



REAL ESTATE REGULATORY AUTHORITY, BIHAR

Before the Bench of Mr. Ved Prakash,

Special Presiding Officer

Rectification Petition RERA/RECTI/16/2026

Arising out of

Exe. Case No. 85/2024

RERA/CC/189/2022

Alok Kumar

....Executant / Complainant

Vs.

M/s Ezzion Construction Pvt. Ltd.

....Respondent

PROJECT - EZZION TOWNSHIP

For the Executant:

In Person

For the Respondent:

Mr. Shiv Shankar Dubey, Advocate

08.09.2026

RECTIFICATION ORDER

Learned counsel Mr. Shiv Shankar Dubey on behalf of the Respondent Promoter, Mr. Kumod Kumar by filing a rectification petition dated 01.07.2026 / 03.08.2026 submits that rectification petition under Regulation 27 of Bihar Real Estate Regulatory Authority (General) Regulations, 2024 has been filed for rectification of the order dated 19.07.2024 / 02.08.2024 passed by this Bench/Authority, wherein this Bench/Authority has directed for issuance of recovery certificate and for taking coercive recovery proceedings against the present Respondent Promoter/Petitioner. He further submits that executant Mr. Alok Kumar who is respondent No. 1 in the present rectification petition, had instituted complaint case No. RERA/CC/189/2022 before the Authority seeking refund of alleged amount paid towards booking of flat in a project Ezzion Township and said complaint case disposed of on 11.12.2023, whereby and where under the Hon'ble Member, Mrs. Nupur Banerjee has directed the respondent to refund the principal amount Rs. 5,00,000/- to the

complainant along with interest. Later on, due to non-compliance of the order, the present respondent No. 1 instituted Execution Case No. 85/2024 seeking execution of aforesaid order passed by the Hon'ble Member.

2. He further submits that it is utter shock to the Respondent Promoter cum Petitioner that the Authority vide order dated 19.07.2024 / 02.08.2024 directed the issuance of recovery certificate under Section 40(1) of RERA Act, 2016 read with Rule 25 of Bihar Rera Rules, 2017 (Annexure -1).

3. He further submits that on bare perusal of impugned execution order, it would reveal that the Authority merely recorded that notices had been issued and thereafter proceeded to observe that the respondent were absent. He further submits that impugned order does not record any finding regarding service of notice upon the present Respondent Promoter / Petitioner in the execution proceedings before directing issuance of recovery certificate and initiation of coercive recovery measures.

4. Learned counsel further submits that the record of execution proceedings would further reveal that no substituted service by way of paper publication was ever undertaken against the present petitioner. The impugned order also does not record any satisfaction regarding completion of service through any alternative mode before directing issuance of recovery certificate.

5. He further submits that even assuming without admitting that the execution proceedings were maintainable against the present petitioner, the impugned order suffers from a further patent error apparent on face of record in much as no notice calling upon the Respondent Promoter / Petitioner to show cause as to why coercive recovery proceeding ought not to be initiated against him was ever issued or served. He further submits that principles embodied in Order XXI Rule 37 of CPC though procedural in nature recognize the fundamental requirement that before coercive execution measures affecting the liberty and property of a person are undertaken an effective opportunity of showing cause must be afforded. The impugned order, however, proceeds straightaway to direct issuance of recovery certificate and coercive recovery proceedings without recording

issuance of service or consideration of any such show cause notice thereby resulting in violation of the principles of natural justice and causing serious prejudice to the Respondent Promoter / Petitioner.

6. Learned counsel further submits that the execution order does not deal with or consider the peculiar facts and circumstances pertaining to the present petitioner before exposing him to coercive recovery proceeding. He further submits that amounts alleged to have been paid by the Respondent No. 1 cum Complainant were admittedly dealt by Md. Ejaz Hussain. The respondent petitioner neither negotiated the alleged transaction with the complainant nor received any amount from him. The petitioner had no direct role to play in the alleged monetary transactions relied upon by the complainant. Further, the claim set up by the complainant is not founded upon any registered Agreement to Sale, Builder Buyer Agreement or any other comprehensive contractual document. The complainant had relied merely upon certain money receipts. The petitioner has serious reservations regarding the genuineness, authenticity and evidentiary value of the said receipts. The said receipts by themselves do not disclose the essential terms of any real estate transaction including the total sale consideration, payment schedule, specification of the proposed unit, reciprocal obligations of the parties or other material contractual conditions and in absence of a duly executed Agreement to Sell, the exact nature, scope and enforceability of the alleged transaction itself remained matter requiring proper adjudication.

