

REAL ESTATE REGULATORY AUTHORITY, BIHAR
IN THE COURT OF SPECIAL PRESIDING OFFICER, RERA, BIHAR
 RERA/CC/71/2023

Mr. Pramoth Kumar-----Complainant

V.

M/s Radha Rani Construction Pvt. Ltd. ----- Respondent

PROJECT: RAMA DEVI KAUSHAL

14/07/2026

ORDER

The complainant has filed this case to direct the respondent/promoter to refund the entire investment of the complainant along with statutory interest and to pay the complainant an amount of Rs. 5,00,000/- (Rs. Five Lakh only) for breach of Agreement for Sale dated 19.05.2020 and also to impose penalty on the respondent for breach of its duties and obligations under the RERA Act, 2016.

2. The complainant's case in brief is that vide Development Agreement no. 30521 dated 07.12.2012, Nitish Kumar and Sunil Kumar (both hereinafter called as allottee) and the promoter entered signed a Development Agreement with the owners namely (i) Balshewar Singh (ii) Jaiweer Singh (iii) Bhaluu Singh (iv) Chandrma Singh (v) Daya Sankar and (vi) Dabluu Kumar for the development of multi storied building under the name of M/s Radha Rani Construction Pvt. Ltd. where 50% belongs to the land owners and the rest 50% share will be held by the construction company or the Developer whose total measuring area is 48.4375 decimal. The Developer has registered their project with Real Estate Regulatory Authority, Bihar on 11.09.2019 which registration no. is BRERAP)4423-1/1076/R-930/2020. The complainant has signed an Agreement for Sale deed no. 3808 dated 19.05.2020 with the Developer M/s Radha Rani Construction Pvt. Ltd. whose company registration no. is U452008R2011PTCO17769 for a flat situated in Rama Devi Kaushal, Block-A, Flat no. 105 First Floor. The complainant made total payment of Rs. 31,75,403/- vide various part payment on different dates through cheques and cash in terms of the Agreement of Sale deed dated

19.05.2020. The complainant applied for the loan amount of Rs. 18,00,000/- from the LIC Housing Finance Ltd. under the scheme of Griha Prakash at the interest rate of 6.66% p.a. for making the payment to the developers in lieu of the booked flat in Rama Devi Kaushal block which is being constructed by the M/s Radha Rani Construction Pvt. Ltd. Till date they have constructed less than 50% of total work and the project is pending for several years. During the course of negotiation as well as in the prospectus offered by the vendor/ promoter, special focus was given on quality and timely completion of the project but on the contrary about 4 years have lapsed and the project has neither been completed nor appears to be completed in coming few years. During these years the complainant has come to know that with the cahoots of other director of M/s Radha Rani Construction Pvt. Ltd. namely Sunil Kumar has started to diverge the hard earned amount of complainant in other various projects and due to that also they are not able to complete the proposed projects within the prescribed time line. Even after lapse of 4 years' promoter is not ready to hand over the possession of the aforesaid flat to the complainant so, in this scenario now the complainant seeks to refund of whole amount i.e. Rs. 31,75,403/- along with the accrued interest on the aforesaid amount since he has been also making EMI payment to the LIC Housing Finance Ltd. till date.

3. On behalf of the respondent a written statement has been filed stating therein brief is that the complainant entered into registered agreement with a real Estate company named as M/s Radha Rani Construction Pvt. Ltd. on 19.05.2020 to purchase a flat with regard to Flat No. 105, at 1st floor, Block-A in Rama Devi Kaushal. Vide order dated 15.05.2026 by this court the instant project namely Rama Devi Kaushal has been transferred to the Radha Rani Construction Buyers Association under Section 8 of the Act as the project lies under lapse category. Despite of the above order the present Managing Director is ready to complete the project and handover the flat to the complainant and if complainant wants refund then the respondent will try to cooperate in approaching the association who will sell the complainant's flat and refund the amount to the complainant. In the present company Sri Nitesh Kumar is the Managing Director and

Sharda Rani is Director and rest four Directors namely Sunil Kumar, Tanay Pawan, Dhanajay Kumar and Upendra Kumar who are no longer active in the day to day business activities and have formed their own companies. The Directors namely Tanay Pawan, Dhananjay Kumar and Upendra Kumar are separate and not involved in the present case except Mr. Sunil Kumar who has done fraud, financial irregularities and defalcated the money of the home buyers with the company and diverged the amount in his shell company against which present M.D. has done paper publication, sent several representations to police officials and also sent notice to Mr. Sunil Kumar. The Director namely Sunil Kumar has done fraud with number of purchasers against which several complaints were made on online portal. There is no laches on the part of the respondent/ developer as the aforesaid project was to be developed on time as well as there is not any single complaint except this instant case but only due to misconduct of the Director namely Sunil Kumar the instant project delayed. Hence, this case is to be set aside and dismissed as there is no any fault or laches on account of the respondent (Developers). The claim of the complainant is unjust, improper, incorrect and not sustainable in the eye of law and hence, it is fit to be dismissed.

