

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

Exe. Case No -531/2022
RERA/CC/05/2021

Kiran ChoudharyComplainant/Executant(s)
Vs.
M/s Aristo Developers Pvt. Ltd.Respondent
PROJECT : Harihar Enclave

For the complainant : Mr. Sahil Kumar (Adv.)
For the respondent : Ms. Kriti Suman (Adv.)

13.12.2024

ORDER

Shri Sahil Kumar, learned counsel on behalf of executant and Ms. Kriti Suman, learned counsel on behalf of respondent are present.

2. The executant, Shri Sanjeev Kumar and others have filed the present execution case against the respondent promoter for execution of order dated 01.10.2021 passed by D.B consisting of Hon'ble Chairman, Shri Naveen Verma and Hon'ble Member, Smt. Nupur Banerjee in RERA/CC/05/2021, as the respondent has not complied the said order within a reasonable time.

3. The respondent promoter, after appearance, has filed reply to the execution petition of the execution. He submits that the execution petition filed for compliance of the order of the Hon'ble Authority is neither maintainable nor sustainable in the eye of law as the operative part of the order does not put any obligation upon the respondent to comply the same as it is not executable. He further submits that the executants have not filed the present execution case with their clean hands, as the executants are already in possession of their flats and they are enjoying their possession of their respective flats. Learned counsel further submits that the respondent has already submitted photo copy of OC and sanctioned map plan, which is evident from the order of the Hon'ble Authority itself.

4. She further submits that the respondent has constructed the building adhering to sanctioned map plan and there is no question of any deviation from the building plan. She further submits that the sanctioned plan has already been communicated and executed after consent of 2/3rd allottees. She

further submits that the respondent company has not done any changes nor created any 3rd party right in shops by way of sale of shops. She further submits that the executant has filed the present execution case only with a view to harassing the respondent. She further submits that the prayers of the executant are unjust improper and incorrect and not sustainable in the eye of law and fit to be dismissed.

5. On the other hand, learned counsel for executant opposes the submission and submits that the respondents are making false submissions through their reply and instead of making compliance of the order of the Hon'ble Authority, they were instrumental in disobeying the same. He further submits that the respondents are unnecessarily trying to mislead the bench as the Hon'ble Authority has clearly directed to refer the matter to the competent authority for re-examination of approval of sanctioned map based on the finding that no approval of 2/3rd majority of flats owners was taken, which is in violation of section 14 (1) (2) of RERA Act, 2016. He further submits that the respondent in its reply has clearly accepted the facts of violation of order, because the running of shops without of grant of commercial electricity connection is in itself violation of direction of Hon'ble Authority. He further submits that this bench has also directed to file an undertaking in the light of order dated 01.10.2021 passed by the Hon'ble Authority to the effect that the respondent will not create any third party interest in the shops by way of sale, which were not included in the approved sanctioned map, but unfortunately, the respondent is not complying the said order till date. Hence, the reply of the respondent is fit to be rejected and an appropriate order may be passed.

6. Heard both parties and perused the record.

7. The Hon'ble D.B of the Authority has directed on 01.10.2021 in the above order that even if the revised map has been approved by the competent authority as stated by the respondent company, it is for the respondent to conform to the provisions of section 14 (1) (2) of RERA Act, 2016, while seeking approval of the revised map. It is also apparent that the consent of the allottees has not been taken while submitting the revised plan. The Hon'ble Authority has further directed that this matter may be referred to the competent authority who may re-examine and reconsider the approval of the revised map specially on the point whether any addition or modification in the plan has been made with the previous consent of at least 2/3rd of the allottees.

8. The Hon'ble Authority has further directed the respondent promoter not to give effect to any change in the original approved map, which was also agreed upon by the allottees at the time of agreement for sale and comply with

the provisions of section 14 (1) of the Act. Hon'ble Authority has further directed that in exercise of power conferred to it under section 37 of the Act, the Authority prohibits the respondent company to create any third party interest in the shop by way of sale of shops, which was not included in the original approved sanctioned map.

9. Though the respondent promoter has not filed supplementary undertaking on affidavit but admittedly the respondent has filed the counter affidavit sworn on 16.08.2024 on the record wherein he has declared that the respondent company has not done any change in creating any third party right by way of sale of shops, which shows that the respondent might have not created any third party right in the shop as per direction of the Hon'ble Authority, which was not included in the original approved sanctioned map.

10. However, it is required that as per direction of the Hon'ble Authority, the matter has to be referred to the competent authority to re-examine and reconsider the approval of the revised map specially on the point whether any addition and modification in the plan has been made with the previous consent of at least 2/3rd of the allottees. Now, it is necessary for the competent authority to inquire on these allegations and the matter is being referred to it as per order of the Hon'ble Authority. The respondent is directed to comply the above order of the Hon'ble Authority not to create any third party interest in the shops by way of sale of shops, which was not included in the original approved sanctioned map and the respondent is under obligation to stand by the submissions made in their counter affidavit. The office is directed to refer the matter to the competent authority for compliance of the order of the Hon'ble Authority. The case is accordingly disposed of.

Sd/-
(Ved Prakash)
Special Presiding Officer