

REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR

Before the Bench of Mr. Naveen Verma, Chairman, Mr. R.B. Sinha, Member and Mrs. Nupur Banerjee, Member

Complainants cases Nos-CC/396/2019, 111/2018, 112/2018, 175/2018, 213/2019, 2016/2019, 225/2019, 226/2019, 229/2019, 230/2019, 231/2019, 263/2019, 267/2019, 269/2019, 270/2019, 271/2019, 275/2019, 276/2019, 281/2019, 284/2019, 287/2019, 289/2019, 292/2019, 293/2019, 302/2019, 306/2019, 307/2019, 310/2019, 311/2019, 312/2019, 323/2019, 352/2019, 354/2019, 363/2019, 373/2019, 378/2019, 400/2019, 401/2019, 402/2019, 411/2019, 417/2019, 418/2019, 425/2019, 426/2019, 429/2019, 435/2019, 455/2019, 456/2019, 457/2019, 458/2019, 477/2019, 502/2019, 503/2019, 520/2019, 523/2019, 526/2019, 531/2019, 532/2019, 537/2019, 545/2019, 559/2019, 563/2019, 575/2019, 576/2019, 639/2019, 646/2019, 649/2019, 650/2019, 652/2019, 653/2019, 655/2019, 659/2019, 660/2019, 662/2019, 663/2019, 664/2019, 665/2019, 666/2019, 668/2019, 670/2019, 675/2019, 676/2019, 679/2019, 680/2019, 682/2019, 683/2019, 685/2019, 686/2019, 688/2019, 689/2019, 690/2019, 691/2019, 692/2019, 693/2019, 694/2019, 695/2019, 697/2019, 700/2019, 701/2019, 702/2019, 704/2019, 708/2019, 710/2019, 711/2019, 712/2019, 713/2019, 714/2019, 716/2019, 720/2019, 722/2019, 725/2019, 726/2019, 728/2019, 730/2019, 731/2019, 732/2019, 735/2019, 740/2019, 750/2019, 751/2019, 792/2019, 793/2019, 794/2019, 808/2019, 809/2019, 813/2019, 816/2019, 817/2019, 821/2019, 823/2019, 824/2019, 827/2019, 828/2019, 829/2019, 832/2019, 833/2019, 836/2019, 837/2019, 838/2019, 840/2019, 841/2019, 842/2019, 843/2019, 846/2019, 847/2019, 848/2019, 852/2019, 854/2019, 855/2019, 856/2019, 857/2019, 859/2020, 860/2020, 861/2020, 865/2020, 866/2020, 879/2020

Suman Kumari and others..... Complainants

vs.

M/s Agrani Homes Pvt. Ltd. Respondent

04.06.2021

Proceedings

The proceedings were held online through video conferencing mode. Most of the complainants were present. Mr Puneet Sidharth Advocate, Mr Kishore Kunal Advocate, Mr Bipin Behari, 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 and Mr Sanjay Singh Advocate. Mr Apurva Harsh, Advocate represented Mrs Sikha Singh, Ex- Director. Mr Satyajeet Kumar Singh,

MD and Mr Navin Kumar Sinha Advocate represented M/s Ruben Patliputra Hospital Pvt Ltd.

At the outset, Learned Counsel of the Respondent company Mr Sanjay Singh welcomed the new Chairman and Member Mrs Nupur Banerjee and hoped that the new bench will be positive towards respondents as well. Mr Navin kumar, Chairman in his opening remarks stated that the Bench can only be positive if the Respondent company comes out with clean hands and positive approach. He further stated that the past proceedings indicate total lack of trust of the complainants in the respondent company. He felt that the promoters have to earn back the trust of customers/allottees if they have to survive the fierce competition in the sector.

The Bench thereafter recalled that Learned Counsel of the Respondent Company Mr Sanjay Singh had committed in course of hearing on 18th February to come out with a comprehensive plan that would address the issue of refund of deposits to the complainants in a time-bound manner. Accordingly, the Respondent Company had submitted a plan on 5th March 2021 but Learned Counsel Mr Singh was not present due to certain unavoidable personal reasons to present the plan. In course of hearing on 15.03.21, Mr Sanjay Singh, Advocate while presenting the plan stated that the Respondent company has submitted a five pronged plan to refund the deposits to the complainants/allottees in a time-bound manner. He highlighted the salient points of the plan and stated that he has come with a cheque of Rs one crore that can be encashed immediately with inclusion of the name of the payee and date. He stated that under the plan 2, the respondent company has got a buyer for 80 kathas of land at Dhawalpur, South of Bye-Pass, Patna (27 kathas- Registered, 27 Kathas- full money paid and 26 kathas- Agreed) that would fetch 14.40 crores (@Rs 18 lakh per kathas) to the Authority. After adjustment of Rs 3.00 crores towards remaining amount to be paid to farmers/registration charges, the Authority would get Rs 11.40 crores for disbursement amongst the complainants. He stated that the buyer has committed to make payment of entire sale proceeds within 11 months. He stated that under Plan 1, the respondent has agreed to dissolve several development agreements executed with land-owners and get the amount of advance/money deposited with RERA for making payment to the

