

**REAL ESTATE REGULATORY AUTHORITY, BIHAR**

**Telephone Bhavan, Patel Nagar, Patna-800023.**

**Before the Bench of Mrs. Nupur Banerjee, Member**

**Complaint Case Nos. CC/422/2019**

**Nitesh Kumar Saw .....Complainant**

**Vs**

**M/s Viable Infra Project Pvt. Ltd. ....Respondent**

**Project: VIP Madhuvan**

**Present: For Complainants: Mr. Sharad Shekhar, Advocate**

**For Respondent: Mr. R. Kumar, Advocate**

**27 /07/2022**

**ORDER**

The matter was last heard on 20-06-2022.

The complainant, Nitesh Kumar Saw, C/o Upendra Prasad Saw, a resident of BadhiTola, Nehru Chok, Patna City, Gulzarbagh, Patna has filed a complaint petition against the respondent firm M/s Viable Infra Project Pvt. Ltd. a promoter and developer company, for refund of the money with interest accrued thereon.

In short, the case of the complainant is that the complainant had booked a flat bearing Flat No.302 on 3<sup>rd</sup> floor in Block-A having an area of 1250 sq.ft. at VIP Madhuvan, Near Patna Central School, Jaganpura, Patna and paid Rs.7,56,000/- to the promoter but they have not started the construction work as per the agreement and changed its company office without any intimidation to the allottee. It is also stated that they never attend any call of the allottee.

A notice dated 11.07.2019 was issued to the respondent company under Sections 03, 12, 18 and 19 of the RERA Act, 2016 and Rule 36 of the RERA Rules 2017 to appear and file their reply. In response to the said notice the respondent filed its reply stating that he has been made party being an authorized signatory of the respondent company. It is stated that he is no longer associated with the said company as a signatory authority or in any other capacity since 20.09.2018, therefore, he has wrongly been made a party as respondent. It is further stated that he was a Director in the said company but has resigned from the said post on 20.09.2018. In reply he admitted that the complainant entered into a contract and paid money to the company but he has not received anything from him in individual capacity. It is further stated that the said company is still in existence and run by some other director, so he should have made communication to the existing directors at the present address. He requested to expunge his name from the records of the case.

A reply has also been filed by one of the Directors of the company, namely, Sanju Kumari, stating that after establishment of the company on 05.12.2016 Mr. Sanjay Kumar was the authority for all types of work and he operated the bank account. He never disclosed about the fund collected. So,

she had no knowledge about the booking amount. After notice she contacted him but he has not responded. Some time ago he resigned from the company and after resignation she operated the bank account and found no money in the account. She further stated that she is only responsible to clear all dispute much less refund of the money to the allottees. The company is not in a position to refund the money because after his resignation no money was found in the account.

Again one of the Directors, namely, Sushil Kumar Singh, filed reply reiterating that Mr. Sanjay Kumar was the single authority for all type of works and he operated the bank account. He had never disclosed regarding any booking and fund to any Directors of the Company. He resigned from the company but he continued to work and operate the bank account illegally. He transferred the money from the company account to his own personal account on 01.10.2018. So, he is only responsible to refund the amount to the complainant because they are unknown about all these works.

On 19.11.2019 hearing was taken up and both the parties were present. Fresh notice was directed to be issued to both the Directors at the present address. On 23.12.2019 the Bench directed Mr. Sanjay Kumar, the Director to be personally present on the next date of hearing. On 03.03.2020 the Bench directed the Ex-Director to submit the proceedings of withdrawal as Director from the company. On 18.09.2020 on a prayer made by the complainant the Bench directed the respondent to give information about the refund of the amount. On 29.09.2020 the complainant prayed for refund with interest as there is no progress in the work. Learned counsel for the respondent Sanjay Kumar submitted that his money has been deposited in the company's account and after his resignation he has not role in it. Bench imposed a cost of Rs.5,000/- for continuous absence of the respondent company. On 13.10.2020 the Director of the company submitted that after RERA registration he will start the work. The Bench directed the Director to refund the first instalment by 4.11.2020 and the second instalment by the end of November. On 05.11.2020 also the Bench directed the respondent to pay 1<sup>st</sup> instalment by 12.11.2020 otherwise notice u/s 63 of the RERA Act would be initiated. On 13.11.2020 learned counsel for the complainant submitted that no money has been received as yet and the respondent has not complied the last order. Mr. Sushil Kumar Singh, M.D. submitted that at the time of booking Mr. Sanjay Kumar was operating the bank account even after resignation and never disclosed about the funds. The Bench observed that all the three Directors are equally responsible and will have to refund the money to him. On 25.11.2020 the Bench directed Mr. Sanjay Kumar to pay ¼th of share of money to the complainant. On 10.12.2020 learned counsel for the respondent company submitted that Mr. Sanjay Kumar is whole and sole responsible for refund. On 28.12.2020 the Bench directed Mr. Sanjay Kumar to pay ¼th share of consideration amount and also to the three Directors to pay ¾th of the share. On 10.03.2021 the complainant reiterated for refund of the money but no instalment has been paid by the respondent as yet. The Bench again imposed a cost of Rs.10,000/- upon the respondent. On 23.12.2021 the Bench again imposed a cost of Rs.10,000/- for non-appearance before the Bench. On 11.04.2022 Learned counsel for the complainant reiterated the submissions

and referred to Section 69 of the RERA Act that all the Directors are equally liable. On 11.05.2022 learned counsel for the complainant submitted that the Directors of the company are shifting their onus on each other. Referring to Section 69 of the RERA Act he submitted that whoever was the Director at that time is responsible for every action taken place. Learned counsel appearing on behalf of Mr. Sanjay Kumar submitted that the complainant deposited the money to the company, therefore, the other Directors are responsible for the same.

During the last hearing on 20-06-2022, learned counsel for the complainant has submitted that the only grievance of the complainant is that the respondent is required to refund the earnest money with interest but they have not refunded the same.

Learned counsel of the Mr. Sanjay Kumar (one of the director of the respondent company but as of now has resigned from the company) has submitted that the respondent was the ex-Director of the company before 2018. In 2018, he resigned from the directorship.

In reply, learned counsel for the complainant has submitted during the last hearing that the company is existing. They are developing another project also. He further submitted that not a single brick has been constructed. He also submitted that complainant booked the flat in 2017.

The complainant has placed on records money receipts of Rs.7,56,000/- dully acknowledged and issued by the respondent company along with Memorandum of Understanding dated 07-02-2019.

The Bench observes that Section 69 of the Act specifically provides that for the offences by the companies, the penal provisions apply for every person who, at the time, the offence was committed was in charge of, or was responsible to the company. Hence, all the directors' fall within the ambit of this section and are thus liable to make the refund.

Having heard the learned counsel for the parties and considering the materials available on record, the Bench hereby directs the respondent company and their Directors to refund the principal amount of Rs.7,56,000/- (Seven Lakh Fifty Six Thousand) to the complainant along with interest at the rate of marginal cost of fund based lending rates (MCLR) of State Bank of India as applicable for two years plus three percent from the date of taking the booking within sixty days of issue of this order.

With the above observations/ directions, this complaint petition is disposed of.

Sd/-

**Nupur Banerjee**  
**Member**