REAL ESTATE REGULATORY AUTHORITY, BIHAR

Before the Full Bench of Mr. Naveen Verma, Hon'ble Chairman, Mr. R.B. Sinha Hon'ble Member & Mrs. Nupur Banerjee, Hon'ble Member.

Case No.CC/168/2018, CC/169/2018, CC/170/2018, CC/171/2018, CC/172/2018, CC/187/2018, CC/209/2019, CC/293/2019, CC/723/2019, CC/1130/2020, CC/1583/2020, CC/1587/2020, CC/ 1101/2020 AO/320/2020, CC/1498/2020 AO/480/2020,CC/1582/2020 AO/533/2020, CC/1584/2020 AO/534/2020, CC/1585/2020 AO/535/2020, CC/1586/2020 AO/536/2020, CC/1770/20202 AO/617/2020, CC/1713/2020 AO/583/2020, CC/1714/2020 AO/584/2020, CC/203/2019, CC/1010/2020, CC/1011/2020, CC/264/2019, CC/279/2019, CC/372/2019, CC/807/2019, CC/812/2019, CC/844/2019, CC/967/2020, CC/1003/2020, CC/1624/2020

Ajay Krishna/Savitri Devi/Meera Gupta/Sanjay Kumar Gupta/Amit Raj Kamal/Mithilesh Kumar/Chhaya Lal/Karali Patra/Seema Kumari/Shivendu Kumar Mishra/Rita Singh/Lalan Prasad Singh/Punam Mishra/Bineeta Kumari/Vijay Kumar Pandey/Aryan Pushpjeet/Rajiv Kumar/Santosh Kumar/Navneet Sharma/Kumar Gaurav/Baijoo Mistri/Bam Shankar Chaudhary/Koushlendra Kumar/Ran Avay Kumar/Sudhir Kumar Singh/Babita Devi/Kumari Anjana/Dineshwar Dubey/Dhananjay Kumar Singh/Anand Kumar Gupta/ Subodh Kumar/Anuj Kumar Sinha/Rekha Kumari**…….....Complainant**

Vs

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

Present:	For Complainants:	In person
		Mr. Rajesh Kumar, Adv
		Mr. Rupak Kumar, Adv
	For Respondent:	Mr. Sanjay Singh, Adv
		Mr. Alok Kumar, MD

18.06.2021 **PROCEEDING THROUGH VIDEO CONFERENCING**

Hearing taken up on 10-June-2021 through video conferencing. Some of the complainants are present. Learned counsels on behalf of some complainants Mr. Rajesh Kumar and Mr. Rupak Kumar are present. Mr. Sanjay Singh, learned counsel of the respondent company and its Managing Director Mr. Alok Kumar are also present.

At the outset the Bench clarified that the present hearing is in respect of D Block and J Block of IOB Nagar and Agrani Ashoka projects of the Respondent Company and orders would be passed separately for each Block/project..

D Block

Hon'ble Member, Shri R. B. Sinha stated that in pursuance to the decision taken on the last date of hearing on 23.03.2021, he had a zoom meeting with association of allottees, promoters of D and E Block of IOB Nagar and the construction agency- Sarveswara Realtors nominated by the promoter in the last week of May 2021 for review of the work. Registration of the project had expired. However, in the interest of the allottees to complete the work and as a special case permission was given to the promoter on 9.10.2020 to complete this project within one month. The promoter is required to get the plan approved by the competent authority, which would enable him to meet the statutory requirement of the RERA Act, Bihar Municipal Act 2007 and Bihar Building Byelaws for issue of Completion Certificate (CC)/Occupancy Certificate (OC). For the project

The Director of the Respondent Company stated that he has already given possession letter to 8-9 persons. Out of 35 flats in D-Block possession letter has already been given to the 18 persons. The Director of the Respondent Company stated that he would be able to give possession letter to the allottees, provided 90% of the amount is deposited by the allottees.

