



REAL ESTATE REGULATORY AUTHORITY, BIHAR

**Before the Single Bench of Inquiry Commissioner, Mr. Sanjaya Kumar Singh, RERA,
Bihar.**

RERA/CC/404/2025

Sri Ritesh Kumar & Sri Sanjeev Kumar

...Complainant

Versus

M/s. Mangalam Homes (India) Pvt Ltd.

... Respondent

Project: Sri Om Prakash Singh Enclave

Present: For Complainant: Adv. Abhinay Priyadarshi

For Respondent: None

ORDER

21.09.2026

1. Hearing taken up. Learned Counsel Sri Abhinay Priyadarshi was present on behalf of the Complainant. No body appeared on behalf of the respondent company.
2. The present matter was last heard on 17.06.2026 and the order was reserved and is being pronounced today.
3. The Complainant has filed the present complaint case against the Respondent company stating that a Registered Agreement for Sale dated 15.01.2018 was executed between the parties in respect of Flat No. 402, admeasuring approximately 1260 sq. ft., along with reserved car parking situated in Om Prakash Singh Complex. However, the possession of said flat has not been handed over to them despite repeated requests. It is further submitted by the Complainant that he has paid a sum of Rs.15,52, 000/- at the time of

execution of the Agreement for Sale, out of a total consideration amount of Rs. 37,80,000/-. It is also stated that despite repeatedly sending legal notice and telephonic requests made by the Complainant for delivery of possession, the same has not been handed over, although the Complainant has expressed readiness and willingness to pay any outstanding dues subject to the Respondent delivering possession of the said Flat No. 402.

4. It is further submitted by the learned counsel for the Complainant during the course of hearing submitted that a total of more than eight flats has been constructed in the project in question and that the same has been completed by the respondent. It is further contended that despite the Respondent being fully aware of the provisions of Section 3 of the said Act, and having knowledge that the project was an ongoing project at the time of the enforcement of the Act, no application for registration was filed, thereby prima facie committing a violation of the provisions of the Real Estate (Regulation and Development) Act, 2016.
5. The Bench enquired as to why the complainant had not made payment of the due instalments to the respondent. In response, learned counsel appearing on behalf of the complainant submitted that no specific schedule for payment of the instalments had been stipulated in the Agreement for Sale. It was further submitted that Clause/Terms and Conditions of the Agreement for Sale, outlined at page 5, provides that, "The buyer shall make timely payment of all amounts under this agreement whether demanded." Accordingly, the complainant understood and proceeded on the basis that the consideration amount was payable upon being demanded by the promoter. Since no demand notice was given to the complainant by the promoter (respondent) for payment of the due amount, the complainant did not make any further payment.

6. This bench vide its interim order dated 10.03.2026 taking into consideration the complainant's apprehension that the respondent might dispose of the impugned flat by way of sale to a third party, imposed a restriction on the sale of Flat Nos. 401, 402, and 302. The Bench further directed that notice be issued to the respondent through publication in the newspaper in accordance with Order V Rule 20 of the Code of Civil Procedure, 1908.
7. Learned counsel for the Complainant further prayed for issuance of a direction to the Respondent to hand over the possession of the flat booked by the Complainant. It was further submitted by the Complainant that he is ready and willing to pay the remaining consideration amount, subject to the Respondent handing over the possession of the said flat. Accordingly, a prayer was made for issuance of appropriate directions to the Respondent to deliver the possession of the flat in question.
8. However, upon inquiry by the complainant, it was found that during the subsistence of the Complainants' Agreement for Sale dated 15.01.2018, the Respondent had proceeded to create a third-party right over the very same flat by executing a registered Sale Deed dated 18.06.2020, bearing Deed No. 5138, in favour of Sit. Sneh Bharti, without first cancelling or terminating the allotment/Agreement for Sale of the Complainants.
9. After perusal of the record and submissions made during the hearing this bench observes that as per the provisions in Order 8 Rule 1 of the CPC, a defendant must file his written statement within 30 days from the date of service of summons, which may be extended by the court up to a maximum of 90 days. If the defendant fails to file the written statement within this prescribed or extended time period, the court, under Order 8 Rule 10, may in its discretion may proceed to pass an ex-parte decree.

