

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

**Case No: RERA/CC/140/2021**

**RERA/AO/80/2021**

**Seema Singh**

**...Complainant**

**Vs.**

**M/s Kameshwar Buildcon & Infrastructure Pvt. Ltd. ...Respondent**

**Project: Dwarikadhish Enclave**

**02/07/2024**

**ORDER**

The matter was last heard on 20.02.2024 and was fixed for orders on 06.05.2024. However, due to pre-occupation of the Bench in other matter, order could not be pronounced on the date fixed. On that date, Mr. Parth Rishik, Advocate appeared on behalf of the complainant. Mr. Jai Ram Singh, Advocate appeared on behalf of the respondent.

In this case, the complainant has prayed for a direction to the respondent to stop the construction of the office at the ground floor and to construct parking area and children area as promised and showed in the brochure as well as shown in the passed map by Danapur Nagar Parishad.

In short, the case of the complainant is that the complainant is the flat owner of 203. In the brochure upon which she agreed to purchase the apartment, it showed that there will no office at the ground floor of the building but the builder has constructed an office at the ground floor. It is stated that this office was not present in the plans for the building passed by the Danapur Nagar Parishad. The brochure showed a temple but yet no construction has been done. It is also stated that there is no mechanisms available for fire prevention which makes the residents feel unsafe. The brochure clearly states 50% of open space on ground floor that consists of children area, green area, sitting arrangement and cultured park but all are missing. Driver sitting area, visitors parking area, two vehicle parking area are also missing. The builder has opened the office on the ground floor which was not mentioned in the brochure or the plans. It is further stated that all the problems has been conveyed to the builder but no replies were given as yet. Hence, this complaint.

The complainant has placed on record the copy of the Brochure, maps and the absolute sale dated 25.02.2020.

A show cause has been filed on behalf of the respondent in which it is stated that the complainant is one of the flat owners, whose flat was delivered with doing extra work and when the respondent had demanded to pay the amount for extra work as per brochure, she filed the present complaint case. The respondent has done all the extra works as mentioned in para-2 of the reply on the request of the complainant and demanded the extra amount. All the grievances either relate to the common area/ for the flat owners' association or relates to Municipal Acts.. In the agreement only 12 flats are sanctioned by the competent authority and only achieved FAR- 1.77 (the permissible FAR is 2.5

as per building bye-laws). It is also stated that there is provision to obtain revised sanctioned map for extra construction to achieve the FAR up to permissible limit and for this, the respondent has submitted a map with completion certificate for sanction the structure constructed in the ground floor as room. It is further stated that as per the Bihar Apartment Ownership Act, 2006 only official of the Association can take cognizance regarding common area dispute. In this apartment flat owner of Flat no.203 and 102 has grievance regarding common area but the structure at ground floor are pending for sanction before the competent authority. Hence, this complaint case is not maintainable before the RERA and hence, it is fit to be dismissed.

A petition has been filed by the complainant stating therein that this complaint is in accordance with the provisions of RERA Act, 2016. She is the owner of a residential flat No.203 in the unit of Dwarikadhish Enclave and the purchase was based on the representations made in the builder's brochure published by the respondent. It is stated that she has discovered several discrepancies between the representations in the brochure and the actual state of the property. It is also stated that the respondent has violated the provisions of the RERA Act by not providing the amenities and features promised in the brochure. Therefore, the complainant has prayed to direct the respondent to ensure the amenities promised by the builder including the ceasing of commercial operation in the area advertised as a common space for residents, ensuring it is accessible to all tenants as initially represented and to ensure that the promised temple and other missing amenities are provided as per the representations in the brochure.

