

REAL ESTATE REGULATORY AUTHORITY, BIHAR, PATNA
2nd Floor, BSNL Telephone Exchange Building, Shastri Nagar, Patna- 800014

Before the Single Bench of Mr. R.B. Sinha, Member

Complaint Case No.: CC/1386/2020

Shailendra Kumar Sinha.....Complainant

Vs.

M/s Jagat Homes & Resorts Pvt. Ltd.....Respondent

Present: For Complainant: Adv. Sumeet Singh
For Respondent: Adv. Jairam Singh

09.12.2021

ORDER

1. Shailendra Kr. Sinha, resident of 107, Patliputra Colony, Patna, Bihar, has filed a complaint petition on 25th August 2020 against the promoter M/s Jagat Homes & Resorts Pvt. Ltd. through their Director, Mr. Prannath Singh, under Section 31 of the Real Estate Regulatory (Regulation and Development) Act, 2016 and Rule 36 of the Bihar Real Estate (Regulation and Development) Rules 2017 for cancellation of the registration of the project J.B.Mall Shopping Complex for contravening the terms and conditions of the development .agreement executed by him as landowner with the developer for development of the project on his land and cancellation of the registration certificate of the project.
2. The complainant has submitted complaint petition along with copy of the letter dated 14.10.2014 signed between the parties, memorandum of understanding for development of property cum money receipts dated 03.12.2014, chart given by the respondent 1st to the complainant, development agreement, notice dated 03.06.2017, share distribution, map etc

Case of the Complainant

3. In his petition, the complainant has stated that he along with other landowners- Smt. Meena Ranjan Lal, Amit Kumar, Sudhir Ranjan and Rahul Ranjan were approached by the respondent company through their

Director for developing their land (34.5 kathas of land situated near St Karen's High school on Danapur- Khagaul Road, Danapur) on 50 : 50 basis and accordingly complainant along with the other owners of the plot of land executed a development agreement on 6th April, 2015 under which 50% of the constructed super built up area was to be handed over to the landowners and 50% of the total developed property was to be the share of the developer. In the agreement, it was also provided that Rs. 15 lacs per Katha would be paid to the landowners.

4. Initially, a memorandum of understanding for development of the project was prepared and signed by Shailendra Kumar Sinha (complainant), P.N Singh and other owners, followed by the execution of development agreement on 06.04.2015.
5. In clause no. 10 of the development agreement, the landowners and developer have undertaken not to sell, dispose off, alienate, encumber, charge, sub lease or transfer their landed property as well as any part thereof. In clause 24, it is further mentioned that there shall be no change, modification or alteration to the agreement and it shall not be done without consent of the landowners. In clause 9 of the agreement it is mentioned that the developer would be liable to take prior consent from the landlord in order to make substantive decision during the construction of the commercial building.
6. The complainant claimed that the respondent took complainant's signature over the proposed project map for the construction of the commercial complex over the said land which was drawn by pencil and was supposed to be given to the concerned authority for its approval. However, when they found breach of agreement, on 02.06.2017 demand notice was given with regards to non compliance of the terms of development agreement dated 06.04.2015 and further a copy of the sanctioned project map was demanded along with the amount to be paid as per agreement dated 14.10.2014.
7. In 2018, a share distribution agreement was executed between the the respondent, complainant and other owners of the land although respondent no. 1 was again asked to sign on a piece of paper and in the said paper it was shown that altogether 34.5 Katta of land is present i.e. 107.8125 decimal of land with a boundary.

