

**REAL ESTATE REGULATORY AUTHORITY, BIHAR**

**Before the Single Bench of Mrs. Nupur Banerjee**

**Case No. CC/814/2021**

**Jitendra Kumar** ..... **Complainant**

**Vs**

**M/s Xavier Construction Pvt. Ltd.** ..... **Respondent**

**Project: Xaviers Prem Kunj**

**Present: For Complainant: Mr. Ashutosh Singh, Advocate**

**For Respondent : Mr. Mohit Raj, Advocate**

**03/08/2022**

**ORDER**

The present complainant has been filed seeking relief to direct the respondent to hand over the shares of complainant as per the development agreement and provide completion certificate.

The facts of the case in short is that complainant's grandmother namely Prem Kaur entered into development agreement with the respondent company and as per the development agreement, the complainant is entitled to get 40% share in super built up area of 1<sup>st</sup> floor as well as land and car parking space. It has been further submitted that complainant is also entitled to get 55% share in super built up area on the 5<sup>th</sup> floor of the building developed by the respondent as per the agreement dated 12-04-2004. It has further been submitted that on great persuasions respondent had given only 4 unfinished flats to the complainant on 1<sup>st</sup> floor of the building on 09-12-2012, although the map sanctioned on 11-09-2008. It has been further submitted that as stated above rest shares were not handed over to the complainant till date.

The complainant has also filed another petition on 25-01-2022, stating therein that complainant Jitendra Kumar is the eldest son of late Dukhan Singh, Prem Kaur original Signatory's son and therefore, he is Karta of the joint family and legal heirs of Prem Kaur who has given authorization letter which is annexed as Annexure-1. It has also been submitted that in 2014, a title suit has been filed by Smt. Prem Kaur, original development agreement signatory against respondent company and its Managing Director namely Kundau Kumar for the following relief:-

1. *To declare that plaintiff is entitled to get 40% share in super built up area of 1st floor as well as land and car parking space and 55% share in super built up area on the 5th floor of the building developed by the respondent as per the agreement dated 12-04-2004, 2.*
2. *for decree of damage at the rate of 15,000/- per months since the date till the completion of the building and its boundary,*
3. *3. For grant of the decree of damage at the rate of Rs. 45000/- per month since 01-05-2011,*
4. *For to remove building materials from the 5<sup>th</sup> floor of the building,*
5. *For to restrain the defendants from selling, alienating, in cumbering and letting out any portion of the complainant's share,*
6. *For the cost of the suit. And during pendency of the suit on 19.10.16 the plaintiff Prem Kuar died and at her place her son namely Dukhan Singh substituted and subsequently after death of Dukhan Singh on 21-08-2019, a substitution application has been filed by the complainant/Jitendra Kumar and others is pending due to the COVID and presently the suit is pending before the learned court of Subjudge -IV, Patna.*

The respondent has filed its reply on 25-01-2022, stating therein that project is completed within the time frame in 2008 itself and given the share of the complainant. It has been further submitted that respect to this matter of occurrence only a title suit bearing title no.5554/2014 is pending before the Civil Court.

During the last hearing, learned counsel for the complainant has submitted that illegal construction on 6<sup>th</sup> floor has been made. Parking has not been given to him. Entire building has not been completed. Even the boundary wall has not been completed. They have not obtained the completion certificate. They are going to sell the flats to others and give possession. He has occupied four flats in 2012 which are also incomplete. 11 flats are in his share. They have not given his shares of the flats.

Learned counsel for the respondent has submitted that this case is not maintainable before this court. The complainant has to file genealogy of the family but it has not been filed. The flats are completed in the year 2008. He has also filed a civil suit in the Civil Court, Patna in 2014 which is still pending. This fact is also admitted in his rejoinder petition. In the title suit his prayer is for injunction of the property. He referred to Section 14 of the RERA Act. He has filed the case only to harass the respondent. He has filed the case for proportion of

share of the land owner. The building has been completed in 2011. The development agreement is of 2004. The plot is of grand-mother of the complainant. So, heavy penalty may be imposed. This project is not registered with the RERA.

On 15-07-2022, the complainant has filed their written submissions stating following grievances:-

- a. The building in question has not been completed by the respondent till date, therefore the partition of complete building in the ratio of 40:60 is not being done by the respondents.
- b. The respondents have illegally constructed an extra floor as 5<sup>th</sup> floor.
- c. The respondents have constructed illegally a big hall, Kitchen, bathroom and latrine in the parking space.
- d. The respondents have not given any parking space to the complainant with respect to the Flat No.101, 102, 103 and 104
- e. The respondents have given the 4-flats after the period expired therefore the ratio will be enhanced.
- f. The respondents have illegally constructed rooms in the parking space of the building in question.
- g. The respondents are not giving the building completion certificate in fact the building has not been completed as yet. Those for want of completion certificate and N.O.C. from department of fire services, the complainant and his brothers are not in a position to sale/ mortgage their flats.
- h. That the respondents have illegally constructed an extra floor as 5<sup>th</sup> floor on building even after objection of the complainant and further denied giving any share in the 5<sup>th</sup> floor and not also ready to demolish the same.
- i. Beside the 4-flats no portion has been given to the complainant, in fact the complainant requires 4-flats on 1<sup>st</sup> floor, 4-flats on 2<sup>nd</sup> floor, 1-flat on 3<sup>rd</sup> floor and 2-flats on 5<sup>th</sup> floor i.e.55%

After the perusal of case records and considering the submissions of the parties and taking notes of submissions of complainant made in petition filed on 25-01-2022 as well as in written submissions filed on 15-07-2022 that on the same issue

and relief sought in this complaint petition in respect to development agreement brought on record, a title suit was also filed before the civil court bearing Title Suit No. 55554/2014 which is pending for adjudication, hence, Bench observes that it is settled principle of the law that on the same issue, two forum cannot on the same time exercise their jurisdiction, hence, considering that the matter in respect to claim made herein and relief sought is pending before the civil court, this Bench cannot entertain.

In the light of above observation, this complaint petition is disposed of.

So far the issue of illegal construction in contrary to approve map is concerned, the complainant is advised to approach appropriate forum.

Sd/-

**Nupur Banerjee**  
**(Member)**