8. Learned counsel for the Respondent Petitioner further submits that project in question was admittedly not registered under RERA Act, 2016. This material aspect also bears directly upon the nature of claim and the issues arising therefrom. He further submits that neither the petitioner nor Ezzion Construction had any project known as Ezzion Township. The existence of alleged project along with any sanctioned map, Development Agreement or other fundamental documents relating thereto requires verification particularly in view of the serious allegations of fraud surrounding transactions allegedly undertaken by Ejaz Hussain.

9. Learned counsel for the petitioner further submits that serious acts of fraud and misrepresentation were committed by the aforesaid Ejaz Hussain in relation to the affairs of the project and transactions concerning prospective purchasers. Upon discovery of such fraudulent activities, criminal proceedings came to be instituted against the said Ejaz Hussain and cognizance has already been taken by the competent criminal court. The aforesaid facts assume significance because the transactions relied upon by the complainant is themselves under a cloud on account of the fraudulent conduct of the aforesaid individual. Despite the aforesaid circumstances, the impugned execution order proceeds to direct coercive recovery without recording any finding with respect to service upon the Respondent Promoter / Petitioner and without addressing the circumstances under which recovery is sought to be enforced against him. Hence, the present petition is Bonafide and maintainable under Regulation 27 of Bihar Real Estate Regulatory Authority (General) Regulations, 2024 and petition may be allowed and order dated 19.07.2024 / 02.08.2024 passed in Execution Case No. 85/2024 by the present Bench / Authority may be rectified and / or modified and it may be held that the recovery certificate and consequential coercive recovery proceeding shall not be enforced against the present petitioner until due consideration of facts and circumstances pertaining to the petitioner.

10. Executant / Complainant vehemently opposed the submissions of learned counsel for the Respondent Petitioner and he submits that the Petitioner / Promoter Mr. Kumod Kumar is whole time director in the Respondent Company M/s Ezzion Construction Pvt. Ltd. since 23.02.2011(Exhibit A). He further submits that the learned counsel for the respondent was always appearing before the Authority while the inquiry was conducted under Section 31 of RERA Act read with Rule 36 Bihar RERA Rules, 2017 and learned counsel of the Respondent Petitioner on 18.08.2023 has admitted that both the Directors are liable for making refund of the principal amount to the complainant and now the Respondent

Promoter / Petitioner is changing his stand, which is legally not correct in the eye of law.

11. Executant further submits that after due service of notice on the Respondent Promoter, the execution case initiated and the learned counsel Mr. Shiv Shankar Dubey was personally present during the hearing on 13.05.2024 without filing Vakalatnama and he has assured to file Vakalatnama on next date and it was directed by the Bench / Authority to the executant to supply copy of execution petition to the learned lawyer for the respondent and accordingly copy was supplied on that very day, but later on, neither Respondent Promoter / Petitioner nor learned counsel appeared. Hence, the order for recovery was passed by the Bench / Authority on 02.08.2024. Hence, the petition of the Respondent Promoter / Petitioner is baseless and it may be rejected.

12. Considering submissions as well on going through the record, Bench / Authority observes that the Hon'ble Member Mrs. Nupur Banerjee has passed order on 11.12.2023 in complaint case No. RERA/CC/189/2022 and has directed the respondent to refund the principal amount Rs. 5, 00,000/- to the complainant along with interest, but at that time, the Respondent Promoter was absent. However, during the proceeding of the inquiry under Section 31 read with Rule 36 Bihar RERA Rules, 2017, the learned counsel of the respondent was appearing casually and as placed on the record on 18.08.2023 the learned counsel Mr. Sujeet Kumar had appeared on behalf of the present Respondent Promoter Mr. Kumod Kumar and he had submitted that both the Directors are liable for making refund of principal amount to the complainant. It shows that Respondent Promoter / Petitioner was conversant about pendency of the complaint case as well as final order passed by the Hon'ble Member, but in spite of knowledge of the above order dated 11.12.2023, the Respondent Promoter / Petitioner has not only ignored to comply the order within stipulated period of 60 days, but has also not taken pain to comply the said order at the time of initiation of present execution proceedings.

13. The Bench further observes that on filing of present execution case No. 85/2024, the notices were issued against both the parties and thereafter on 13.05.2024, the executant in person as well as learned counsel Mr. Shiv Shankar Dubey, who is also present today, had appeared and the copy of execution petition was supplied to the learned counsel by the executant who had appeared without filing of Vakalatnama and he has submitted that on next date, he will file Vakalatnama. Thereafter, neither the learned counsel nor present Respondent Promoter nor any representative appeared on behalf of the respondent in spite of reminder notice dated 21.06.2024 against the respondent. Hence, having no response from the side of the present Respondent Promoter on 19.07.2024 / 02.08.2024, the impugned order was passed as the respondent has not made refund of the principal amount and interest accrued thereon. It was incumbent upon the respondent to comply the order passed by the Hon'ble Member in either of the modes, but instead of making compliance, he preferred to tightly sit on the matter and waited for such a long time and after lapse of more than 2 years, the Respondent Petitioner has come with this rectification petition.

