

REAL ESTATE REGULATORY AUTHORITY, BIHAR
Before the Bench of Mr. Ved Prakash,
Special Presiding Officer

Exe. Case No. 334/2024
RERA/CC/239/2023

Vikash Kumar

....Executant(s)

Vs

M/s Star India Construction Pvt. Ltd.

....Respondent

PROJECT- Dhanraj Complex

For the complainant:

Mr. Amit Singh (Adv.)

For the respondent :

Mr. Sumit Kumar (Adv.)

23.06.2026

O R D E R

Shri Amit Singh, learned counsel on behalf of complainant and Shri Sumit Kumar, learned counsel on behalf of respondent are present.

2. The present execution case has been filed with a prayer to comply the order dated 28.05.2024 passed by Shri S.D. Jha, the Hon'ble Member of the Authority in complaint case no. 239/2023, whereby the Hon'ble Member was pleased to direct the respondent company and its Chairman, Mr. Shashi Bhushan Prasad to hand over the possession of flat with all amenities as per the terms and condition of the Agreement and to execute the conveyance Deed after completing all the legal formalities within two months from the date of issue of that order. Further, the complainant was directed to pay the remaining consideration amount along with interest, if the payments made by are not found in the manner and within the time as specified in the Agreement for sale, after handing over possession of flat and before the execution of Conveyance Deed. Further, the complainant was given liberty to move the Adjudicating Officer, RERA, to claim for compensation if the delivery of possession of flat is not handed over as per the Agreement for sale dated 07.02.2020.

3. Learned counsel for respondent has filed counter reply dated 24.02.2025 on behalf of respondent submitting therein that the executant/complainant and his brother-in-law had booked a Flat in their name in the project, Dhanraj Complex, Block -B being developed and by the respondent company and entered into an

Agreement for Sale wherein he had assured the developer that he would abide by the terms and condition of the Agreement and make timely payment against their booking, but the executant and his brother-in-law miserably failed to abide by the terms and conditions of their allotment of both unit and the developer initiated the refund process after cancellation of allotment.

4. Learned counsel for respondent further submits that after 2 years of cancellation of allotment, the complainant/executant and his brother in-law had preferred vide CC no 236/2023 and CC 239/2023. After hearing both the parties, the Authority was pleased to pass order in CC 236/2023 as follows: The Authority also observes that section 11 (2) of RERA Act, 2016, empowers the promoter to cancel the allotment in accordance to the Agreement for sale and further, section 19 (6) of the RERA Act, 2016 casts duty upon the allottee to make payment as per the Agreement for sale. In the complaint case 236/2023, the Authority holds that the complainant fails in obliging his duty cast under section 19 (6) of the RERA Act, 2016. Accordingly, the cancellation of allotment made by the respondent vide letter dated 06.04.2022 is valid and is in accordance to the provisions of section 11 (5) of the RERA Act,

5. Being aggrieved with the order passed in CC 236/2023, the complainant has preferred an appeal before the Hon'ble Appellate Tribunal, which is pending adjudication. Likewise, the respondent promoter also preferred an appeal before the Hon'ble Appellate Tribunal against the order passed in CC 239/2023 dated 28.05.2024, which is also pending adjudication.

6. Learned counsel for respondent submits that in the light of pending appeal before the Hon'ble Appellate Tribunal and decision rendered by Full Bench in favour of the respondent, the present execution case is premature and unsustainable in law.

7. Heard and perused the record.

8. On going through the record as well as considering the submissions/arguments made on behalf of both the parties, it appears that the executant /complainant booked Flat no. DC-503 on 5th Floor in Dhanraj Complex, Phase II (Block -B) on consideration of Rs. 42,19,800/- by making payment of Rs. 1,51,000/- and thereafter, an Agreement for Sale was executed on 07.02.2020. It also appears that out of the total consideration amount, the

complainant/executant paid Rs. 22,47,920/- till January, 2022. It was also anticipated that the flat was to be completed and handed over by March, 2023, but the project was still under construction. The complainant having found no progress in construction work stopped further payment and thereafter on 06.04.2022, the respondent cancelled booking unilaterally and the executant/complainant was aggrieved by such unilateral action of the respondent. However, he was willing to pay the remaining consideration amount after handing over the possession of said flat as per the Agreement. It also appears that the respondent, in the meanwhile, has executed the sale deed with respect to the said flat in favour of some other prospective buyer.

