

REAL ESTATE REGULATORY AUTHORITY, BIHAR

**Before the Bench of Hon'ble Inquiry Commissioner, Mr. Sanjaya Kumar Singh, RERA,
Bihar**

RERA/CC/92/2025

Durgesh Kumar

.....Complainant

Vs

M/s R.D.Eco Developers Pvt. Ltd.

.....Respondent

Project: Ram Swaroop Apartment

Present: For Complainant: In person

For Respondent: Mr. Sumit Kumar, Advocate

05/11/2025

ORDER

Hearing taken up. The complainant is present in person. Mr. Sumit Kumar, learned counsel for the respondent is also present.

Learned counsel for the respondent submits that the matter is subjudice before the Hon'ble High Court in C.W.J.C.No. 2893/2024. He further submits that the Hon'ble High Court vide its order dated 28.02.2024 had restrained the promoter/ respondent from handing over the possession of the impugned project to anyone henceforth in case the possession had not been handed over till the date of the order i.e. till 28.02.2024. He further submits that the landowner is creating hindrance in completing the remaining work. He also submits that the promoter had already handed over the possession of the flat owners in writing and is also willing to complete the remaining work and handover the physical possession to the complainant in all respect within three months but he is unable to do so owing to the above circumstances.

Learned counsel for the respondent also submits that the sale deed has been executed in favour of the complainant and the possession letter has been handed over to the complainant in writing accordingly.

After hearing the argument of the respondent, it is clear that though the possession letter has been given by the respondent but physical possession has still not been handed over to the complainant as yet and that is why this present complaint case.

In such a case, the respondent is directed to ensure full compliance of the possession letter which has been given by him to the complainant concerned. He is also directed to get the dispute with the landowner (if any) resolved as early as possible so that physical possession of the impugned project be handed over to the respective home buyers as early as possible.

The complainant, who himself is present in person, refers to the judgment dated 09.09.2024 delivered by the Sub-divisional Magistrate, Danapur in Case No. 754(M)/2024 in which the respondent was the first party. In the said order, it has been specifically mentioned that the first party (respondent) has admitted before the S.D.M. Court, that prior to the order dated 28.02.2024 passed by the Hon'ble High Court, the developer (respondent) had executed the sale deed in favour of the respective allottees and he has also issued the possession letter in favour of the allottees. The complainant submits that the Hon'ble High Court has put a restriction on the builder not to give possession to anyone after the date of passing of that order i.e. after 28.02.2024 but in the present case since the possession has already been handed over to the respective allottees, hence the question of violation of the order of the Hon'ble High Court

does not stand in this case as falsely claimed by the respondent. He further says that on the contrary the respondent by not giving physical possession to him is rather committing fraud by making false statement in contrary to the statement which he has made before the learned SDM, Danapur. He further submits that the respondent is not only deceiving him but also all the other allottees by not physically acting in accordance with his own act of executing the sale deed in favour of the respective allottees and handing over the possession on paper, which he has done well before 28.02.2024.

Perused the order of the SDM, Danapur. On perusal of the said order it appears that the respondent though has admitted before the SDM court, Danapur that he has already executed the sale deed and handed over the possession letter to the respective allottees but actually he has not handed over the physical possession of the respective flats to the concerned buyers, thus committing a violation of the terms and conditions laid in the agreement for sale and the provisions of Section 11(4)(a) of the RERA Act, 2016 and is, therefore, liable for penal action as per provisions contained in Section 7(1)(c) as well as Section 61 of the Real Estate (Regulation and Development) Act, 2016

From a perusal of the order dated 28.02.2024 of the Hon'ble High Court it is also clear that since the possession (in writing) has been handed over to the complainant prior to the date of passing of the order by the Hon'ble High Court i.e. prior to 28.02.2024, hence the interim stay as referred to in the said order does not apply in the present case of the complainant.

Learned counsel for the respondent submits that he has already completed over 70% of the project work and at present only internal finishing work is remaining. Learned counsel for the respondent further submits that the matter is presently in the Hon'ble High Court in the above said writ petition in which many of the flat buyers are intervenor petitioners and they are pursuing the case in the Hon'ble High Court. He further submits that the respondent is ready to handover the physical possession of the impugned flats after completing the remaining work within three months from today provided that the landowner stops creating hindrance regarding the same.

The respondent is directed to complete the entire finishing work along with electric connection and other amenities as assured by him in the Agreement for Sale, entered into with the respective allottees within two months, so that when physical possession of the respective flats is handed over to the allottees, there is no structural defect left to be addressed by the respondent, once the allottees are actually in physical possession of their respective flats. It would not be out of place to mention here that as per provisions contained in Section 14(3) of the RERA Act, 2016 the promoter (respondent) concerned is under a legal obligation to rectify any structural defect or any other defect in workmanship quality or provisions of services or any other obligations of the promoter as per the 'agreement for sale' within a period of five years from the date of handing over of possession. Hence, it is clear that in case the promoter does not rectify the said structural defects/ any other shortcomings despite having given the possession of the respective flats to the respective buyers, on paper, it will be deemed that he is violating the said provisions of law.

Learned counsel for the respondent submits that he is ready to get the remaining work (which is basically internal finishing) completed but the landowner concerned are creating hindrance in the said work. It goes without saying that the respondent is at liberty to take recourse to any legal action against the hindrance maker/ mischief monger including filing of F.I.R./ instituting a criminal case against the said person. But the respondent is liable

to handover the physical possession to the complainant after completing the remaining work.

The complainant requests that he has been paying rent despite the flat being complete and the sale deed already executed in her favour just because that the physical possession of the said property has not been handed over to her and as such, she claims for proper compensation by the respondent regarding the same.

The respondent is directed to handover the physical possession of the flat to the complainant after duly completing the remaining work pertaining to the said project within 60 days from the date of passing of this order. It goes without fail that the respondent is at liberty to file F.I.R./ criminal case/ take any legal action against the persons who are creating hindrance in getting the work completed as well as handing over of the physical possession of the flats to the respective flatowners.

Sr.S.P., Patna is requested to instruct the SHO, Rupaspur to visit the site regularly and see to it that there is no obstruction whatsoever caused by any person and take necessary legal action against the person creating hindrance. The S.D.M., Danapur is also requested to take all necessary measures for ensuring the same.

Since the matter is presently subjudice before the Hon'ble High Court in C.W.J.C.No. 2893/2024, the complainant is at liberty to present her grievance before the Hon'ble High Court, through an intervenor petition for redressal of the same.

As far as her claim regarding compensation for rent is concerned, he is requested to file a case before the Adjudicating Officer for redressal of the same as per the provisions of law.

With the aforementioned observation and direction, this case is accordingly disposed of with a liberty to the complainant to file an affidavit for revival of this case in case the directions as given herein above are not complied with by the respondent.

Sd/-
(Sanjaya Kumar Singh)
Inquiry Commissioner,
RERA, Bihar