

**REAL ESTATE REGULATORY AUTHORITY, BIHAR**

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

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

**Complaint Case Nos. CC/522/2019**

**Vijay Bihari Agrawal .....Complainant**

**Vs.**

**M/s City Makers Pvt. Ltd. ....Respondent**

**Project: Banke Bihari Kunj**

**For Complainant: Mr. Puneet Siddhartha, Advocate**

**For Respondent: Mr. Ravi Shankar Roy, Advocate**

**24 /08/2022**

**ORDER**

The matter was last heard on 20.06.2022 and order was kept reserved but, due to pre-occupation, the order in the said case was not pronounced.

The complainant, Vijay Bihari Agrawal, a resident of F.No. 401, Exhibition Road, Ambition Residency, Patna has filed a complaint petition against the respondent M/s City Makers Pvt. Ltd., a promoter and developer company, for a direction to the respondent company to provide physical possession of the flats in question, to construct the project as per sanctioned map plan, to conduct enquiry against the said project by the competent authority and pay interest @10% on the paid amount for the delay caused in handing over physical possession of the flats and compensation of Rs.25,000/-.

In short, the case of the complainant is that out of consideration amount of Rs.1,57,21,623/-, the

complainant has paid Rs.61,50,000/- to the respondent as per mutual understanding. The complainant was assured for delivery of the flats i.e. Flat Nos. G01, G02, G04 and 302 within the stipulated time but the respondent has yet not given the physical possession of the above stated flats. The complainant approached the respondent for non-delivery of the flats in question but it was found that the flats are still incomplete. The complainant approached the respondent but they did not give any reply. The area of the flats is mentioned in para-6 of the complaint petition. It is stated that the map plan of the project has been sanctioned on 08.12.2012 by the Patna Municipal Corporation but the respondent has not followed the sanctioned map plan and has violated the terms of Sections 13 and 14 of the RERA Act. The respondent has given an assurance to provide well planned project with facilities of drainage system, electricity etc. It is further stated that the complainant approached several times to the respondent to settle the physical possession of the flats but they never responded to the said request due to which complainant had suffered heavy financial and physical loss. Hence, this complaint.

A notice dated 09.09.2019 was issued to the respondent company under Sections 03, 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 has filed his reply stating therein that the complainant has filed the instant

petition for providing physical possession of flat Nos. G-01, G-03, G-04 and 302 for which he made payment of Rs.61,50,000/-. It is stated that the complainant has not produced any agreement paper with this case. The receipts of the amount of Rs.8 lakh, 2 lakh and 28 lakh have been attached without his signature which goes to show his foul play. The complainant has claimed that the physical possession of flat nos. 302 and G-03 were not made to him but in a criminal case filed by the complainant, he has already admitted that the physical possession of Flat no. 302 and G-03 and one car parking space was already handed over to him without making any agreement. It is further stated that from perusal of the F.I.R., it appears that a development agreement was made between the respondent and the land owner with the ratio 55% and 45% and the respondent has already constructed the multi storied building and handed over to the land owners. It is further stated that respondent has registered Flat No.302 in favor of Dipti Agrawal and Flat No.G-03 in favor of Tripati Agrawal, the daughter of the complainant. The complainant has filed this case without any basis or material, which is fit to be dismissed.

A petition has also been filed on behalf of the respondent on 14.09.2020 stating that several cases have been filed by the parties which are pending in different court of law. The complainant of this case filed ABP No. 8228/2019 and the respondent of this case filed ABP No. 6410/2019. Both the anticipatory bail petitions

filed by the parties were heard before learned ADJXVII, Patna and the said court sent the matter before the Mediation Centre and both the parties appeared before the Mediator and all the disputes between the parties were settled and a joint compromise petition was also filed before the Mediator. Thereafter, both the parties appeared before the learned ADJXVII, Patna and both the parties agreed upon the terms and conditions in the joint compromise petition and raised no objection. Thereafter anticipatory bail was allowed to both the parties. It is stated that as per report submitted by the learned Mediator this case has also been compromised and there is no grievance of either party.

An application u/s 35(i) of the RERA Act,2016 read with Section 63 of the act has been filed on behalf of the complainant on 16.09.2020 for conducting an enquiry of Flat Nos.G-01, G-02 and G-04 of the said project. In the mediation court, the respondent has taken a plea that he has been on way of compromise with the complainant to handover the physical possession of the said flats. It is further stated that the complainant has deposited all money along with registration cost as per demand raised by them but after payment of the total amount by the complainant; the respondent has not given the physical possession of the flats till date. On visiting the site, the complainant has found incomplete construction and various discrepancies. It is also stated that the project is still incomplete and in this way the respondent has misled the Authority regarding completion of the project.