9. The Bench further notes that the respondent has cited the decision rendered by Full Bench of the Authority in another complaint case of similar nature pertaining to the same project. Here, it has to be clarified that the execution court has very limited option in execution matter. The execution court has to ensure only compliance of the order passed by the Hon'ble Member of the Authority.

10. The record shows that the Hon'ble Member, Shri S.D. Jha on 28.05.2024 has directed in RERA/CC/239/2023 to the respondent promoter direct the respondent company and its Chairman, Mr. Shashi Bhushan Prasad to hand over the possession of flat with all amenities as per the terms and condition of the Agreement and to execute the conveyance Deed after completing all the legal formalities within two months from the date of issue of that order. Further, the complainant was directed to pay the remaining consideration amount along with interest, if the payments made by are not found in the manner and within the time as specified in the Agreement for sale, after handing over possession of flat and before the execution of Conveyance Deed. Further, the complainant was given liberty to move the Adjudicating Officer, RERA, to claim for compensation if the delivery of possession of flat is not handed over as per the Agreement for sale dated 07.02.2020.

11. On the basis of above discussions and materials available on record, the Bench/authority observes that the respondent promoter, on one or the other ground, was never ready to comply the order dated 28.05.2024 passed by Hon'ble Member in RERA/CC/239/2023 and in total disregard of the order of the Hon'ble Member, the respondent promoter, Shri Shashi Bhushan Prasad executed a

registered sale deed with respect to the said flat in favour of a stranger purchaser. The respondent promoter without any substantive evidence, has brought on record a theory that he is in process of making refund of the principal amount of the complainant instead of delivery of possession and execution of sale deed. Hence, in the above facts and circumstances, the submission of the respondent promoter is not tenable in the eye of law and accordingly it is rejected.

12. The record further shows that the respondent was adamant to transfer the said property to the stranger purchaser only with a view to harassing the complainant in total disregard of the order of the Authority and committed contravention of RERA Act, 2016 and other applicable laws. Hence, this Bench/Authority under the provisions of section 11 (5) of RERA Act, 2016 observes that the respondent promoter knowing well about the agreement for sale dated 07.02.2020 as well as the above order dated 28.05.2024 passed by Hon'ble Member in RERA/CC/239/2023 has executed an absolute sale deed in favour of stranger purchaser going beyond the legal obligations cast upon him and as such, the conduct of respondent promoter is wholly illegal, unilateral, arbitrary without showing sufficient cause and contrary to the obligation cast upon him under the provisions of RERA Act, 2016.

13. The Bench /Authority further observes that subsequent sale deed executed by the respondent promoter in favour of stranger purchaser demonstrate that the respondent has committed a deliberate attempt to curtail the legitimate right of the executant that cannot be justified by any measuring rod. The said subsequent sale deed also goes against the terms and conditions set in the agreement for sale executed between the parties. Hence, the Bench/Authority is of considered opinion that the respondent promoter acted in a clandestine manner and with mala fide intention to deprive the complainant of his rightful claim over the flat in question. Further, selling of the said flat in favour of stranger purchaser is tantamount to an unfair trade practices and breach of contractual obligation and also violation of the principle of transparency, accountability and fairness envisaged under the RERA Act, 2016.

14. The respondent promoter cannot be permitted to benefit from his own wrongful act as the complainant/executant has suffered losses and prejudices solely due to conduct of the respondent promoter. The respondent has further

disobeyed the above order passed by the Hon'ble Member. Hence, the penalty under section 63 of RERA Act, 2016 has to be imposed for non-compliance of the above order passed by the Hon'ble Member. Accordingly, a penalty of Rs. 2000/- per day is imposed under section 63 of RERA Act, 2016 against the respondent promoter, Shri Shashi Bhushan Prasad recoverable till compliance of the order of the Hon'ble Member.

15. The office is directed to issue a recovery certificate u/s 40(1), read with Rule 25/26 of RERA Act and section 4/5 of Bihar & Orissa Public Demand Recovery Act, 1914 and send the same to the collector, Patna for recovery of penalty amount.

With the above observations/directions, the present execution case is disposed of.

Sd/-
(Ved Prakash)
Special Presiding Officer