

**REAL ESTATE REGULATORY AUTHORITY, BIHAR**  
2<sup>nd</sup> Floor, BSNL Telephone Exchange, North Patel Nagar, Road No. 10,  
Patna -800023

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

**Complaint Case No.: CC/790/2021**

**Birendra Prasad Singh.....Complainant**

**Vs**

**M/s Medhatiya Construction Company Pvt. Ltd.....Respondent**

**Project: Dream City at Mainpura**

**For Complainant: In Person**

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

**ORDER**

**27-07-2022**

The matter was remanded back by the Hon'ble Real Estate Appellate Tribunal; vide order dated 21-04-2022, passed in REAT Appeal No.15/2022 to decide first maintainability of the complaint filed before the Authority within one week from the date of receipt of the order.

In compliance to the direction of the Hon'ble Real Estate Appellate Tribunal, the matter was listed on 02-05-2022 and both parties were heard on the maintainability of the present case and accordingly, the Bench during the course of hearing on 02-05-2022, decided the issue of maintainability as following:-

“The Bench observes that authority has jurisdiction to entertain the complainant under section 31 of the RERA Act, 2016 for any dispute arises between the land owner and promoter in respect of their shares of flat which has been not handed over by the promoter to landowner as per the development agreement. 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.”*

In light of the above, the issue pertaining to jurisdiction is found to be within the ambit of Authority”.

The matter was last heard on 13-06-2022. During the last hearing on 13-06-2022, the complainant present in person has submitted that the respondent has not handed over the possession nor the key of the flat has been handed over as per the Shares Distribution Agreement.

Learned counsel for the respondent has submitted that they have handed over the possession but he has not filed any reply. On 21.11.2020 they submitted the completion certificate in RERA in proper form duly received by the PMC. The complainant is the land owner. He further submitted that on the last date of hearing, he has already filed list of documents with photographs that possession has already been handed over to complainant and they are residing there.

In reply, the complainant has refuted the submissions of respondent and submitted that respondent has converted their 3 BHK flat in 2 BHK and out of 7 flats, they had handed over only 2 flats.

The facts reveal that the complainant is the owner of land bearing Khata No.-428, Tauzi No.-5236, Thana No.-02, Mauza- Mainpura, Anchal-Patna Sadar, Police Station- Patliputra, District- Patna, Rakba- One Katha Sixteen Dhur, situated at Patna. The complainant submitted in their complaint that he had entered into development agreement dt.19-01-2013 for the construction of a multi- storied residential building with the respondent company upon his land. It has been also been submitted by the complainant that as per agreement, the respondent in lieu of the value of same land, shall handover 5200 sq.ft built up area in four super deluxe flats along with four parking space and its area, seize and boundary would be decided by partition by the consent of both the parties as per the approved map by the PRDA. Further, the complainant submitted that as per development agreement, the project has to be completed in four years and if it not then, the respondent shall pay Rs.15,000/- per month rent allowance till the allotment of all the flats and parking space. The complainant also states that besides built-up area of 5200 sq.ft., the respondent has also agreed to give some initial money. It was also submitted by the complainant further that respondent has said to add his land in another parts of land and will construct a complex known as ‘Dream City’. He submitted further that the respondent taken the responsibility to shift the complainant on rent house and has agreed to pay the entire rent of the house at the rate Rs.15,000/- per month and also taken responsibility to pay the enhancement amount if any in monthly rent. It is also submitted by the complainant further that they had entered into supplementary agreement on 13-04-2015 where it was agreed between both the parties that now, the respondent will give 750.5 sq.ft. extra to complainant in the share of complainant i.e. total 5950.sq.ft. built up area in seven flats along with four parking space within 4 years and will pay entire house rent till the handover of all flats but till now, only 2174 sq.ft built up area in two flats has been handed over and remaining is yet not handed over by the respondent even after several requests and approaches. He further requested to direct the respondent to hand over the remaining flat and rent arrear as per agreement.

The Complainant has placed on record development agreement dt.19-01-2013 and supplementary agreement dt.13-04-2015.

On 06-12-2021, the respondent had filed objection petition stating therein that present complaint case is not maintainable due to lack of jurisdiction of the present court to decide the dispute arose out of development agreement dt.19-01-2013. He further submitted that complainant is landowner and any dispute arises out of non-performance of development agreement or rent arrear is governed by the law of specific relief and complainant can file claim before the court of competent jurisdiction under CPC and SRA. It has been submitted in para – 9 of the objection petition that the respondent had handed over entire physical possession of entire share of 7 flat along with respective parking spaces way back in November, 2019. Further, Respondent had brought on record letter dt.05-11-2019, in way of Annexure-4, stating therein that respondent has sent the letter to complainant to take the possession letters of the remaining flats but the letter was not delivered.

