

REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR

Before the Bench of Mr. Afzal Amanullah, Chairman and Mr. R.B. Sinha Member

Complainants cases Nos- CC/396/400/401/402/411/417/418/425/426/429/435/455/456/457/458/477
/503/213/216/289/293/310/175/302/275/231/378/111/271/263/352/311/312/267/229/230/225/226/
269/270/276/281/284/287/292/306/307/323/363/502/354/373/520/523/526/531/537/545/559/563/5
75/576/112/532/639/646/649/650/652/653/655/659/660/662/663/664/665/666/668/670/675/676/67
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/730/731/732

Suman Kumari and others..... Complainants

vs.

M/s Agrani Homes Pvt. Ltd. Respondent

18.02.2021 Proceedings

The proceedings were held online through video conferencing mode. Most of the complainants were present. Mr Bipin Behari Advocate, Mr Kishore Kunal Advocate, Mr Rakesh Roushan Singh Advocate, Mr Dheeraj Kumar Rai Advocate and Mr Puneet Kumar Advocate were present on behalf of complainants and represented their clients. Respondent Company was represented by Mr. Alok Kumar, Director of the Company, Mr Amit Narayan Advocate and Mr Sanjay Singh, Advocate. Mr Amit Narayan, Advocate and Mr Sanjay Singh, Advocate also represented Mr Padum Singh, Mrs Vijaya Raj Laxmi and Mrs Alka Singh Present/Previous Directors of the Respondent company. Mr Apurva Harsh, Advocate represented Mrs Sikha Singh, Ex- Director. Mr Navin Kumar Sinha, Advocate and Mr Ajeet Kumar, Advocate also appeared on behalf of the Ruben Patliputra Hospital Pvt Ltd. Mr Rana Ranvir Singh and Mr Keshav Shankar both previous directors of the company were absent.

At the Outset, the Bench noted that the Respondent company has been changing their counsels very frequently and had changed at least 5 Advocates in last five months since September, 2020. Again the new counsel Mr Amit Narayan who had not even submitted his vakalatnama on the last date of hearing, has brought an additional counsel Mr Sanjay Singh today to argue the case on behalf of the respondent company.

The Bench thereafter started the proceedings and informed that they have received two petitions on behalf of Mr Alok Kumar, one petition on behalf of Ruben Hospital and a rejoinder thereto filed by Mr Kishore Kunal, Advocate. The Bench was informed by Mr Sanjay Singh, Advocate that he was representing all directors, past/present except Mr Rana Ranvir Singh, and Mr Keshav Shanker. Mr Apurva Harsh, Advocate stated that he was representing Mr Shikha Singh, a previous director. The Bench noted that the Respondent company has also submitted six original deeds of absolute sale/purchase of land at Parmanandpur, Sonepur and Patna City on 9th February 2021 and sixty original deeds of registered development agreements during 15-18th February 2021.

Thereafter, the Bench recalled the hearing held on the previous date and requested the Respondents to submit the Action taken reports on the directions given by the Bench on 10.02.2021. At this juncture, Mr Sanjay Singh, Advocate appearing on behalf of Mr Alok Kumar, Managing Director of the Respondent Company informed the court that he had filed a petition under section 39 of the Real Estate (Regulation and Development) Act 2016 to amend, rectify and recall the order and directions dated 10th February 2021. Mr Sanjay Singh, Advocate reiterated the claims of Mr Alok Kumar in his petition that the Authority has exceeded its jurisdiction and that order dated 10.02.2021 was beyond the power of the RERA. In his petition, Mr Alok Kumar had claimed that the Respondent company had not filed any response in the aforesaid complaint cases as they were not accorded any opportunity. The Bench however interjected to say that it was factually incorrect as the respondent was given full opportunity to file his response in each case and in many cases, the director of the Company had filed their written response also, committing for time-bound refund but those commitments were never fulfilled. Learned counsel claimed that RERA has no powers to freeze any property of directors of the company. He claimed that he should be given two weeks time to submit a proposal in this respect, to which many complainants objected. Mr Bipin Behari, Advocate stated that this was a delaying tactics and desired to know from Mr Sanjay Singh whether his AoR has submitted a NOC from the previous lawyers of the respondent company before requesting him to appear before the Bench. Mr Punit Kumar, Advocate stated that the respondent company has been bringing new counsel every month just to delay the proceedings. The Bench thereafter directed that the petition filed by the Respondent