One of the allottees Mr Bam Shankar Chaudhary (Case No. CC/203/2019) raised the issue of over flow of sewage and drainage water in parking area; non construction of the road and the main gate and that the electric panel board is burnt. He also stated that he had paid 84 % of the cost of the flat in lump sum in 2014 and he has not been given possession till date. It was clarified by the Bench that the allottees are required to pay the dues as mentioned in the agreement and the issue of compensation and interest would be taken up separately.

Mr Koushlendra Kumar (**CC/1010/2020)** submitted that he has paid 90% of amount and possession letter has been received from the respondent. He further submitted that a 8 feet chain gate may be fixed by the respondent. He also claimed that there is no proper fire fighting arrangement. He also raised the issue that the construction of the main drainage system has not been taken up. Member (NB)

suggested that there was no need of chain gate in the staircase area and instead, a fire proof door may be fitted in the enclosed staircase room in order to prevent fire to spread laterally in each floor from the stairs. She also suggested that a septic tank with the soak pit, of appropriate size based on the total requirements of the flats, may be sufficient for the time being.

The Director of the respondent company, Mr. Alok Kumar refuted the allegation about overflow of the sewage as adequate soak pits have been made. He stated that the main municipal drain is about 500 meters away from the main gate and hence construction of the Society drain at this stage would not serve any purpose. He further suggested that a committee can be constituted to oversee the work.

The Bench observed that the parties are raising issues pertaining to maintenance, which can be best resolved by mutual negotiations and is not within the purview of the Authority.

The learned counsel for the Respondent submitted that there were still 15 allottees, who have not paid the amount due, which works out around Rs 45 to 50 lakhs. The Bench directed the respondent to provide the list of those allottees who have not paid the amount. The Bench also made it clear that in 2-3 cases, the Authority had passed orders, giving compensation to the allottees. In such cases, the orders passed by the Authority would stand, unless the respondent files appeal before the appellate tribunal and gets those orders set aside.

The Director of the respondent Company Mr. Alok Kumar further submitted that the construction plan of the allottees are required to pay stage by stage while the building was completed. The Complainants however contested the contention of the promoter, claiming that the project was required to be completed more than 5 years ago and thus the promoter was required to pay interest/compensation to the allottees.

It was submitted by the allottees that three DDs have been issued in the name of the promoter and submitted in RERA office. The Demand Drafts received in RERA office will remain in the custody of OSD, RERA. This arrangement although, not provided in the RERA Act, is being permitted under exceptional circumstances considering the lack of trust between the allottees and the promoters. During the course of hearing both parties agreed that the demand drafts will be prepared by the

allottees in the name of the promoter and sent to RERA office. The promoter assured that the remaining work of the building will be completed immediately.

O R D E R

After hearing both the parties and going through the relevant records, the Full Bench working as Authority under the RERA Act gives the following directions-

1. The remaining works in D-Block of IOB Nagar as per the agreement between the promoter and allottees would be completed within a period of one month of the date of issue of the order. In the event of failure of the promoter to comply with the direction of the Authority, a penalty of Rs.5,000.00 (Rupees Five Thousand only) will be imposed for every day of delay after this period.
2. Every allottee will make necessary payment up to 90% of the Project cost as per Section 19{6}of the RERA Act, except in those cases where final orders have been passed by the Authority.
3. Considering the trust-deficit between the allottees and the promoters, the Authority allows the allottees in case they desire to send their Demand Draft/ Bankers cheque in the name of Promoter in RERA office. Mr. Rajesh Thadani, Officer on Special Duty will keep those Demand Drafts/ Bankers cheques, in safe custody.
4. The promoter will open a separate Bank account for D-Block, IOB Nagar under intimation to the Authority.
5. The promoter will prepare an assessment of the work till date, which will be verified by a team consisting of Civil Engineer, Architect and Chartered Accountant and submit the same to the Authority and to the association of allottees. After fresh construction work, the promoter will get it verified by an independent team consisting of Civil Engineer,

Architect and Chartered Accountant, which will submit a report to OSD, RERA, who on perusal of the report would release Demand Draft/ Bankers cheque sent by the allottees to the promoter in proportion to the work done as certified by them. The promoter will place it on the website and web page of the RERA site.

