

REAL ESTATE REGULATORY AUTHORITY, BIHAR
Before the Single Bench of Mrs. Nupur Banerjee, Member

Case No. RERA/SM/148/2018

Authorized representative of RERAComplainant

Vs

M/s Shree Ganesh Developers Pvt. Ltd.Respondent

Project: Ganesh Enclave

Present: For Complainant: Mr. Abhinay Priyadarshi, Advocate

For Respondent: Mr. Bishwash Vijeta, Advocate

10/05/2024

ORDER

Hearing taken up. Both the parties are present through their respective learned counsel.

Learned counsel for the respondent press the rectification petition filed on 03-05-2024 and submits that this petition is filed because the order passed on 07-03-2024/05-12-2023 violates the principle of natural justice as well as the same does not give due respect to the provisions of the Act. He further submits that respondent's reply filed has not been considered while passing the order. He also submits that respondent submissions while passing the order were not considered is not only violation of principle of natural justice but is procedural violation too. He further submits that present rectification petition filed is for procedural review not substantive review and to substantiate his submission, he put reliance on the order passed by the Hon'ble Allahabad High Court in Writ-C No.323301 of 2019 where the Hon'ble High Court held that :-

“It is well recognized that every court/tribunal has an inherent power of procedural review and the same cannot be denied to the petitioner merely for the reason that there is no provision to that effect in the Act/Statute”.

He further submits that in the present case a Suo-Motu proceeding was initiated before the Hon'ble Authority way back in the year 2018 and accordingly, the respondent has received the show cause notice by RERA for which the respondent had filed his reply. He further submits that first reply was filed on 21.08.2018 and a detailed reply was filed on 05.09.2018. The facts of the case are that this project

was started in the year 2012 and the same completed in the year 2016. The completion certificate was issued on 11th January, 2017 and on 31st March, 2017; the respondent had applied for obtaining Occupancy Certificate before Bhagalpur Municipal Corporation. He further submits that as per the Section 13.1 of the Bihar Building By-laws 2007, if the competent authority fails to issue the occupancy certificate within two weeks from the date of submission of completion certificate before the Authority then the building shall be deemed to be occupied without waiting for the certificate. He further submits that in this regard already information has been provided to Bhagalpur Municipal Corporation on 10.04.2017 and as such, all the formalities as stated above has been completed prior to the enforcement of the RERA Act, 2016 which has come into force on 1st May, 2017. He further referred Annexure 3 & 4 and submits that notices sent to Bhagalpur Municipal Corporation on 10.04.2017 and 03-072018 is brought on record with this petition as well as with reply filed on 11.09.2018. Respondent has also placed on record sale deed executed in 2012 pertaining to the project land. He further put reliance on Hon'ble Supreme Court order passed in Criminal Appeal No.471 of 2009 where the Hon'ble Supreme Court held that: -

“Principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice”.

He further prays to consider his petition and rectify the order dated 07-03-2024/05-12-2023.

Legal representative of the Authority submits that reply filed by the respondent was on record but same was not incorporated in the order. He further submits that on completion certificate and letter submitted to Bhagalpur Municipal Corporation for obtaining Occupancy Certificate a report from technical wing may be called for which Authority intervene and observes that letters placed on record satisfied the compliance of the provision of Building Bye Laws as submitted by the respondent.

Perused the record. It appears that the reply and documents filed by the respondent have overlooked at the time of pronouncement of the order passed on 07-03-2024/05-12-2023. Hence, in view of the facts and circumstances as stated above as well as considering that this rectification does not fall under the substantive review in the light of above placed

judgments of Hon'ble Supreme Court & Allahabad High Court, this rectification is allowed. Accordingly, in the light of documents placed showing that project is completed before the enactment of the RERA Act, 2016, the proceeding initiated against respondent project **Ganesh Enclave**, under sections 35 & 59 of the RERA Act,2016 vide show cause notice dated 30-07-2018 is dropped out.

The order dated 07-03-2024/05-12-2023 is modified as indicated above. Accordingly, this Suo-Motu case is disposed of.

Sd/-
Nupur Banerjee
Member