

REAL ESTATE REGULATORY AUTHORITY, BIHAR
IN THE COURT OF SPECIAL PRESIDING OFFICER, RERA, BIHAR
RERA/CC/326/2023

Pankaj Kumar **Complainant**

Vs

M/s Swastika Mangal Developers Pvt. Ltd. & Ors. **Respondents**

Project: Krishna Enclave

Present: For the Complainant: Mr. Manoj Kumar Sinha, Advocate
For the Respondent No.3 (APSMASS): Mr. Amit Singh, Advocate

30.03.2026

ORDER

Heard Mr. Manoj Kumar Sinha, learned counsel appearing for the complainant and Mr. Amit Singh, learned counsel appearing on behalf of Respondent No.3.

2. The complainant has filed this case for a direction/order to the respondent to give physical possession of the concerned flat and to execute the sale deed as per the agreement for sale and any other relief/reliefs for which he is entitled.

3. The facts of the case, in brief, is that the complainant has executed an Agreement for Sale on 17.02.2018 with the respondent no.1 to purchase a residential flat having Flat No.303 in Krishna Enclave Apartment situated at Mohalla-Dental College, Mauza Jalalpur, P.S. Danapur, District-Patna having Tauzi no.5808, Khata no.192, Survey Plot no. 107, Samitee Plot no.07A having an area of 1236 Sq. ft., including a car parking space in the Ground Floor. An MOU was executed on 17.02.2018 for Rs.27,00,000/- for the same and Service Tax applicable on the amount is extra charge and the

complainant is ready to pay that amount and the respondent no.1 had assured that after finalization of the construction, the flat will be handed over including the proportionate share in the land. The complainant had paid either through cheque/cash or online payment a total amount of Rs.15,00,000/- on different dates up to February, 2021 and the rest amount of Rs.12,00,000/- has to be paid with applicable service tax. As per MOU, construction was to be completed within 18 months and thereafter extra six months will be treated as grace period. If any dispute arises relating to the land for construction of the flat and three months delay will be caused in the construction work, the respondent no.1 will return the amount to the complainant with an interest of current Bank rate. As per clause 14 of the MOU executed on 17.02.2018 it was clearly stated that if the complainant does not purchase the flat, in that circumstances 15% of the paid amount will be deducted and the rest amount after deducting the 15% will be returned and it was also stated in the clause that if the respondent no.1 does not give possession to the complainant, in that event, the complainant will deposit the rest amount and registration of the flat will be made by the Court of law through legal process.

3.1 The complainant regularly visited the site and saw the construction work and after completion of the work, he requested respondent no.1 to take the rest amount and execute the sale deed in his favour, but the respondent no.1 always made the lame excuses to execute the sale deed in his favour. When the complainant personally met with the respondent no.1, the respondent no.1 told that he has cancelled the Development Agreement on 03.03.2021 made with the

respondent no.2 (land owner) and he is unable to give the possession of the flat.

3.2 Respondent no.1 has created dummy person with a fake company in the name of respondent no.3 and has executed fresh Development Agreement with respondent no.2 (land owner) on 10.03.2021 just after completion of seven days of cancellation of the earlier Development Agreement. Respondent no.1 cunningly created new company of known person to cheat the complainant and has violated the provisions of agreement executed on 17.02.2018 and till date neither he has given the possession of the flat nor has returned the amount. When the petitioner visited the office of the respondent no.3 who told that your grievances will be redressed by the respondent no.1 and he has no concern with the earlier development agreement and it seems that all the respondents in collusion with each others have made conspiracy to cheat the complainant as well as the other persons who have made agreement to purchase the flat with the respondent no.1. Thereafter, the complainant has given a legal notice on 02.01.2023 which was returned with an observation that the respondent no.1 has left the office from March 2022 and finding no efficacious remedy available to him, the complainant has filed this complaint petition. The complainant is a simple and innocent person for which the respondents are taking undue advantage and mentally harassing him since 2018 uptill now to which the complainant has suffered huge monetary loss as well as the mental agony.