consumers. He assessed that about Rs 13.75crores would be collected under this plan. Under the Plan 3, the respondent Company proposes to register the plots of land admeasuring 1.3 Bighas in their project Prakriti Vihar to 182 consumers after development of the land from part of the sale proceeds. He claimed that the Authority could get about 8 crores under this plan. Under Plan 4, the Respondent company proposes to commence a few projects so that their business in the real estate sector could again pick up. The Respondent company has requested the Authority to approve the registration of these 7-8 projects, whose applications are pending with the Authority. Under Plan 5, the Respondent Company has requested for adjustment of claims of 27 complainants who has agreed to take plots of land in the project, as requested by Mr Kishore Kunal, Advocate. Learned Counsel Mr Singh stated that to start with, any one plan may be approved by the Authority. He suggested that initially the Plan 2 may be approved by the Bench so that the sale proceeds start flowing into the escrow account to be kept under the control of the Authority. Thereafter, the Bench may consider other plans as per suitability for approval. The Bench after detailed deliberations had directed that the proposals of the Respondent Company preferably Plan 1 to 3 & 5 should also be examined by the complainants and their counsels. Opinions/views, if any, be made available to us within two weeks. The Bench further informed that they have received a few petitions from the complainants in this respect. The Bench also informed that Authority has complied with the directions given on the previous day to the effect that Rs 1,07,04,258 received from M/s Ruben Patliputra hospital Pvt Ltd be paid to the complainants as per the criterion prescribed by the Bench expeditiously. The Bench informed that Complainants upto serial number 400 have been paid as per the criterion.

The Bench however informed that Ruben Hospital has not paid the remaining amount (Rs 1,88,54,098) to the Authority inspite of directions given. Further, the Ruben Hospital has not informed whether the entire receipts from the facilities existing at 15, Patliputra Colony are being kept in an escrow account and has not been submitting a fortnightly report to the Authority regarding the balance available in the account. They have also not submitted the entire revenues received by them from the said facilities from 1st July 2020 to 31st March 2021 till date. The Bench further informed that Mr Alok Kumar has not kept his commitment given to the court vide his petition dated 9.2.2021

for paying back the remaining loan amount to IOB, Kankabagh and obtain a NOC from the Bank for registration of the Property in favour of Ruben Hospital. He has also not repaid Rs 4.31 Crore, the amount diverted by him to adjust the loan of its sister concern Indus ventures (MD- Ms Vijaya Raj Laxmi) and not deposited all original deeds of Absolute purchase of plots of land of IOB Nagar, Keshripur, Parivida, Bachhawan and Druva, Darekhu, 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 as directed by the Bench. The Bench thereafter requested all parties to present their action taken reports on the directions given.

Sale of Patliputra Property

Chairman stated that since MD of the Ruben Hospital is present, he should be heard first as he has to go somewhere. Dr Satyajeet Singh, MD Ruben Hospital stated that he executed an agreement for sale with Mr Alok Kumar for purchase of his property A-15, Patliputra Colony and the first two payments were made in favour of RERA, Bihar only. He also admitted that he had thereafter released payments directly to Mr Alok Kumar. He also stated that as property papers were with bank, he released payments to Bank to get the NOC from them. He expressed his willingness to pay the balance amount to RERA, provided Mr Alok kumar clears his dues with the Bank and gets a NOC from Bank to enable him to get the registration of the property done. Mr Kishore Kunal, Advocate, appearing on behalf of eleven complainants, stated that the transaction of Ruben Hospital was a sham transaction and Ruben management has benefitted tremendously through this sale at the cost of allottees/complainants.. He requested the Bench to recall its proceedings held on 31st January 2020, when Mr Alok Kumar had submitted an agreement for sale executed with one Mr Narendra Kumar Singh for the same Patliputra property (15A, Patliputra Colony- 13 kathas of land with the existing double story building) at Rs 18 crores. He had also submitted six post-dated cheques to the Bench. However, within a week the cost of the property was reduced from Rs18.00 crores to Rs 12.00 crore when the property was sold to the Ruben Hospital. He stated that both Mr Alok Kumar and Ruben Hospital have colluded to defraud the complainants

/allottees. Ruben Hospital has been earning revenues from the use of the Patliputra property since July 2020 without registration/ownership and approval from the competent Authority i.e. Patna Municipal Corporation for use of the residential property as commercial property. Ruben management had deliberately released funds to Mr Alok Kumar and at his behest, to the Banks in hurry during February-September 2020 without any consultation with the RERA, knowing fully well that the Mr Alok Kumar was selling the property for refunding the deposits of his customers under the direction of RERA, Bihar.

