REAL ESTATE REGULATORY AUTHORITY, BIHAR
Before the Bench of Mr.Ved Prakash,
Special Presiding Officer

**RERA/CC/53/2021**
**RERA/AO/34/2021**

Subhash Kumar ….Complainant(s)

Vs

M/s R.D. Eco Developers Pvt. Ltd. ….Respondent
PROJECT- Chetna Enclave

For the complainant: Mr.IshtiyaqueHussain (Adv.)
For the respondent : Mr.Sumit Kumar (Adv.)

**19.08.2026** **O R D E R**

Hearing is taken up. Learned counsels on behalf of both the parties are present.

2. Learned counsel for complainant submits that this complaint case has been filed, seeking direction upon the respondent promoter to handover possession of remaining three flats with compensation.

3. The learned counsel for the complainant submits that the complainant is landowner of 10 decimal land situated at Thana no. 9, Tauzi no. 5316, Khata no. 24, survey Plot no 292,Mohalla –CDA Clony, Mauza-Shekhpura, Survey Thana-Phulwari, P.S-Shastrinagar, District -Patna and he came in peaceful possession of this land after partition of ancestral land on 09.12.2008. The complainant came in contact with the Directors of M/s R.D. Eco Developers Pvt. Ltd., namely, Shri Pramod Kumar and Smt. Shilu Devi, who were engaged in developing building and construction work of Apartment. The respondent promoter gave an undertaking that they would develop the land and make construction of multi-storied apartment and the complainant would be given 50 % share in the building/apartment. Accordingly, the complainant and the respondent promoter executed a Development Agreement on 25.02.2015, vide Deed no. 1616 duly signed by both the parties, which includes certain terms and conditions. As per the agreement, the respondent with consent of the complainant will get the proposed map and plan of the building approved from the PMC before

starting the construction work of the building. The development agreement says that the construction of the building will be completed within 3 ½ years from the date of approval of the map/plan. It was also agreed that in case the building is not completed within time said limit, the respondent will make payment of Rs.25, 000/-per month to the land owner as penalty. Clause 14 and 16 of the deed approves that 50% share of flats and land in equal proportionate to the promoter and land owner. It was also agreed that the name of building will be Chetna Enclave. However, the respondent promoter did not construct the building over the land of complainant; rather they were constructing building over 30 decimals of land of Pattidars of the complainant adjacent to the land the complainant. The complainant's land was also used for construction of underground tanks.

4. Learned counsel for complainant further submits that the respondent company executed another Development Agreement on 15.02.2016 with respect to the land of Pattidar of the complainant, namely, Shri Bhagwan Das Singh vide Deed no. 2330, wherein it has been promised that the construction of the building would be completed within a period of 2 ½ years from the date of approval of the map/plan. Learned counsel further submits that the complainant is not aware about the approval of the map of I & J Block of the apartment. Further the approved copy could not be provided to the complainant, but he knew that there are total 20+30=50 flats in Block I &J of Chetna Enclave having total area 58807 Sq. ft. Further the share of the complainant comes to 7350.8 sq.ft, out of total 14701 Square feet after construction on 10 decimal lands of the complainant and the respondent has to deliver six flats falling in the share of complainant, but the possession of only three flat i.e. Flat no 205 area 1342 sq. ft, Flat no. 305 area of 1342 sq. ft and Flat no.401 area of 1144 sq. ft for total area of flats coming to 3828 sq. ft, have been given to the complainant. The complainant is regularly making demand of remaining 3 flats having area of 3522 Sq.Ft from the respondent.

5. Learned counsel for complainant further submits that the complainant has alleged that the agreement dated 25.02.2015, which is also the date of development agreement, is a forged and fabricated one with a

view to harassing, cheating and also for grabbing the share of the complainant. It is further submitted that the construction of the building was actually started in the year 2017, but the Shri Bhagwan Das,Pattidar of the complainant lodged an FIR no. 14/2017 dated 14.10.2017 and got 144 Cr.P.Cimposed on the ground that the said land was sub-judice and a T.S bearing T.S no. 237/2003 was pending before the learned Sub-judge IX, Patna, who vide order dated 04.02.2019 imposed status quo with respect to the suit property.

