

REAL ESTATE REGULATORY AUTHORITY, BIHAR

Before the Single Bench of Mrs. Nupur Banerjee

Case No. CC/1189/2021, 1197/2021

Shamshad Alam/ Mohammad Muslim Rahman.....Complainants

Vs

M/s ABM Developers Pvt. Ltd.Respondent

Present: For Complainant: Mr. Sharad Shekhar, Advocate

For Respondent : Mr. Ajay Kumar Singh, Advocate

31/08/2022

PROCEEDING

Hearing taken up. Both the parties are present.

A counter affidavit has been filed on behalf of the respondent. Learned counsel for the respondent submits that he has a preliminary objection that this complaint petition is not maintainable. Firstly, in the second case RERA/CC No.1197/2021, it is not at all agreement for sale rather it is M.O.U. and the RERA Act does not recognize M.O.U. He further submits that in the M.O.U. certain other terms and conditions remains which are different than the Agreement for Sale. The complainant claims to be allottee. He has impleaded BCTA as party respondent no.2 but there is no such organization.

The complainant submits that he wants possession of the shop. He is not the landlord. Learned counsel for the complainant submits that his case is that a joint M.O.U. has been signed between the allottee BCTA and ABM Developers Pvt. Ltd. for the allotment of the shop. Respondent no.1 has taken responsibility for the construction of the project where as respondent no.2 has taken responsibility for allotment of the shop. The complainant has given the money to the second party builder and the builder has got the money and the first party i.e. is Baptist Church. His claim from respondent is that they first submit the latest status of the construction of the work and allot particular shop number to him in lieu of M.O.U. and complainant is ready to pay further consideration amount.

Learned counsel for the respondent no. 1 i.e. ABM while referring Annexure- 1 submits that agreement is being executed with Baptist Union Church, Bakerganj whereas in this complaint petition, complainant has made ABM as party to respondent no.1 and Baptist Church Trust Association as respondent no.2. Both are two different organizations and in fact the dispute between them as to who is the real owner of the land in question. BCTA is the landlord and now he is developing the project, therefore, this agreement for sale is with Baptist Union Church. A litigation was also going on as to who is the landlord. Learned counsel further submits that the respondent has filed the

counter affidavit in which he has stated that Baptist Union Church has withdrawn his consent and that apart this, agreement for sale is of the year 2015 much prior to come into force of the RERA Act. Therefore, this agreement for sale will not come under the purview of the RERA Act. He further submits that let it be first decided as to whether the complaint filed in the present form is maintainable or not. He further submits that he has already stated that pursuant to the agreement for sale, this project has not been registered against the respondent ABM. He further submits that ABM is not the promoter and the registration done in the RERA is not by ABM.

In the second case, respondent submits that MOU is not recognized by the RERA Act. It has to be the agreement for sale to claim for any relief under the Act. It has been further submitted that not a single farthing has been paid as consideration by the complainant which is very well transpired from the perusal of MOU placed.

Learned counsel for the complainant submits that the complainant paid the money to ABM Construction. The ABM made agreement with the new promoter for development of land which is violation of Section 15 of the Act as ABM admitted that they are transferring the land to Azalfa. The agreement is between Azalfa and ABM and the only purpose to make this agreement is to increase the value of the project and make more profit. He further submits that the new developer is not giving the shop. He further submits that they are declining that they have no connection with Azalfa.

Learned counsel for the respondent further submits that they entered into agreement with BCTA with the consent of Union Church Association. This agreement is between ABM and Union Church Association. He is pursuing the BCTA. ABM is not the developer. The project has been registered in the name of Azalfa. ABM is not the promoter rather Azalfa is the promoter. Furthermore, in view of the law laid down by different Benches, it has been held that since the agreement is prior to come into existence of the RERA Act, therefore, it will not be amenable to entertain the same with RERA Act, rather it has to be decided by another forum. Therefore, in that judgment it has been held that this RERA Act has come into force in 2017 and the agreement is of the year 2015, therefore, it is not amenable to the RERA Act.

In reply, learned counsel for the complainant submits that the agreement for sale has been executed in 2015. We are covered under section 3 of the Act. The mauza of the project is still being developed by some other builder. We have not come into the development agreement with the right party. ABM Developer is still taking interest.

In the second case, learned counsel for the complainant submits that the complainant wants shop.

Learned counsel for the respondent submits that there is no agreement at all. In MOU there is no clause. He has already raised objection that this case

is not maintainable at all. So, this type of complaint should be out rightly rejected. He further submits that the document upon which they are basing the claim has to be looked into. That document has to be considered with the recital of the document. In the second case, the complainant has not paid a single farthing. There is no signatory of BCTA. He further submits that with regard to maintainability let it be decided as preliminary issue. Let the issue be framed. Since we have raised a preliminary issue with regard to maintainability, so question of maintainability be decided first. He submits that in view of the objection raised this forum does not have authority to decide anything.

Heard the parties at length. The complainant is directed to make the BCTA as well as Azalfa, who is now developing the project and on whose name project is registered, to be impleaded as party respondents and serve the copy of complaint to them and inform the office accordingly for the **issuance of notice** to them. All the parties are directed to address the Bench on the issue of maintainability raised by respondent ABM as per the submissions made during the hearings. All the parties are also at liberty to file their submissions in respect to counter reply filed.

Put up for hearing on 20.10.2022.

Sd/-

Nupur Banerjee
Member