A supplementary counter affidavit has been filed on behalf of the respondent on 10.03.2021 in which it is stated that the instant case is false, frivolous and has been filed with malafide intention to mislead the court. The complainant has suppressed the material facts to mislead the court, hence present complaint case is fit to be dismissed. The Authority has no jurisdiction to entertain the instant complaint because the matter involves specific performance of contract. The complainant is not only a land owner but is also a co-promoter as per Section 2(zk) of the RERA Act. The complainant has also received his share in the built up area thereby being covered within the definition of the promoter under the Act. Therefore, the complainant should have to raise his grievance before the Civil Court. The respondent has more or less reiterated the statements made in his reply and prayed to dismiss the instant complaint and award heavy cost on the complainant.

An application u/s 60 of the RERA Act, 2016 has been filed on behalf of the complainant on 07.04.2021 for imposing penalty on the respondent for providing false information while getting registration certificate. It is stated that when the RERA Act, 2016 came into force, the project of the respondent was ongoing project and the registration of ongoing project is mandatory under proviso to Section 3 of the RERA Act, 2016. It appears that the respondent had applied for registration of its ongoing project and obtained registration certificate on

31.10.2018 which has been obtained in an illegal manner by submitting a false and fabricated map and the complainant had not signed the map but the map which has been submitted by the respondent before the Authority has the signature of the complainant which shows that they have illegally got the map sanctioned without consent of the complainant. It is further stated that the Patna Municipal Corporation had passed the map on 08.02.2012 which had already lapsed on 07.02.2015 and no effort was taken by them to renew the map. The respondent has filed a forged and fabricated map by changing the date of sanction in order to take registration certificate. Thus, the registration certificate issued on 31.10.2018 may be declared as null and void and heavy penalty be imposed on them for submitting false information.

A supplementary affidavit has been filed on behalf of the complainant on 20.06.2022 stating that in the application filed u/s 60 the complainant has attached a photo copy of certified sanctioned map and a copy of the forged map submitted by the respondent for registration of the project which are annexed as Annexures A1 and A2 respectively. It is further stated that they have alleged that the dispute between the parties was mutually settled in the criminal case and to substantiate the same the respondent has brought on record the mediation report but all the pages of the said report have not been filed by them deliberately. As per terms of the settlement it was agreed that the respondent shall complete all the

work within a period of one month but the respondent has not done any work and therefore, they have committed fraud. It is also stated in the report that if the respondent did not abide by the terms of settlement, the mediation shall be held invalid and the complainant shall be at liberty to take legal action against them.

On 06.10.2020 hearing was taken up and learned counsel for both the parties were present. On that day learned counsel for the respondent submitted that both the parties have agreed to compromise. On 14.10.2020 the complainant had filed objection petition to the counter affidavit. On 11.01.2021 learned counsel for the complainant submitted that as per development agreement the respondent was under obligation to complete the work but the respondent has not shown any interest. The complainant submitted that the promoter has stopped the work soon after receipt of payment and prayed for enquiry.

The Bench directed the officials of RERA to visit the site and submit their report regarding present status of the project.

In pursuance of the said direction of the Bench the team of the Committee visited the project on 31.01.2021 and submitted its report as follows:

*“There is serious dispute between the land owners and promoter regarding completion of share of land owner, not freeing the space for construction of front boundary wall, gate in the set-back area, guard*

*room and common toilet. Installation of transformer, demarcation of parking area for land owners, rectification of seepage on floor in the basement of parking area, completion of work of Flats which belongs to the complainant/ landlord/ allottee as per the promise made by the promoter and removal of poll which is present in the middle of driveway, installation of door and window in the temple at terrace and also to cover drainage area with proper drainage arrangement.”*

On 05.02.2021 the complainant submitted that the matter was settled as an allottee in the mediation centre and registry was done. He further submitted that after registry, the respondent prayed for one-month time to complete the work and hand over the possession. Learned counsel for the Authority submitted that the boundary has not been done as yet. On 08.04.2021 learned counsel for the complainant submitted that an application has also been filed that the respondent has supplied false document to RERA for obtaining registration number. He further submitted that the complainant booked five flats in ground floor but not even bifurcation of the flats was done. On 23.12.2021 learned counsel for the complainant submitted that the complainant booked five flats but the respondent delivered only two flats and the remaining flats have not yet been completed. He further submitted that the registration of the project has since expired and no extension has yet been given to the respondent. The

Bench directed the Registration Wing to enquire into the matter. On 04.04.2022 learned counsel for both the parties reiterated the submissions as submitted earlier. On 11.05.2022 learned counsel for the respondent submitted that they had filed a criminal complaint against them. Both the parties have settled the matter and they have executed the sale deed in favor of wife and daughter.