6. The Authority will have a lien over all unsold flats, if any, in the D Block until further orders.

With this direction the cases pertaining to D Block IOB Nagar are disposed off.

Agrani Ashoka

The Bench took note of its directions given on 9 October 2020, when extension was granted to the promoter for Agrani Ashoka till 30 April, 2021 as a special case to enable completion of the remaining work.

The father of Ms Kumari Anjana (**CC/372/2019)** submitted that there has been no progress in work in Agrani Ashoka after the last hearing. He stated that there has been no progress in installation of lift either in block A or B, generator has not been installed, railing work was still incomplete, fire fighting system was not working, and boundary wallhas not been constructed.He further submitted that there was water logging on the terrace, space for car park has not been earmarked.He stated that booking was made in 2013 and more than 95% of the cost of the flat has been paid and the respondent was supposed to hand over the possession in June 2015 and that he may be given possession at the earliest.

The learned counsel for the Respondent submitted that after the order of the Hon'ble Bench a meeting was held with the association of allottees where it was decided that the left over internal work would be completed by the association of allottees while the remaining work on the common area would be completed by the promoter- the Respondent company.

Mr Santosh Kumar, (**CC/1586/2020 AO/536/2020**)Joint Secretary of the committee submitted that out of 79 units being constructed, 50% are with the landowners and two flats are still unsold lying with the promoter. It was mentioned that the association is not being trusted by the allottees as the landowners have spent the money received from the members on their own flats.

Mr Dineshwar Dubey (**CC/807/2019)** submitted that, as decided in the meeting, all the allottees are completing their interior work on their own. He further submitted that the promoter may be directed to deduct the value of work done by them from the outstanding dues of the allottee.

The Director of the Respondent Company, Mr Alok Kumar submitted that total amount of the money lying with the allottee is approximately Rs 1 crore and 5-6 persons have paid less than 50% of the due amount to the company. The learned counsel for the Respondent assured that possession would be handed over after 90% of payment by the allottees and the work would be completed at the earliest.

Director of the respondent company, Mr Alok Kumar prayed for de-freezing of at least one of the bank accounts so that money can be withdrawn for the work and submitted that a petition to recall its order of 12.04.2021 has been filed.

Order

The Bench observes that the proposal of some part of the remaining internal work being done by the allottees and the common area works done by the promoter would be fraught with practical difficulties as no single party would be responsible for any defect, shortcoming or any accident that may happen due to poor workmanship and there could be difficulties in obtaining the completion and occupancy certificates.

The Bench notes the assurance of the Learned Counsel of the respondent, Mr. Sanjay Singh that possession would be handed over after 90% payment of the dues by the allottees if the allottees send their Demand Draft/ Bankers cheque in the name of the promoter to RERA.

After taking into consideration the submissions of the parties and after perusal of records, the Full Bench working as Authority under the RERA Act gives the following directions-

The remaining works in Agrani Ashoka, as recorded in the agreement between the promoter and allottees, would be completed within a period of two months of the date of order. The promoter is directed to start construction work in

Agrani Ashoka project immediately as the extended time period given by the Authority on 9.10.2020 had expired on 30th April, 2021. Considering the second lockdown a grace period of two months from the date of order is granted to the respondent company to complete the work. In the event of failure by the promoter to comply with the direction of the Authority, a penalty of Rs.5,000.00 (Rupees Five Thousand only) will be imposed for every day of delay after this period.

