

REAL ESTATE REGULATORY AUTHORITY, BIHAR

Before the Bench of

Hon'ble Member Mr. S.D. Jha, RERA, Bihar,

RERA/CC/12/2024

Suman Kumar Complainant

Vs.

M/s APSMASS Pvt. Ltd. Respondent

For the complainant: Mr. Praveen Kumar, Advocate

For the Respondent no.1: None

For the Respondent no.2: Mr. Amit Singh, Advocate

For the Respondent no.3: None

Project:- KRISHNA ENCLAVE

ORDER

22.07.2024 Hearing taken up. Mr. Praveen Kumar, Advocate, appears for the complainant. Mr. Amit Singh, Advocate, appears for the respondent no.2 M/s APS Mass Pvt. Ltd. The respondent no.1 M/s Swastika Mangal Developers Pvt. Ltd. and the respondent no.3 Smt. Krishna S. Sharma, landowner, are absent.

2. Learned counsel for the complainant by filing a supplementary affidavit today in the Bench submits that since the issue involved in this case is identical to the complaint case (RERA/CC/473/2022; Prashant Bharti Vs. M/s Swastika Mangal Developers Pvt. Ltd.), which has been disposed of vide order dated 31.01.2024 by the Full Bench presided over by **Hon'ble Chairman, Mr. Vivek Kumar Singh & Hon'ble Members Mrs. Nupur Banerjee & Mr. S.D. Jha, RERA Bihar**, an order may also be passed in this case on the same line. Hence, the order is being passed on the same line as prayed.

3. The case of the complainant is that he has booked flat no.102 in the project titled "Krishna Enclave" of the respondent no.1, Swastika Mangal Developers Pvt. Ltd. and a registered Agreement to Sale was entered into on 12.06.2017 and he had paid a total amount of Rs.13.50 lakhs, for which details of payment are contained in Annexure -8 of the supplementary affidavit dated 22.07.2024. It has been mentioned that the progress of project was slow and when he had visited the site in the month of March, 2021, it was learnt that the respondent no.1

had cancelled the development agreement on 03.03.2021 through registered Deed and came out of the project Krishna Enclave.

4.The respondent no.3 land owner entered into a fresh development agreement with the respondent no.2 namely, M/s APS MASS Pvt. Ltd. for construction and completion of the work left by the respondent no.1 but none of the respondents kept him informed of these developments. It has been stated that the respondent no.2 has assured him orally that they can, at best, refund the money taken by the respondent no.1.

5. The complainant wants possession for which a legal notice was sent on 02.09.2021. Being aggrieved he has filed the complaint to give direction to the respondent no.2 to confirm his allotment and penalty for the respondent no.1 and 3 and for compensation.

6.The complainant has filed copies of the registered development agreement between the respondent no.3 and respondent no.1 on 06.03.2012 and agreement with the respondent no.1 dated 12.06.2017, agreement for cancellation dated 03.03.2021. He has also filed copy of Development Agreement dated 10.03.2021, photographs of the building, statement of account and copy of legal notice.

7. The respondent no.2 submits that he had no role to play in the Agreement to Sale dated 12.06.2017 which was entered into with the respondent no.1.

8. The complainant submits that he had booked a flat on the assurance of respondent no.1 and 3 and had paid Rs.13.50 lakhs. He has further stated that the structure of the first floor was erected in 2018 and second floor in 2019. Thereafter, the work was slow. He has challenged the submissions of the respondent no.2 that he was not aware about the prior agreement or amendment. He has further stated that the respondent no.2 may have been cheated by the respondent no.3 and she was the party to the Development Agreement. He has further stated that the contention that the project is not registered with RERA and hence is not maintainable cannot be accepted, as it would not be in the interest of allottees. He referred to Section 15 of the Real Estate (Regulation and Development) Act, 2016 which mentions the obligations of the promoter in case of transfer of a Real Estate Project to a third party.

9. The Authority has perused the record of registration of the project APS Krishna Enclave which was registered on the application submitted by the respondent no.2. The application was submitted on 18.09.2022 as ongoing project but the promoter had submitted occupancy certificate. Technical team of RERA had visited on 02.12.2022 where it was found that the structural part of the building was completed earlier and the finishing was done in 2021-22. The sanctioned map shows the project as "Krishna Enclave" as an existing project. The Authority notices from the proceeding of 08.06.2023 that the project was registered with RERA on 03.02.2023 for three months subject to the condition that Rs.5 Lakh is paid as penalty. The Authority directs the office to initiate proceedings for recovery of the penalty amount, if it has not been deposited as yet.

