

**REAL ESTATE REGULATORY AUTHORITY, BIHAR
IN THE COURT OF ADJUDICATING OFFICER, RERA, BIHAR**

RERA/CC/ 186/2023

RERA/AO/18/2013

Ram Laddu Ray

.....Complainant

Vs

M/s Star India Construction

Pvt. Ltd.

. Respondent

Project: SHIV BHAJJU

05/02/2026

ORDER

Heard Shri Suryadeo Prasad Singh, learned counsel for the complainant and Shri Sumit Kumar, learned counsel for the respondent.

2. This case is filed for rent loss of Rs. 11,60,000/- plus Rs.10 lacs physical loss, Rs. 10 lacs for mental loss, 3 percent in lieu of other adjoining plot and other reliefs to which the complainant is deemed entitled to.

3. The complainant's case in brief is that an agreement was made between 22.07.2009 for development of land between Star India Pvt. Ltd. whose C.M.D. is Shashi Bhusan Prasad and complainant along with others. According to the agreement the total super built up area was to be divided in ratio of 60% to builder and 40% to the landowner. Duration of project was 43 months plus 6 months' grace period from the date of sanction of map by P.R.D.A. If the project could not be completed in time, then there was a provision in agreement that the builder would pay a penalty of Rs. 10,000/- per month to the landowner till the project is not completed. There was also a provision in agreement that if the builder amalgamates other's plot with this project, then the builder would give 3% of his part of share to the landowner. The builder has entered into a separate agreement with Kamla Prasad on 25.03.2010 and amalgamated his plot with the ongoing project. Due to greediness of builder of acquiring more and more land it took a long time in passing of map and the map was passed on 11.05.2011 by P.R.D.A. The builder performed Bhumi Pujan ceremony on 22.07.2011 and started construction work with tortoise speed. The complainant asked the builder for possession of flats and compensation as per agreement, but he totally denied to give any compensation. He also denied to give 3% of his part of share which he gained by amalgamating Late Kamala Prasad's plot with the ongoing project. Thus

the builder has violated the terms of agreement. Then the complainant sent twice notices to the builder on 14.10.2015 and 12.11.2015 for possession of and compensation. But there was no effect on builder from these legal notices. Then the complainant moved to Civil Court, Patna and filed a Complaint Case No. 1357©/2016 on 30.04.2016 which is still going on. When the builder got information about complaint case, he somehow completed a part of project situated over the plot of the complainant and gave possession to flat buyers. He has not made share distribution of flats with the complainant and has arbitrarily sold the flats without any legal rights. Thus, the builder has cheated the complainant in every way that he can. Before the agreement the complainant was getting Rs. 10,000/- rent per month from his house of 2.5 katha from which livelihood of the complainant and his family was going on. Due to financial crisis the complainant is suffering from physical and mental tensions and also education of the two daughters and one son has been postponed by this building construction.

4. On behalf of the Respondent an Interlocutory application is filed challenging the maintainability of complainant stating therein that this case is not maintainable before this Forum under Section 18 of the Act. The share of the complainant was completed in the year 2016-17 itself and other co-landowner namely Kamla Yadav has received his share and enjoying the same without any objection but the complainant with an intention to grab some undue advantage filed a criminal complainant bearing case no. 1357 of 2016 which was assailed by the respondent in Criminal Revision No. 494/2018 which was disposed of vide order dated 10.08.2023 in favour of the respondents. In the matter of “Dakshin Homes Apartment Owners Association Versus Dakhin Home Developers” in Appeal no. 04 of 2018 decided on 11.07.2019 the Tamilnadu Real Estate Appellate Tribunal decided that when there is already a case pending before any forum no further case is maintainable before the Authority. In the Appeal No. 98/2021 decided on 21.02.2022 Tamilnadu Real Estate Tribunal has decided that “Developer is not the promoter for the Land owner hence section 31 of the RERA cannot be invoked by Land Owner. There is GST due of Rs. 4,28,400/- against the complainant as per judgment dated 19.07.2023 passed by the Appellate Tribunal in Reat Appeal No. 14 of 2023 complainant is liable to pay GST on part of his share and a demand letter was also issued to the complainant on 22.07.2023 but the complainant did not pay the same. The complainant has filed a complaint case bearing No. 319/2019/ AO-220/2019 before the RERA Authority for