1. Every allottee would make necessary payment up to 90% of the Project cost within a month in terms of Section 19{6} of the RERA Act. Failure to comply with the direction would attract action against the allottee under section 67 of the Act;
2. Considering the huge trust-deficit between the allottees and the promoters, the Authority permits the allottees, in case they desire, to send their Demand Draft/ Bankers cheque in the name of Promoter in RERA office. Mr. Rajesh Thadani, Officer on Special Duty will keep those Demand Drafts/ Bankers cheques in safe custody;
3. The promoter will prepare an assessment of the work till date which would be verified by a team consisting of a Civil Engineer, an Architect and a Chartered Accountant and submit the same to the Authority and post it on their web page. The promoter would cause the progress of work i.e.fresh construction to be verified by an independent team consisting of Civil Engineer, Architect and Chartered Accountant who would submit a report to OSD, RERA. OSD, RERA, on perusal of the report would release Demand Draft/ Bankers cheque sent by the allottees to the promoter in the separate bank account stated above in proportion to the work done as certified by them;
4. The promoter will place these reports on their website and web page of the RERA site;

The Bench takes on record that two flats are still unsold in Agrani Ashoka, which could fetch a sum upto Rs.1.20 Crore if the restrictions on operations of the promoter company are relaxed. The Authority has in its earlier order

created a lien over all unsold flats of the promoter in the Project Agrani Ashoka, which will continue until further orders.

On the request of the respondent company to defreeze at least one account so that they can resume the work, the respondent company is directed to make its written submissions with a copy to complainants in this case so that considered decision may be taken against the party.

With these directions, the cases pertaining to Agrani Ashoka are disposed off.

J-Block, I.O.B. Nagar

Mr. Rajesh Kumar, Learned Counsel on behalf of the association of allottees submitted that the super structure of the 42 flats in J-Block has been ready for quite some time. During the hearing he recounted the previous direction of the Bench as follows:-

1. On 19.2.2020 the Bench had directed the allottees and the promoter to meet on 1st March, 2020 at site and the promoter was to submit the plan of the completion of project by 2nd March, 2020.
2. After the First lockdown, in the hearing on 25th September, 2020, the respondent Company submitted that because of Corona Epidemic they could not fulfill the above direction of the Bench. The Learned Counsel, Mr. Rajesh Kumar for the Association of allottees stated that the respondent Company is taking direction of RERA very casually and they could have submitted the Plan of Action within a week of the order.

3. In the hearing on 9.10.2020, in the matter of Suman Kumari & Ors. as a very special dispensation the respondent company on the submission of respondent and their then Learned Counsel, Mr. Vinay Lakhani, the Authority granted extension till 15th July, 2021 to complete the Project with the direction that the respondent Company will submit monthly progress report and that construction work would not be stopped for non-payment by the complainants.

3. The matter was taken up again on 4.11.2020, where the Director of the respondent Company Mr. Alok Kumar stated that they had arranged financial resources for completion of the Project and the schedule for completion will be submitted within a week. The Bench had observed that heavy cost could be imposed for non-compliance of its directions.

4. On 8.2.2021 the Bench had constituted a monitoring team of RERA for inspecting the project, which submitted its report on 23.2.2021 that little work has been done after the direction of the Bench on 9.10.2020 and that no progress report has been filed. Again on 12.3.2021, the respondent Company reiterated that adequate funds are available with them.

5 On 23.3.2021, the learned Counsel for the respondent Company, Mr. Sanjay Singh submitted the offer of completion of construction through M/s Sarveshwara Realtors, a third party . The Hon.ble Bench had directed the respondent company to coordinate with the association of allottees to complete the work.

The learned Counsel for the association of allottees stated that despite the submissions of the Promoter before the Bench, that adequate funds are available for completion of the flats within extended period of registration i.e. 15.7.2021 , no work has started.

Learned Counsel for the respondent Company, Mr. Sanjay Singh said that they had arranged a third party to undertake the construction of the remaining works but the allottees did not agree to pay money against the outstanding dues of Rs.3 Crores and hence work could not be started. He further submitted that the allottees have paid only 45 percent of the project cost whereas the actual physical work is more than 60 percent. He further submitted that the allottees may be directed to make payment upto 70% to 90% of the project cost so that the construction work would be resumed by the third party.

