

**REAL ESTATE REGULATORY AUTHORITY, BIHAR**  
**Before the Bench of Mr. Ved Prakash, Senior Legal Consultant**

**Exe. Case No - 42/2022**  
**RERA/CC/317/2021**

**Dr. Amirchand Singh**

**....Executant**

**Vs.**

**M/s Dream Heaven Homes Pvt. Ltd.**

**....Respondent**

**PROJECT : Apna Basera**

**For the complainant :**

**In person (through mobile mode)**

**For the respondent :**

**Shri Hitendra Singh (Adv.)**

**30/01/2023**

**ORDER**

On 17.11.2022 the judgment debtor / respondent has filed an objection petition, mentioning therein that neither the execution case is maintainable in the eye of law nor on facts. Learned counsel for respondent submits that since the complaint case was decided by the Division Bench of the Authority, so this Single Bench has no jurisdiction to decide the execution case. He further submits that all the claims of the decree holder / Executant are misconceived, baseless and based on concocted story. Hence, all the allegations are denied on behalf of the Respondent.

2. He further submits that it is a settled principle of law that suppression of material facts amounts to committing a fraud on the court and also on the affected parties, for which the Hon'ble Supreme Court in S.P. Chengalvaraya Naidu vs. Jaggannath and others(1994)AIR(SC)853 and N.Khosla vs Rajlakshmi 2006 SCC(3)

605 has held that the suppression of material facts in order to get advantage on other side, the litigant would be guilty of fraud on court as well as on opposite party and it can be challenged at any stage in any court.

3. He further submits that the Executant in original complaint case no. 317/2021 has got the order on 24.08.2021 in his favour on the basis of misleading to the Division Bench of the Authority. Hence, such order is not executable in the eye of law. He further submits that in para 7 of the complaint petition, the complainant has declared that the matter regarding which the complaint case has been filed is not pending in any court of law or any other Authority or any other Tribunal(s), and further made the same declaration in the present execution case no. 42/2022, whereas prior to filing of the complaint case no. 317/2021, there were two matters pending in the court, one before the Bihar State Consumer Disputes Redressal Commission, Bihar, Patna as consumer case no. 66/2016 and other pending before the Sub-Judge V, Arrah, Bhojpur, in which the Executant is Defendant no. 13. He further submits that due to pendency of the Title Suit, the Respondent has not taken the registration of the project "Apna Basera" and the Executant has not disclosed the material facts before the Authority and got the order in his favour by misleading to the Authority. He further submits that when the title suit is pending relating to any real estate project in civil court, the Authority has no right to entertain the complaint case unless or until the said suit is disposed of, because the RERA is not an alternate forum of the civil

court. Hence, the order dated 24.08.2021 is an error on the face of the record and, therefore, not executable in the eye of law.

4. He further submits that the Respondent is under the process to file an appeal before the Hon'ble High Court against the order dated 07.06.2022 passed by the Hon'ble Tribunal in REAT Appeal no. 31/2022. Hence, the present execution case filed by the Executant may be dismissed / rejected with heavy cost.

5. On the other hand, the decree holder /Executant has filed a reply to the objection petition of the Respondent. He submits that the promoter / Respondent has collected more than Rs. 22,00,000/- on 01.03.2013 for constructing a Duplex Bungalow and has not handed over the Duplex as yet after a lapse of more than 9 years 8 months, although he has assured and signed an agreement to hand over the possession of duplex within 12 to 18 months from the date of agreement. He further submits that it was / is always an aim of the promoter to kill valuable time of the court, and as such, he has been put to mental harassment in the hands of the promoter. In spite of payment of 99 % of the consideration money as per agreement, he is still waiting eagerly for delivery of possession.

6. The Executant further submits that he has already withdrawn the consumer case no. 66/2016 from the court of Bihar Consumer Disputes Redressal Commission. Bihar, Patna and has submitted a copy of the said order dated 16.03.2022 passed by the learned forum. He further submits that in terms of section 79 of the RERA

Act, pendency of Title Suit before civil court does not bar him to approach the Authority. He further submits that at the time of enforcement of RERA Act i.e. 01.05.2017, the project "Apna Basera" was not completed. Therefore, it is an on-going project and as per the first proviso of section 3 of the Act, the project must be registered, which has already been held by the Hon'ble Tribunal on 07.06.2022 in REAT Appeal no. 31/2022, and due to non-registration of the project, suo motu proceeding as suo motu case no. 355/2019 has been initiated by the Authority against the promoter for violation of section 3/59 of the Act, 2016. He further submits that the case is maintainable against the promoter, hence the objection petition of the respondent may be rejected and order dated 24.08.2021 passed by the Authority may be executed.

