REAL ESTATE REGULATORY AUTHORITY, BIHAR

2nd Floor, BSNL Telephone Exchange, North Patel Nagar, Road No. 10,

Patna -800023

Before the Double Bench of Mr. Naveen Verma, Chairman

& Mrs. Nupur Banerjee, Members

Complaint Case No.: CC/370/2019

Awadhesh Mishra…….....Complainant

Vs.

M/s Bhootesh Construction Pvt. Ltd.....Respondent

Project: ParkritiVihar

O R D E R

19-11-2021

11.1.2022 The matter was last heard before the double bench on 27.10.2021.

The case of the complainant is that he had entered into an agreement dt.15-11-2013 for the purchasing of flat bearing Flat No.106. He further, submitted that he had paid Rs.5, 61,250/-out of total consideration amount of Rs.22.45 lakh. It has been submitted by the complainant further that the respondent at the time of booking, had promised to deliver the possession of flat within stipulated time but till date, the respondent has not handed over the possession of flat and even there is no construction has been started yet, therefore, he want the refund of the money deposited with interest.

The complainant has placed money receipts on record dt.19-12-2013 for Rs.50,000/-, dt.02-10-2013 for Rs.2 lakh, dt.28-11-2013 for

Rs.1 lakh, dt.07-03-2014 for Rs.1,61,250/-&dt.28-01-2014 for Rs.50,000/-, totaling to Rs.5,61,250/- lakh, issued by respondent company in respect to payments made.

Mr. Rajiv Nayan, second Director of the respondent company filed counter affidavit on 28-08-2021stating therein that till date company has undertaken 3 construction project which are- 1.Rahmat Tower at Phulwari Sharif, 2. Prakrati Vihar at Rajput colony, Hajipur and 3. Bhoomi Complex at Kankarbagh and during the course of business, some dispute crept in between him and Mr. Arvind Kumar Singh (first director) due to which he decided to quit the company and tendered his resignation in April, 2015 but the resignation was not consented by the director Mr. Arvind Kumar Singh. It has been further submitted that he continued only as de jure director in the company on paper but the affairs of the company were completely managed by Mr Arvind Kumar Singh and he had not attended even a single board meeting after 2016 nor did he entertain any client of the company after that. Mr. Rajiv Nayan further submitted that in the year 2018, both entered into an agreement dt.05-09-2018 resolving that out of 3 projects undertaken by the company, Rahmat Tower and Prakriti Vihar would fall under the responsibility of Arvind Kumar Singh and Bhoomi Complex would be under Rajiv Nayan. He further submitted that in Bhoomi Complex, he had refunded the amount paid by several customers due to the project not being completed within stipulated time. It was submitted that several FIR has been lodged against Arvind Kumar Singh and he is now in jail. In para-11 of the counter affidavit Mr. Rajiv Nayan, submitted that he is willing to take the responsibility to complete the project and prayed that if the cost of the

project is borne by him then direction be given to the customers and complainants to make further payments to him only and Arvind Kumar Singh be barred from claiming interest/dividends as he already usurped huge amount of money paid by the customers/complainants and still do not fulfil his responsibility.

The wife of respondent no.2 Renu Kumari has filed rejoinder on the behalf of her husband Arvind Kumar Singh (Respondent No.2) on 27-10-2021, stating therein that her husband is in judicial custody in connection with Danapur P.S. case no.10 of 2020. It has been submitted by the wife of Director of respondent company that Bhootesh Construct Pvt. Ltd. is duly registered company and according to clause 44 of its article of association, there are two directors of the company i.e. her husband Mr. Arvind Kumar Singh and Rajiv Nayan and both will hold the office for life or until otherwise retire or become unfit. It is further submitted that several persons including some of the complainants before RERA have lodged several F.I.R and he was arrested in connection with the same and in some of the cases, he was granted bail upon the payment of 25% of the amount allegedly given by the allottees. It has been submitted by the wife of Respondent No.2 in para-7 of the rejoinder that in the present, the company is being represented by Mr. Rajeev Nayan who is also a director of the company and it appears that he has developed dishonest intention and trying to take control of the assets of the company in his personal capacity. It is also submitted that the complainant who had paid money had enter into contract with company therefore, her husband cannot be only be made liable. It has been further submitted by the wife of respondent no.2 that her

husband was unable to present his case due to his incarceration and has no access to the records of payment made to the company by complainants or the refund made to them. It is also submitted by the respondent no.2 that the bail application of her husband is pending before Hon'ble High Court and is likely to be heard in due course. She has further submitted that the internal dispute of the directors of the company and its affairs cannot be determined under the provisions of RERA Act and same can be subject matter of a proceeding before NCLT.

During the course of hearing on 26-08-2021, the complainant submitted that the MD of the company had refunded 25% of the deposited money before the interim bail was granted and rest amount is still due with respondent.

During the hearing on 27.10.2021, the complainant submitted that he had booked two flats- one in Patna and other in Hajipur in 2013 and till now, he has not been handed over the possession.

Mr. Rajiv Nayan and his learned counsel submitted that he has not received any rejoinder to the reply. He further submitted that the agreement was executed between Sudhir Kumar Singh (land owner) and Mr. Arvind Kumar Singh. However Mr.Rajiv Nayan is willing to take the responsibility of completing the project with afresh agreement. He further submitted that his liability is limited and there is division of work between Rajiv Nayan & Arvind Kumar Singh and if the project is carried out by Rajiv Nayan, then Mr. Arvind Kumar Singh must be barred from sharing the profits in project. He further submitted that he has refunded the amount to more than 30-35 allottees and is willing to

take over the Project and will hand over the project within stipulated time to the complainants however the landowner is not permitting him to construct the project and is creating a hurdle. He further prays before the Bench to give direction to the landowner to provide full cooperation in completing the project. He also submitted that entire liability cannot fall upon one director i.e. Rajiv Nayan as the same is against the Company Law.

On the other hand, learned counsel on behalf of MD Arvind Kumar Singh submits that agreement is between the company and the landowner and therefore personal liability cannot be fixed upon MD Arvind Kumar Singh alone. He reiterated the contents of the affidavit filed on behalf of wife of MD Mr. Arvind Kumar on27-10-2021 and particularly submitted that Mr Rajiv Nayan wants to capture and take over the company.

The Authority takes note of the submissions made by both the director and observes that the dispute between them basically pertains to internal affairs of management of the company, which is not tenable under the Real Estate (Regulation and Development) Act, 2016. The pleas made regarding the distribution of assets and liabilities and of change in management of the company have to be raised before the authority competent to adjudicate on such company matters.

The Authority notes that neither of the two Directors of the company have denied that the promoter had received money from the complainant for completion of project and cannot escape from the liability of refunding the amount paid by the complainant along with

interest thereon. Rather both the Directors are jointly and severally liable to make the refund to the complainant.

The Authority further observes that Section 69 of the Act specifically provides that for the offences by the companies, the penal provisions apply for every person who, at the time, the offence was committed was in charge of, or was responsible to the company for the conduct of, the business of the company. Hence both the respondent directors fall within the ambit of this section and are thus liable to make the refund.

On the basis of the submissions and taking into consideration the documents filed, the Bench directs the respondent company to refund outstanding principal amount , ie 75% of Rs 5,61,250/- along with interest thereon at the rate of marginal cost of fund based lending rates (MCLR) of State Bank of India as applicable for three years plus four percent from the date of taking the booking till repayment within sixty days of issue of this order.

Sd/-	Sd/-
Nupur Banerjee	Naveen Verma
Member	Chairman