6. Learned counsel for complainant further submits that by way of two forged unregistered agreement dated 05.03.2012 & 25.02.2015 respectively, the respondent claimed to have allotted 6 flats i.e. flat No.205 having area 1342 Sq.Ft., flat No.305 having area 1342 Sq.Ft,401 having area1144 Sq.Ft,105 having area1342 Sq.Ft.405 Sq.Ft to the complainant in Chetna Enclave and as it will be apparent from Annexure -2 & 3 that the respondent has fraudulently committed forgery in signature of the complainant and tried to show that the complainant has transferred two flats of his share i.e. Flat no. 105 area 1342 sq. ft, Flat no. 405 area 1342 sq. ft., total area of 2684 sq. ft, to the respondent in lieu of payment of Rs. 68, 81,776/-to the complainant. Such theory made by the respondent against the complainant are baseless and concocted story and nothing else. The learned counsel for the complainant further submits that the complainant having no option, filed FIR against the respondent as Shastrinagar PS Case No.952/2019 dated 18.12.2019 u/s 406,420, /34IPC (Ann-5). Learned Session Judge while rejecting Anticipatory Bail Petition observed that cheating and forgery has been committed. Even Hon'ble High Court vide order Dated 07.07.2020 passed in Cr.Misc.No.14719/2020 has observed that only 3 flats, out of 6 have been given to the complainant, for which the complainant has been well advised to approach Civil Jurisdiction(Ann-6&7)

7. Learned counsel further contends that the respondent promoter has allotted and delivered the possession of only three flats and paid Rs. 10,00,000/- to the complainant as Non amount vide different cheques at the time of entering into development agreement and except the aforesaid amount, nothing has been paid to the complainant. Hence, the respondent

promoter may be directed to handover the share of the remaining 3 flats of the project Chetna Enclave in I &J Block namely flat No.405 at 4th floor, flat No.105 at 1st floor and 6th flat total area 3522 Sq.Ft. and rent Rs.3, 60,000/ against retention of 3 flats of the complainant as well as litigation cost Rs.1, 00,000/- to the complainant.

8. Learned counsel for respondent promoter has filed counter reply to the present complaint case and has further filed a maintainability petition dated 09.05.2024 before the Authority.

9. Learned counsel further contends that the present case is neither maintainable in eye of law nor on facts. He further submits that the project in question is unregistered as the same has been completed prior to enforcement of RERA Act, 2016 on 01.05.2017. The respondent company also provided electricity connections and executed sale deeds in favour of allottees of the project before 1st May, 2017. Learned counsel further contends that since the project is a completed prior to enforcement of RERA Act, 2016, they have not violated any provisions of RERA Act, 2016. He further submits that the dispute between the complainant and the respondent have arisen out of Development agreement dated 25.02.2015; hence Authority has no jurisdiction to entertain complaint cases of such matters. The competent forum for redressal of such matters is Courts /Tribunals constituted under specific relief Act 1963 and arbitration and Conciliation Act 1966.Further the Averment made in paragraph XI of the complaint petition clearly stipulates that the Authority has no jurisdiction to decide upon validity of any document. Learned counsel further submits that the dispute pertaining to this matter is also pending before the Sub-Judge, Patna, vide T.S. 237/2003 and the criminal case bearing Shastrinagar P.S case no. 952/2019 regarding alleged forged signature of the complainant is also pending .As a result of the said criminal case, the bail application of the respondent promoter was rejected by the District Judge, Patna. The respondent promoter, then, filed an Anticipatory bail application before the Hon'ble High Court. The Hon'ble Court, vide order dated 07.07.2020, held that the matter of dispute is of civil nature and

respondent promoter was enlarged on anticipatory bail. Thus, the present case is hit by the principle of res sub-judice.

10. Learned counsel further contends that the respondent promoter has already allotted and provided the possession of three flats, as mentioned above, to the complainant and the said documents pertaining to share distribution and transfer documents of two flats to the respondent by the complainant in lieu of Rs. 68, 81,776/- is genuine and the promoter has not created any fake and fabricated documents to that effect.

11. The learned counsel for the respondent further submits that Hon'ble Tribunal in REAT Appeal No.16/2021 and REAT Appeal No.27/2021 has held vide order dated 20.07.2021 that land owner is a co-promoter and the Authority cannot entertain the complaint case filed by the land owner as he is also promoter and not an allottee.

