

REAL ESTATE REGULATORY AUTHORITY, BIHAR
Before the Bench of Mr. Naveen Verma, Chairman

Complaint Case Nos. CC/1135/2021

Rajmani Roy

.....Complainant

Vs

M/s Shri Balajee Nest Builder Pvt. Ltd. & ors. ...Respondents

Project: Shukdeo Enclave

ORDER

11/08/2022

30/08/2022

The matter was last heard on 23.06.2022

The case of the complainant is that the respondent has obtained registration of the project in fraudulent and illegal manner after concealment of facts and in violation of the provisions of the Regulations. It is stated that the title of ownership of the said project is disputed for which Title Suit No. 130/2008 is pending before the Sub Judge III, Patna since 2008. It has been alleged that the plan has been sanctioned illegally by the Patna Municipal Corporation in favour of one Vidya Nath Singh and the respondent has constructed the said project in illegal manner and tried to grab his part of land. Hence, this complaint has been filed for staying further construction in relation to the same disputed land; cancellation of registration of the project and initiate legal action.

The respondent has not filed any reply. However, during the hearing held on 24.05.2022, learned counsel for the respondent had submitted that this case was not maintainable because a matter is pending before the Civil Court for the same cause of action. He submitted that the complainant is neither allottee nor land owner. On 23.06.2022 learned counsel for the respondent reiterated the said submissions and referred to Section 31 of the RERA Act.

In view of the above submission, the complainant was requested to clarify whether this matter was maintainable before the Authority.

Written submissions were filed on behalf of the complainant stating therein that the respondent has been constructing a new project on Plot no. 218 and the complainant had purchased part area of plot no. 219 adjacent to the project site. There was an encroachment of 232 sq. ft. in the said plot for which he had filed a title suit which is pending before the Civil Court. He submitted that the landowner and the promoter of the project had suppressed the material fact that the area of Plot No. 219 went in the area of Plot No. 218 from the side of the complainant's house. The complainant had already left 8 feet wide land but the landowner intends to construct the apartment on his land of the complainant although a title suit for the said land is pending before the Civil Court. , therefore, the respondent should not have started the construction work till disposal of the suit.

The learned counsel for the complainant submitted further that Section 31 does not state that only Promoter, Allottee or Real Estate Agent have Locus Standi to file a Complaint before the Authority but rather any aggrieved person having an interest in the Project may file a Complaint before Authority. He also referred Rule 36 of the RERA Act and submitted that any aggrieved person having “any interest” is authorized to file a complaint before the Authority against any violation of the Act and Rules. The term ‘Interest’ is not defined in the Act. He referred to the judgement of Hon’ble Supreme Court, in Zelia M. Xavier Fernandes E Gonsalves vs Joana Rodrigues wherein it was held that “the word Interest” has a basic meaning of participation in advantage, profit and responsibility and” Interest” is a right, title or share in a thing.” In this case although the complainant is not an allottee, he is an aggrieved person having interest in the subject matter of the project.

The complainant also referred to the decision in the case of Ram Asta Harichand vs. Tarachand, reported in AIR 1983, HP 65 whereby “Aggrieved Person” means a person who has suffered a legal grievance, i.e., a Person against whom a decision has been pronounced, which has lawfully deprived him of something or wrongfully refuses him of something or wrongfully affected his title to do something. Complainant has also cited the case of Seethalakshmi Ammal vs. State of Tamil Nadu, AIR 1993 and quoted decision that the meaning of the word “Aggrieved Person” may vary according to the context of the statute and that even a stranger may be found to have Locus Standi although he may not have any personal interest of his own, provided, he is not a busy body or meddlesome interloper and although a stranger. He further submitted that the Promoter by suppressing the material fact regarding encumbrances and status quo over the project land by the PMC had got the RERA registration of the project by violating Section 4(2)(b) of the RERA Act, 2016 and Rule 3(1)(e) of the RERA Rules, 2017.

The Authority observes that the aim of Real Estate (Regulation and Development) Act, 2016 hereinafter referred as RERA Act is to protect the rights and interests of the consumers and to promote uniformity and standardization of business practices and transactions in the Real Estate sector. It also attempts to balance the interest of buyers and promoters by imposing certain duties on both of them and seeks to establish symmetry of information between buyer and promoter. A complaint can, therefore, be filed by any home buyer against the builder, developer or agent if the buyer’s rights are violated or any provisions of the Act are contravened.

The Authority notes that Section 31 clause 1 of the Real Estate (Regulation and Development) Act, 2016 hereinafter referred as RERA Act, 2016 reads - “Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made there under against any promoter allottee or real estate agent, as the case may be.”

Such complaint can be filed against “any promoter, allottee or real estate agent”, as the case may be, and can be filed by “any aggrieved person”, and it has to be read with an explanation, “person” includes an association of allottees or any voluntary consumer association registered under any law for the time being in force.

Hon'ble Supreme court in the case M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD..... APPELLANT(S) VERSUS STATE OF UP & ORS. ETC.RESPONDENT(S) relied on the opening statement of objects and reasons which has a material bearing that establishment of the Real estate Regulatory Authority (the Authority) for regulation and promotion of real estate sector and to ensure sale of plot, apartment or building, as the case may be, in an efficient and transparent manner and to protect the interest of consumers in real estate sector and establish the regulatory authority and the adjudicating officer and in hierarchy, the Appellate Tribunal for early and prompt disposal of the complaint being instituted primarily by the home buyers for whom this Act has been enacted by the Parliament in 2016. Hence the object of the Act is primarily to protect the interest of the home buyers.

