



REAL ESTATE REGULATORY AUTHORITY (RERA)
IN THE COURT OF ADJUDICATING OFFICER
4TH & 6TH FLOOR, BIHAR STATE BUILDING CONSTRUCTION CORPORATION CAMPUS
HOSPITAL ROAD, SHASTRI NAGAR
PATNA-800023

Execution Case No. 94/2020

RERA/CC/318, 333 & 334/2019

RERA/AO/56, 62 & 63/2019

1. Mr. Ram Kumar Sharma
2. Nishant Kumar Singh Complainant/Executants

Vs

M/s Bharti Project Media & Infratech Pvt Ltd.Respondent

Project: BHARTI PROJECTS

ORDER

16.02.2023:

Heard Mr. Baidya Nath Thakur, learned counsel appearing for the executants, namely, Mr. Ram Kumar Sharma and Nishant Kumar Singh and Mr. Sharad Shekhar, learned counsel appearing for the respondent.

2. The case of the parties, in brief, is that the respondent herein has filed a complaint case bearing Case No. RERA/CC/318/2019/RERA/AO/56/2019 and the complainant-executants herein had also filed two cases bearing Case No. RERA/CC/333/2019/ RERA/AO/62/2019 and RERA/CC/334/2019/ RERA/AO/63/2019. All the three cases were heard analogous and disposed of with the following directions by a common judgment and order dated 25.07.2019:

“Therefore the complaint case No. RERA/CC/318/2019/ AO Case No.56/2019 of the complainant, Abhishek Tiwari is allowed on contest, but without cost. The Respondents; Ram Kumar Sharma and Nishant Kumar Singh are directed to pay the outstanding dues Rs.14,20,000/- and Rs.16,60,000/- respectively along with simple interest @ 10% per annum since 25.04.2018 and applicable G.S.T. to the complainant within 30 (thirty) days. They are further directed to pay 10% per annum simple interest on other remaining outstanding dues, which has to be paid by them to the complainant, out of total consideration.

The complaint Case No. RERA/CC/333/2019/ A.O. Case No.62/2019 and Case No. RERA/CC/334/2019/ A.O. Case No.63/2019 filed by the respondents, (1) Ram Kumar Sharma and (2) Nishant Kumar Singh are also allowed only to the extent of delivery of possession of their respective shops. Therefore, Respondent, Abhishek Tiwari is directed to deliver the possession of shops to these complainants, completed in all respect, as per Agreement for Sale dated 25.11.2017 and also to execute Sale Deed within 60 (sixty) days. It is further, directed that if respondent Abhishek Tiwari fails to deliver possession and execute Sale Deeds within such period, then he shall pay rent @ Rs.15,000/- per month to each of the complainants.

It is further directed that both the parties shall bear their own cost and they shall comply the order within the stipulated period, failing which they may enforce the order through process of the Court.”

3. The executants herein, namely, Ram Kumar Sharma and Nishant Kumar Singh being not satisfied with the aforesaid order filed writ petition bearing CWJC No.18637/2019 before the Hon’ble Patna High Court which was permitted to be withdrawn with the liberty to avail the statutory remedy of appeal under the RERA Act

within a period of one month and the appellate authority was directed to consider the appeal on its own merit and dispose of the same in accordance with law.

4. In the light of the order passed by the Hon'ble Patna High Court in writ petition bearing No.18637/2019 the executants herein moved before the Real Estate Appellate Tribunal, Patna (hereinafter referred to as 'the Appellate Tribunal') by filing appeal bearing REAT Appeal Nos.17/2019, 10/2020 and 11/2020. Appeal no.17/2019 was filed jointly whereas latter two bearing Appeal no.10/20120 and Appeal no.11/2020 by Nishant Kumar Singh and Ram Kumar Sharma respectively. Those appeals were heard analogous and dismissed by a common judgment and order dated 25.09.2020, the operative portion of the judgment are as follows:

“Consequently the appeals stands dismissed. The order regarding payment of outstanding dues with interest along with applicable G.S.T within 30 days as directed and also the order regarding delivery of possession of the shop as per agreement for sale and to execute the sale deeds as directed, and the order regarding payment of rent in case of failure remain intact. An interim order was passed on 07.01.2020 by the Tribunal directing the promoter to abstain from transferring the shop in question to any other person. Any transfer or reallocation made during the pendency of the appeal is null and void being hit by the doctrine of lis-pendence.”