On 11-08-2022, complainant has filed his written statement along with photographs via online and submitted the hard copy of the same on 12-08-2022 stating therein that the complainant had purchased flats in ground floor in Block-A from the respondent but till date the respondent has not completed the flats which can be evident from the photographs annexed. It is further submitted that according to respondent he has completed the entire project which is false and fabricated. It has been further submitted that, it is evident from the photograph annexed in Annexure 1 which is block A that on the ground floor, the flats have only window space and there is no window frame. In the second photograph annexed as Annexure 1A wherein it can be clearly seen that no flat has been constructed instead respondent has not even properly erected walls for its construction. It has been further submitted that that respondent has tried to mislead the Bench by presenting form-XII as Notice (Certificate) of Completion where it has been submitted that project has been completed on 18-12-18 but it is relevant to mention here

that how this form is submitted when the project is not complete which is very much evident from the photographs placed. It is also submitted that Architect Mr. Sooraj Bharti who had signed and sealed on Form-XII and stated that building is complete is itself is son of the promoter as well as manager of the respondent company. It is relevant to mention here that Mr. Sooraj Bharti who has examined the building regarding completion has raised question that how the building is declared complete when on reality, it is not completed which need inspection and examination of building by Competent Authority and complainant humbly prays to direct the Competent Authority to examine the same. It has been further submitted that the incompleting construction of the project will be elucidated from the Sulahnama done between both the parties dated 06/02/2020, i.e. Prapatra-2 whereby the respondent had prayed to give time of one month to complete the construction of flat. It has been further stated that if the construction of building was completed by 18/12/2018 then how come respondent in his Sulahnama promised to complete the construction in a month in 2020. It is further submitted that complainant got the registration of the flat done on 24/01/2020 and thereafter fully paid the consideration amount of the flat on 23/01/2020 on the pretext that respondent would complete the construction of the flat in a month as promised as per the compromise done between both the parties on paper in Sulahnama on 06/02/2020 i.e. Prapatra-2. It has been further submitted that the complainant has

suffered a lot due to such delay and act of the respondent and prays to impose a heavy penalty along with interest for such delay.

During the last hearing on 20/06/2022, learned counsel for the complainant has submitted that the complainant is the allottee wherein he has purchased five flats. He further submitted that out of five flats two flats have already been completed. Three flats (G01, G02, G04) are totally incomplete. Inspection has been made and the inspection report is on record. He has paid the full amount. A criminal complaint was filed against the respondent. The District Judge sent it for mediation. They agreed to execute the sale deed. In mediation they have said that they will do the remaining work in one month. The sale deed was executed in his favour. Since then no work has been done. He also submitted that petition has been filed under section 60 of the Act which is on record.

Learned counsel for the respondent prayed for one-week time to file reply to the supplementary affidavit.

The Bench notes that no reply has been filed as prayed by the respondent on the last date of hearing.

In the light of the submissions, advanced by learned counsel for the parties and documents placed, this Bench deals the issue raised in the present complainant in the following manner:-

As raised by the respondent regarding maintainability of the present case filed by complainant

and their submissions regarding that he is not only land owner but is also a co-promoter as per Section 2(zk) of the RERA Act. The complainant has also received his share in the built up area thereby being covered within the definition of the promoter under the Act. Upon that complainant has submitted that complainant has purchased this flat from the respondent not being as land owner but as allottees and the same purchased flat was executed in favor of his daughters through registered sale deed by respondent after the order of mediator as per the compromise has been taken placed by the parties. To substantiate his submissions, the complainant has placed money receipts duly issued and acknowledged by respondent and Sulahnama dated 06/02/2020 i.e.Prapatra-2.

The Bench observes that Section 31 of RERA, Act, states as following below:-

***Section 31 clause 1 of the RERA Act, 2016 reads as- “Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made there under against any promoter allottee or real estate agent, as the case may be.”***

The Bench put reliance on Hon’ble Supreme Court recently observation in M/s Newtech Promoters & Developers Pvt. Ltd. Vs State of U.P & Ors. [2022] (1) RCR (Civil) 357 where the Hon’ble Supreme Court

observed that under Section 31, the complaints can be filed either with the authority or adjudicating officer for violation or contravention of the provisions of the Act or the rules and regulations framed there under. Such complaint can be filed against “any promoter, allottee or real estate agent”, as the case may be, and can be filed by “any aggrieved person”, and it has to be read with an explanation, “person” includes an association of allottees or any voluntary consumer association registered under any law for the time being in force.

