

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

RERA/CC/401/2024

Shekhar Sinha, Bhuwan Sinha

....Complainant(s)

Vs

M/s PeryVidya Pvt. Ltd.

....Respondent

PROJECT- Mohan Sadan

For the complainant:

Mrs.Kriti Suman (Adv.)

For the respondent :

Mr. Jai Ram Singh (Adv.)

01.07.2026

O R D E R

Hearing is taken up. Learned counsels on behalf of both the parties are present.

2. The learned counsel for the complainants submits that the complainants are a set of the landowners, out of 12 landowners and the building, namely, Mohan Sadan is the ancestral property of the complainants' grandfather, Late Kameshwar Prasad Sinha and the land was in the name of complainants' grandmother, late Smt. Mohan Devi Sinha. The Late Kameshwar Prasad Sinha had 12 Children. Late Lalit Kishore Prasad, father of the complainants was one of the legal heirs, out of 12 children and following his death, the complainant's mother Late Pramila Verma gained her rights on the said property.

3. Learned counsel for the complainants further submits that the respondent promoter, Mr. Manoj Kumar approached some of the legal heirs of late Smt. Mohan Devi Sinha and late K.P. Sinha with an offer to develop the land from the old building into a new multistoried building. The offer of the respondent promoter was accepted by the legal heirs of the said property. The respondent offered to give 50% of flats to the complainants and other legal heirs. A Development Agreement dated 13.11.2009 was executed between the respondent promoter and the rest of legal heirs. It was agreed that the promoter would give the legal heirs,

including the complainants a 50% stake of the total developed land and that each of the heirs will get a flat or Rs. 12 Lakhs in lieu of the flat immediately. However, the complainants mother did not agree with it as her father-in-law had not given equal share in the property to all her children and as per his will, he had given her husband a larger share in the said property. Subsequently ,a joint settlement petition dated 06.10.2010 was filed by mother of the complainants, with the respondent whereby it was agreed that she would get two bedroom flats of 1050 sq. ft each on first floor with assigned parking space for each.

4. The learned counsel further submits that aforesaid building had to be converted into the Mohan Sadan Apartment, having four stories and a basement and garage with a 50-50% sharing ratio as well as proportional parking space. As per settlement, each of the eleven landowners had to be provided with a flat and a parking space except those who chose to receive Rs. 12 Lakh immediately in lieu of the flat.

5. Learned counsel for the Complainants further submits that as per settlement, the respondent promoter would have to give two flats with two parking spaces in the name of the complainants separately and the possession of flats was to be handed over by the promoter to the complainants within 3.5 years with a further six months grace period. Further the grievances of the complainants are that though the flat nos. 101 (2BHK) and 105(3 BHK) along with parking spaces were allotted to both the of the complainants as the legal heirs of late Mr. Pramila Verma by the respondent, the respondent promoter has not yet provided parking spaces after marking, possession letter, NOC and the completion and occupancy certificates. Further the project is unregistered with RERA, Bihar and it was completed in year 2022, hence the Director of the respondent company has contravened the provisions of Section 3 RERA Act 2016. Hence complaint.

6. On the other hand, learned counsel appearing on behalf of respondent by filing reply cum maintainability petition submits that registered Development Agreement dated 13.11.2009 was executed between the complainants' mother and respondent promoter and

subsequently a share distribution-cum-possession declaration was executed on 25.01.2013 by means of which, the possession of the respective share was handed over to all the landowners, including the share of complainant's family. It is further submitted that out of twelve (12) landowners, more than six landowners have already sold out their respective units, although all the landowners have jointly executed a single development agreement with the respondent promoter. The learned counsel for the respondent further submits that share allotted to the complainant's family was also delivered and they are in peaceful possession of their flats. He further submits that in the year 2022, fresh Memorandum of Understanding (MOU) for possession post share – distribution was prepared and signed by all land owners except complainant's mother. The reason of abstention is not disclosed and best known to the complainants.

7. The learned counsel for the respondent further submits that the complainants by virtue of their family's co-ownership and involvement in development of the project, fall in category of Promoter under clause 6 of Bihar RERA (General) Regulation 2021 and as such they are not entitled to invoke jurisdiction of Authority (RERA) under RERA Act 2016 for seeking grievances of possession etc. He further submits that several land owners namely Smt. Prabhawati Sinha, Smt.Meera Sinha, Smt. Karuna Prasad sold their shares during construction stage and further Ms. Pramila Verma and Ms. Pratima Prasad had also sold their flats No.101 and 401 respectively. Hence complainants are also Co-Promoter and their complaint case is not maintainable in RERA, Bihar. He further submits that a similar case bearing no. RERA/CC/541/2019 was dismissed by the Authority on 05.07.2024 on the ground that the landowner was held a co-promoter (copy of order is annexed as Annexure-1).

