

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

Exe. Case No.-98/2024
RERA/CC/985/2021

Akhileshwar Pd Gupta & Manju Devi

....Executant(s)

Vs

M/s KanaishkaBuildcon Pvt. Ltd.

....Respondent

PROJECT- VidyanandMaheshwari Complex

For the complainant:

Mr. Jai Ram Singh (Adv.)

For the respondent :

Mr. Sumit Kumar (Adv.)

17.02.2026

O R D E R

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

2. Learned counsel for executant submits that the instant execution case has been filed with a prayer to issue directions to the respondent promoter to comply the order dated 17.08.2023 passed in complaint case no. 985/2021 by Smt. Nupur Banerjee, the Hon'ble Member of the Authority. Learned counsel further submits that the complainant no. 1 is also land owner of Khata no. 156, Survey Plot no. 390, Thana no. 23, Tauzi no. 5292, admeasuring area of 1 Khata 5 dhur, which is equal to 3.90624 decimal and complainant no. 2, who is wife of Shri Akhileshwar Prasad Gupta, is the landowner of Khata no. 123, Survey Plot no. 390, Thana no. 23, Tauzi no. 5292, area 1 Katha 17 Dhurs, which is equal to 5.84375 decimal. Learned counsel further submits that on 11.11.2021 a registered development agreement was executed between the complainants and the respondent to construct a multi-storeyed building, namely, Vidyanand Maheshwari Complex on their land. He further submits that in para 13 of the development agreement, the promoter had committed to complete the building in four years, failing which the promoter shall be liable to pay compensation amount in the form of rent amount of Rs. 10,000/- per month

per flat. The promoter had also agreed to give possession first to the landowner and then to his purchaser.

3. Learned counsel further submits that the Hon'ble Member, vide order dated 17.08.2023, after analyzing the claims and counter claims of the parties, held that the respondent had not complied the earlier directions of the Authority. Hence, the Hon'ble Member directed the respondent to comply his own commitments given in the court to complete the remaining work as per the development agreement and brochure and also to install the fire extinguishing system, which is the basic need of the building. Learned counsel, therefore, contends that this part of direction was still not complied with by the respondent. Hence, the executant was left with no option but to file the instant execution case for compliance of the order dated 17.08.2023 passed by Hon'ble Member in the complaint case no. 985/2021.

4. Learned counsel for respondent files an Affidavit duly sworn in by Notary, Government of Bihar to the effect that the promoter has already received Completion Certificate of the project in question dated 17.04.2017 from Civil Engineer, Nagar Parishad, Danapur Nizamat. The respondent promoter has raised the objection that the project in question does not fall within the ambit of section 3 of the RERA Act, 2016 and hence the project is unregistered with Authority. Learned counsel further submits that the respondent promoter has provided all the amenities and facilities in Block A, B, C and D of the project as per the agreement. The respondent promoter has also entered into share distribution agreement with the executants and provided all the amenities and facilities in terms of development agreement and share distribution agreement. He further submits that the complainant before completion of the project executed sale deed on 12.08.2016 and as a result of this, the complainant may be considered as co-promoter in terms of Regulation 6 of the RERA Regulation, 2024. Learned counsel, relying on para 54 of the judgment rendered in Civil Appeal No(s) 6745, 6749 of 2021 (M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P and Ors), submits that the present project does not come under the ambit of section 3 of the RERA Act, 2016. Learned counsel further submits that in aforesaid facts and circumstances, the present execution proceeding may be dropped

for want of jurisdiction of the Authority and/ or the complainant may also be considered as co-promoter of the project in question in terms of Regulation 6 of Bihar RERA Regulation, 2024.

5. Heard and perused the record.

6. Considering the submissions made on behalf of both the parties as well as going through the materials available on record, it appears that the respondent promoter has laid more emphasis on the point relating to the completion of project prior to enforcement of RERA Act 2016 on 01.05.2016, but Hon'ble Member after minutely examination of the facts came to conclusion that the project was incomplete and directed the respondent to complete the remaining works of the project as per development agreement and the brochure and also to install fire extinguishing system. The respondent himself has submitted before the Hon'ble Member that one lift was installed, but 2nd lift was going to be installed. The Bench observes that at the stage of execution, the respondent promoter cannot be allowed to raise the same plea of maintainability of this case, which has already been considered and rejected by the Hon'ble Member at time of passing of order on 17.08.2023 in RERA/CC/985/2021. Hon'ble Member further directed in the order that if the respondent does not comply within 60 days from the date of issue of the order, the respondent promoter shall be liable to pay a penalty of Rs. 1000/- per day till the completion of remaining work.

7. It has to be made clear to the concerned party that the execution court is barred from re-examining the facts of the case and deciding the matter afresh. It has to see to it that the order passed in complaint case is complied with in its letter and spirit. In this case, the Bench notes that the respondent promoter, instead of installing the fire-fighting equipment, completing the remaining works of the project and making compliance of order of Hon'ble Member in the building, is raising the issue of maintainability of the present execution case. The Bench / Authority is of considered opinion that if the respondent promoter was not satisfied with the decision/order passed by Hon'ble Member in the said complaint case, he could have preferred an appeal before the higher forum because that option was available to him but

he did nothing . By now, the order dated 17.08.2023 passed by Hon'ble Member in complaint case no. 985/2021 has already acquired the finality. Therefore, he is left with no option, but he has to make compliance of the said order of the Authority in its letter and spirit.

8. In the light of discussion made hereinabove, this Bench/Authority holds that the respondent promoter has defied the order of the Authority and he has nowhere made submission that he would provide safety measure to the building by installing fire-fighting equipment and complete the remaining works of the project. The promoter has, till date, not honored his own commitments made before Bench and also made to the complainant in the development agreement executed between both the parties.

9. In such view of the matter, the Bench/Authority hereby directs the respondent promoter to complete the remaining works as per the development agreement and brochure and also to install fire-fighting equipment in the building at proper place, which is the basic need of the building and its resident, at the earliest.

10. Since the respondent has miserably failed to comply with the above order passed by the Hon'ble Member, hence, issue recovery certificate under provisions of Section 40(1)(2) of RERA Act 2016 and Rule 25 Bihar RERA Rules 2017 r/w Section 4/5 Bihar and Orissa Public Demands Recovery Act 1914 for recovery of penalty amount @ Rs. 1000/- per day, after 60 days of order dated 17.08.2023 till completion of the remaining work.

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

Sd/-
(Ved Prakash)
Special Presiding Officer