

**REAL ESTATE REGULATORY AUTHORITY, BIHAR**

**Telephone Bhavan, Patel Nagar, Patna-800023.**

**Before the Bench of Mr. Naveen Verma, Chairman**

**Complaint Case No. CC/1176/2021**

**Vijay Kumar .....Complainant**

**Vs**

**M/s Soho Infrastructure Pvt. Ltd. ....Respondents**

**Project: Badri Narayan Enclave**

**Present: For Complainants: Mr. Punit Kumar, Advocate**

**For Respondent: None**

**28/06/2022**

**30/06/2022**

**INTERIM ORDER**

The complainant Vijay Kumar has filed a complaint petition against the respondent firm M/s Soho Infrastructure Pvt. Ltd., a promoter and Developer company praying therein to give possession of the flat at the earliest with all amenities and pay Rs.5 lakhs as compensation for mental harassment as well as litigation cost of Rs.50,000/- and stay further construction activity and handing over/registration of any flat on the said land property.

The complainant paid Rs.27 lakhs to the respondent for purchase of a three bed room flat bearing No.204 having an area of 1100 sq.ft. As per the allotment letter the total consideration amount was Rs.30 lakhs including car parking of the said flat. The complainant agreed to pay the total consideration amount to the developer as per his convenience which was accepted by them but neither they offered for the agreement nor for the possession of the flat. When he visited the site of the project in December, 2017 he was assured that within a year his flat would be delivered. It is further stated that he visited several times in the office of the respondent and requested for possession of the flat as he paid more than 90% payment but the respondent never offered possession of the flat. Thereafter, they showed the receipt of the RERA for registration of the project and again assured that after registration they will deliver the flat. It is further stated that the certificate for registration was issued on 30.01.2019 for the period 31.12.2020 which has also been lapsed. It is further stated that the complainant has been mentally harassed for his no fault and finding no alternative, he approached this court.

An application under sections 37 and 38 of the RERA Act,2016 read with Rule 24 of the Bihar Estate Regulation Rules, 2021 has been filed on behalf of the complainant to bring on record some relevant document. It is

stated that the instant matter was taken up on 14.03.2022 where the Hon'ble court pointed out on the issue of maintainability as the complainant with ill-advice has filed the case bearing No.395/2019 in which after hearing the parties, the Bench passed the order on 12.02.2020 giving liberty to the complainant to approach the concerned Hon'ble Court for redressal of his grievance. The Apex Court has also passed the judgment satisfying the power of the Authority and the Adjudicating Officer given in the Act. It is also stated that the respondent took the signature of the complainant on a piece of paper and recently he came to know and found the agreement dated 27.03.2015 which was kept by the respondent in his office. Therefore, his claim is genuine, proper and sustainable in the eye of law.

On 18.02.2022 hearing was taken up and the learned counsel for the complainant was present but the respondent was absent. On that day, learned counsel for the complainant submitted that he has paid Rs.27 lakh for the flat and states that earlier they had filed the case before the Adjudicating Officer but could not get any relief, therefore, this case has been filed. The Bench observed that a complaint with the same cause of action cannot be filed twice by the same complainant. On several occasions the learned counsel for the complainant requested for handing over the possession.

Learned counsel for the complainant submits that the complainant is a service man who wished to purchase the said flat from his hard earned money. He further submits that the complainant suffered an irreparable loss and injury because he is living on rent with his family members. If the respondent are unable to deliver the flat, they may be directed to pay the amount of cost of the flat at the present market rate. He also submits that the respondent has ill motive towards the complainant from the very beginning and tried to usurp the money. The complainant is moving from pillar to post but nothing has been done. For all these reasons the complainant wants possession of the flat with all amenities with compensation of Rs.5 lakh and litigation cost of Rs.50,000/-

The Bench after the perusal of cases records, observes that since the present issue was already taken into consideration by the court of Adjudicating Officer. However, as submitted by the complainant, the issue was not adjudicated there. The Bench taking into consideration the complainant reliance placed of Hon'ble Supreme Court observation in M/s Newtech Promoters & Developers Pvt. Ltd. Vs State of U.P & Ors. [2022] (1) RCR (Civil) 357 where the Hon'ble Supreme court held that Authority can hear the matter pertaining to refund and possession and Adjudication Officer relating to compensation, holds that the present matter is fit to be heard by it on the ground that complainant has approached before the Authority for possession.

The Bench also observes that despite notices issued to respondent, respondent has not appeared due to which exact fact regarding the status of the project has not cleared. But, the respondent company has filed a reply in pursuant to the order dated 24.05.2022 of this Bench bringing on record the orders of NCLT, New Delhi. The Bench also observes that complainant has

also not brought on record any facts from which it can be ascertained about the stage of project, hence, let this matter be re-heard before passing final orders.

In meanwhile, the Bench directs complainant to file necessary documents stating about the status of project.

So far as the issue relating to pendency of proceeding in respect to insolvency before NCLT, New Delhi is concerned, the Bench notes that section 88 of the Act provides that the provisions of the Real Estate (Regulation & Development) Act, 2016 is in addition to and not in derogation of any other law. The Bench also notes the judgements passed by the Apex Court in Pioneer Urban Land and Infrastructure Ltd and Anr vs. Union of India wherein it has been held that the remedies available to the allottees are concurrent in nature and they are in position to avail remedies under the Consumer Protection Act 2019, RERA as well as under the Insolvency and Bankruptcy Code, 2016. Therefore, the contention of the respondent company that the instant case is not fit to be heard by the Authority holds no ground.

The complainant is liberty to press the claim for compensation before the court of Adjudicating Officer.

Issue fresh notice to both the parties along with a copy of this order. Let a copy of reply be served to the complainant.

Put up on 26.8.2022.

Sd/-

**Naveen Verma**  
**Chairman**