8. The complainant claimed that initially a rough piece of paper was given with regard to MoU, development agreement and share-distribution agreement but by the time original documents were given, it was too late. He claimed that on verifying the same, it was found that there were various discrepancies but by that time, signature from the complainant was taken. He claimed that he immediately informed other landowners that there were misdeeds committed by the developer and therefore, not to sign on the said distribution agreement and accordingly other landowners did not sign specially Amit Kumar and Sudhir Ranjan/Rahul Ranjan.
9. The complainant claimed that he visited the project site in the August 2019 but still approved map was not given but it was observed that a separate part of land which is not part of the property was also being developed by the developer and at the site, it was stated that it will be the part of the entire project.
10. The complainant and other owners of the property have not been served with the copy of the proposed and approved map at the time of taking the signatures. In 2019, the complainant took the copy of the same and found that the same is contrary to the terms of the agreement.
11. There is no written consent of the landlord for the development of the area other than the Schedule 1 property of the development agreement dated 06.04.2015 and without consent, the developer has proceeded to take the approval of RERA authority in the name of Jagat Homes & Resort which is in complete violation of RERA Act, 2016 as well as RERA Rules.
12. The respondent has violated clause 10, 14, 24, 28 of the terms of the development agreement and a high level committee is required to investigate the matter. The respondent is resorting to fraud and is also misleading the Danapur Nagar Parishad.
13. The complainant has prayed for cancellation of the RERA registration. The complainant further prays for issue of injunction against the builder from carrying out the development work on the property and the builder must compensate the complainant for loss and damage caused to complainant.

14. In pursuance to the receipt of Complaint petition, a notice was issued to the respondent company on 16.9.2020 to furnish their reply by 07.10.2020.

RESPONSE OF THE RESPONDENT

15. The respondent filed a reply on 24th September, 2020 against the complaint petition mentioning that the complainant was the co-owner of the property bearing 10 Katha and 10 dhur of land and a registered development was executed on 06.04.2015 between respondent 1-2 and complainant, respondent no. 3, 4, 5 and 6 for developing the land into commercial Project. The other development agreement dated 12.10.2015 was executed between the respondent no. 1, 2 and Dilip Kumar for developing the land as commercial activity.

16. The Respondent company stated that the map was got prepared by a certified architect and signed by all the landowners and builder along with engineer concerned. The same was submitted before the competent authority i.e. Nagar Parishad, Danapur Nizamat and after the proper verification, the map of the said project was sanctioned vide building plan no. 147/16-17 by the Executive officer, Danapur Nizamat Nagar Parishad.

17. Thereafter, the respondent submitted the application along with all required documents before RERA for registration and on 01.08.2018 the registration certificate of project was issued vide project registration no. BRERAAP00364-1/249/R-120/2018. The date of commencement of the project was 01.08.2018 and registration certificate was valid up to 31.07.2021 (subject to extension of validity of map).

18. In the complaint petition, the complainant has made his family members who also have executed the said development agreement, as parties but no other executants have any grievances. The respondent claimed that the petition was liable to be dismissed under the RERA Act, 2016 with an order to pay appropriate litigation cost.

19. The Respondent company claimed that the dispute raised by one out of five executants of the said development agreement was irrelevant as the map of project was signed by all the landowners and builder before submission for sanction to the competent authority.

20. The Respondent also submitted that the complainant has also filed a complaint case before the executing officer, Danapur Nizamat for redressed of grievances. They claimed that the petition was not maintainable and the same may be dismissed according to the facts and circumstances mentioned above.

HEARING

Hearings were held on 09.02.2021, 24.03.2021, 08.07.2021, 10.08.2021, 10.09.2021, 24.09.2021 and 01.10.2021.

21. In the course of hearing, the complainant was represented by Adv. Sumeet Singh and the respondent was represented by Adv. Jairam Singh. The complainant counsel submitted that the petitioner was a landowner and a development agreement was executed between the parties in April 2015 and he further informed the Bench that the land on which the respondent was supposed to develop has been changed by the respondent without written or verbal consent of the landowners. The respondent counsel submitted that the complainant was a co-promoter and he has already filed a reference case before the Hon'ble High Court which has been dismissed on merit and also has filed a petition given before Danapur Nazarat Nagar Parishad Forum, which has not been entertained. After hearing both the parties it was observed by the Bench that the case was not maintainable under RERA. However, the Bench directed the complainant to file his written brief of submission indicating inter-alia the section of RERA Act, under which the complainant comes under and also state which section of RERA Act is being violated by the respondent.

