

# **REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR**

**Before the Bench of Mr. Afzal Amanullah, Chairman and Mr. R.B. Sinha Member**

Complainants cases Nos- CC/396/400/401/402/411/417/418/425/426/429/435/455/456/457/458/477/503/213/216/289/293/310/175/302/275/231/378/111/271/263/352/311/312/267/229/230/225/226/269/270/276/281/284/287/292/306/307/323/363/502/354/373/520/523/526/531/537/545/559/563/575/576/112/532/639/646/649/650/652/653/655/659/660/662/663/664/665/666/668/670/675/676/679/680/682/683/685/686/688/689/690/691/692/693/694/695/697/713/714/716/720/722/725/726/728/730/731/732

**Suman Kumari and others..... Complainants**

**vs.**

**M/s Agrani Homes Pvt. Ltd. .... Respondent**

**05.03.2021 Proceedings**

The proceedings were held online through video conferencing mode. Most of the complainants were present. Mr Puneet Sidharth Advocate, Mr Kishore Kunal Advocate, Mr Rakesh Roushan Singh Advocate, Mr Dheeraj Kumar Rai Advocate and Mr Puneet Kumar Advocate were present on behalf of complainants and represented their clients. Respondent Company was represented by Mr Alok Kumar, Director of the Company, Mr Amit Narayan Advocate and Mr Rakesh Kumar Sinha, Advocate. Mr Amit Narayan, Advocate and Mr Rakesh kumar Sinha Advocate also represented Mr Padum Singh, Mrs Vijaya Raj Laxmi and Mrs Alka Singh Present/Previous Directors of the Respondent company. Mr Apurva Harsh, Advocate represented Mrs Sikha Singh, Ex- Director. Mr Raj kamall Advocate represented Mr Keshav Shankar ex-Director. Mr Navin Kumar Sinha, Advocate and Mr Ajeet Kumar, Advocate also appeared on behalf of the Ruben Patliputra Hospital Pvt Ltd. Mr Rana Ranvir Singh previous director of the company was represented by a Learned Advocate but his vakalatnama was not presented before the court.

The Bench started the proceedings with information that they have received a petition on behalf of Mr Alok Kumar, a petition filed by Mr Kishore Kunal, Advocate, a petition of Mr Punit Kumar, Advocate and a petition from Mr Apurva Harsh, Advocate on behalf of

Ms Sikha Singh, Ex-Director. The Bench however stated that all these petitions have been received very late and hence the Bench has not yet gone through them nor these petitions have been sent to all complainants for their observations. The Bench also informed that they have received a demand draft for Rs 1,07,04,258 from M/s Ruben Patliputra Hospital Pvt Ltd, which has since been deposited in a new separate account opened by the Authority for all deposits/sale proceeds received from Respondent No-1 M/s Agrani group of companies through their MD Mr Alok Kumar for disbursement to the complainants under directions of this bench.

(1) Thereafter, the Bench recalled the hearing held on the previous date and stated that on the request of Learned counsel of the Respondent, the Bench had very reluctantly agreed for adjournment of the hearing for two weeks to enable him to come out with a comprehensive plan that would address the issue of refund of deposits to the complainants in a time-bound manner. The Bench however felt that there was nothing new in the petition filed by the respondent and each of the proposals mentioned is already discussed in the past. At this juncture, Mr Amit Narayan Advocate appearing on behalf of Mr Alok kumar, Managing Director of the Respondent Company informed the court that he had filed a petition on behalf of the respondent company as committed by the Learned counsel on last date of hearing. He also stated that Senior Counsel Mr Sanjay Singh has not been able to attend the hearing today due to unavoidable personal reasons and sought a short adjournment of the hearing. The Bench expressed its disappointment as the date was fixed on his suggestion. The Bench further felt that the so-called plan was basically no plan as there were many ifs and buts and there was no certainty of recovery of the deposits taken by the promoter after making tall and utopian promises to the consumers. In most projects, the promoter had started booking plots/flats and taking deposits in violation of all existing orders/rules without getting the development agreements registered and building/development plans approved by the competent Authority. The Chairman enquired whether this petition has the approval of senior counsel Mr Sanjay Singh, to which Mr Narayan confirmed that the petition was filed with the approval of the Learned counsel Mr Singh. The Chairman expressed his utter

sense of disappointment on the so-called “comprehensive plan” for refund of deposits submitted by the Respondent, holding that it was not a plan at all and the only intention behind the package appeared to be buying more and more time for the respondent without any guarantee of refund of deposits/advances paid by the complainants several years ago and illegally misappropriated/diverted by the promoter. He said that the Bench has lost two weeks of valuable time.

