

REAL ESTATE REGULATORY AUTHORITY, BIHAR

2nd Floor, BSNL Exchange Building, Patel Nagar, Patna-800023.

**Before the Double Bench of Mr. Naveen Verma, Chairman
& Mrs. Nupur Banerjee, Member**

Case No. RERA/CC/05/2021

Sanjeev Kumar & Ors.....Complainants

Vs

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

Project: Harihar Enclave

Present:For Complainants : Mr. Nilanjan Chatterjee, Advocate

For Respondent :Mr. R.K. Srivastava, Advocate

01-10-2021

ORDER

The complainants S/Shri Sanjeev Kumar, Manoj Kumar, Ms Kiran Choudhary, Nishant Tripathi, Niraj Kumar, Ms Hemlata Kumari, Chandan Kumar, Binod Kumar, Ms Bina Bhimrajka, Ms Poonam Kumari, Arvind Kumar and Anuj Kumar who are homebuyers in the project- Harihar Enclave and are in possession of their respective flats have filed this complaint against M/s Aristo Developers Pvt Ltd. praying for demolition of the illegally constructed shop which were not as per the sanctioned plan. They have alleged that the illegal construction has blocked main entrance to the apartment and the parking which is causing discomfort and inconvenience to the Complainants and this act of the respondent company is in contravention of Section 14 of the Real Estate (Regulation & Development) Act 2016.

The respondent company in its reply dated 01/03/2021 submitted that no shops have been constructed by the Respondent company and that the complainants take the route for entry into the parking as elaborated in paragraph 5 of the complaint. The respondent company further stated that the hall in the basement/ground floor is as per the sanction plan and the possession of the same has been given to the complainants for their use. The respondent company alleges that the complainant has encroached upon the common area of their adjacent flat of the apartment which may be enquired by the Authority.

The respondent company has placed on record photocopies of the occupancy certificate, sanctioned map and Table 4 of the Bihar Building Bye Laws, 2014 along with their reply.

The Learned Counsel of the complainants submitted that the respondent company has deviated from the map and constructed illegal shops in the parking area and will sell the same to third parties.

Learned Counsel of the respondent company however states that shops have been constructed as per the revised map which was subsequently submitted and approved.

The Learned Counsel of the respondent company raised objection regarding maintainability of case stating no specific sections have been mentioned by complainants which have been violated by the respondent company and the allegations cannot be addressed by the Authority but by the municipal authorities.

Learned Counsel of the complainants submitted that they have filed their rejoinder to the reply of the respondent company. They stated that the contents of prospectus have been deviated. The respondent company has made structural changes without the consent of the complainants thereby violating Section 14(1) of the RERA Act. The complainants further submitted that the respondent company have constructed shops and out of pressure of the allottees, they are now making submissions that they have constructed hall and not shops.

The Learned Counsel of the complainants also filed a sale deed and reiterated that the respondent company has constructed shops beyond the sanctioned map and came up with a revised map in 2018 without the consent of the complainants thereby violating section 14(2) of the RERA Act and the main issue relates to the entrance with the right to access from exit to the main road which has been shifted to the approach road.

The complainants may approach the competent authority if they believe that the revised map has not been approved by the competent authority.

After hearing both the parties and examining the materials on record the Bench observes that even if the revised map has been approved by the competent authority, as stated by the respondent company, it is for the respondent to satisfy that the provision of Section 14 (1) (2) of the Real Estate (Regulation and Development) Act, 2016 has been complied while seeking approval of the revised map. It is

apparent that the consent of the allottee has not been taken while submitting the revised plan.

The Bench therefore, directs that this matter may be referred to the competent authority who may re-examine and reconsider the approval for the revised map, especially on the point whether any addition and modification in the plan has been taken with the previous consent of at least 2/3rd of the allottees.

The promoter is directed not to give effect to any change in the original approved map which was agreed with the allottee at the time of agreement for sale and comply with the provision of Section 14 (1) of the Act.

Under the powers conferred to it under Section 37 of the Act, the Bench prohibits the respondent company to create any third party interest in the shops by way of sale of shops which was not included in the original approved sanction map.

With these directions, the matter is disposed of.

Sd/-
Nupur Banerjee
Member

Sd/-
Naveen Verma
Chairman