

**REAL ESTATE REGULATORY AUTHORITY, BIHAR**  
**Before the Bench of Mr. Naveen Verma, Hon'ble Chairman**  
**Case No.CC/1185/2021**

**Shakila Khatoon and Others.....Complainant**

**Vs**

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

**Order**

**12-10-2022:** This matter was last heard on 29/08/2022.

The case of the complainants is that they booked a shop measuring 215sqft bearing shop number G/2 measuring 215 sq. ft in the multi storeyed building with commercial shops on Md Raza Khan Wakf Estate, Guzri Bazaar, PS Khajekalan, Patna. They had paid an advance of Rs. 7,00,000/- against the total consideration. Mr. Neeraj Kumar as one of the partner of the respondent firm signed a deed of agreement for sale on 08.01.2019. As per the agreement for sale the absolute sale deed was to be executed within 2 years from the date of execution of the agreement for sale after receiving rest of the consideration. As the respondent failed to construct the project, the complainant approached Neeraj Kumar for the refund of the paid consideration but since the respondent refused this complaint has been filed for refund with interest @ 18%.

The complainant has placed on record deed of agreement for sale dated 08/01/2019 and legal notice dated 29/01/2021.

The respondent has filed reply raising preliminary objections about the maintainability of this complaint under the RERA Act, 2016. They have stated that construction activity has not been initiated by the respondent. The respondent stated that a proposed site plan and construction map with structural design was submitted by them before Patna Municipal Corporation for approval of the building project, but, said proposed map and plan for the construction with structural design of the project building/ apartment got stuck in a legal quagmire vide vigilance case no. 12B/2019 which is still pending for execution. The promoter stated that the construction of the project could not be started due to force majeure, so it cannot be termed as on-going project under section 3 of the RERA, Act. The respondent has also referred to an order of the learned Punjab Real Estate Regulatory Authority in complaint case 3/2107 decided by them on 13.12.2017 wherein by majority it was decided that Authority cannot entertain complaint against promoters of projects that have not been registered with it. It has been submitted that the agreement submitted by the complainant has no evidentiary value.

The complainant has filed rejoinder annexing a copy of the development agreement entered by the respondent with Raza Khan Wakf Estate through registered deed of agreement dated 22-04-2014. The respondent undertook to construct a commercial cum residential building

on the scheduled property of the said deed of agreement. He further stated that the respondent has violated section 3 of the RERA Act, 2016 by entering into an agreement for sale with him on 8.1.2019 without getting the project registered. It has been submitted that the judgement of Punjab RERA is not binding and it had not clearly dealt with the provisions of the Act. The complainant has referred to the Judgment of the Hon'ble Supreme Court in Imperia Structures Limited vs Anil Patni and another that for the purposes of sec 18 of the RERA, Act the period for maintaining an action has to be reckoned in terms of an agreement for sale and not the registration of the project and hence the matter is maintainable. The complainant has filed a copy of development agreement dated duly signed on 22/04/2014.

The respondent has filed reply to the rejoinder filed by the complainant stating therein that the reliance placed by the complainant over the decision of the Hon'ble Supreme Court in M/s Imperial Structure Limited vs Anil Patni and another actually supports their claim rather than that of the complainant. The respondent referred to para 30, page 41 of the judgement stating that the Hon'ble Supreme Court has observed that ' issues concerning a registered project are specifically entrusted to the Authority . It has also held that the allottee has the option to seek relief either under the RERA Act or the Consumer Protection Act, 1986. The respondent has also annexed orders delivered by the Real Estate Appellate Tribunal, Bihar, which has held that the Authority gets jurisdiction to entertain any complaint only after the registration of the concerned real estate project under sec 3 and it does not have jurisdiction to admit complaint in context of unregistered projects.

During the course of hearing the learned counsel for both the parties reiterated the contents of the petition filed by them .

The Authority agrees with the learned counsel for complainant that the order of Punjab RERA is not binding. In any event, the facts of these two cases are not similar. In the present matter the respondent has not denied that they made the booking of a shop to the allottee in 2019, without getting the project registered. The submission of the respondent that the map has not been passed does not condone the offence of violation of Section 3 of the RERA Act, 2016. In fact the respondent should not have made any booking without getting the map sanctioned and getting the project registered with the Authority.

After considering the notes the submissions of the parties regarding maintainability of the case, the Authority observes that after having executed Agreement for Sale in 2019 and taking advance of Rs 7.00 lakhs for a shop to the complainant/ allottees the plea of the respondent that the project has not yet started, and hence is not registerable and maintainable before the Authority is not tenable. The Authority further observes that Section 3 of the Act mandates that all the on-going projects on the date of commencement of the Act have to be registered with the Authority. In this matter the development agreement was entered into 2014 and admittedly the project was on-going. The plea of the promoter that the matter is not maintainable is against the

observations of the Hon'ble Supreme Court in a recent judgment in M/s Newtech Promoters and Developers Pvt. Ltd vs State of U.P. & Ors that provisions of the Act is retroactive in nature, and that the Statute primarily aims to protect the right of the allottees.

The Authority further observes that objective of the statute would be defeated if the promoter chooses not to register the project or fulfil the mandatory requirements for registration.

In the light of above the Authority finds that the present complaint is maintainable and directs the respondent to submit their application for registration indicating the present status of the approval of the map. A reference may also be made to the Patna Municipal Corporation.

The Authority also observes that the respondent has violated Section 3 of the RERA Act as they executed the deed of agreement for sale in 2019 without registering the project with the RERA, Bihar and directs to initiate a Suo Moto proceeding against the respondent company as to why penalty under Section 59 not be initiated against them.

The Authority directs the respondent company and its directors to refund the principal amount of Rs. 7,00,000/- along with interest at the marginal cost of fund based lending rates (MCLR) as applicable for two years from date of taking the advance to the date of refund within 60 days of issue of this order.

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

Sd/-

**Naveen Verma**

**Chairman**