10. The Authority notes that Suo-motu proceeding has been initiated against the respondent no.2 for violation of provisions of Section 3 of the RERA Act.

11. The Authority observes that the project Krishna Enclave for the respondent no.1 was not registered with RERA although, it is ongoing project on 03.03.2021. It directs that the show cause notice may be issued to the respondent no.1 as to why penalty should not be imposed under Section 59 (1) of the RERA Act for violation of Section 3 of the RERA Act.

12. It is also noted from the record of registration that the Occupancy Certificate submitted by the Authority included a penalty for deviation from the original sanctioned plan in 2011. It means that the respondent no.2 and 3 has completed the work which was executed by the respondent no.1. The revised sanctioned map was sanctioned on 22.06.2022 and Occupancy Certificate was issued on 03.07.2022 showing that this was an existing building. The respondent no.3 has signed in all these papers as the landowner.

13. The Authority accepts the contention of the complainant that partial work has been done before the Development Agreement was revoked as the respondent has not shown any map which was established that the work was started. It is not possible to complete the project in about one year as the Occupancy Certificate was submitted within 15 months of signing of the Development agreement with respondent no.2.

14. Regulation 6(1) of the Bihar RERA Regulations as amended provides that whether the land owner will be considered as an allottee or a promoter would depend on the facts and circumstances of the complaint that may be placed before the Authority in the complaint. In this matter admittedly, the respondent no.3 land owner had entered into Development Agreement with the respondent no.1 and during this period the complainant had booked a flat. Subsequently, she had cancelled the Development Agreement of the respondent no.1 and entered into a fresh agreement with the respondent no.2 stating clearly in the Development Agreement that there is no encumbrance or liability. She had stated that there was no arrangement or agreement and which has been shown is factually incorrect on the basis of the documents filed by the complainant. The Authority therefore, holds that the land owner respondent no.3 is a promoter in this matter because she has got the ongoing project of respondent no.1 be completed by respondent no 2 on her land. Her contention that she is an allottee stands rejected.

15. The Authority notes that the Hon'ble Supreme Court of India in the Newtech Promoters and Developers matter has observed that the provisions of RERA Act apply retroactively. Although, the project, Krishna enclave, was not registered with RERA, the spirit behind Section 15 of the RERA Act, 2016 should have been followed by the respondent before taking over construction of a semi constructed building.

16. The Authority observes that the respondent no.2 has not countered the contention of the complainant that structure up to second floor was existing before he initiated the work. The complainant has been able to establish by whatsoever matter with the respondent no.1 was in contact with respondent no.2. The general practice is that if a promoter gives up his partially constructed works to some other promoter, he would take compensation on the basis of value of work done either from the new promoter or from the land owner. The new promoter by way of abundant precaution should have asked the respondent no.3 and respondent no.1 where there was any liability or commitment made in respect of the semi-completed project and ought to have fulfilled the commitments before proceeding with the works. The right of the allottee cannot get extinguished merely because the Development Agreement with the promoter is

revoked and the land owner enters into a new agreement stating that there are no previous liabilities.

17. Nevertheless the Authority agrees with the submissions of the respondent no.2 that he has no direct connection with the complainant and that there is no legal liability upon him to honour the commitment given by the respondent no. 1.

18. It has been mentioned in the Deed of cancellation that the respondent no.1 cannot complete the construction work in a proper manner and that is why the Development Agreement has been revoked. It is obvious from the recital that the work has been done by the respondent no.1 without ascertaining the future liability.

19. The Authority holds respondent number 3, who is also a promoter as mentioned above, was responsible for ensuring that all the previous liabilities and commitments made by the respondent no.1 were adequately addressed before the Development Agreement was revoked.

20. The Authority notices from the Development Agreement signed between the respondent no.2 and 3 on 10.03.2021 that 50 percent of the share of the flats would be given to the land owner by the respondent no.3. The Authority therefore, directs the respondent no.3 to give a flat to the complainant from her share.

21. The complainant is directed to pay the remaining amount of consideration , if any, to the respondent number 3.

22. The respondent no.2 is directed to ensure that the flat no.104 is allotted to the share of land owner and in case any third party right is created for that particular apartment , an alternative flat of equivalent area should be given to respondent 3 in her share, who would then give this to the allottee.

23. The Authority directs the respondent no.1 to pay the amount collected from the complainant along with interest thereon to the respondent no.3 as she is giving a flat from her share to the complainant.

24. With these directions and observations, the matter is disposed of.

Sd/-
S.D. Jha,
Member