7. Now, in the light of submissions of the parties and their petitions, the following points may be formulated to decide the objection petition of the Respondent :-

(i) Whether the complainant / Executant has committed fraud on the court / judgment debtor/Respondent?

(ii) Whether the Respondent has come with clean hands and whether they are ready to complete the project and hand over the possession of Duplex to the complainant/Executant?

8. The above both points are taken up together for discussion as they are inter-related. The Authority has delegated powers to this court under section 81 of the Act 2016 to execute the orders of Authority/ Members(s), so there is no question of any jurisdictional error, accordingly there is no force in the contention of learned counsel for the Respondent that this Bench has no jurisdiction to dispose of this execution case,

9. Admittedly, the project is incomplete, and the possession of Duplex to the complainant has not been handed over as yet by the respondent. Hence, it is categorically established that the project "Apna Basera" of the Respondent is on-going and it should have been registered with the Authority within three months from the date of enforcement of the RERA Act i.e. 01.05.2017, but as yet the Respondent has not got the project registered, and that is why suo motu case 355/2019 has been registered against the promoter for violation of section 3/59 of the Act, 2016.

10. Admittedly, the complainant / Executant has not disclosed about the pendency of the title Suit no. 552/2017 pending in the court of Sub-Judge I, Arrah, Bhojpur, and further pendency of consumer case no. 66/2016 before the Bihar State consumer Disputes Redressal Commission, Bihar, Patna, for which the learned counsel for Respondent has submitted that the complainant has played fraud not only on the Authority, but also on the Respondent, and he has filed ruling of Hon'ble Supreme court, reported in (1994) AIR (SC) 853(S.P. Chengalvaraya Naidu vs.

Jaggannath and others) and 2006 SCC (3) 605 (N. Khosla vs. Raj Lakshmi) in support of his case. The Complainant / Executant has strongly opposed and submitted that there was no fraud committed by him as the aggrieved person has option to approach the forum where he feels to get justice at the earliest, and when he has filed the complaint case in the Authority, he has withdrawn the case from the consumer forum. As regards the pendency of Title Suit, he submitted that he was not the main party in the Title Suit 552/2017, so there was no need to disclose about the pendency of the title suit in the complaint case filed before the Authority.

11. The factual matrix of the case is that the promoter Shri Viveka Nand Pandey and original land owners, Shri Krishna Singh and others have executed a development agreement on 17/02/2012 for development of the project "Apna Basera" on the land of Khata no. 325 and 326, khesara no. 2312, 2314 and 2315, Area 1 Acre 32 decimal, situated in Mauza Dakschin Ekauna, P.S – Udawant Nagar, District – Bhojpur. Both parties had also agreed that after development of the project, 34 % share will go to the land owners and 66 % will go in the share of the promoter. Thereafter, the promoter, on the basis of the said deed, had executed several registered sale deeds in favour of different allottees, including the complainant/Executant, Dr. Amir Chand Singh. Further, on 01.03.2013, the promoter had executed the sale deed in favour of the present Executant after receiving Rs. 2,63,000/- with respect to 1.82 decimal land in Khata No. 326, Plot No. 2314 of the aforesaid project land. Later on, the land owners were not satisfied with the

action of the promoter and they had filed the title suit no. 552/2017 in the court of learned Sub-Judge I, Arrah, Bhojpur against the Respondent promoter, Shri Viveka Nand Pandey and Duplex purchasers in which the complainant Dr. Amir Chand singh had been made a party as Respondent no. 13. If the title suit is decreed, naturally, there will be loss to the complainant, who has to be compensated by the Respondent as per provision of section 18 Sub-clause 2 of the RERA Act, 2016. Hence, due to non-disclosure of pendency of the title suit 552/2017 by the complainant, there is no benefit to the complainant, rather it is the complainant who is going to be loser. In this view of the matter, it was the duty cast on the Respondent to disclose the same, but they have kept silence, because he is himself not ready to file registration application before the Authority for registration of the project "Apna Basera".

