

REAL ESTATE REGULATORY AUTHORITY, BIHAR
6th Floor, Bihar State Building Construction Corpn Complex
Shastri Nagar, Patna-800014.

Before the Bench of Mrs. Nupur Banerjee, Member

Case No. RERA/ CC/728/2021

Ashok Kumar PalComplainants

Vs.

M/s RR Builders & Developers Pvt. Ltd...Respondent

For Complainant: Mr. Rakesh Roshan, Advocate

Mr. P.K. Jha, Advocate

For Respondent: Mr. P. Gaurav, Advocate

ORDER

10/03/2022

The matter was last heard on 31-01-2022. Complaint was filed on 15-07-2021.

The case of the complainant is that the complainant had enter into the development agreement dated 06-02-2016 with the respondent company for the construction of a multi storied building over his land situated at Mauza – Adampur, Survey Thana – Danapur, District- Patna having Thana No. 40, Tauzi No.5712, Khata No. 108, Kheshra No. 460 for the project named “Sanchar Nagar”. He further submitted that total measurement of land was 38 decimal out of

which he got 11 decimal land. It has been further submitted that as per the development agreement, the building was to be completed within five years with a grace period of six months. He further submitted that in 2017 the builder signed share distribution agreement with other land owners but not with the complainant. He has submitted that as per the development agreement, 42% share of the constructed building over the land which is their rightful share is not being given by the respondent and respondent is trying to put pressure on him to not to claim for transfer of his share of flat in constructed building as per the development agreement and requested to direct the respondent to hand over the rightful share in constructed building.

The complaint has placed on record agreement dated 06-02-2016.

On 11-10-2021, the respondent had filed objection petition stating therein that the complaint petition is not maintainable under the provisions of Real Estate (Regulation & Development) Act, 2016 as well as Bihar Real Estate (Regulation & Development) Rules 2017 because the dispute in the present case relates between the land owner (the complainants) and developer/builder (the respondent) who are the promoters as per the definition provided under Section 2(zk)(i) of the Real Estate (Regulation & Development) Act 2016. Respondent further submitted that the

complainant and the respondent come within the ambit of promoter. It has been further submitted that under Section 31 of the Act, the complaint is only maintainable at the behest of any aggrieved person as against promoter, allottee or real estate agent and person who can file the complaint, shall include the association of allottees or any registered voluntary consumer association and further stated that this complaint petition has been filed in the wrong forum intentionally to extort money from the respondents. He further submitted while referring the order dated 04/01/2021 passed by the earlier Double Bench of Mr. RB Sinha & Mr. SK Sinha, then Members of the Authority in CC/63/2018 which was challenged before the Hon'ble Appellate Tribunal in Appeal No.16/2021 which upheld the order passed by the Double Bench, and submitted that this dispute cannot be decided by the present forum as the jurisdiction has already been set at rest by this forum as well as the Appellate Authority and if not adhered to, it will amount to discrimination as per Article 14 of the Constitution of India.

On 28-11-2021, complainant had filed rejoinder to the reply filed by the respondent while referring the order dated 23-12-2019 passed in RERA/CC/183/2019 and submits that the definition of promoter or allottees is already resolved by this court on various occasions. He further prays to give direction to the respondent to

honour the commitments made as per conditions mentioned in the registered development agreement.

On 13-02-2022, complaint had filed 2nd Supplementary Affidavit praying to direct the respondent to hand over the share of complainant as per devolvement agreement and to direct the respondent to not sell out any flat to any one unless the share division is done between complainant and respondent as per the development agreement.

During the last hearing on 31-01-2022, Mr. Rakesh Roshan, learned counsel appeared for complainant had submitted that the order dated 24/09/2021 was challenged by the respondent before the Trib unal which directed the respondent to give the share to the land owner as per development agreement. He further states that the project was to be completed in 2021 and the respondent has sold the flats regularly and refusing to give share of the complainant till all the flats are sold. During the course of last hearing the learned counsel for complainant had prayed for injunction from selling the flats by respondent otherwise several cases would come up. He also stated that as per lay out plan, share should be decided on that calculation. The Hon'ble Tribunal has also directed the respondent to give complainant's share.

The respondent during the course of last hearing had submitted that the complainant is not maintainable.

Considering the submissions and documents filed by both the parties, the bench observed and directs the respondent to hand over the share of complainant as per development agreement dt.06-02-2016 within 60 days from the issuance of this Order.

Let the copy of the order be pasted on the project of the respondent company through Special Messenger.

With these directions and observations, the matter is disposed of.

Sd/-

Nupur Banerjee
Member