8. The learned counsel for the complainants by filing rejoinder submits that the complainants are allottees under Section (2)(d) of RERA Act 2016 and they have not received any kind of monetary/economic benefit from the deal. He further submits that the Authority in several complaint cases like RERA/AO/101/2024, RERA/AO/2022, RERA/CC/956/2020 has

found land owners of the said project are allottees and directed the respondent promoter to deliver possession of flats. She further submits that the respondent has not handed over the complete possession of flats to the landowners/complainants and simply handing over of the keys of flats will not be treated as possession in eye of law. Hence CC/OC and other documents have to be delivered to them along with possession of flats No.101 and 105 and parking spaces with marking numbers as per Building Bye Laws.

9. Admittedly the development agreement dated 13.11.2009 was executed between Shri Gopal Prasad Sinha and others and the respondent promoter for construction of multistoried building, namely, Mohan Sadan. Later on, other Development Agreement was executed on same date 13.11.2009 between Smt. Prabhawati Sinha w/o late Naval Kishore Prasad, Smt. Pramila Verma, wife of late Lalit Kishore Prasad and others as well as the respondent promoter for development of the above project. Further a joint compromise petition dated 6.10.2010 was filed on behalf of Smt. Pramila Verma and promoter Mr. Manoj Kumar in T.S no. 14/2007 (Smt. Pramila Verma and others vs. Estate of Late Kameshwar Prasad Sinha and others), wherein it was agreed that the plaintiff, Smt. Pramila Verma for herself and on behalf of legal heirs of Late Lalit Kishore shall also execute a development agreement with same developer in regard to the said property. It was further agreed upon between the parties that irrespective of share of late Lalit Kishore Prasad, the plaintiff, Smt. Pramila Verma shall be allotted two bed room flats each having super built-up area of 1050 sq. ft (approximate) on first floor.

10. Learned counsel for respondent submits that the complainants by virtue of their family co-ownership and involvement in development of the project fall within the definition of co-promoter as per clause 6 of Bihar RERA (Gen) Regulation, 2021 and as such, the complainants are not entitled to invoke the jurisdiction of the Authority under RERA Act, 2016 for consumer related grievances. He further submits that several co-landowners, namely, Ms. Prabhawati Sinha, Ms. Meera Sinha, Smt. Karuna Prasad, Smt. Nirmala Sinha have sold their respective shares even during the construction phase. It has

further come to the knowledge that certain flats were sold by landowners, namely, Ms, Pramila Verma flat no. 101, and Ms. Pratima Prasad, flat no. 401 to third parties and as such, the landowners who are indulged in marketing, advertising or selling of their share of the project prior to its completion are treated as co-promoter under Regulation 6 of the Bihar RERA (Gen.) Regulation, 2021 and as such, the present complainant case is not maintainable before the Authority.

(i) On the other hand, learned counsel for complainants opposes and submits that the respondent promoter has wrongly contended that there was only one Development Agreement between the promoter and land owners. In reality there was separate Development Agreement on 13.11.2009 between Ms.Pramila Verma,the mother of the complainants and others and the promoter for construction of project Mohan Sadan. Learned counsel further submits that the complainants and their family does not come under the definition of co-promoter as per Clause 6(1)of Explanation (1)(C) and as such the present case is maintainable and the complainants are allottees under Section 2(d) RERA Act 2016.

(ii) Bench observes that there were two Development Agreements on 13.11.2009.In one Development Agreement Pramila Verma along with others had executed deed with the promoter for development of the project .There being a separate development agreement, it cannot be said that on the sale of flat from share of the other landowners will make any impact on the merit of the present case. It also finds support from the fact that the respondent promoter has miserably failed to file any sale deed executed by Smt. Pramila Verma, the mother of the complaints like flat no. 101 as she had died in the year 2017.

