

REAL ESTATE REGULATORY AUTHORITY, BIHAR

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

Case No. RERA/PRO/REG.1214/2020

Authorized Representative of RERA

v.

Nissaa Realtors Pvt. Ltd.

Project – GHAR APNA BLOCK A, B, C & D

24.01.2022

28.01.2022

ORDER

M/s Nissaa Realtors Pvt. Ltd. through its Directors filed an application for registration of real estate project 'GHAR APNA BLOCK A, B, C & D', as an ongoing project before the Real Estate Regulatory, Bihar, on 19.02.2020. Real Estate Regulatory Authority, Bihar issued a show-cause notice to Nissaa Realtors Pvt. Ltd., through its Director, Mr. Deepak Singh, on 27.12.2021 as to why the application for registration of the Project GHAR APNA BLOCK A, B, C & D, filed by the company with the Real Estate Regulatory Authority (RERA), Bihar, on 19.02.2020, should not be rejected under Section 5 (1) (b) of the Real Estate (Regulation & Development) Act, 2016. The ground for rejection were that the applicant failed to furnish local address proof of company/promoter, copy of map approved by competent authority, directors report, auditors report, profit & loss account, balance sheet and cash flow statement of year 2019, copy of cash flow statement of year 2016-17, 2017-18, copy of registered deed of land & landowners certificate in the name of Sant Saran Goswami. After receipt of Notice dated 27.12.2021, respondent company submitted the requisite documents on 10.01.2022.

The matter was last heard on 10.01.2022, under section 5 (1) (b) of the Real Estate (Regulation and Development) Act, 2016, for rejection of the application for registration of the project 'GHAR APNA BLOCK A, B, C & D', wherein Learned Counsel for the promoter as well as Landowner were requested to submit written submission and matter was reserved for Orders.

Submission on behalf of the Landowner

In his written statement landowner submits that he is one of the landowner of the project having absolute ownership of the land measuring 18 Katha bearing Tauzi No.5292, Thana No.23, Khata No.172, Plot No.213, situated at Mauza – Saguna, and he has entered into two Development Agreement dated 03.05.2010 bearing Deed No.12999 and dated 16.04.2010 bearing Deed No.4040 for the construction of the aforesaid project. Since, the promoter failed to complete the construction work as per clause 7 of the Development Agreement and the validity of the Development Agreement had also lapsed, he filed Title Suit No.239/2021 & Title Suit No.261/2021 for cancellation of aforesaid development agreements before Sub-Judge-1, Danapur, which is still pending before the Court. In light of such facts and circumstance he prays to reject the application for registration of the real estate project of the respondent company. He has also placed on record corrigendum dated 06.01.2022, which has been published in the local daily regarding Title Suit No.239/2021 & Title Suit No.261/2021.

Submission on behalf of the Respondent Company

In the written submission on behalf of the promoter, it is admitted that Sant Saran Goswami is one of the landowner of the aforesaid project. However, Development Agreement was executed on behalf of the company by the Late Prabhat Kumar Verma, the then Managing Director of the company and the other then Directors of the company. After death of the Managing Director in the year 2018, another Director Mr. Devendra also resigned. Thereafter, Mr. Deepak Kumar and Sudhir Kumar Singh took over the charge of the company as Directors. He also placed on record that Ms. Dhanrajia Devi, one of the land owner of land measuring 20 Katha of land after selling/relinquishing title in favour of Ms. Nissaa Realtors Pvt. Ltd. had also filed a case before Danapur Municipal Court in the year 2012, wherein respondent company was directed to stop further construction. The ban imposed on the construction was lifted vide Order dated 18.12.2019 passed by Danapur Municipal Court. Thereafter, Ms. Dhanrajia Devi filed case before Real Estate Regulatory Authority, Bihar, vide case No.162/2018 to stop the construction of the project 'GHAR APNA BLOCK A, B, C & D', which was finally disposed of vide Order dated 15.09.2020, on the grounds of being devoid of merit. It has been submitted that

although the Development Agreement entered into with landowner Sant Saran Goswami was valid for three and half years with a grace period of six months but at the time of execution of these agreements there was residential building over the subject land where the landowner and his tenants were residing, and as per the terms of the Development Agreements the landowner had to handover the vacant possession of the scheduled land to the developer for construction of multi-storeyed building. Since the landowner failed to vacate the building and was residing along with his tenants from the date of signing of the agreement it has been prayed that direction may be issued to the landowner Sant Saran Goswami to vacate the premise and handover the vacant possession to the promoter so that the construction may be commenced at the earliest. The promoter has placed on record Order dated 18.12.2019 passed by Danapur Municipal Court & Order dated 15.09.2020 passed by Real Estate Regulatory Authority, Bihar.

On perusal of records , it appears that the promoter entered into Development Agreement with Landowner Sant Saran Goswami on 03.05.2010 and 16.04.2010 vide deed No.12999 & Deed No. 4040 for total land admeasuring 18 Katha.

Clause 7 of both the Development Agreements expressly mention that *“the Promoter / Developer shall complete the construction of project within three and half years plus a grace period of six months from the date of the sanction of the building plan from PMC and handing over of vacant possession of land”*.

Clause 20 of both the Development Agreement expressly mention that *“The landowner agrees to handover vacant possession of the land within three months from the date of Sanction of plan of said property”*.

The Authority observes that from-joint reading of clause 7 & 20 of the Development Agreements and the submissions made by the promoter , it is apparent that the intervenor, Shri Sant Saran Goswami one of the landowner has admittedly not handed over the vacated possession of land to the promoter. In fact , the learned counsel for the landowner have also admitted before the Authority on 10.01.2022 that landowner is having the peaceful possession of the land and upon which he is also running Khatal (Cowshed).

The Authority is of the opinion that under these circumstances where the title and possession of part land is under dispute the promoter would not be able to give an affidavit about the entire land of the project. The promoter has filed an application for registration of real estate project 'GHAR APNA BLOCK A, B, C & D', as an ongoing project before the Authority, it has not been able to satisfy whether the construction of the project is in progress since the landowner Sant Saran Goswami has filed Title Suit No.239/2021 & Title Suit No.261/2021 for the cancellation of Development Agreements which is pending before the competent court of civil jurisdiction. The promoter may also clarify whether it is possible to undertake work on the portion of the land that is not under dispute, and whether they are in a position to indemnify the allottees if the title suit is decided in favour of the landowner. The promoter may also disclose the number of bookings already made in respect of this project.

Hence another opportunity is given to the promoter to clarify the above issues before the application for registration of project 'GHAR APNA BLOCK A, B, C & D' is considered further.

Sd/-

Nupur Banerjee
(Member)

Sd/-

Naveen Verma
(Chairman)