It has further observed by the Hon’ble Supreme court that establishment of the Real estate Regulatory Authority (the Authority) for regulation and promotion of real estate sector and to ensure sale of plot, apartment or building, as the case may be, in an efficient and transparent manner and to protect the interest of consumers in real estate sector and establish the Real Estate Appellate Tribunal to hear appeals from the decisions, directions or orders of the Authority.”

The Bench also observes that as per Bihar Real Estate Regulatory Authority (General) Regulations, 2021 Section- 6 (3) which reads as follow:-

***“In cases where there is a development agreement or such like arrangement between the promoter and the landowner/s, unless otherwise mentioned in the agreement, the landowner would be treated as an allottee under the Act as he is getting apartments in lieu of land . In all such cases the promoters of the project would be responsible for***

***fulfilling all obligations under the RERA Act and Rules made there under.”***

From the above discussions and considering the submissions of the parties, the Bench finds that the present complaint has been filed by the complainant as an allottee and from the documents produced and money receipts issued by respondent, it is quite clear that respondent has sold the flats at ground floor to complainant and there is no documents placed by respondent from which it reflects that these flats are felled under the shares of complainant as land owner. Hence, the present Complaint Case is maintainable against the Respondents.

As regards the issue of non-completion of work and production of form-XII as Notice (Certificate) of Completion where it has been submitted that project has been completed on 18-12-18, upon this issue, after the perusal of photographs placed by complainant, it very much appears that the flats purchased and also sale deed executed in respect to alleged flats by the Sulahnama dated 06/02/2020 i.e.Prapatra-2 taken place between the parties, are incomplete and hence, considering that the flats are incomplete, the Bench requests the competent authority to inquire the building before issuing completion certificate.

The Bench also takes the notes of the submissions of complainant that incomplete construction of the project will be elucidated from the Sulahnama done between both the parties dated 06/02/2020,i.e.Prapatra-

2 whereby the respondent had prayed to give time of one month to complete the construction of flat. It has been further stated that if the construction of building was completed by 18/12/2018 then how come respondent in his Sulahnama promised to complete the construction in a month in 2020. Hence, by perusal of Sulahnama done between both the parties dated 06/02/2020, i.e. Prapatra-2, the Bench observes that submissions of Form XII i.e. Notice (Certificate) of Completion is contrary to sulahnama i.e. Prapatra-2.

As regards the complainant application u/s 60 of the RERA Act, 2016 and forged map is concerned, The Bench perused the records of the registration section. From perusal of the records, it appears that on 08-02-2012, Architect was competent to approve the map of the project in year 2012. Accordingly, the submitted map was approved by the Architect Sri. Jiwachh Kumar on 08.02.2012 and on the basis of this approved map, the project was registered with RERA on 21.10.2018 because this map was approved by the competent authority on date and RERA didn't ask for any other drawing. Now the question of forged drawing is not concerned with RERA, Bihar. Hence, if any issue is rising, then the complainant may approach before the competent authority or before the certified Architect Sri. Jiwachh Kumar, Patna Nagar Nigam, Registration No: 17/2009 to get it verified or claim their issue regarding map raised here.

In the view of above issues discussed, this Bench finds that though the Sale Deed is executed in the favor

of daughters of complainant in consonance to Sulahnama dated 06/02/2020 i.e.Prapatra-2 but actual physical possession is still not handed over by completing the flats which is clearly appearing from the photographs placed, hence, Bench directs respondent and their directors to complete the flats in all respect and provide all the facilities as per the Sale Deed executed within 60 days of issuance of this order, failing which penalty of Rs.5,000/- would be imposed upon them for each day of delay. The Bench further directs respondent to issue possession letter for taking physical possession of the flats after completing within the time frame stated above and also directs complainant to take the physical possession after receiving the possession letter.

The Bench further directs respondent to pay interest at rate of marginal cost of fund based lending rates (MCLR) of State Bank of India as applicable for two years plus two percent in the light of section 18 for delaying in handing over the physical possession of flat by completing it in all respect from the date of actual handing over the possession of flat till the date the physical possession will be given.

The Bench also impose a penalty of Rs. 2 lakh upon respondent for wrongly submitting the form-XII as Notice (Certificate) of Completion and mentioning therein that building is completed in all respect on 18/12/2018 and directs to deposit the penalty amount within 15 days of issue of this order, failing which, the same shall be

recoverable as per section 40(2) of the Real Estate (Regulation & Development) Act, 2016, read with Order 21- Rule -30 of the Code of Civil Procedure, 1908.

The complainant is at liberty to press claim for compensation before the A.O.

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

Let a copy of order be sent to P.M.C., Patna.

Sd/-

**Nupur Banerjee**  
**Member**