the same relief and during the proceeding before the Adjudicating Officer complainant was offered possession letter but the complainant did not take the possession so the possession letter was submitted on record later on after direction of this Forum complainant has taken the possession. At the time of entering into Development Agreement complainant has assured to the respondent that the said land is free from all encumbrances and agreement was executed in the year 2009 but till 2012 there was dispute over the site by other claimant and after that Raj Kumar son of one of the Land owner namely Shiv Narayan Yadav started creating nuisance over the site in A & C Block, somehow respondent has completed the B Block in 2016 which is the share of the complainant but complainant moved to Civil Court and till date the respondent was not provided the 20ft wide road from east side as per agreement. In view of the aforementioned facts and circumstances this case is to be dismissed as having no merit.

5. A written submission has also been filed on behalf of the respondent stating the facts which has already been mentioned in petition of maintainability earlier. He has added that this case is barred by law of Limitation as the project time along with grace period ended on 11-06-2015 itself and the complainant has filed a complaint case and as such estoppel is also barred. The complainant has already taken possession but by the order of Authority on 31.07.2023. In the present case, after entering into an agreement, the petitioner was not able to provide peaceful possession over land till 2011 and his house was not demolished till date and several letter was issued for providing peaceful possession over land and also informed about disturbances by other co-sharer/ land owners. There was no approach road over the plot of the petitioner i.e. plot no. 291 so taking the plot of Shiv Narayan Yadav and Kamla Yadav who is also owner of plot no. 291 and 295 a project was developed in the name & Style of Shiv Bhajju Vihar and Kamla Yadav agreement was executed later on due to share issue between petitioner and Kamla Yadav as both the brothers and it is clearly written in the agreement that Developer as per his convenience will make one or more block and land owner will have no objection and petitioner has signed as witness in the said agreement and no separate project was made hence complainant is not entitled for any compensation or damage. The land owner created hurdles and threatened the developer and damaged the material due to which an FIR was lodged against the petitioner's son. The complainant has also got excess area and 10 lakh rupees which is liable to be refunded to the developer. The delay has been

caused due to conduct of the complainant himself. If there is any delay that is beyond the control of the developer. The demand of extra 3% is also not applicable in the present case. There is no delay in getting approval of the map by the conduct of the respondent. The complainant is not entitled for any extra share as claimed by him. The claim of the complainant is bogus, baseless and is liable to be dismissed with extraordinary cost.

6. After perusal of the order dated 18.11.2022 of the Real Estate Regulatory Authority, Patna Bihar in case no. RERA/CC/319/2019 it appears that the complainant has filed this case by direction of the Authority. In that case the Authority has directed to handover the flat and letter of possession to the complainant within one month of this order. The promoter will assure that all the amenities and facilities should be provided as per the agreement. The Authority has also directed the complainant to file a fresh case before the A.O. for compensation. This order itself clears that the complainant of this case has filed this case only by the direction of the Authority and the order dated 18.11.2022 is still in existence. So far the law described in reply/ written submission passed by RERA Authority Tamilnadu is concerned, it is not applicable in this case as an order dated 18.11.2022 is still in existence. So far criminal case is pending before the Chief Judicial Magistrate, Patna or at any forum that is another matter which comes within the purview of criminal charges whereas this matter is only for compensation. As per the order dated 18.11.2022 of the Authority, the respondent has to comply the order and the respondent himself has accepted that he has given the possession of the flat to the complainant. He has not challenged that order and complied the order up to some extent so it may be said that the respondent is also liable for compensation for physical and mental agony and litigation cost.

7. Considering the aforesaid facts and circumstances of the case, the respondent is liable to pay compensation only to the complainant though the complainant himself has not filed any document to show as to what he wants and what amount has been extended on his share. In such circumstances he may be given compensation only for harassment and mental agony. The complainant appears to get compensation for mental agony of Rs. 2,00,000/- and litigation expenditure of Rs. 1,00,000/- only. So far extra 3% charge is concerned, it is neither proved nor it can be given as compensation.

8. The respondent is directed to pay the aforesaid amount within a period of two months of this order, failing which the complainant may proceed further per law prescribed.

9. With the aforesaid observation and direction, this case is disposed of.

Sd/-

(Vinod Kumar Tiwari)
Adjudicating Officer
RERA, Bihar