company should be sent to each complainant with a direction to file his/her response within two weeks of the receipt of the petition.

Mr Apurva Harsh, Advocate stated that his client Mrs Shikha Singh was only an employee of the company and had been promoted as the Director of the company. She resigned from the company in 2017. He stated that she has undergone a surgery recently and that's why, she couldn't attend the hearing today. He said that she had not got the notice but based on newspapers' reports, he is attending the hearing on her behalf. He said that he would file a petition before the next date of hearing.

Most of the Complainants however contested the claims of the Learned counsel of the respondent company and said that the promoter (Mr Alok Kumar) was an unreliable person and couldn't be trusted again as he has illegally diverted hundreds of crores of rupees from several Projects without taking any action to complete them. They claimed that he had run away from the state. Mr Punit Kumar, Advocate claimed that drastic action should be taken against the Respondent company and Ruben Hospital for their failure to comply with the orders of the Bench. Mr Kishore Kunal, Advocate also stated that the promoter of the respondent company could not be trusted any more. He requested that the property of Mr Alok Kumar at 15, Patliputra Colony should be auctioned by the Authority and the money of Ruben Hospital be returned to them.

The Bench directed the Learned counsel of Ruben Hospital to let the Bench know on the action taken by them on directions given by the Bench. Learned counsel Mr Navin Kumar Sinha of Ruben Hospital stated that they were prepared to pay the remaining amount of (Rs 2,54,49,603 – Rs 1,88,54,098 =) Rs 65,95,505 after clearance of the home loan account of Mr Alok Kumar to the Authority so that they could get the registration of the property done at the earliest. He also said that his client had sent a draft of Rs 5 lakh on 11th February to RERA office but the office was closed. As regards the excess amount of Rs 41.08 lakhs paid to IOB, Anisabad for closure of the cash credit account of Indus Ventures (MD- Mrs Vijaya Raj Laxmi Wife of MrAlok Kumar), Learned counsel agreed that they would pay the Rs 41.08 lakh to the Authority or anyone else as per their direction. As regards usage of residential property as a Private Hospital, he stated that Mr Alok Kumar had handed over the possession of the property

to Ruben Hospital after receipt of significant sum of sale proceeds. Ruben Hospital has further made huge investments in establishing ICU/Ventilators/Monitors etc for the Covid Patients and based on directions of the Government, they have been using the property as Hospital for Covid Patients since July 2020. Many complainants however alleged that Ruben Hospital was illegally earning revenue from the Residential building by using it as a commercial private hospital without having even ownership of the building and that there was no direction or approval from the state government to use the specific property as a Private Commercial Hospital.

The Bench expressed its displeasure over the conduct of the Ruben Hospital as they have not kept their commitment of deposit of a significant sum with the Authority for refund to the complainants. The Bench showed its anguish on the conduct of the Ruben Hospital and said that they have known since beginning that the property was being sold by the respondent company under directions of RERA to pay back the dues of the consumers/allottees of the company but they have released funds to all concerned without ascertaining the directions/orders of the Authority. The Bench also noted that in flagrant violations of the orders passed by the Bench on 24th September 2020, Ruben Hospital released Rs 4.31 crores to IOB, Anisabad on 28th September 2021. Learned counsel finally expressed their readiness to deposit Rs 1.07 crores to the Authority, if directed to do so.