14. The Bench further notes that Mr. Kumod Kumar is one of the Director of the Company and dispute between the Directors is their internal matter and any allottee has no concern with the disputes inter se among the Directors.

15. Section 69 (1) of RERA Act very specifically makes it clear that where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, or was responsible to the company for the conduct of, the business of the company as well as the company, shall be deemed to be a guilty of offence and shall be liable to be proceed against and punished accordingly. Section 69(2) of the Act 2016 says that notwithstanding anything contained in Sub-Section (1) where the offence under this Act is committed by the company, and it is proved that the offence has been committed with the consent or connivance of or is attributable to, any neglect on the part of any director, manager secretary or other officer shall also be deemed to be guilty of that offence

and shall be liable to be proceeded against and punished accordingly. The explanation under Sub Clause-(a) of this Sub Section 2 says that the company means any body corporate and includes a firm or other association of individuals and Sub Clause (b) says director in relation to firm, means a partner in the firm. Hence, factually and legally, the present respondent promoter cum Petitioner cum director Mr. Kumod Kumar is equably liable like Ejaz Hussain and he cannot escape from the liability.

16. The Hon'ble Member after due consideration of materials has passed the above order and directed the respondent to refund the principal amount Rs. 5, 00,000/- along with interest. The Respondent Promoter has not filed appeal against the said order. Hence, the same has got finality.

17. The Bench further observes that on non-compliance of order passed by the Hon'ble Authority, the present execution case was initiated and as discussed above, in spite of notice Respondent Promoter has failed to make compliance of the said order of the Hon'ble Member. Now agitating about service of notice by the learned counsel on behalf of the respondent petitioner has no leg to stand as it is baseless. The Bench / Authority is not obliged to scrutinise during the execution proceedings the order dated 11.12.2023 passed by the Hon'ble Member in RERA/CC/189/2022 as the same has got finality.

18. The Bench further observes that if the respondent petitioner had any grievance he should have got set aside / modified the order from the Hon'ble Tribunal / Hon'ble High Court, but he did nothing rather preferred to wait till filing of rectification petition, which is not entertainable in eye of law.

19. The Bench further notes that the learned counsel for the Respondent Petitioner is making prayer to rectify the impugned order dated 19.07.2024 / 02.08.2024 under the provisions of Regulation 27 Bihar Real Estate Regulatory Authority (General) Regulations, 2024, which is based on Section 39 of RERA Act, 2016 which allows rectification of an order only when there is any mistake apparent from the face of record and it is not substantive part of the said order, but in present case, the Respondent Petitioner is willing to rectify the impugned order passed in Para 4 for issuance of



recovery certificate under Section 40 (1) of RERA Act read with Rule 25 of Bihar RERA Rules, 2017, which is not a clerical or formal mistake rather it is substantive and it cannot be rectified under the provisions of Section 39.

20. On the basis of materials what has been discussed above, it is clear that the Respondent Petitioner Mr. Kumod Kumar was appearing casually during the inquiry proceeding under Section 31 r/w Rule 36 Bihar RERA Rules, 2017 before the Hon'ble Member and he being adamant not to comply the said order has not taken pain to comply the same within stipulated period of 60 days. It is also surprising that in spite of appearance on first date of execution proceeding after notice on 13.05.2024 the learned counsel Mr. Shiv Shankar Dubey even after receiving the copy of the execution petition from the executant has not taken pain to make compliance or to file reply on behalf of the respondent.

21. It is utter surprising that after passing of impugned order on 19.07.2024 / 02.08.2024, the Respondent or his representative / learned counsel has not taken pain to file stay order on the record against the said order and it has also got finality like the order passed by the Hon'ble Member. In such facts and circumstances, it seems that the respondent and his learned counsel knowingly and intentionally has avoided the compliance of the orders passed by the Hon'ble Member as well as by this Bench/Authority and after wait of 2 years has come for rectification of substantive part of the impugned order, which is neither factually nor legally entertainable and maintainable.

Hence, the rectification petition is accordingly rejected.

Sd/-
(**Ved Prakash**)
Special Presiding Officer
RERA, Bihar