Mr Kishore Kunal, Advocate stated that he has filed a petition duly signed by 27 complainants, expressing their willingness to get the plots of land in the Pragati Vihar project of the respondent located at Parmanandpur, Sonapur. He further claimed that he had gone through the land deed for plots of land admeasuring 400 dismils in which one Mr Yashwant kumar had executed the agreement for sale with farmers. The Bench desired to know as to which director or official of the respondent company executed the deed on behalf of the Respondent Company, to which Mr Kunal confirmed that none of the directors or officials were involved. The Bench made it clear that RERA will not get involved in any transaction in which the promoter was not directly or indirectly involved and was ultra-vires of the RERA Act, 2016. Mr Kishore Kunal however claimed that Mr Yashwant Kumar had entered into the transaction of 400 dismil of land based on the funds transferred from the Respondent company only. He was directed to produce relevant evidence in this respect.

Mr Punit Kumar, Advocate stated that the respondent company has been bringing new counsel every month without vakalatnama just to delay the proceedings and claimed that Mr Rakesh Kumar Sinha Advocate appeared before Adjudicating Officer earlier on behalf of the Respondent Company and appears to be consciously avoiding attending the court since then. Now today, he is claiming to appear before the Bench on behalf of Ms Alka Singh and Ms Vijaya Raj Laxmi, ex- Directors and sister and wife of the promoter respectively. He invited the attention of the Bench to the Section 69 of the Act and demanded that each director and senior officials of the respondent company should be made

individually and /or collectively responsible for all miss-appropriation/diversion of funds of the company. He also demanded that the Bench should refer the matter to the ED for further investigation and fixation of responsibility. He demanded that the agreement for sale executed between Mr Alok Kumar and Ruben Hospital may be declared null and void and set-aside. The Patliputra property may be auctioned and payments made by Ruben Hospital be paid back from auction proceeds. He believed that the Patliputra property has been undersold. He was supported by many complainants citing the previous agreement for sale executed by Mr Alok Kumar with one Mr Narendra kumar Singh for Rs 18 Crores for the same property in January 2020.

Mr Apurva Harsh, Advocate stated that his client Mrs Shikha Singh was only an employee ( Sales executive) of the company since 2012 and had been elevated as the Director of a small sister concern of the company in 2014, based on her performance. She resigned from the company in 2016 but her resignation was accepted in 2018. He claimed that he has filed a petition along with detailed bank statements from 2012 to 2020 to show the payment received by her from the company. He stated that there was a need for making distinction between family members directors and employee directors. He claimed that the employee directors didn't have any powers and they were virtually rubber-stamp directors. He desired that Ms Sikha Singh was not married until the end of her tenure (2018) with the company and so the bank accounts of her spouse should be released from accounts freezure order. He said that he would file another petition under section 39 of the Act for amendment of the order dated 10.02.2021 before the next date of hearing.

Mr Raj Kamall, Advocate informed that he had filed his Vakalatnama on behalf of Mr Keshav Shanker Ex-director and submitted a petition on behalf of his client today at 2.30 pm. He also claimed that his client didn't exercise any powers and was only a rubber-stamp director. Many complainants contested that these rubber –stamp directors have enjoyed the perks and privileges of the director for several years and now when responsibility is likely to be fixed on all of them, they

are declaring themselves as a rubber-stamp directors and hence their plea should not be accepted.

Learned counsel Mr Navin Kumar Sinha of Ruben Hospital stated that they have deposited a demand draft of Rs 1.07,04,258 with the Authority, as per direction of the Bench and claimed that Mr Alok Kumar has not followed the direction given by the Bench on the last date to pay back the remaining dues of the home loan and get a NOC from IOB, Kankarbagh. He showed his willingness to pay the remaining amount of Rs 1,88,54,098, after clearance of the home loan account by Mr Alok Kumar, to the Authority so that they could get the registration of the property done at the earliest. Many complainants however alleged that Ruben Hospital was already earning revenue from the Residential building by using it as a commercial private hospital and hence they should pay the remaining amount without making it contingent upon the clearance of the home loan by Mr Alok Kumar. The Bench also felt that considering large number of complainants and the fact that the possession of the property was in their hands and the premises are already being used for generating revenues, Ruben Hospital should deposit the remaining amount of Rs 1,88,54,098 with the Authority as their good-will gesture, without making any further delay.

The Bench thereafter directed that the petition filed by the Respondent company, Mr Kishore Kunal, Mr Punit Kumar, Mr Apurv Harsh and Mr Raj Kamal should be sent to all petitioners and parties involved with a direction to file their response within two weeks of the receipt of the petition.

Most of the Complainants however contested the claims of the Learned counsel of the respondent company and said that the promoter (Mr Alok Kumar) was an unreliable person and couldn't be trusted again as he has illegally diverted hundreds of crores of rupees from several Projects without taking any action to complete them. They claimed that he had run away from the state. Mr Punit Kumar, Advocate claimed that drastic action should be taken against the Respondent company and Ruben Hospital for their failure to comply with the orders of the Bench. Mr Kishore Kunal, Advocate also stated that the promoter of

the respondent company could not be trusted any more. He requested that the property of Mr Alok Kumar at 15, Patliputra Colony should be auctioned by the Authority and the money of Ruben Hospital be returned to them.