22. On 08.07.2021, the complainant counsel submitted by quoting Section 2 (d) that the complainant is an allottee as the complainant is getting the flat not under the ground of sale but on transfer by the promoter. He further submitted that the builder has violated clause no. 24 of the development agreement, which mandates that any deviation from the provisions of terms and conditions of the development agreement is to be done only after obtaining the written consent of the complainant/landowners. He further submitted that the major issue is that on their 34 kathas of land, third party's property has been amalgamated which has no pathway and both the lands have been joined together and the map on record has been

also deviated which requires a vigilance enquiry. He further submitted that around 10 kathas land have been added to his land.

23. Counsel for the respondent submitted that the complainant is not clear regarding his relief as to whether he wants the flat or has complained about the deviation of the plan to which the complainant counsel submitted that he had lodged this complaint with regards to fraud committed by the respondent by deviating from the plan. Complainant counsel submitted that he has filed case under Section 31 of RERA Act, 2016 and relief sought is that the builder is contravening the terms and condition of the development agreement i.e. clause 24 stating that “*no change, modification and may be done in the agreement without the written consent of the owner and developer*” to which the respondent counsel submitted that then he should approach Nagar Parishad. The respondent counsel further submitted that along with the complainant there are four brothers and one of the brothers intention is to grab some additional money from the builder and if there is any issue with the development agreement, one should appoint an Arbitrator. It was observed that by adding third party land without access to the road, the interests of complainant have been compromised as the built up area in the complainant’s land will get reduced due to provision of pathways in the complainants land for giving access to the other landowners’ land/property. In this way, though the promoter and other landowner have gained overall, the complainant has lost and will get fewer shares and put to a loss. The Bench directed the complainant counsel to make amendment in the relief sought, if he so desired and directs both parties to sit together and sort out amicably.

24. On 10.08.2021, the respondent counsel was represented by Adv. J.S Arora. The complainant counsel submitted that the complainant lies under the category of the allottee and he further informed the Bench that meeting was scheduled on 01.08.2021 and counsel for both the parties were present, issues were raised accordingly but since the respondent was not present, the meeting was further scheduled for 08.08.2021. He further informed that on 08.08.2021, the respondent did not appear due to some personal issues. Respondent counsel submitted that an additional land was added, distribution of share has been also finalized, and map was also represented and signed by all the landowners including the complainant. He further informed the Bench that the map has been sanctioned by the competent authority and was further approved by

RERA. The Bench observed that since the complainant himself had signed the map, he cannot claim ignorance about the map and further directed the complainant to be specific in his relief and again directs both the parties to settle the matter amicably.

25. On 10.09.2021, the complainant counsel submitted the meeting couldn't take place and since the mediation was in process, he didn't file the petition regarding specific relief and further prayed for 3 weeks time to file his reply. He further informed the Bench that a meeting was arranged by the complainants but the respondent did not turn up. The respondent counsel submitted that mediation will not succeed as the complainant has already filed a compliant case before the Danapur Nagar Parishad and Hon'ble High Court, Patna and further prayed to pass final orders.
26. During the course of hearing on 01.10.2021 the complainant counsel submitted that the deviation has taken place without taking the written consent of the complainant. He also submitted that the respondent has amalgamated 10 kathas land of another person who did not have any access to the road. He claimed that the builder has manipulated the entire map and drew attention towards the right hand side of the map where 5 names are mentioned in computerized form and 6th name is hand written.
27. The Complainant filed an interlocutory application on 01.10.2021, praying for directing the builder to handover 1,06,000 approx sq. ft. to the present complainant and not 82,000 sq. ft. The additional area included in the land of the complainant resulted in profit to the builder and thus the same should be shared to the complainant which will be in the form of enhancement/share of the area construction etc. He further prayed for directing the respondent to enter into a fresh development agreement with the present complainant and the third party for the safety of future allottee with regard to the land in question and take necessary approval from the respective authority.
28. The respondent counsel submitted that the development agreement executed was signed by the complainant himself as well as 5 others which clearly depicts that all of them have given their consent for the map. He further submitted by quoting para 9 & para 11 of REAT Appeal no. 16/2021 and 27/2021, Section 35 (2) of RERA Act, 2016 and concluded that if the complainant has issues regarding the development agreement,

he must approach the competent forum and further prays for passing final orders.