12. Learned counsel for the respondent further submits that right, title and interest of the parties of the Development Agreement normally accrued from said registered deed and any supplementary share distribution is not required registration under section 17 of registration Act because actual right ,title and interest reposed under the said registered Development Agreement. Any share distribution agreement in light of development agreement which only divide the share and possession of parties and registration of such document is optional under registration Act Here the present respondent, already in consultation with the complainant, has executed share distribution agreement on 25.02.2015.The present case find support from recent Ruling of Hon'ble High Court passed in CWJC No.15444/2021.Hence the complaint case may be dismissed as not maintainable.

13. In view of the foregoing discussions as well as on going through the record as well as on meticulous examination of the documents/materials available on record, the Bench/Authority observes that the admittedly, a Development Agreement was executed on 25.02.2015 between the complainant and the respondent promoter as per which the respondent promoter committed to develop the 10 decimal land of the complainant and to construct a multistoried building. Besides other terms and conditions,

the agreement provides that 50% of the built-up area would go in the share of the complainant. On basis of said Development Agreement as claimed by the respondent a supplementary share distribution agreement was executed between both the parties on 25.02.2015, wherein 5 flats were allotted in share of the complainant and out of 5 flats,3 flats as mentioned, were delivered to the complainant and remaining two flats are said to have been transferred to the respondent by the complainant in lieu of Rs.68, 81,776/-

14. The Bench further observes that the respondent promoter has not only handed over three flats to the complainant falling in his share, but has also issued possession letter dated 18.05.2019 in favour of the complainant mentioning 3 flats No.205, 305, and 401 (Block I&J) along with car parking spaces in Chetna Enclave and remaining three flats of the share of complainant are in dispute. The complainant claims that Flat no. 105 area 1342 sq. ft., and Flat no. 405 area 1342 sq. ft, total area of 2684 sq. ft were not delivered to him, whereas the respondent promoter through his reply contends that the complainant has transferred those flats to the respondent.

15. Bench Bench/Authority notes that learned counsel for the respondent has correctly submitted in light of order dated 28.08.2024 passed by the Hon'ble High Court ,Patna in CWJC No.15444/2021 that unregistered supplementary agreement is not compulsorily required registration u/s 17 of the registration Act 1908 as it is in continuation of the Development Agreement, but if share distribution deed goes beyond the purview of the Development Agreement and allottee tries to transfer of title going against the development Agreement, it always requires registration U/s 17 Registration Act 1908 and Section 54 of Transfer of Property Act 1882 as well as Section 17 RERA Act 2016 also fortifies the same. The learned counsel for the respondent promoter has claimed that the complainant has transferred two flats No.105, 405, each having area 1342 Sq.Ft. falling in his share to the respondent in lieu of Rs.68,81,776/-through the alleged unregistered share distribution deed dated 25.02.2015.Though the complainant has alleged that the respondent has created the said share distribution deed through committing forgery of his signature as he has never signed therein, but even if for a moment it is presumed that the said

share distribution deed is genuine then also due to non-registration of said deed, title to the respondent cannot pass in light of aforesaid provisions of law. Rulings of Hon'ble Apex Court passed in (Suraj Lamp Industries Pvt Ltd Vs. State of Haryana (2012) 1SCC656 & (2018) 7 SCC 639)) Ameer Minhaj Vs. Deirdre Elizabeth (Wright ) Issar also support this analysis.. Secondly if the said document is treated as disputed in light of allegation of forgery by the complainant, it cannot transfer title, unless and until Civil Court does not declare the share distribution deed cum transfer deed dated 25.02.2015 as genuine one. Hence on basis of above discussion, the bench observes that the respondent cannot retain the remaining 2 flats No.105 and 405 falling in share of the complainant and he has to deliver possession of these flats along with other one to the complainant, hence submissions of learned counsel for the respondent for transfer of said flats in favour of the respondent is rejected.

16. The land owner cum complainant has filed the present case for delivery of possession of remaining 3 flats falling in his share and neither it is alleged nor is case of any party that complainant has taken part in construction activity or has worked for profit and revenue, hence in light of cited Ruling of the Hon'ble High Court ,Patna passed in CWJC No15444/2021 as well Regulation 6 (1) of Bihar RERA Regulation 2024,the land owner, who has simply sought relief for share of flats will be treated as an allottee and not as promoter, hence the cited order dated 20.07.2021 passed by Hon'ble Tribunal in REAT Appeal No.16/2021 and 27/2021 are not applicable in present case and present complainant will be treated as an allottee and hence, complaint case is maintainable before this Bench/Authority.