On this the Learned Counsel Mr. Rajesh Kumar submitted that the respondent Company had been repeatedly stating that theyhad funds to complete the work and in this context reported that in terms of direction of the Apex Court (referred in SCC 1991) that breach of undertaking given to the Court will be treated as disobedience of court order and action may be taken against the respondent company.

The learned counsel for the allottees association further submitted that under Section 2 (zg) (vi) of the RERA Act, an association of persons or a body individuals whether incorporated or not is included as a 'person' under the Act and hence there is no necessity for registration of Association of allottees. The learned counsel for the respondent company drew attention of the Bench to explanation of Section 31 (1) of the RERA Act which clearly specifies that the "person" relevant to that section shall include the association of allottees registered under any law.

The Bench observed that there is a lack of clarity as to how and under which law, the association of allottees would be registered. Since the Full Bench constitutes Authority, it was decided that appropriate recommendation would be sent to Government under Section 32 (j) of the RERA Act.

The Bench considered the arguments of both sides and took note of its previous directions and non-compliance of those by the respondent Company. The Bench tends to agree with the submissions of the Learned Counsel for the Association of allottees that its directions have not been implemented by the respondent Company and that it has been making fresh proposals just to gain more time and avoid discharging its responsibilities as given under Section 11 of the RERA Act. The offer of construction work by the third party could have, at best, been a matter of mutual negotiation between the complainants and the respondent Company before the matter was brought to RERA. The respondent company have repeatedly been given undertakings before the Authority that they have resources to complete this project and only

on that basis the Bench during hearing on 9.10.2020 had granted them extension till 15th July, 2021.

After hearing the parties, the Bench had kept order reserved on 10th June,2021 giving direction to both the parties to file their written submissions by 14.6.2021. The Bench notes that in the night of 14th June, 2021 the Director of the respondent Company, Mr. Alok Kumar had sent a letter by email. Indeed, if this is the written submission of the respondent company, their learned Counsel for the respondent company is advised to serve a copy to the Learned Counsel for the association of allottees, Mr. Rajesh Kumar.

On 15 June 2021 , Learned Counsel for the association of allottees have filed their written submission that they are willing to get the construction done by M/s Sarveshwara Realtors or the respondent company or any other company under the supervision of RERA. He has submitted that the allottees are ready to pay the remaining part of the due amount immediately in getting the offer of possession. He is advised to serve a copy to the learned counsel for the respondent company.

Order

Having regards to the submissions and facts of the case, Full Bench functioning as Authority is constrained to observe that the promoter has failed to comply with the order of the Authority and therefore, in terms of Section 63 of the RERA Act, a penalty of Rs.1,000.00 (Rupees One Thousand only) for everyday for the default after 8.11.2020 i.e. one month of the order of 9.10.2020 is imposed till 10.4.2021 when the second phase of lockdown had started.

The Authority is satisfied that the present case is a fit case for initiation of action under Section 7 (1) of Act for revocation of the registration in view of the repeated default of the respondent company. The Registration wing of RERA is directed to issue a show cause notice to the

promoter under Section 7 (2) of the Act as to why the registration of the promoter should not be revoked.

Notwithstanding the undertaking given by the respondent Company before the Bench, the allottees are also directed to fulfill their duties prescribed under the Act. Every allottee is directed to arrange necessary resources to make payment so that construction work be completed in terms of Section 19 (6) of the RERA Act. The allottees are also advised to submit their proposal for carrying out the remaining pending works in the event of registration of the promoter being revoked so that appropriate consultation could be undertaken with the State Government. The Authority will continue to have its lien on the unsold flats in the J Block until further orders.

The matter of J Block IOB Nagar may be listed for hearing on 29.6.2021.

Sd/-	**Sd/-**	**Sd/-**
(R.B. Sinha)	**(Naveen Verma)**	**(Nupur Banerjee)**
Member	**Chairman**	**Member**