3.3 Respondent Nos.1 and 2 have neither appeared nor filed any reply, rather respondent no.3 appeared and filed counter

affidavit/reply stating therein that he has no role in the agreement for sale dated 17.02.2018 on which basis this complaint has been filed. The present complaint is false, frivolous and absurd to the extent of demand of Flat from the answering Respondent. The complainant has filed this case with *mala fide* intention, suppressed material facts and has projected himself as the weaker party, only with the aim of getting the unqualified sympathy of the Authority. The Respondent entered into a Development Agreement dated 10.03.21 with Respondent No.2 (land owner). Para 17 (iii) of the Development Agreement dated 10.03.2021 clearly states that there is no agreement or arrangement with anyone. Para (v) of the Development Agreement dated 10.03.2021 is the declaration by Respondent No.2 that there is no encumbrance or liability on the scheduled land. There is no role to play in the alleged activities of Respondent No.1 and was completely unaware of any prior arrangement/agreement. The Development Agreement dated 10.03.2021 is clear manifestation of an arrangement and agreement b/w Respondent No.2 and 3 and hence the question of being dummy person does not arise, rather the respondent no.2 is an authentic and *bona fide* legal entity. There is no provision/act/rule prevalent as a law of land to compel the respondent no.3 to recognize the complainant on the basis of his false and baseless allegations. At the time of completion of the building, the Respondent No.1 was nowhere in existence in context of the building but the complainant falsely claims that he met with him (Para VI of the complaint) whereas the Development Agreement with Respondent No.1 was already cancelled on 03.03.2021 and the building was completed on 05.07.2022.

3.4 If the complainant, as claimed, regularly visited the site and after completion of the work, i.e. in 2022, how could he meet the respondent No.1, who had vanished in thin air and till date has never either appeared nor has been traced by anyone. The complaint in itself is bereft of any legal standing and the complainant has no *locus standi* to institute a false and baseless complaint against the Respondent No.3 as both are completely and legally alien to each other. The Full Bench order of RERA dated 31.01.2024 which has already been placed on record clearly lays down the liability of the answering respondent vide Para-21 and Para 25. Flat No. 303 was allotted in the share of the answering Respondent and the same has already been registered in favour of Smt. Prabha Sinha, vide Registered Deed No.7752 dated 16.08.2023 and immediate physical possession has also been handed over. So this case is to be rejected as this case is false and baseless.

4. After hearing learned counsel for the complainant and the learned counsel for Respondent No.3 and on perusal of the records, it appears that Respondent Nos. 1 and 2 have not appeared in this case and as such this case is to be disposed of on the basis of the material available on record.

5. The complainant himself has stated that Respondent No.1 has cancelled the Development Agreement on 03.03.2021 made with Respondent No.2 (land owner) and he is unable to give possession of the flat and also Respondent No.1 has created a fake Company in the name of Respondent No.3 and has executed a fresh Development Agreement with Respondent No.2 (land owner) on 10.03.2021.

6. The learned counsel for the complainant and learned counsel for Respondent No.3 have admitted the fact that the same type of matter was heard by a Full Bench of the RERA and the order dated 31.01.2024 was passed in RERA/CC/472/2022 and they have stated that the Full Bench has considered in detail the facts of the case and the same type of order may be passed in this case also.

7. After perusal of the order dated 31.01.2024 of the Full Bench of the Authority it appears that in that case also the Respondent No.1 did not appear and the Full Bench passed the order after full discussion of the case.

8. In the present case, Respondent No.1 also has neither appeared nor filed any reply. Therefore, considering the fact that the order dated 31.01.2024 passed in RERA/CC/472/2022 is final and this order has not been challenged as per the record and submission made by the parties, so this order dated 31.01.2024 appears to be justified and it should also be considered in this case also.

9. In the present case also, the court observes that the right of the allottee cannot get extinguished merely because the development agreement with the promoter is revoked and the land owner entered into a new agreement stating that there are no previous liability. As per development agreement between the land owner and the promoter dated 10.03.2021, 50% of the share of the flat would be given to the land owner. This court therefore directs respondent no.3 to give physical possession of the concerned flat to the complainant and to execute the sale deed as per the Agreement for Sale in favour

of the complainant and the complainant is also directed to pay the remaining amount of consideration to respondent No.3.

10. With the above observations/directions, this case is disposed of.

Sd/-

(Vinod Kumar Tiwari)
Special Presiding Officer
RERA, Bihar