29. The Bench directed both the parties to submit their final notes of arguments and further directed the respondent to assure in writing that the landowners won't face any loss due to the additional agreement executed and further directed the complainant to produce evidence regarding the loss faced by them due to amalgamation of additional area in the project.
30. It is observed nothing has been filed on the part of the complainant but on 05.11.2021 the respondent filed supplementary show cause stating that this case was heard by the Authority and direction was given to the complainant to file his final notes of arguments but no such petition has been filed on behalf of the complainant. It is further stated that the respondent is ready to deliver the possession of their share as per the terms of development agreement as well as share distribution between the parties. He further prayed to dismiss this case with the direction to the complainant to cooperate.

Issues under Consideration

31. The Project J B Mall Shopping Complex is a RERA registered commercial project. The Project has BL+BU+G+9 building structure. The building plan was approved by the Danapur Nazarat Nagar Parishad on 1.11.2016 and was valid for three years. The Development agreement executed between the developer and landowners envisaged that the project would be completed by the promoter within a period of four years and six months from the date of approval/sanction of the plan by the competent Authority with a grace period of six years. As per the quarterly progress report for the 2nd quarter for the year 2021-22 uploaded by the promoter on 3.11.2021, the project was still largely incomplete with only few (4-5) floors structure constructed out of the proposed 9 storied building. Meanwhile, the validity of the RERA registration certificate also expired on 31.07.2021 and the promoter has requested for extension of the validity of the registration certificate.
32. In the registration certificate issued by the Authority on 1.8.2018, it was mentioned that the validity of the registration certificate would be three years i.e. by 31st July 2021 subject to extension of the validity of sanctioned plan. The promoter has however neither submitted the extension of the validity of approved/ sanctioned plan by the competent

authority after expiry of the plan on 30.10.2019 nor the modified/revised development agreement duly concurred by the landowners for extending the validity of the development agreement beyond 31st October 2021.

33. The complainant has alleged violation of several provisions of the development agreement by the promoter and requested for cancellation of the registration certificate of the project under section 31 of the Act. The respondent has however contested the claims of the the complainants and stated that the complainant has lost his case before the Hon'ble Patna High Court. They claimed that the complainant's case before Danapur Nazarat Nagar Parishad has also been rejected. The resolution of dispute in respect of the development agreement is beyond the mandate of the Real Estate Regulatory Authority under the Real Estate (Regulation and Development) Act 2016.

34. It is however observed that the revocation of the registration of the project is permissible under section 7 of the Act only on the grounds specified therein. The complainant is therefore required to satisfy themselves whether the promoter has done/committed any action or unfair practices or irregularities as specified under section 7 (1) (a), (b), (c) and (d) and then submit a complaint petition under section 7 (1) of the Act to the Authority for appropriate necessary action.

ORDER

35. The Bench holds that the resolution of the dispute in respect of violation of various provisions of the development agreement executed between developer and landowners is beyond the mandate of the Real Estate Regulatory Authority under the Real Estate (Regulation and Development) Act 2016. The Complainant, if he so wishes, may approach the competent civil court for redressal of their grievances.

36. The complainant is however at liberty to file a complaint petition under section 7 (1) of the Act to the Authority for appropriate necessary action, provided conditions prescribed under section 7 (1) (a), (b), (c) and (d) of the Real Estate (Regulation and Development) Act 2016 are met.

37. The Promoter is directed to submit the modified/ revised/ supplementary development agreement duly concurred by all landowners, extending the validity of the registered development agreement beyond 31st October 2021 as the promoter doesn't have a valid title to the land (34.5 kathas) as on date, as required under section 4 (2)

(l) (A) of the Real Estate (Regulation and Development) Act 2016 within thirty days of issue of the order, failing which, the Authority may initiate appropriate action under section 7 (1) of the Act.

38. The Bench directs the respondent company to ensure that the complainant/landowners don't incur any loss due to amalgamation of additional 10 kathas of land to the project consequent upon another development agreement executed by them with Mr Dilip Kumar on 12.10.2015.

Sd/-
R.B. SINHA
(Member)