

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

Exe. Case No -77/2022
RERA/CC/1559/2020

Mr. Ashish KumarComplainant/Executant(s)
Vs.
M/s Raman and Kumar Construction Pvt. Ltd.Respondent

PROJECT : Laxmi Prabha Apartment

For the complainant : Mr. Bhola Shankar (Adv.)
For the respondent : Mr. Sumit Kumar (Adv.)

10.01.2025

ORDER

Shri Bhola Shankar, learned counsel along with executant and Shri Sumit Kumar, learned counsel on behalf of respondent promoter are present.

2. The present execution case is filed by the executant against the respondent for execution of order dated 28.10.2021/15.11.2021 passed by the then Hon'ble Chairman, Shri Naveen Verma in RERA/CC/1559/2020, wherein the Hon'ble chairman has directed the respondent promoter to hand over the possession of flat no. 103 in the project, 'Laxmi Prabha Apartment' to the complainant and execute sale deed in favour of the complainant within 60 days from the date of the order on payment of remaining consideration Rs. 9,00,000/- to the respondent company.

3. Learned counsel for executant submits that in spite of repeated directions, the respondent has failed to comply the above order of the Hon'ble Chairman and also in utter violation of the above order, the respondent has delivered and executed sale deed dated 27.04.2023 in favour of one Smt. Rup Lata with respect to the said flat. He further submits that the respondent has filed REAT Appeal no. 3/2022 before the Hon'ble Tribunal wherein he could not get any relief, rather the said appeal was dismissed as withdrawn on 23.02.2022. He further submits that since the respondent has knowingly and

intentionally not implemented the above order of the Hon'ble Chairman, so as per section 63 of the RERA Act, the penalty may be imposed on the respondent for non-compliance of the said order. He further submits that the respondent has filed a petition mentioning therein that he has filed a review application before the Hon'ble Authority, but neither the copy of the said application has been served on the executant nor the said application has been registered and provided any registration number by the office of the Authority. He further submits that the respondent for one or the other reason has resorted to dilatory tactics for lingering the matter and avoiding to execute the order of the Hon'ble Chairman. So coercive measure may be taken against the respondent for non-compliance of the said order.

4. Learned counsel for respondent by filing his reply on 14.08.2023 as well as a petition dated 22.11.2024 submits that the respondent has sold out the aforementioned flat in favour of other person by executing an absolute sale deed. Therefore, it is impossible to execute sale deed in favour the present executant on the basis of order passed by the Hon'ble Chairman. He further submits that a review application under Regulation 20 of RERA Regulation, 2021, read with section 114 of CPC, 1908 is pending before the Authority since 29.12.2021 and further that the executant has filed a Title Suit no. 122/2021 for the same cause of action before the Civil Court, Patna. Hence, the present execution case is barred by the principle of res judicata and res-subjudice as no person can be vexed twice over the same cause of action and as such the present execution case is not maintainable. He further submits that the respondent is ready to refund the principal amount along with interest to the complainant as the respondent has already sold out the flat no. 103 of the above project to other allottee and further that the respondent is also ready to pay simple bank interest on the principal amount to the executant. He further submits that the appeal preferred by the respondent was withdrawn on technical ground, so the same cannot be construed as a basis for argument by the executant against the respondent that the appeal was dismissed on merit. Hence, the execution petition being not maintainable may be dismissed and the respondent may be directed to refund the principal amount to the executant.

5. Heard and perused the record.

6. The Hon'ble chairman has directed the respondent promoter on 28.10.2021 /15.11.2021 to deliver and execute the sale deed on receipt of remaining consideration Rs. 9 lakh in favour of the executant, Shri Ashish Kumar with respect to flat no. 103 in the project, 'Laxmi Prabha Apartment' within 60 days of the issue of the order. But the respondent, instead of making compliance of the above order of the Hon'ble Chairman, has executed sale deed no. 6934 dated 27.04.2023 with respect to flat no. 103 in project, 'Laxmi Prabha Apartment' in favour of one Smt. Ruplata on payment of consideration amount of Rs. 36,50,000/- against the total consideration of Rs. 30,00,000/- as agreed between the complainant and the respondent. Moreover, the said sale deed in favour of third party was executed by the respondent during the pendency of the present execution case without seeking permission from the Hon'ble Authority.

7. It is also correct that the respondent has preferred REAT Appeal no. 03/2022 before the Hon'ble Tribunal, which was admittedly dismissed as withdrawn on 23.02.2022, which shows that the respondent was not able to establish his case before the Hon'ble Tribunal and as such, he could not get any relief against the order passed by the Hon'ble Chairman.

8. The respondent has submitted that he has filed a review application before the Hon'ble Authority, which is said to be pending since 29.12.2021, but he could not establish the fact that the copy of the said application was ever handed over to the executant and any registration number was provided on the said application of the respondent promoter, which shows that mere filing of the review application against the above order of the Hon'ble Chairman is a very vague plea on behalf of the respondent which is not tenable in the eye of law, unless or until any order is passed by the Hon'ble Authority on such review application.

9. The respondent has further claimed that the executant has filed Title Suite no. 122/2021 before the Civil Court, Patna against the respondent and new purchaser, Smt Ruplata and due to filing of such suit, the principle of res-judicata and res-subjudice will apply in the present execution case, but it is not correct in the eye of law as the order of the Hon'ble Chairman was

passed prior to the filing of Title Suit and execution case for executing the said order was already pending. Secondly, the Title Suit may be filed by the executant against the stranger purchaser as the Hon'ble Authority is legally not empowered to set aside the sale deed executed by the respondent in favour of stranger purchaser and as such, the principle of res-judicate and res-subjudice herein the present execution case will not apply.

10. The respondent, instead of making compliance of the above order of the Hon'ble Chairman, has offered to refund the principal amount along with simple bank interest, but the defaulter respondent has done nothing towards such assurances in spite of taking several adjournments on this point.

11. From the discussions made herein above, it is clear that the respondent on one or the other ground is not ready to comply the above order of the Hon'ble Chairman and in utter violation, he has been advancing unreasonable pleas, which are not tenable in the eye of the law. In such view of the matter, it is established that the respondent has been showing disregard to the order of the Hon'ble Chairman and has violated the directions of the Hon'ble Authority also. So, the respondents are liable for penalty under the provisions of Section 63 of the RERA Act, 2016, which clearly says that since the default is still continuing, the penalty may be imposed on the defaulter up-to 5 % of the estimated cost of the Real Estate project.

12. Admittedly, the respondent promoter has executed sale deed in favour of stranger purchaser, Smt. Ruplata, as discussed hereinabove, on 27.04.2023 on consideration of Rs. 36,50,000/- and there are 12 flats in the said project, so the estimated cost of the project comes to the tune of Rs. 4,3800,000/-. If one per cent of the estimated cost of the project is imposed on the respondent promoter, it will come to Rs. 4,38,000/-. Accordingly, the penalty amount of Rs. 4,38,000/- is hereby imposed on the respondent promoter under the provisions of section 63 of the RERA Act for continued contravention of the order of the Hon'ble Authority. The respondent is, therefore, directed to pay the penalty amount within 30 days from the date of the order.

13. The respondent is further directed to comply the above order of the Hon'ble chairman, otherwise other coercive measures may be adopted against them for non-compliance of the order of the Hon'ble Chairman.

Put up on 17.02.2025 for further hearing.

Sd/-
(Ved Prakash)
Special Presiding Officer