the Conveyance Deed in favour of the allottee along with undivided proportionate title in the common area and supply all relevant documents regarding the development of the project as per Section 17 of the RERA Act, 2016.

In short, the case of the complainant is that the respondent no.1 has come into the Agreement for Sale (M.O.U.) dated 22.12.2015 executed among ABM Developers, respondent no.1 BCTA, respondent no.2 and the complainant and the complainant has deposited Rs.25,000/- to respondent no.1. It is stated that the complainant was a tenant and had been occupied a shop from long time and the complainant had been paying rent to respondent no.2. Thereafter the respondent no.2 approached the complainant and convinced him for proposal of development of market whereas respondent no.2 has persuaded him to purchase the aforesaid shop @ Rs.6000/-. Thereafter development agreement dated 18.10.1995 has been commenced between respondent no.1 and 2 for development of the market in the year 1995. It is stated that certain disputes have been occurred between respondent no.1 and 2. After some time both the parties agreed upon development of the market. After settlement, respondent nos. 1 and 2 have executed Agreement for Sale (M.O.U.) with the complainant on 22.12.2015 for allotment of shop on the ground floor. It is further stated that after approval of the map, respondent no.1 on recommendation of respondent no.2 shall allot the

shop to the complainant. After the agreement for sale (M.O.U.) the complainant has deposited Rs.25,000/- to the account of respondent no.1. It is also stated that after completion of the project, respondent no.1 shall execute absolute sale deed in his favour against the shop in question after receiving the total consideration. It is mentioned in para-7 of the agreement that respondent no.1 has to raise the demand of due consideration after approval of the sanctioned map but even after approval of the map the respondent no.1 has not yet been abiding by the agreement for sale (M.O.U.) and there is no development in the project. The complainant trusting on respondent no.1 vacated the shop for the purpose of construction of other shops over the aforesaid land. It is also stated that even after lapse of more than six years both the respondents has been delaying to give physical possession of the said shop to the complainant. When the complainant approached the respondent to inquire about the latest development regarding the shop, they have given no satisfactory reply. The complainant has given several reminders to settle the matter, no steps have been taken by the respondent. It is further stated that due to laches on the part of the respondent concerned, the complainant is suffering heavy financial, physical as well as mental loss because shop was the only source of earning to the complainant.

A reply has been filed on behalf of respondent no.1 in which it is stated that the relief prayed by the complainant is not maintainable in the eye of law. The statement made in the complaint petition goes to show that the complainant entered into an agreement for sale (M.O.U.) on 22.12.2015 with respondent no. 1 and respondent no.2 and pursuant to the said agreement he has paid Rs.25.000/- as advance. From perusal of the agreement for sale (M.O.U.) it appears that the complainant has entered into agreement for sale (M.O.U.) with Baptist Union Church whereas he has made party as respondent no.2 Baptist Trust Association, which are two different entities and as such, impleadment of respondent no.2 is illegal and meaningless. Therefore, the present complaint case cannot proceed against respondent no.2. In fact the complainant had made encroachment over the land in question and declared himself as tenant of Baptist Union Church to whom he used to pay rent. It is stated that the representations of Baptist Union Church were claiming to be the real owner and title holder of the project. Therefore, the present complaint petition is not maintainable before this court.

A supplementary counter affidavit has been filed on behalf of respondent no.1 that this complaint petition is not maintainable and is fit to be dismissed at all.

An interlocutory application has been filed on behalf of the complainant seeking a direction to the respondent to stop registry/ sale deed regarding the project Urban Plaza till final adjudication of the present matter.

After hearing the parties and considering the records of the case, it appears that the complainant not able to establish that the complainant entered into agreement with the respondent as an allottee and from the documents placed by the complainant, it is not evident that any allotment has been made by the respondent as alleged by the complainant. Hence, the Authority finds that the complaint of the complainant does not fall under the ambit of the RERA Act, 2016.

The complainant may approach to the appropriate forum under the provision of law in regard to their disputes.

With the above observations, the matter is disposed of.

Sd/-
Nupur Banerjee
(Member)