A reply to the petition dated 05.10.2023 filed by the complainant has been filed on behalf of the respondent stating that the complaint petition is not maintainable before RERA, Bihar because of the fact that the project was already completed in the year 2020 and the completion certificate has already been submitted in RERA on 31.01.2020. In regard to prayer no.1 it is submitted that all amenities are already provided to all the residents. A completion certificate under the provision of Clause 15 of Building Buylaws, 2014 has been submitted before the competent authority. With taking consent of nine flat owners out of 12 flat owners to obtain revised map as existing construction i.e. covered area at the parking space. It is stated that there is no use of commercial activity, only temporary office of promoter are running and promised to surrender to the flat owners association. There is no any illegal construction in the premises of the apartment. In regard to grievance no.2 is concerned, it is stated that all amenities are very much available to all the flat owners. Only this flat owner has filed this application for redressal of his personal grievance. It is further stated that all the common grievances may be raised by the flat owners association, not by the individual flat owner, therefore, he prayed to drop the proceeding.

A reply to the submission dated 18.12.2023 filed by the respondent has been filed by the complainant with a prayer to direct the respondent to immediately cease the operation of the office located on the ground floor of Dwarikadhish Enclave and to restore the common area to its intended use for the benefit of all the allottees.

Regarding jurisdiction of the Authority, learned counsel for the complainant has made reference to the case of Pioneer Urban Land and Infrastructure Limited and Anr. Vs. Union of India & ors. (Civil Appeal No.12238 of 2018) in which the Hon'ble Supreme Court upheld the allottees' right to pursue remedies available under any law including RERA, consumer courts, civil courts etc. as RERA does not preclude the jurisdiction of other forums. Therefore, the complainant's claim remains maintainable despite the project's completion, given the respondent's failure to provide undivided interest in a common area as advertised in their brochure. He submitted that the respondent through their brochure advertised various amenities in the project, including a children' area and a temple but the designated children's area was repurposed into a temporary office. Despite the project's completion, the temporary office continues to operate within the designated Children's area constituting violation of RERA Act. Despite assurance given by the respondent, no tangible action has been undertaken to discontinue the operation of the office. He also submitted that they have not installed a temple as advertised in the brochure. Therefore, the complainant prayed that an order may be passed to cease the operation of the temporary office in the designated common area and install a temple as advertised in the respondent's brochure.

An interim order was passed by the Authority on 03.11.2023 in which it was held that it has the mandate to intervene when the promoter does not fulfill the requirement as mentioned in the Act and therefore, the argument that this matter may be heard by other forum is not tenable. It is further observed that Section 14(3) of the Act provides that the promoter has to rectify any defect in the provision of services or any other obligation of the promoter as per the agreement for sale. On 18.12.2023 learned counsel for the respondent submitted that the maps has been revised by the competent authority after taking consent of the allottees. He further submitted that the respondent is willing to dismantle his temporary office and handover the common areas to the Association of Allottees. The son of the complainant submitted that commercial activity is being undertaken in common areas. He further submitted that Section 11 of the RERA Act, 2016 has been violated by the respondent and that the respondent has not made available the amenities as promised.

From the facts and the submissions made above, it is clear that the grievance raised by the complainant in the complainant petition is common of all the allottees and an individual allottee cannot make the common grievance of the apartment and therefore, such type of grievance can only be raised by the allottees' association and not by individual one. Anyhow, in the proceeding dated 18.12.2023 learned counsel for the respondent submitted that the respondent is willing to dismantle his temporary office and handover the common area to the association of allottees.

Having heard learned counsel for the parties and on perusal of the records, the Authority observes that the respondent did not honour the commitment made in the proceeding dated 18.12.2023 in dismantling his temporary office and handing over the common areas to the Association of Allottees. Therefore, the Authority directs the respondent to dismantle his temporary office and handover the common area to the Association of

Allottees within sixty days of issue of the order. So far as the installation of temple is concerned, the Authority advises the respondent to install a temple as advertised in the brochure in the interest of all the allottees as soon as possible.

With these directions and observations, the matter is disposed of.

Sd/-  
**Nupur Banerjee**  
**Member**