(iii) The respondents' learned counsel has claimed that co-landowner, Smt.Smt Urmila Kumari and others sold their flats falling in the same project being co-landowner, and the complaint case RERA/CC/541/2019/ RERA/AO/134/2019 was dismissed on 05.07.2024 by learned Adjudicating Officer, RERA, Bihar. On going through the order it appears that in the said case, the complainant was absent and not contesting the case and it was decided after hearing the learned counsel for respondent, but on the other hand, the other landowner, Shri Rajeev Ranjan has filed a complaint case no. 956/2020 before the Authority and vide

order dated 13.04.2022, the Hon'ble Member, Smt. N. Banerjee has held the said case maintainable for the same project. In like manner, the learned A.O has also found the case of compensation as maintainable in RERA/AO/101/2024, RERA/AO/83/2022. In such facts and circumstances, the submissions of learned counsel for respondent appears not tenable and the Bench/Authority finds the complainants as allottees under Section 2(d) of RERA Act 2016. Accordingly the submissions of the learned counsel for respondent are rejected and the present case is held maintainable against the respondent.

11. Learned counsel for respondent emphasized and submits that a share distribution-cum-possession declaration was executed on 25.01.2013 through which the possession of respective share was handed over to all the landowners, including the share of the family of the complainants and since then the complainant and his family members are coming in peaceful possession. He has further submitted that in 2022, a fresh MOU for possession based on share distribution was prepared and signed by all the landowner, except the complainant's mother and reason for her abstention was not disclosed, which is best known to the complainant. The admission of respondent itself shows that dispute with respect to completion of project and delivery of possession of share of flats including parking spaces was pending till 2022 and even then the flats and parking spaces were not delivered to the complainants as per norms of building bye laws and that is why they did not sign on the share distribution deed.

12. Section 3 (1) of RERA Act, 2016 provides that

“ no promoter shall develop, advertise, market, book, sell or offer for sale or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any Real Estate Project or part of it, in any planning area, without registering the Real Estate Project with RERA established under this Act;

provided that the projects that are on going on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act;

Provided further that x xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

(2) Notwithstanding anything contained in Sub-section (1), no registration of

the allottees or the competent authority, as the case may be, as per the local laws.” In addition to the above, Section 19 (10) says that “ *Every allottee shall take physical possession of the apartment, plot or building, as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be.* Further, as per section 19 (5), “ *The allottee shall be entitled to have the necessary documents and plans, including that of common area, after handing over the physical possession of the apartment or plot or building, as the case may be, by the promoter.*” But in the present case, the respondent did not file completion/occupancy certificate in support of the claim that the project is completed and the possession of flat no. 101 and 105 have been handed over to the complainants. Unless and Completion Certificate/Occupancy Certificate as per Section 3/11 RERA Act 2016 is not filed and handed over, it will be presumed that the project is incomplete

15. Hon’ble Supreme Court in Debashis Sinha vs. M/s R.N.R. Enterprises (2023) 3 SSC 395 has held that the offer of possession without requisite completion/occupancy certificate is not valid offer of possession. The home buyer cannot be compelled to accept such possession. Further Hon’ble Supreme Court in Samruddi Co-operative Housing Society Vs. Mumbai Mahalaxmi Construction (P) Ltd. (2022) 4 SCC 103 has held that failure to obtain occupancy certificate constitute a continuing deficiency in service as it is an essential part of lawful possession. Hon’ble Supreme Court in Parsvnath Developers Pvt. Ltd vs. Mohit Khirbet (2006) has held that merely handing over of keys or offering possession without statutory approval does not absolve the promoter of his liability. In such view of the matter, it is established that merely on handing over of the keys of flat no. 101 and 105 to the complainants will not absolve the promoter(s) of their liabilities as required by laws. Accordingly, the respondent has to make delivery of possession of both flats 101 and 105 after obtaining completion and occupancy certificates from the competent authority and hand over the same to the complainants as well as deliver physical possession of flats along with car parking spaces with marking as per Bihar Building Bye Laws 2014.

16. In the backdrop of the above facts and circumstances as well as applicable laws of RERA Act, 2016, the Bench/Authority holds that the present complaint case is maintainable and accordingly, the respondent company through its

Director, Shri Manoj Kumar is directed to deliver possession of flat nos. 101 and 105 along with car parking spaces on the ground floor as specified in Bihar Building Byelaws, 2014 within 60 days of passing of the order and also hand over the completion/occupancy certificates along with other documents to the complainants. Secondly, the respondent is further directed to get registration of the ongoing project, Mohan Sadan with the RERA Bihar within stipulated period , otherwise Suo Motu case for contravention of Section 3 RERA Act 2016 shall be initiated for non –registration of the project-Mohan Sadan.

17. The complainants, if so advised, shall be at liberty to press other relief(s), if any, which is in the nature of compensation, before the Adjudicating Officer, RERA, Bihar.

With these observations/directions, this complaint case is disposed of.

Sd/-
(Ved Prakash)
Special Presiding Officer