Order 8 Rule 10. Procedure when party fails to present written statement called for by Court.-Where any party from whom a written statement is required under rule 1 or rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up:]

10. The Bench also observes that the Hon'ble Apex Court, in several decisions, has consistently affirmed the legal position that when a respondent, despite being duly served with notices and granted repeated opportunities, fails to file a reply, it is deemed that the respondent has waived the right to present its defence. In view of this settled principle of law, the Bench is left with no other alternative but to proceed without the respondent's reply. As there exists no sufficient justification to further delay the adjudication of the matter, the Bench is therefore constrained to decide the present case on the basis of the pleadings, documents, and evidence available on record.
11. In view of the aforesaid facts, circumstances, submissions made by the parties and the documents placed on record, it is evident that the complainants had booked residential flat bearing Flat No. 402 in the impugned project, having a super built-up area of 1260 sq. ft., along with reserved parking space, in the project named "Shri Om Prakash Singh Enclave" for a total consideration of ₹37,80,000/- , and agreement for sale was accordingly executed on 15.01.2018 in his favour. However, from the sale deed dated 18.06.2020 placed on record by the complainant, it is evident that the aforesaid Flat No. 402 which had been booked and allotted in favour of the complainant, has subsequently been sold to a third party.

12. The question that falls for determination before this Authority is whether the respondent-promoter was legally entitled to create or confer any third-party right in respect of the aforesaid flat without first effectuating a valid cancellation of the allotment made in favour of the complainant and without issuing any prior notice or demand requiring the complainant to discharge the alleged outstanding dues.
13. In this regard, Section 11(5) of the Real Estate (Regulation and Development) Act, 2016 (“RERA Act”) expressly provides as under:

“The promoter may cancel the allotment only in terms of the agreement for sale.”

14. A plain reading of the aforesaid provision makes it clear that the power of the promoter to cancel an allotment is neither absolute nor unfettered. Such cancellation can be made only in accordance with the terms and conditions stipulated in the Agreement for Sale. Therefore, any cancellation of allotment by the promoter is required to be in conformity with the contractual terms governing the parties and cannot be affected arbitrarily or unilaterally.
15. In the present case, it is an admitted position that the aforesaid flat was allotted in favour of the complainant pursuant to the Agreement for Sale dated 15.01.2018. However, at no point thereafter did the promoter-respondent raise any demand upon the complainant for payment of the balance consideration amount, despite the stipulation contained at page 5 of the said Agreement for Sale. It is further evident from a perusal of the complaint petition wherein the complainant claims that, despite repeated requests and persistent efforts on the part of the complainant, the respondent has failed to furnish any response or communicate its position regarding the allotment and possession of the aforesaid flat. The respondent also

failed to respond to the legal notice issued by the complainant calling upon it to hand over the possession of the said flat.

16. The respondent has also failed to produce any cogent evidence to prove that he has given any demand note to the complainant or even any notice regarding cancellation of the booking of the impugned flat. Such conduct on the part of the respondent demonstrates that no effective demand for the alleged outstanding consideration was ever communicated to the complainant prior to the subsequent action taken by the respondent in respect of the aforesaid flats nor has the respondent furnished any documents to establish otherwise.
17. In view of the aforesaid statutory scheme, the respondent-promoter was required to act in accordance with the provisions of the RERA Act and the applicable Rules and should not have, without following the prescribed contractual and statutory requirements, treated the allotment as cancelled or proceeded to create a third-party right in respect of the aforesaid flat.
18. The complainant has placed on record a registered Sale Deed dated 18.06.2020, bearing Deed No. 5138, executed in favour of Smt. Sneha Bharti, which constitutes a material document evidencing the creation of third-party right in respect of the flat already allotted to the complainant. The said document unequivocally establishes that, notwithstanding the subsisting allotment in favour of the complainant, the respondent-promoter proceeded to alienate the subject flat in favour of a third party without first cancelling or otherwise lawfully terminating the earlier allotment. The respondent has further failed to demonstrate that the consideration amount paid by the complainant was refunded prior to such alienation. Thus, without informing the complainant or bringing the proposed transaction to his notice, the respondent proceeded to sell the very same flat to a third party, thereby acting in derogation of the

complainant's subsisting rights and in breach of its contractual obligations.

19. It is further pertinent to consider the doctrine of priority embodied in *Section 48 of the Transfer of Property Act, 1882*. Section 48 of the Transfer of Property Act reads as under:

"48. Priority of rights created by transfer- Where person purports to create by transfer at different times rights in or over the same immovable property, and such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created."

