

REAL ESTATE REGULATORY AUTHORITY, BIHAR
IN THE COURT OF SPECIAL PRESIDING OFFICER, RERA, BIHAR
 RERA/CC/ 85/2024
 RERA/AO/14/2024

Birendra Prasad Singh

----- -----Complainant

Vs

Medhatiya Construction company Pvt. Ltd. -----Respondent

Project: Dream City, Phase-2.

08/04/2026

ORDER

Heard Shri Rahul Kumar, learned counsel for the complainant and Shri Sumit Kumar, learned counsel for the respondent.

2. The complainant has filed this case for rent of Rs. 17,45,000/- and penalty of Rs. 10,95,000/- as compensation.

3. The fact of the case in brief is that the complainant entered into a development agreement with the respondent on 19.01.2013 wherein he gave 1 katha 16 dhurs of land for its development and in consonance thereof the respondent agreed to give 5,200 sq. ft built up area and non-refundable amount of Rs. 50.00 lacs. In the development agreement it was also agreed by and between the parties that apart from above developer will give Rs. 15,000/- per month towards the rent and also after certain period of time when rent will be increased by the House owner then the amount increased from previous rent will be paid by the developer. The developer further agreed that in case the landlord enhances the rent the same shall be compensated by the respondent (developer). The project was named as "Dream City". The respondent is a registered ongoing project. The respondent upon several requests of the complainant handed over only 2 flats with a super built up area of 2,174 sq. ft. on 05.12.2018. The complainant filed complaint Case before the RERA, Bihar vide Complaint Case No. 790/2021 in which the RERA vide order dated 13.01.2022 directed the respondents to handover the possession of remaining flats to the complainant within 60 days. The respondent preferred appeal and record was remitted back to decide maintainability first. The complainant case was heard and vide order dated 27.07.2022, the RERA Bihar, Patna directed the Respondent to issue fresh possession letter as well as physical possession to the complainant within a period of 15 days' time with regard to the Flat No.

A-303, B-204 and 205 or else a penalty of Rs. 1,000/- per day for each day of delay in handing over the project. The RERA further directed to handover the possession letter of 7 car parking space on the ground floor. The RERA also directed the complainant to take possession within 7 days' time from the date of receipt of the possession letter. The respondent on 02.08.2022 handed over the possession letter to the complainant but the same was not in consonance with the agreement hence, the complainant apprised the respondents about the same through various letters and correspondences. Lastly the respondents vide possession letter dated 01.08.2023 handed over the possession to the complainant with regard to 4 flats and 7 car parking space. The respondents have altogether paid a sum of Rs. 9,05,000/- whereas, the rent from the March, 2013 upto August 2023 comes to Rs. 26,50,000/-. More so the penalty of Rs. 10,95,000/- is also to be paid by the respondent to the complainant. Thus, in total a sum of Rs. 28,40,000/- is to be paid by the respondent to the complainant towards the rent and penalty.

4. The respondent appeared and firstly filed a maintainability petition. The respondent has stated in his maintainability application that the complainant's case is not maintainable either in fact or in law and the complaint case is vexatious, concocted and has been filed with mala fide intention. The complainant has filed his petition praying (i) for compensation of Rs. 17,45,000/- as an arrear of rent in the light of terms and conditions enshrined under the development agreement and (ii) for the payment of penalty of Rs. 10,95,000/- in favour of the complainant, in light of the order dated 27.07.2022. The Authority is not a forum to enforce any contract/ agreement, except agreement for sale of allottees, either in parts or as a whole and complainant has prayed for enforcement of a specific clause of the development Agreement with regard to the compensation and further it is submitted that the appropriate forum for enforcement of a contract/ agreement in Civil Court of competent jurisdiction. The penalty imposed by the Authority vide order dated 27.07.2022 can only be realized by the authority in accordance with the RERA Act, Rules and Regulations thereof and the complainant has no right to pray for the recovery of the penalty as compensation. The respondent promoter has already allotted and handed over the peaceful possession of the flats along with the respective car parking

space, in light of the development Agreement to the complainant. The complainant case does not attract section 17 and 18 of the RERA Act, 2016 and the present complainant is a co-promoter in terms of Regulation 6 of the RERA Regulation, 2024 and this case is to be dismissed as not maintainable.