4. In this matter, the petitioner namely Shri Sunil Kumar filed an Interlocutory application to the respondent, who has been made party of this case has stated that this case is not maintainable against this respondent Shri Sunil Kumar. The concerned project was decided to be developed on the basis of partnership and for this purpose Sri Nitesh Kumar and Sunil kumar have entered into a partnership agreement dated 12.01.2013. As per para 5 of the said partnership deed Sri Sunil Kumar i.e. answering respondent has 40% share in the Developer's share. After execution of partnership deed, share distribution agreement dated 12.05.2015 was executed among the partners/ director of the present company i.e. respondent no. 1 and as per the said share distribution agreement, the answering respondent Sunil Kumar became the lawful title holder of flat no. 105A and thereby executed an agreement for sale dated 28.08.2018 bearing deed no. 9830 in favour of prospective allottee Sri Manish Kumar Bharti. Nitesh Kumar has committed

fraud with the alleged allottee/ complainant by executing agreement for sale of booked the Flat no. 105A without any title in the said flat. Further it is not out of place to mention here that all the payment receipts submitted by the instant complainant has been issued by Sri Nitesh Kumar who have accepted all the payments. The complainant is not an allottee in terms of section 2(d) of the RERA Act, 2016. As he has purchased the flat no. 105 Block-A in the concerned project from one of the promoter namely Nitesh Kumar who has no title over the alleged Flat and has transferred bad title in the project. It is also shocking that how any finance institution can sanction and disburse loan amount without going through share distribution agreement with respect to any real estate project and thus the concerned financial institution may also be impleaded in the instant case. The answering respondent Sri Sunil Kumar has no involvement in the entire transaction alleged by the complainant and the answering respondent Sri Sunil Kumar has only rights and liability over only that part of the project which falls in his share. The answering respondent has no liability to refund the amount paid by the instant complainant to some other person i.e. Sri Nitesh Kumar and the liability to refund the alleged amount lies only on Sri Nitesh Kumar in terms of express partnership agreement, contrary to other. The complainant has misled the Authority and has represent himself as a member of association namely Radha Rani Construction Buyer's Association in case bearing RERA/CC/129/2023 and has obtained order in his favour in the said case. He has preferred an appeal before the Real Estate Appellate Tribunal against the respondent Nitesh kumar by challenging the order dated 15.09.2023 passed in RERA/CC/66/2022. Hence, this case is to be dropped.

5. Heard Shri Apurv Harsh, learned counsel for the complainant, Shri Punit Kumar, learned counsel for the respondent and Shri Sumit Kumar, learned counsel for the intervener respondent. After hearing and perusal of the record it is apparent clear that the concerned flat, which was to be constructed and given possession to the complainant is neither completed nor it has been given in possession nor it would be completed by the respondent in near future. Hence, it is clear that the complainant has

suffered and also suffering after payment of such huge amount to the respondent and had got nothing. As per reply of the both respondents i.e. the liability of either construction or payment is not on them but it is clear that both the Directors are the members of the one company cannot deny their liability.

6. The learned counsel for the original respondent argued that as per order dated 15.05.2026 in RERA/CC/129/2023, Association of allottee has been given liberty to construct the building and as such he is not responsible either for construction or payment of the aforesaid amount given by the complainant.

7. After perusal of the order dated 15.05.2026 passed in RERA/CC/129/2023 the court's order is as follows: -“After hearing and considering the aforesaid facts and circumstances, it appears that there is no any option before this Court to give liberty to the complainant to form association of allottee and complete the construction work and the association of allottees are also at liberty to claim for expenses, losses and compensation in accordance with law.” This order itself clears that the association of allottees are given liberty to claim for expenses, losses and compensation in accordance with law. So liberty given to the Association of allottee does not mean that the liabilities of the either to the allottee or any person involved have been demolished. They are liable for the same and anyone who has grievance against them including association of allottees they may claim their rights against company and its director.

8. Considering the aforesaid facts and circumstances, the company and its Director is liable to refund the amount which has been paid by the complainant. So the respondent is directed to refund principal amount of Rs. 31,75,403/- (Rs. Thirty-one lakh, seventy-five thousand and four hundred three only) which was paid by the complainant to the respondent along with interest within sixty days of issue of this order. The rate of interest payable by the promoter shall be at 2% above the prevalent Prime Lending Rates of the State Bank of India on the date on which the amount becomes due till the date of payment.

9. The complainant is at liberty to press other claims, which are in the nature of compensation, before the Adjudicating Officer, RERA.

10. With the aforesaid observations and directions, this case is disposed of.

(Vinod Kumar Tiwari)
Special Presiding Officer
RERA, Bihar