

REAL ESTATE REGULATORY AUTHORITY, BIHAR

Before the Double Bench of Hon'ble Chairman, Mr. Vivek Kumar Singh

& Hon'ble Member Mr. S.D. Jha, RERA Bihar,

RERA/CC/236/2023

Shubham Prakash..... Complainant

Vs.

M/s Star India Construction Pvt. Ltd..... Respondent

For the complainant: Mr. Amit Singh, Advocate

For the Respondent: Mr. Imteyaz, Advocate,

Project:–DHANRAJ COMPLEX

RECTIFICATION OF ORDER DATED 08.05.2024

05.09.2024 This case was last heard on 28.08.2024 and the order was reserved on mutual consent of learned counsels for the parties. Mr. Amit Singh, Advocate, appeared and defended the case of the complainant whereas Mr. Imteyaz, Advocate, appeared and defended the case of the respondent. The order is being delivered today i.e. 05.09.2024.

2. At the very inception the Authority notes that this case came to be listed on rectification application dated 06.06.2024 filed under Section 39 of the RERA Act, 2016 by the complainant for rectification in the order dated 08.05.2024.

3. Learned counsel for the complainant submitted that there is a mistake apparent from the order dated 08.05.2024 because the order has been passed on the basis of a wrong report dated 30.04.2024 of the Technical Team, RERA. He further submits that the report of the Technical Team does not relate to the project "Dhanraj Complex, Phase -1", rather that relates to another project "Dhanraj Complex, Phase – II". Therefore, it may be said to be a procedural lapse on the part of the Technical Team, which is covered by the decision of the Hon'ble Allahabad High Court in Writ-C No.32301 of 2019 and,

therefore, the order dated 08.05.2024 is unsustainable in the eye of law. Hence, the cancellation made by the respondents was not maintainable for the reason that the ingredients of Section 11 (5) of the Real

/2/

Estate (Regulation & Development) Act, 2016 were not complied with.

4. Learned counsel for the respondent submitted that the Authority passed the order on the basis of the material available on the record including the fact that the complainant received demand letters dated 14.09.2020, 20.01.2021, 06.12.2021 & 16.12.2021 but failed to make payment of installments and, consequently, his allotment was cancelled by the respondent. He also submitted that the Authority had rightly observed that the complainant failed in obliging his duty casted upon him under Section 19(6) of the RERA Act, 2016 which resulted in cancellation of allotment under the provision of Section 11(5) of the RERA Act, 2016. He further submitted that no relief can be granted under Section 39 of the RERA Act, 2016 as the said Act empowers to rectify any mistake apparent from the record but the Authority while rectifying mistake apparent from record shall not amend any substantive part of its order. The complainant in the garb of rectification application wants to modify the substantive part of the order.

5. He further submitted that he has no objection if rectification is made in the order regarding name of the project as Dhanraj Complex Phase II (Block B) instead of Dhanraj Complex. Lastly, he submits that in WPC no.2052 Of 2024 (Ashok Kumar Maurya Vs. Uttar Pradesh Real Estate Regulatory Authority), the Allahabad High Court has observed that "Law is otherwise settled that power of review can be vested in an authority only by law. Since the Act of 2016 does not contain any power of review and

the rectification is restricted to errors which do not extent substantive amendment in the part of the order....”

6. Perused the rectification application dated 06.06.2024 filed under Section 39 of the RERA Act, 2016 by the complainant for rectification in the order dated 08.05.2024, whereby the Authority held that the cancellation of allotment by the respondent is valid and is in accordance with the

/3/

provision of Section 11(5) of the RERA Act, 2016. The Authority further observes that the order dated 08.05.2024 does not show that it was passed mainly on the report of the Technical Team, RERA, the Authority had also considered the fact relating to non-payment of installments as per stipulated payment schedule as well as making no payment in spite of demands raised by the respondent vide letters dated 14.09.2020, 20.01.2021, 06.12.2021 & 16.12.2021 which attracted the provision of Section 11 (5) of the RERA Act, 2016 resulting in cancellation of allotment. The Authority, therefore, observes that the nature of rectification sought is not in consonance with the provision of Section 39 of the REA Act, 2016 as the said Act empowers to rectify any mistake apparent from the record but while rectifying mistake apparent from record shall not amend any substantive part of the order and in this case the nature of rectification sought would amend substantive part of the order and, therefore, the prayer for rectification is rejected on this issue

7. The Authority further observes that project's name has inadvertently been mentioned as “Dhanraj Complex” in stead of “Dhanraj Complex Phase II (Block B)” which has been verified from the record and, accordingly, the order dated 08.05.2024 is modified to this extent that instead of “Dhanraj Complex”, as mentioned in the said order, it should be read as “Dhanraj Complex Phase II (Block B)”.

Taking into consideration, the aforesaid facts and the observation, the rectification application dated 06.06.2024 is partly dismissed, as discussed above.

Sd/-

S.D.Jha
Member

Sd/-

Vivek Kumar Singh
Chairman