The Bench thereafter heard the individual complainants, most of which sought refund of the principal amount along with interest without further delay. In most of the cases, the projects have either been abandoned, cancelled or inordinately delayed. Many of them were on verge of losing their cool, due to inordinate delay in refund of their hard-earned money along with interest. They wanted harshest punishments for culprits. Mr Kishori Prasad CC/425 said that he has finally received an email from Mr Alok Kumar but it was vague and non-committal. He was informed that the respondent has shown interest in accommodating his requirement in the Project Agrani Ashoka. He then desired to have a firm commitment from the promoter.

After hearing the complainants, the respondents and their lawyers and after due consideration, the Bench orders that:-

- (1) The MD of the Respondent company should pay entire sale proceeds of their Patliputra Property, that have been illegally misappropriated to make good the siphoning of the entire Cash Credit loan of Rs 4.31 crore taken by his wife Ms Vijaya Raj Laxmi as MD of the M/s Indus Ventures from IOB Anisabad and other loans/usage, inspite of repeated directions of the Bench and his own written commitment given to the Bench that the entire sale proceeds of their Patliputra Property would be kept in a separate designated bank account for refund of the deposits of the complainants to the Authority without any further delay, failing which, the Authority may initiate the proceedings for violation of section 4 (2) (l) (d) and under the section 63 of the Real estate (Regulation and Development) Act 2016 with immediate effect.
- (2) Rs 1,07,04,258 received from M/s Ruben Patliputra hospital Pvt Ltd may be paid to the complainants as per order issued by the Bench on 16<sup>th</sup> October 2020 which inter-alia stated that the Authority will release a sum of Rs 5 lakh or 50 percent of the deposit, whichever is lower, to the complainants on first come first

served basis, based on the date of filing of their complaints with the Authority (depicted as per serial number of the complaint case), after paying the sum due to the Complainant CC/426, who is suffering from Blood Cancer/Kidney failure. Initially, only principal amount of each complainant will be paid. It is further ordered that the minimum amount to be paid to a complainant should not be less than Rs one lakh or the amount of deposit, whichever is lower.

- (3) The Bench notes that Ruben Hospital has paid Rs1,07,04,258 only to the Authority against its direction to deposit the entire remaining amount of sale proceeds i.e. (Rs 2,54,49,603 + Rs 41,08,753 =) Rs 2,95,58,356 crores with the Authority. The Bench therefore directs Ruben Hospital to pay the remaining amount of (Rs 2,95,58,356- Rs1,07,04,258 =) Rs 1,88,54,098 to the Authority without any further delay.
- (4) Mr Alok Kumar is once again directed to honour his commitment given to the court vide his petition dated 9.2.2021 by paying back the remaining loan amount to IOB, Kankabagh and obtain a No-objection certificate, without any further delay, from the Bank for registration of the Property in favour of Ruben Hospital, failing which the Authority may initiate the proceedings for violation of section 4 (2) (I) (d) and under the section 63 of the Real estate (Regulation and Development) Act 2016 with immediate effect.
- (5) The Bench also noted repeated violations by Mr Alok Kumar, Director of the Respondent Company of its directions to hand over/deposit all original deeds of Absolute sale/purchase of plots of land and/or Apartments at Parmanandpur, Sonapur, plots of land of IOB Nagar, Keshripur, Parivida, Bachhawan and Druva, Darekhu, Varanasi, House No-A/15, Yogipur, Lohiyanagar, Kankarbagh, Patna, flat No-A/403, Awadh Apartment, Bhootnath Road, Kankarbagh, Patna and the plot of 7-8 kathas of land, near Maulana Engineering College, Danapur, Patna with the Authority along with an affidavit that they were surrendering them for auction/sale for refund of the deposits of the complainants. The Bench directs the Authority to initiate the proceedings for violation of section 4 (2) (I) (d) and under the section 63 of the Real estate (Regulation and Development) act 2016.

- (6) The Bench directs the office to make available the petitions filed by Respondent Company and its previous directors to each complainant and other parties, seeking their response within two weeks. The Bench thereafter directed that the petitions filed by Mr Kishore Kunal Advocate and Mr Punit Kumar Advocate should also be sent to all petitioners and parties involved with a direction to file their response within two weeks of the receipt of the petition.
- (7) The Complainants are directed to submit their response on the Petition filed by Mr Alok Kumar under Section 39 of the Act and the proposal of Mr Kishore Kunal Advocate for sale of plots of land and/or handing over the plots to allottees within a week.

Put up on 15.03.2021 at 3.30 PM.

Sd/-

(R.B. Sinha)

Sd/-

(Afzal Amanuallah)