Mr Kishore Kunal , Advocate also drew attention to his petition regarding the sale of land at Parmanandpur. The Bench informed that the proposal has been look into but a decision could be taken only after hearing the views of the complainants. The Bench therefore directed that the proposal submitted by Mr Kishore Kunal should be made available to all complainants and their views be obtained within two weeks, before taking a final view on the issue. The Bench however noted that the Respondent company had purchased the land at Parmanandpur after diverting the funds/deposits from other projects and interests of allottees of such projects ought also be protected as they have been suffering for longer period.

The Bench thereafter heard the individual complainants, most of which sought refund of the principal amount along with interest without further delay. In most of the cases, the

projects have either been abandoned, cancelled or inordinately delayed. Mr Kishori Prasad CC/425 said that he didn't receive any email from Mr Alok Kumar, as committed by him. He requested Mr Sanjay Singh, Advocate to take up his matter and get it sorted out at the earliest.

After hearing the complainants and the respondents and their lawyers and after due consideration, the Bench orders that:-

- (1) Mr Sanjay Singh, Advocate will come out with a comprehensive plan on behalf of the Respondent company in next two weeks to refund the principal amounts of deposits along with interest and reasonable compensation to allottees/complainants within a time-bound period. The Respondent company must prove their bonafide by commencing and completing the process of refund of deposits/interests to atleast 20 percent of the allottees/complainants within a month.
- (2) The Bench has consistently held that the Complainants/allottees have the first charge on the sale proceeds of Mr Alok Kumar's property at 15, Patliputra Colony, Patna as it was purchased primarily through illegal diversion of deposits of allottees/complainants. Hence Ruben Hospital is directed to deposit the entire remaining amount of sale proceeds i.e. (Rs 2,54,49,603 + Rs 41,08,753 = Rs2,95,58,356 crores with the Authority, as agreed and requested by Mr Alok Kumar in his petition dated 9.1.2021 filed with the Authority and also,during the course of hearing on 10.02.2021. To start with, they may pay Rs 65,95,505 + Rs 41,08,753 = Rs1,07,04,258, as committed by them within seven days.
- (3) Mr Alok Kumar is also directed to honour his commitment given to the court by paying back the remaining loan amount to IOB, Kankabagh and obtain a No-objection certificate from the Bank for registration of the Property in favour of Ruben Hospital.
- (4) Mr Alok Kumar had also illegally given the property (House No-15, Patliputra Colony, Patna) created from the proceeds of the deposits of the Allottees/Complainants as **guarantee** for a Cash Credit loan of his wife as MD of M/s Indus Ventures, a partnership firm for Rs 4.50 crore from Indian Overseas

Bank, Anisabad. Mr Alok Kumar and his wife MrsVijaya Raj Laxmi are directed to deposit Rs 4.31 crores immediately with the Authority.

- (5) A fresh notice be issued to the previous directors –Mr Rana Ranvir Singh and Mr Keshav Shankar to remain present during the hearing on the next date and all future hearings until further orders.
- (6) Mr Alok Kumar, Director is once again directed to hand over/deposit all original deeds of Absolute sale/purchase of plots of land and/or Apartments at Parmanandpur, Sonepur, Varanasi, House No-A/15, Yogipur, Lohiyanagar, Kankarbagh, Patna, flat No-A/403, Awadh Apartment, Bhootnath Road, Kankarbagh, Patna and the plot of 7-8 kathas of land, near Maulana Engineering College, Danapur, Patna with the Authority immediately along with an affidavit that they were surrendering them for auction/sale for refund of the deposits of the complainants.
- (7) The Petition filed by Mr Alok Kumar under Section 39 of the Act may be made available to each complainant , seeking response his/her response within two weeks.The proposal of Mr Kishore Kunal Advocate for sale of plots of land and/or handing over the plots to allottees may be sent to each complainant with a direction to submit his response within two weeks.

Put up on 05.03.2021 at 3.30 PM.

Sd/-

(R.B. Sinha)

Sd/-

(AfzalAmanuallah)