

REAL ESTATE REGULATORY AUTHORITY, BIHAR

**Before the Full Bench of Mr. Naveen Verma, Chairman,
Mrs. Nupur Banerjee & Mr. S.D. Jha, Members, RERA, Bihar.**

RERA/CC/397/2019

Mr. Pankaj KumarComplainant

Vs.

M/s Vasundhara Homes Pvt. Ltd....Respondent

ROJECT: VASUNDHARA HOMES PVT. LTD.

20.12.2022 **ORDER**

23.12.2022

Hearing was taken up on 20.12.2022. Complainant Mr. Pankaj Kumar appeared in person and Sri Shashank Shekhar, Advocate, appeared for the respondent.

The complainant has filed the matter seeking directions to execute the Sale Deed for flat no.306 in the project booked by him on 24.5.2014 and for payment of Rs.15,000/- per month as rent.

This matter was earlier disposed by Sri SK Sinha, Member dated 28.12.2020. Both the parties had filed separate appeals before the Appellate Tribunal which in its order dated 25.6.2021 had observed that the Authority has to first decide whether the project was ongoing or not on the date of commencement of the Act and then adjudicate on the issue of cancellation of allotment and had set aside the impugned order and remanded the matter back to the Authority.

This matter was being heard earlier in the Single Bench of Mrs. Nupur Banerjee but thereafter on the request of the complainant the matter was transferred to the Full Bench then consisting of the Chairman and Member Mrs. Nupur Banerjee. The Authority had passed orders on 7.4.2022, keeping in view the fact that the project was an ongoing project on the date of commencement of the Act as some flats were not complete at the time of commencement of the Act, it had directed the promoter to submit an application for registration with the Authority. The Authority also ordered initiating of *Suo-motu* proceeding against the promoter for violation of Section 3 of the Act. In the said order it was also decided that the matter of the complainant Mr. Pankaj Kumar would be heard after the project is registered.

However, the matter was taken up again after receiving a request from the complainant for early disposal of this matter.

Admittedly the promoter has not applied for registration. Hence, *suo motu* proceeding in RERA/SM/529/2022 has been initiated against the promoter for violation of Section 3 of the RERA Act.

The Authority finds that in spite of its specific directions during the *Suo motu* proceeding against the promoter in RERA/SM/529/2022, the promoter has still not filed application for registration. The Authority recalls that In the *suo motu* case (RERA/SM/529/2022) the Bench has already imposed penalty on the promoter for not complying with its direction for filing the application for registration and the matter has been listed for orders on 20th January, 2023 on the quantum of penalty to be imposed as provided

under Section 59(1) of the Real Estate (Regulation & Development) Act, 2016 .

The Authority observes that the RERA Act, 2016 has been primarily enacted in order to safeguard the interest of home buyers. The promoter cannot take one pretext or other for not having registered the project and thereby deny the allottees to approach the Authority to seek redressal of their grievance. Hon'ble Supreme Court in 2021 SCC on line SC 1044 (Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P. & Ors) has amply reiterated in its judgment that this legislation applies retro-actively for safeguarding the interest of the allottees.

The complainant submits that this matter is pending for a long period. Hence the complaint is being disposed of.

In his complaint petition, the complainant has mentioned that he had paid Rs.3.70 lakh to the respondent company. He submits that the promoter did not execute the agreement to sale and that there was a vigilance case pending in the Patna Municipal Corporation. He also submits that the respondent did not provide assistance in providing loan and that without getting occupancy certificate the respondent had executed the Sale Deed in respect of in respect of other allottees.

The complainant has filed copy of the letters sent by him to the respondent company and to the Patna Municipal Corporation along with the copy of the Agreement to Sale dated 14.3.2015.

The complainant had filed an affidavit on 4.2.2020 that the respondent company had not expedited the process of disbursement of housing loan. He stated

that some documents were required by the LIC Housing Finance Ltd. Which was not provided with the respondent company and hence the loans were cancelled. He has also stated that the respondent company has cancelled the booking of flat on 11.6.2015. He has submitted that he has paid more than Rs.11 lakh and could not pay the remaining amount as the loan was cancelled in the want of registered agreement to sale. He has filed copy of the communication sent by LIC Housing Finance.

Perused the records. The total consideration amount was Rs.73.25 lakh to be paid in instalments as mentioned in Schedule C of the Agreement to Sale against which the complainant has paid Rs 11 lakhs and has filed the matter for execution of deed of conveyance.

During the hearing held on 20.12.2021 learned Counsel for the respondent company had submitted that the allotment of the flat had been cancelled in 2015. He has further stated that the respondent company has transferred this flat to one Dr Bimal Kishore Prasad Singh through a Deed of Absolute Conveyance executed on 20 September,2021 and hence he is not able to give possession of the flat. He offered to refund the principal amount along with interest to the complainant.

The complainant submits that he had booked the flat in 2014 and the respondent – company executed a registered sale deed for the same flat to someone else while the matter was sub judice before the Authority. He requests that the sale deed executed against this flat may be cancelled. The complainant also submits that criminal action may be taken against the promoter.

The Authority observes that the fact that the promoter has committed violation of Section 3 of the RERA Act, 2016 has already been established in the suo motu matter (RERA/SM/529/2022). It agrees with the complainant that the respondent company has committed a continued violation of Section 3 by executing the deed of conveyance during the pendency of these proceedings and hence this is a fit case for taking criminal action against the promoter as provided in Section 59 (2) of the Real Estate (Regulation and Development) Act, 2016. It directs that further action to file a criminal complaint case before the CJM Patna as provided in Section 80 of the Act may be taken.

The Authority observes that when the complaint matter was pending before it and was linked with the issue of registration of the project, it was purely unethical on the part of the promoter not to register the project and instead execute the sale deed to someone else. This tantamounts to thwarting the provisions of the Act.

However, the Authority does not have power to cancel any sale deed which has already been executed. The sale deed can be cancelled only by a court of competent jurisdiction. The complainant is at liberty to move the competent court of civil jurisdiction to seek redressal of his grievance.

The complainant further submits that he may be given Rs. 2 crore as compensation so as that he can purchase an equivalent apartment at current market price. The Authority cannot look into the matter of compensation. The complainant may approach the Adjudicating Officer for compensation.

With these observations and directions,
this case is disposed of.

The records of this case may be sent to
the Adjudicating Officer for deciding the issue of
compensation raised by the complainant in the course of
arguments by the complainant.

Sd/-
S.D.Jha
Member

Sd/-
Nupur Banerjee
Member

Sd/-
Naveen Verma
Chairman