Admittedly the complainant is not a home buyer.

The Authority also notes that Section 18(2) of the Act mandates that in case, loss is caused to allottee due to defective title of the land, on which the project is being developed or has been developed, the promoter shall compensate the allottee and such claim for compensation under Section 18(2) shall not be barred by limitation provided under any law for the time being in force.

The Authority takes note that under section 2(zg) "Person" includes,- (i) an individual; (ii) a Hindu undivided family; (iii) a company; (iv) a firm under the Indian Partnership Act, 1932 or the Limited Liability Partnership Act, 2008, as the case may be; (v) a competent authority; (vi) an association of persons or a body of individuals whether incorporated or not; (vii) a co-operative society registered under any law relating to co-operative societies; (viii) any such other entity as the appropriate Government may, by notification, specify in this behalf.

The person who is filing a complaint has the option to approach either the Authority and Adjudicating Officer as has been clarified by Hon'ble Supreme Court's observation in M/s Newtech Promoters & Developers Pvt. Ltd. Vs State of U.P & Ors. [2022] (1) RCR (Civil) 357. The Hon'ble Supreme Court observed that under Section 31, the complaint can be filed either with the authority or adjudicating officer for violation or contravention of the provisions of the Act or the Rules and Regulations framed there under.

The Authority is of the opinion that the cause of action for a person who is aggrieved under the RERA Act, 2016 has to be due to violation or contravention of the provisions of the Act or the rules and regulations framed there under.

Section 18(2) of the Act mandates that in case, loss is caused to allottee due to defective title of the land, on which the project is being developed or has been developed, the promoter shall compensate the allottee and such claim for compensation under Section 18(2) shall not be barred by limitation provided under any law for the time being in force. The promoter is directed to clarify how they would indemnify in case of any defect in title or possession after third part rights have been created.

The case of violation of Section 4(2)(b) of the RERA Act, 2016 and Rule 3(1)(e) of the Bihar Rules, 2017 has not been established as it relates to submission of various details of previous projects done by the Promoter. In terms of Rule 3(1)(e) of

the Bihar Rules, 2017 is concerned the Promoter had submitted the No encumbrance certificate for plot no.218 issued by the District Sub-Registrar of Patna on dated 20/08/2019.

The Authority observes that in the case of Seethalakshmi Ammal vs. State of Tamil Nadu, AIR 1993 the Hon'ble Supreme Court had analysed the jurisdiction of Article 226 in general and certiorari in particular. It says in a country like India where writ petitions are instituted in the High Courts by the thousand, many of them frivolous, a strict ascertainment, at the outset, of the standing of the petitioner to invoke this extraordinary jurisdiction, must be insisted upon",

The Authority is of the view that this judgement implies that unless he has legal peg for a justiciable claim to hang on, he is not a person aggrieved and has no locus standi to challenge.

The role of the Authority to adjudicate disputes have been clearly spelt out in the statute and it has no jurisdiction to settle the grievance of encroachment raised by the complainant and for its remedy other appropriate forums have already been approached by him.

The Authority observes that the matter of Ram Asta Harichand vs. Tarachand, reported in AIR 1983 relates to eviction petition filed by Tara Chand Landlord/petitioner under Section 14 of the Himachal Pradesh Urban Rent Control Act, 1971 seeking eviction of M/s. Ram Asra Hari Chand Shopkeepers from Shop No. 2. This judgement clarifies that... "The expression "person aggrieved" in fact means a person who has suffered a legal grievance, i.e., a person against whom a decision has been pronounced,".

The Authority finds no relevance of the Section 14 of the Himachal Pradesh Urban Rent Control Act, 1971 Act with that of the intent of the RERA Act.

The Authority further observes that the Hon'ble Supreme Court, in Zelia M. Xavier Fernandes E Gonsalves vs Joana Rodrigues had held that "the word Interest" has a basic meaning of participation in advantage, profit and responsibility. "Interest" is a right, title or share in a thing". Admittedly the complainant has no direct participation in advantage, profit and responsibility of the Project Sukhdeo Enclave in question.

The Bench notes that the complainant does not fall within the ambit of aggrieved person as per the section 31 of RERA, Act. The Section 31 clarify who is aggrieved person.

The Bench observes that the Authority has no jurisdiction to resolve the dispute pertaining to title and encroachment. The competent forum to raise such dispute is the CIVIL Court.

It is evident from the submissions made by both the parties that a title suit bearing Title Suit No. 130/2008 is pending adjudication before the Sub Judge III, Patna for the same cause of action. Title Suit bearing No. 130/2008 is for encroachment area of Plot No. 219 in Plot No. 218 by 232 sq. ft. and the suit is pending and no order to of stay has been given in it. The map has also been passed by competent authority on plot

no 218 only of which Promoter has legal entitlement. Moreover, for redressal of the grievance forwarded by the complainant, appropriate legal remedy is available to him and this does not come under the jurisdiction of Authority.

The Authority therefore holds that as the complainant is neither an 'aggrieved allottee' or 'aggrieved promoter' or 'aggrieved real estate agent' as defined in the Real Estate (Regulation and Development) Act, 2016, this matter is not maintainable before the RERA.

With these observations this complaint petition is disposed of.

Sd/-

Naveen Verma
(Chairman)