5. After passing of the judgment and order dated 25.09.2020 by the 'Appellate Tribunal' the executant Ram Kumar Sharma did RTGS UTR No. SBINR52020101200039146 of Rs.27,74,000/- (Rupees twenty-seven lacs seventy-four thousand) on 12.10.2020 with interest and GST in the credit facility account for the purpose of payment to Abhishek Tiwari and executant Nishant Kumar Singh did

RTGS UTR No. UBINH20287707738 of Rs.30,74,000/- (Rupees thirty lacs seventy-four thousand) on 13.10.2020 but the bank did not accept both the aforesaid payments because of the fact that by that time Abhishek Tiwari had already blocked the credit facility accounts and due to the said reason those amounts could not be credited in the account of the respondent. In support of their contention the executants have enclosed the photo copies of bank statement of Union Bank of India and State Bank of India, marked as Annexures 1 and 2 respectively. The executants also sent two letters through Speed Post asking Abhishek Tiwari to link his account with credit facility or furnish another account for the purpose of depositing the balance consideration money along with interest and G.S.T. on 15.10.2020 and 30.10.2020 marked Annexures 4 and 5 respectively and also sent an application on his e-mail ID in that regard.

6. After receiving such information the respondent gave reply thereto on 24.10.2020 through registered post that he had already allotted the shops to another purchaser and, therefore, he is unable to receive the balance consideration money. However, he replied that he is ready to refund the money tendered by the executants herein.

7. When the balance consideration money along with interest and GST did not credit to the credit facility account of Abhishek Tiwari having been blocked by him, the executants herein filed an application before the 'Appellate Tribunal' on 13.10.2020 praying therein to permit them to deposit the draft of balance consideration money along with interest and GST in court so that the same may be handed over to the respondent. 'The Appellate Tribunal' informed the executants herein to take steps in the RERA for execution of the

order dated 25.07.2019. Then the executants filed the instant **Execution Case No.94/2020** for execution of the common order dated 25.07.2019 read with the order dated 25.09.2020 passed by the ‘Appellate Authority’ and since the court of Adjudicating Officer was vacant, the executants herein filed Execution Case No.1/2021 before ‘the Appellate Tribunal’ for execution of the order, which was disposed of vide order dated 06.01.2022 with the following observation:

“However, as the execution case is not maintainable before the Appellate Tribunal therefore the appeal stands dismissed with the observation that the appellant may approach the Authority for passing appropriate order in accordance with Rule 26 of Real Estate (Regulation and Development) Rules, 2017. There is provision in the said Rule that in event of its inability in executing order passed by A.O. or the Authority it may be sent to the Principal, Civil Court to execute such order either within the local limits of whose jurisdiction the real estate project is located or in the Principal Civil Court within the local limits of whose jurisdiction the person against whom the order has been passed resides or carries on business or personally works for gain. So the appellant may approach before the Authority within a week for passing appropriate order in view of the aforesaid provision observed above.”

8. Since the Court of Adjudicating Officer was vacant the executants herein again filed Misc. Case No.02/2022 before ‘the Appellate Tribunal’ for logical conclusion of the execution case which was disposed of by ‘the Appellate Tribunal’ vide order dated 05.08.2022 and directed the Adjudicating Officer to make enquiry whether RTGS A/c was blocked on the date the money was intended to be remitted to the promoter and if it is so then money be received for making payment to the promoter in Court itself and then to proceed expeditiously in Execution Case No.94/2021.