On 15-01-2022, the complainant had filed petition stating therein that the complaint is not promoter as per section 2(zk) of the RERA Act,2016. He further submitted that the complainant has filed this complaint petition as allottee to redress his grievances like allotment parking place and payment of arrear of rent. He further submits that complainant wants his flat for his personal use and for his joint family members.

On 24-01-2022, the respondent has filed final argument denying the contents of petition filed by complaint on 15-01-2022 and further submitted that development agreement was executed by land owner as the sole proprietor of the land and not as HUF.

On 02-05-2022, the respondent has filed a list of documents with photographs and electricity bill stating therein that following below flats has been handed over to complainant Mr. Birendra Prasad Singh:-

B —201, (sold to buyer by Landowner — electricity connection in buyer's name)

B - 202 & 203, (sold to buyer by Landowner — electricity connection in buyer's name)

B - 204 & 205, (landowner looking for buyers)

B —206, (Landowner sold this to Suman, Reeta & Santosh)

B — 306, (sold to buyer by Landowner — electricity meter installed)

A —203 (In Landowner\*s Possession with Electricity connection in his name)

A — 303. (In Landowner's possession)

On 16-06-2022, complainant has filed his reply stating therein that no paper of the possession letter and no keys of left out flats i.e. A-203, A-303

and B- 204 & 205 have been handed over to complainant. It has been further submitted while referring to Annexure-1 that Flat No. A-203 was 3 Bhk but it has been converted into 2 Bhk by respondent which can be evident from the photographs annexed with this petition. It has been further submitted that as per the approved map by PRDA vide no. CA/ 99/ 244 13 dated 10/ 12/ 2012, the flat no. A-203 was having 3Bhk unit of 1313sq ft. but one bedroom has been sealed by a wall erected in place of a door. It has been further submitted that an electricity meter was installed in the Flat A-203 in my name with the help of the supplementary document in fear of losing the whole 3Bhk flat which is now converted to 2Bhk. It has been further submitted that complainant had applied the electricity connection assuming the flat is of 3Bhk, while it has been reduced to 2Bhk and because of that only complainant has refused to accept the possession of the flat no. A-203. It has further submitted that no single parking place for the all 7 flats has been handed over to complainant in practical or paper. He further submitted that respondent has not paid the arrear of rent and penalty for late handing over of all 7 flats till date.

After the perusal of case records, documents placed, the Bench observes that only the dispute as pointed out by the complainant in their petition dated 16-06-2022 remains regarding handing over of flats nos. A-203, A-303 and B- 204 & 205 which the complainant alleged that said flats are not handed over to complainant and upon which respondent has submitted that the same has been handed over to complainant and also a list of documents has been filed by respondent with photographs and electricity bill.

The Bench further observes from the perusal of documents placed and submissions made that in respect to Flat No. A-203, a picture of electric meter has been brought on record with electricity bill by the respondent which the complainant has also admitted in their reply filed on 16-06-2022 but complainant has narrated a different story stating that same flat has been a 3BHK flat which was converted into 2 BHK by respondent and to substantiate his averment, complainant has filed photographs of flat.

Upon the above discussed issue, the Bench observes that from the facts and circumstances stated above, it appears that complainant is in the possession of the above said flat and regarding conversion of flat from 3 BHK to 2 BHK in contrary to approved map, the Bench directs complainant to approach competent forum.

So far the issue in respect to other flats possession is concerned i.e. possessions of Flat nos. A-303 and B- 204 & 205, the Bench takes the notes of photographs placed on record by the respondent and in view that flats are in ready stage and directs respondent to issue fresh possession letter in respect to above said flats on the correct address of complainant within 15 days and also hand over physical possession as per the possession letter. Further the Bench directs complainant to take the possessions of the same within a week of receiving the letter of possession from respondent. If the respondent fails in acting as directed then a penalty of Rs.1, 000/- for each day of delay would be imposed upon respondent.

The Bench also directs respondent to issue letter for the possession of parking space at ground floor in respect to the parking's space allotted to complainant as per the agreement.

As regards the prayer inform of compensation for delay in handing over the possession or any rent arrear is concerned, the complainant is at liberty to press the claim for that before the Bench of A.O.

With these observations and direction, this complaint is disposed of.

Sd/-  
Nupur Banerjee  
Member