17. Lastly an important point is raised by the learned counsel for the respondent that project is not registered with RERA as it was not required to be registered with the Authority because it was completed prior to enforcement of Act 2016 on 01.05.2017.Learned counsel in support of his submissions submit that respondent has provided Electricity connection and executed sale deeds with respect to flats prior to 1st May 2017.Admittedly learned counsel for the respondent has not filed Completion Certificate/Occupancy Certificate issued by competent

authority with respect to the project in question. Section 3 (1) of RERA Act 2016 very clearly says that no promoter shall advertise, market, book, sell or offer for sale etc.xxxxxxxxx without prior registration with the Authority.Further 1st proviso says that the projects that are ongoing on the date of commencement of this Act and for which completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within period of three months from date of commencement of this Act.

(i) Admittedly, Development Agreement Deed No1616 dated 25.02.2015 was executed between both the parties. wherein the respondent had agreed to complete the building within period of 3 years and 6 months with grace period of 6 months from approval of map/plan by competent authority means PMC and on calculation the period of completion of the building comes to 25.02.2019 plus. In likewise the respondent has also agreed with Pattidar of complainant Mr. Bhagwan Das Singh through Development Agreement deed No.2330 dated 15.02.2016 to complete the building within 2 years 6 moths with grace period of 6 months from the date of approval of map/plan by PMC. On calculation, the period of completion comes 15.02.2019 plus. Bench observes when the project was likely to be completed in year 2019, then how it was completed prior to enforcement of RERA Act 2016, has to be explained by the respondent, but neither Completion nor is Occupancy Certificate is filed to prove about the completion of the project prior to 01.05.2017, which might have well explained the non-attraction of provisions Section 3 of RERA Act 2016.

(ii) Bihar Municipal Act 2007,Bihar Building bye laws 2014,Bihar Apartment Ownership Act 2006,as well as RERA Act 2016 requires that no promoter shall allow to enter into possession to any allottee without completion of the project, hence if the promoter has executed sale deeds and provided Electricity connections without completion of the project ,he has violated the provisions of above laws and coercive action against the promoter must be taken for violations of Section 3 of RERA Act 2916 as well as other relevant laws.

(iii) In such view of the matter, the Bench/Authority is of considered opinion that the present complaint case is not hit by res sub- judice due to pendency of T.S no.237/2003 and Shastrinagar P.S Case No.952/2019, because of both the cases are distinct and independent and cause of action in all these cases may take its own course. In such facts and circumstances the present complaint case is maintainable.Accordingly, the maintainability petition of the respondent is rejected.

18. The complainant has already got possession of share of flats No.205 area 1342 Sq.Ft., flat No.305 area 1342 Sq.Ft.and flat No.401 area 1144 Sq.Ft, total area 3828 Square Feet and respondent has declared allotment of flat No.105 area 1342 Sq.Ft., flat No.405 area 1342 Sq.Ft. total 2684 in share of complainant, but the respondent claims that the complainant had transferred the said flats to him. Later on, he transferred the said flats to some prospective buyers, However Bench is of considered opinion that neither the respondent has got title in the said flats nor is entitled to pass title to anyone. Hence the complainant is entitled to get his share in the building that is 50% of the total built-up area including flats No.105, and 405 of the Block I & J of the project.

19. In view of what has been held above, the respondent/promoter through its directors Mr. Pramod Kumar and Smt. Shilu Devi is directed to handover the remaining of flats to the complainant falling within 50% of built-up area as per Development Agreement dated 25.02.2015, including Flat No.105 and 405 in Block I, &J of the project within a period of 60 days of the present order. The complainant is also directed to make payment of applicable G.S.T to the respondent.

20. The project, Chetna Enclave is developed on 40 decimal land, equal to 1618.74 Sq.Ft., which is more than 500 Square Feet, hence Sub-Section 3(2)(a) of RERA Act 2016 is not applicable in present project and it is registrable, but respondent knowingly and intentionally had not got registration of the project . Since the project, Chetna Enclave is still unregistered, hence initiate Suo Motu/STV case against the promoter for violations of Section 3 of RERA Act 2016.

21. The complainant, if advised, shall be at liberty to seek other relief(s), which is in nature of compensation, before the Adjudicating Officer, RERA, Bihar.

With these observations / directions, this complainant case is disposed of.

**Sd/-**
**( Ved Prakash )**
Special Presiding Officer
19.08.2026