9. In order to make effective and reasonable inquiry the executants herein were asked to bring on record tangible evidence in support of their claim that they rendered the balance consideration money to the promoter through RTGS but it was not accepted. Accordingly they filed a short synopsis of the case enclosing the documentary evidences in that regard as discussed above.

10. From perusal of the statements of the Union Bank of India and the State Bank of India it is clear that Ram Kumar Sharma and Nishant Kumar Singh respectively did RTGS in RTGS UTR No. SBINR52020101200039146 of Rs.27,74,000/- and RTGS in RTGS UTR No. UBINH20287707738 of Rs.30,74,000.0/-. Those amounts could not be credited in the credit facility account of the promoter as the promoter has blocked the same.

11. On 13.10.2020 the complainants filed an application before the 'Appellate Authority' that they be permitted to deposit the draft of the balance consideration money along with interest and GST in court so that the same be handed over to the respondents. By letter no.167 dated 15.10.2020 the Appellate Tribunal informed the complainants to take steps in the RERA as it has to execute its own order.

12. From the whatsapp message happened between the parties on 20.10.2020 and 21.10.2020, it is clear that the executants herein asked the promoter to accept the balance consideration money whereas in reply the promoter sought time to reply the said message. It is the contention of the executants that he has taken time with an intention that the period of 30 days would lapse and he may not be compelled to execute the sale-deeds in their favour.

13. Learned counsel for the respondent has not controverted the aforesaid evidences of the executants herein. He simply submitted that the executants herein did not make payment of the balance consideration money and, therefore, the shops in question were sold out but in support thereof he has not filed any document. The learned Appellate Tribunal vide order dated 07.01.2020 directed the promoter to restrain from transferring the shops in question to any other person and any transfer or reallocation made during the pendency of the appeal is null and void being hit by the doctrine of the lis-pendence. Therefore, there is no need to give any further opinion on this point.

During the course of argument learned counsel for the respondent herein further submitted that the execution case is not maintainable as it was not filed within a period of 30 days from the date of the order dated 25.07.2019 passed by this court. In reply, learned counsel for the executants herein relied upon a judgment of the Hon'ble Supreme Court reported in **(2000) 6 SCC 359 (Kunhayammed & Ors. Vs. State of Kerala & Anr.)** and submitted that the decision of the subordinate forum merges with the decision of the appellate forum and the decree or order becomes enforceable from the date of the order of the appellate forum. Reckoned from the date of the order of the Appellate Tribunal dated 25.09.2020 this execution case was filed in time. Thus the execution case does not suffer from limitation. In several other cases the Apex Court has laid down the principle that appeal is continuation of the suit so the argument of learned counsel for the respondent that the executants herein have not deposited the balance consideration money has no leg to stand.

From the discussions made above and the perusal of the documents filed by the executants herein mainly Annexures, 1, 2, 3, 4, 5, 6, 7 and 8 to the synopsis of the executants, it is clear that they have taken bonafide and reasonable attempt but on the other hand the promoter has intentionally blocked his account so that the amount deposited by the executants could not be credited in his account in time. Therefore, the intention of the promoter reflects that he is/was not ready to execute /obey the order of this court.

14. In the facts and circumstances discussed above this court is of the view that both the parties are bound to discharge their obligation as indicated in the order dated 25.07.2019 passed in RERA/CC/318/2019/ RERA/AO/56/2019, RERA/CC/333/2019/ RERA/AO/62/2019 and RERA/CC/334/2019/ RERA/AO/63/2019 within a period of 60 days from the date of this order. Both the parties are directed to execute/comply the order of this court dated 25.07.2019 under intimation to this Court. In case of non-compliance the aggrieved party would be at liberty to move before this court for seeking necessary direction by filing a petition in this court itself. It is made clear that in case of non-compliance of the direction this court would be compelled to take harsh action in the matter in the light of the provisions of the RERA Act, 2016.

Accordingly, the execution case is disposed of.

Sd/-
(Ambrish Kumar Tiwari)
Adjudicating Officer
16.02.2023