12. Secondly, what is the effect of non-disclosure by the complainant/ Executant about the pendency of the case before the consumer court? Naturally, the complainant / executant cannot seek same relief before the different forums as the Hon'ble Supreme court in Pioneer Urban Land and Infrastructure and others vs. Union of India has held in para 86 ( 1 ) as under;

"That RERA is to be read harmoniously with the Code, as amended by the Amendment Act. It is only in the event of conflict that the code will prevail over the RERA. The remedies that are given to allottees of Flats/ Apartments are, therefore, concurrent remedies. Such allottees of

Flats / Apartments, being in position to avail of remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the code”.

13. When the executant / complainant came to know the factual as well as legal aspect of the matter, he has withdrawn the consumer case 66/2016 from the Bihar State Consumer Disputes Redressal Commission, Bihar, Patna. Accordingly, the learned Forum has dismissed the said consumer case as withdrawn vide order dated 16.03.2022. Accordingly, the point no. ( i ) is decided in negative and against the respondent.

14. The Respondent had executed the sale deed on 01.03.2013 with respect to the land in favour of the complainant and also issued the allotment letter on 22.02.2013 /29.07.2013 and had also received the major portion of consideration money Rs. 22,73,000/- out of Rs. 23,35,000/-, but till date, they have not delivered the possession of Duplex to the complainant, in spite of order dated 24.08.2021 passed by the Authority in RERA/CC/317/2021. Instead of delivery of possession of Duplex to the complainant, the Respondent has preferred REAT appeal no 31/2022 before the Hon'ble Tribunal, which was dismissed on 07.06.2022. It is also not out of place to mention here that the Respondent / promoter met with the complainant on 18.08.2021 and assured him that he would give possession to the complainant till 14.01.2022, but he failed to comply with his own assurances.



This aspect of the matter has been well explained in the order dated 24.08.2021 of the Authority.

15. Presently, the learned counsel for the respondent submits that the respondent will prefer an appeal before the Hon'ble High Court against the order dated 07.06.2022 passed by the Hon'ble Tribunal in REAT Appeal no. 31/2022, which is another attempt on the part of the respondent to spoil valuable time. The Respondent should have registered the project with the Authority and completed the same, but he is losing time in litigations. It shows that the Respondent is not coming before the Authority /Bench with clean hands and he is still not ready to complete and deliver the possession of Duplex to the complainant. In such view of the matter, the point no. (ii) is decided in positive and against the Respondent.

16. In the light of what has been discussed above, it is established from the factual as well as legal analysis of the present case that the complainant has neither committed any fraud on the Authority nor on the Respondent and rulings of the Hon'ble Supreme Court are also not applicable in the facts and circumstances of the present case and there is no force in the submission of learned counsel for Respondent, and hence, the objection petition dated 17.11.2022 of the Respondent is hereby rejected.

17. The Authority has directed the Respondent to hand over the possession of Duplex to the complainant by 14.01.2022, failing

which a penalty of Rs. 5000/- for each day of delay will be paid by the Respondent company to the complainant. Learned counsel for Respondent as well as Respondent have undertaken on 18.08.2021 to hand over the possession to the complainant before the due date. It shows that the Respondent has given a false assurance before the Authority about the delivery of possession of Duplex to the complainant, as till date he has not handed over the possession. Hence, considering the assurances as well as dilatory tactics being played by the Respondent to avoid delivery of possession to the complainant, the penalty amount as levied by the Authority on 24.08.2021 in RERA/CC/317/2021 be recovered under section 40 (1) of the Act, 2016, read with Rule 25 of Bihar RERA Rules, 2017 and section 4/5 of Bihar and Orrisa Public Demands Recovery Act, 1914. Hence, issue a recovery certificate to Collector, Arrah, Bhojpur for recovery of penalty at the rate Rs. 5000/-( five thousand) per day since 15.01.2022 till the delivery of possession of the Duplex, and Collector, Arrah, Bhojpur may be requested to inform the Authority about the continuous process taken from time to time and finally after payment of penalty amount to the Executant.

**Sd/-**

**(Ved Prakash)**

Senior Legal Consultant  
RERA, Bihar

30-01-2023