20. The said provision incorporates the well-established legal principle that where a person creates, at different points of time, rights or interests in respect of the same immovable property in favour of different persons, the rights created earlier shall, subject to the provisions of law, prevail over and have priority against the rights subsequently created. The principle is founded upon the maxim *qui prior est tempore potior est jure*, meaning thereby that he who is prior in time is stronger in right.

21. The underlying rationale of the aforesaid doctrine is that a person cannot, by a subsequent transaction, derogate from or prejudice a right or interest which has already been validly created in favour of another person. Once a prior right or interest has been created in respect of a property, any subsequent dealing with the same property is necessarily subject to such pre-existing right, unless the earlier right has been lawfully extinguished, relinquished, cancelled or otherwise rendered ineffective in accordance with law.

22. The Supreme Court in **ICICI Bank v. SIDCO Leather** AIR 2006 SC 2088 held that

In terms of [Section 48](#) of the Transfer of Property Act claim of the first charge holder shall prevail over the claim of the second charge holder and in a given case where the debts due to both, the first charge holder and the second charge holder, are to be realized from the property belonging to the mortgagor, the first charge holder will have to be repaid first. There is no dispute as regards the said legal position.

23. In the facts and circumstances of the present case, the complainant had been allotted the aforesaid flat pursuant to the Agreement for Sale dated 15.01.2018. The respondent-promoter has, however, failed to demonstrate that the said allotment was ever validly cancelled in accordance with the terms of the Agreement for Sale or the applicable statutory provisions of law. There is also no material on record to establish that, prior to creating any subsequent rights in favour of third parties, the respondent had issued any notice of cancellation or demand notice in respect of the alleged outstanding amount, or had afforded the complainants a reasonable opportunity to explain or rectify the alleged default.
24. In the absence of a valid and lawful cancellation of the prior allotment, the rights and interests of the complainant flowing from such allotment could not have been unilaterally displaced or overridden by the respondent by subsequently dealing with the same flat in favour of a third party. The subsequent creation of any third-party interest, therefore, cannot, by itself, have the effect of extinguishing or defeating the pre-existing rights of the complainant.
25. The principle of *nemo dat quod non habet* meaning thereby that no person can confer upon another a better title or interest than he himself possesses also reinforces the aforesaid position, subject always to the statutory exceptions recognised under law. Thus, the respondent, by means of a subsequent transaction is not entitled to confer upon a third party any interest from the prior rights of the

complainant when such prior rights have neither been validly cancelled nor been otherwise extinguished in accordance with law.

26. Accordingly, this bench is of the considered view that the subsequent creation of a third-party right by the respondent-promoter, without first bringing the prior allotment in favour of the complainant to a lawful and effective termination, cannot prima facie operate to override, extinguish or defeat the pre-existing rights and interests of the complainant. Any such subsequent rights must necessarily be examined subject to the prior rights of the complainant and in accordance with the statutory framework governing the parties.

27. However, this Authority is also conscious of the fact that the registered sale deed dated 18.06.2020 has already been executed in favour of a third party. The Bombay High Court in **Macrotech Developers Ltd Vs. Joint Sub-Registrar and Ors.** Writ Petition (L) No. 18256 of 2025 *has held that RERA execution powers cannot extend to unilateral cancellation of registered sale agreements.*

28. The question therefore relating to the cancellation, setting aside or declaration of invalidity of the aforesaid registered sale deed and the adjudication of the consequential title and third-party right arising therefrom falls within the jurisdiction of the competent Civil Court. The complainants are accordingly at liberty to approach the competent Civil Court for appropriate relief, including cancellation or setting aside of the said sale deed and protection/enforcement of their rights in accordance with law.

29. Since the complainant has not sought refund of the consideration amount in the present proceedings, this Bench is constrained to confine its consideration to the relief specifically prayed for by the complainant, namely, delivery of possession of the subject property. Accordingly, the relief of refund cannot be granted in the absence of any specific prayer in this regard.

30. However, it is clarified that the complainant shall remain at liberty to institute appropriate proceedings before the competent forum under the provisions of the Real Estate (Regulation and Development) Act, 2016, and the Rules and Regulations framed thereunder, seeking refund of the consideration amount, if otherwise permissible in law. Such proceedings, if instituted, shall be considered and adjudicated upon in accordance with law and on their own merits.
31. The Complainant is also at liberty to move the Adjudicating Officer for any Claim/Compensation in accordance with the provisions of the Real Estate (Regulation and Development) Act 2016.
32. With the above directions, the present complaint case is accordingly disposed of.

Sd-

Sanjaya Kumar Singh
Inquiry Commissioner
RERA Bihar