REAL ESTATE REGULATORY AUTHORITY, BIHAR
Before the Bench of Hon'ble
Member Mr. S.D. Jha, RERA, Bihar.

RERA/CC/518/2022

Mr. Sunil Singh & Ors.……Complainants
Vs.
M/s R.D. Eco Developers Pvt. Ltd.. ……Respondent

PROJECT: RAM SWAROOP APARTMENT
For Complainants: Mr. Dheeraj Kumar Roy, Advocate,
For Respondent: Mr. Sumit Kumar, Advocate

PROCEEDING

07.02.2023 Hearing taken up. Mr. Dheeraj Kumar, Advocate, appears for the complainants. Mr. Sumit Kumar, Advocate, appears for the respondent.

Learned counsel for the complainant submits that in compliance of the direction given in the proceedings dated 12.01.2023, he has filed the written statement on affidavit. He also submits that despite communication of notice annexing a copy of the proceedings dated 12.01.2023 to the respondent and the I.G. Registration for issuing necessary direction to all the DSRs/Sub Registrars, Patna/Phulwarisharif not to register any apartment/flat of the project till further order of the Authority, the respondent has executed sale deed of a flat on 21.01.2023. The said act of the respondent - promoter warrants an action under Section 63 of the RERA Act, which prescribes that if any promoter fails to comply with or contravenes any of the orders or directions of the authority, he shall be liable to a penalty. He also submits that the respondent has filed quarterly progress report ending 30th June 2022 and that too is misleading one as that does not reflect the correct picture as that shows that 26 flats have been booked whereas there is proof of booking of 28 flats. The respondent has sold out even those flats which fall in the complainant's share. He further submits that the respondent - promoter is making additional construction beyond the sanctioned plan in parking area and the promoter is habitual offender as without registration of the project he had advertised for booking of the flats of the project.

One of the complainants, namely, Sri Pinku Kumar (Complainant no.4) appears and says that he has every apprehension that his share in the project would be sold by the respondent – promoter, to which learned counsel for the respondent submits that the complainant no.4 would get his share as per the development agreement.

Learned counsel for the respondent submits that he has not received the copy of the supplementary affidavit submitted by the complainant as he is appearing in the case today and the mail ID on which the complainant has sent the affidavit is presently not in operation. Subsequently, he has accepted that the copy of the proceeding dated 12.1.2023 has been received with the notice. He further submits that the direction dated 12.1.2023 of the Authority to the DSRs/Sub-Registrars, Patna/Phulwarisharif for not registering any apartment/flat of the project till further order is beyond the mandate of Sections 36 & 37 of the Act and as such the Authority has got no power to give direction to the authority, such as, DSRs/Sub-Registrars of the Registry office.

Here, the Authority observes that the said submission of learned counsel for the respondent does not hold water because of the fact that Section 35 (2) (iv) of the RERA Act, 2016 emphatically says that "Notwithstanding anything contained in any other law for the time being in force, while exercising the powers under sub section (1), the Authority shall have the same powers as are vested in a civil Court under the Code of Civil Procedure, 1908, while trying a suit in respect of any other matter which may be prescribed. Thus, the said Section 35 (2) (iv) clearly mandates for issuing any direction to any of the authorities of the State Government if the Authority finds injustice is being done or likely to be done with the allottees at the hands of the promoter. The Authority further observes that Section 36 of the Act also mandates for issuing an interim order in case the Authority finds an act in contravention of this Act has been committed and continues to be committed, the Authority may restrain any promoter from carrying any such act until further orders and the order dated 12.01.2023 is *in the nature of an interim order* in order to restrain the promoter from carrying on such an act which contravenes the provisions of the RERA Act, but in this case the respondent – promoter in spite of knowing the interim order dated 12.1.2023 received with the notice has executed a sale deed of a flat, as claimed by the complainant.

Learned counsel for the has lastly submitted that learned counsel for the complainant may be directed to supply a hard copy of the affidavit to enable him to file reply on an affidavit within a week, to which learned counsel for the complainant has assured that he would be given the hard copy of the affidavit within a week.

In view of the allegations made by the complainant including the sale of flats of the project by the respondent in an unauthorized manner etc., it is considered appropriate that this matter be examined by the Full Bench.

Accordingly, this case is transferred to the Full Bench.

In the meanwhile, the promoter is again directed to ensure that the direction in the proceeding dated 12.1.2023 of not registering any apartment/flat of the project is strictly followed.

Sd/-
S.D. Jha,
Member