5. The respondent has also filed a separate reply stating therein that the complainant entered into Development agreement dated 19.01.2013 for the development of real estate project on the scheduled land and as per para 6 of the Development Agreement the time period of completion of the project was 4 years and 6 months and the said para further provides that the promoter shall pay monthly rent of Rs. 15,000/- for the period of delay in completion of project. Thereafter, the parties entered into a supplementary agreement dated 19.02.2015 for the allotment of shares of the complainant and thereby the complainant was allotted Flat no. B201, B203, B204, B205, B206, A203, A303 having total built up area of 5950.5 sq. ft. along with the respective car parking space. The complainant preferred a complaint case and the Authority by the order dated 27.07.2022 directed the respondent to issue fresh possession letter and hand over physical possession of the flat no. A303, B204, B205 along with all 7 parking spaces and thereafter, the complainant preferred execution case no. 03/2023 which was disposed vide order dated 04.08.2023 wherein it was observed that the possession of the flats no. B204, B205 and A 303 along with 7 car parking has been handed over to the executant on 01.08.2023. There is no delay in handing over/ completion of the project as the respondent promoter has already handed over possession of the complainant's share in the year 2017 vide letter dated 26.07.2017. Even if the learned court considers the actual date of handing over of possession as 01.08.2023 in light of order dated 04.08.2023 in Execution Case No. 03/2023 the total period of delay comes to 63 months only after excluding the time period of 4 years and 6 months for the construction of the project and further as per para-6 of the Development Agreement and further 9 months' grace period granted by UDHD for covid. In light of para 6 of the Development Agreement the respondent is liable to pay rent of Rs. 15,000/- as month for the period of delay and thus the total rent accrued is equal to 9,45,000/- which has already been paid by the respondent promoter and the same is also admitted by the complainant in its complaint petition. With regard to the second claim of

penalty amount of Rs. 10,95,000/- is concerned, the complainant has no right to claim the penalty amount and the right of claim only accrues with the Authority. Therefore, the claims of the complainant do not sustain and are fit to be dismissed.

6. As per order dated 02.12.2025 of this Court, the maintainability application is also being considered at this stage i.e. in final order.

7. After hearing both sides and perusal of the record it appears that it is an admitted fact that the complainant preferred a complaint case before the Authority and an order was passed by the Authority on 13.01.2022 and the respondent preferred appeal before the Appellate Authority against this order and the case was remitted back to the Authority with a direction to firstly decide about the maintainability and accordingly, the Authority again passed an order on 27.01.2022 and now that is full and final judgment of the Authority which has not been challenged before any competent Authority. It is also an admitted fact that the complainant preferred an Execution case before the Authority for the compliance of the order dated 27.01.2022 of the Authority and by order dated 04.08.2023, the case was disposed of on the basis of application filed by both the parties in which it has been stated that two flats number i.e. B204 and A-303 with car parking in all seven flats has been handed over by the respondent company to the Executant on 01.08.2023. It has also been prayed that the order has been complied with and accordingly the execution case was disposed of by the Executant Authority.

8. After perusal of this order it is clear that the order of the Authority has been complied and no any grievance against the order of the Authority can be raised at this state.

9. During argument and perusal of record it also crystal clear that the flat concerned and car parking space as per agreement has been provided by the Developer to the complainant. Now, only question arises whether any lacuna has been made by the respondent in providing the same within the stipulated period and if so he may be compensated or not.

10. After perusal of the order of the Authority it appears to show that the Authority has directed the respondent to issue fresh possession letter in respect to flat no. A323, B204 and 205 on the correct address of the complainant within fifteen days and also hand over physical possession as per the possession letter. As per this order it appears that the Authority has considered the fact that the possession letter was issued before this order and it is also supported by the documents filed by the respondent that possession letter was already issued and occupants remarks on

that Letter is signed by the complainant on 05.11.2019 itself. Letter dated 05.11.2019 also appears to prove that there was no any unreasonable delay in compliance of the agreement of the sale deed. But filing of execution case, by the complainant itself shows that the respondent has not complied the order dated 27.01.2022 within stipulated period by the Authority. As such the conduct of respondent appears to show that the respondent has harassed the complainant mentally and physically and also the litigation cost.

11. Learned counsel for the respondent draw attention of the court that the complainant does not come within the purview of allottee as per section 6 of the Act. This argument does not appear proper as the landlord has claimed flats of his share. The Hon'ble Apex court has also held in **M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P. & Others** (Civil Appeal No. 6745-6749 of 2021) that relationship will be considered on the basis of the facts and circumstances of the present case. The complainant appears to be allottee so his right may not be denied. As discussions made above and also as per liberty given by the Authority by order dated 27.01.2022, this case is maintainable in the eye of law as well as on fact also.

12. Considering the facts and circumstances of the case, the complainant is entitled to get compensation only for mental and physical agony as well as litigation cost. Hence, the respondent is directed to pay Rs. 2,00,000/- for compensation for mental agony and litigation cost of Rs. 50,000/-. The respondent is directed to pay the aforesaid amount within a period of two months of this order.

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

Sd/-

(Vinod Kumar Tiwari)
Special Presiding Officer
RERA, Bihar