The Bench expressed its displeasure on the conduct of the Ruben Hospital management in releasing funds in installments directly to Mr Alok Kumar, despite having released the first installment of Rs 2 crores directly in favour of the RERA, Bihar. The Bench also noted that it had directed on 24th September 2020 “..... **It is made clear that the sale proceeds of the property will be used only for repaying the money to the complainants. This money cannot be given for repayment of loans or mortgage or for any other liability. The first charge on the money is of the consumers. The Patliputra property is apparently purchased through diversion of fund collected from consumers of Agrani Projects and as such the sale proceeds in toto will have to be given to the consumers. ii) The Sub-Registrar, Patna is directed not to register any property situated in Patliputra Colony belonging to M/s Agrani Group of Companies or its Director, Mr. Alok Kumar or the other Directors of the Company until we issue a No Objection Certificate for the same.**” In spite of the directions given, the Ruben Hospital management released Rs 5.36 crores to IOB on 28th September 2020. Out of this, they paid Rs 4,31,08,752.53 in the IOB loan account of M/s Indus Ventures (Proprietor- Mrs Vijaya Raj Laxmi) as against Rs 3.90 crore stipulated in the agreement of sale executed on 7th February 2020.

Mr Alok Kumar had also been directed by the court on 16th October 2019 to keep the entire funds received from sale of Patliputra properties in a designated bank account and pay to the complainants as per the criterion prescribed by the Authority. However, Mr Kumar has admitted that he has made payment of Rs 2.00 crore only out of Rs 4.05 crore received by him to the complainants, as directed by the Authority. At the instance

of Mr Apurv Harsh, the Bench clarified that the Authority has only got Rs 3.07 crores out of total payment of Rs10.48 crores made by the Ruben Hospital till now against this purchase. The learned lawyer for the respondent company Mr Sanjay Singh submitted that the proceedings are being conducted on the presumption of diversion of funds by the respondent company and without any conclusive evidence or order. The Bench pointed out that given the fact that “ Loan to the director” of Rs 6 crores and above is being continuously depicted in the annual accounts of the respondent company for the financial year 2015-16, 2016-17 & 2017-18, observations of the statutory auditors on the annual accounts of the respondent company for the successive financial years 2015-16, 2016-17 & 2017-18, large number of complaints for refunds, the fact that construction has not even started in several projects after taking full payment in many cases some years back and admittedly the respondent has no liquid assets including funds available, it is not unreasonable to conclude that the money taken by the respondent company from home buyers for several unapproved projects has been diverted for some other purposes/projects. It was also noted that the respondent companies have not submitted the audited annual accounts of the Agrani group of companies for the financial years 2018-19 & 2019-2020 and annual statement of accounts of each registered projects for the financial years 2018-19 & 2019-2020, required under Section 4 (2) (l) (d) of the RERA Act 2016 till date, which by itself is also a serious offence under the Companies Act.

Many complainants alleged that the Ruben hospital was already earning revenue from the Residential property by using it as a commercial private hospital, without making full payment for the property. The Bench therefore reiterates its earlier direction that the Ruben Hospital should pay the remaining amount of Rs 1,88,54,098 without making it contingent upon the clearance of the home loan by Mr Alok Kumar or alternatively Ruben Hospital should open an escrow account for keeping all revenues from the facilities operating at 15, Patliputra Colony premises.

Plans Submitted by Agrani Group of Companies

The Bench thereafter requested the complainants and their advocates to give their views/opinions on the proposals/plans submitted by the respondent company to refund

the deposits made by them. Mr Kishore Kunal, Advocate requested that the respondent company must adhere to the commitments given by them. He stated that the promoter should have filed an affidavit from each land-owner also in each case under the plan 1. It would have expedited the process. He however supported the Plan 1, stating that the respondent should be permitted to collect the funds from the dissolution of the Development agreement in a time-bound manner. Mr Puneet Siddharth, Advocate stated that the MD had committed to the Authority in November 2019 that entire sale proceeds of the Patliputra Property would be kept in a designated bank account for making payment to the complainants but barely one-fourth of the sale proceeds were refunded to the complainants. He suggested that it should be ensured that in future there is no leakage of funds whenever the respondent company raises funds through these plans. The Bench noted that preliminary enquiry done by the Authority has indicated that the landowners may not have any money left with them and this may not be able to address the issues of the complainants. Many complainants and the learned lawyers for the complainants expressed doubts on the transparency of the procedure to be adopted and sincerity of the respondent to deposit the money.

Mr Sanjay Singh Advocate stated that the entire liabilities of the 158 complainants being heard today could be easily met if the Bench allows the Respondent company to proceed with the Plan 1. Member (RBS) stated that the Bench may consider permitting the respondent company to proceed with the Plan 1 provided the entire process is completed in one month i.e. 5th July 2021.

After hearing all parties and different shades of opinion, the Bench felt that the respondent may be allowed to proceed with Plan 1 on the following conditions:

- i) the names and present addresses of the landowners of each project, would be given to RERA who will be summon them to appear as allottees on the assigned date of hearing;
- ii) A representative of RERA would be associated in all discussions so that the money gets transferred directly to RERA
- iii) Shri Sanjay Singh, learned lawyer for the respondent kindly agreed to be associated in this process
- iv) The complainants can also nominate one person on their behalf, if they so desire.

The entire process would be completed in a month.

On Plan 2, the Chairman suggested that the sale price of land at Dhawalpura should not in any circumstances be lower than the circle rate. Member (RBS) stated that the Authority could explore the possibilities of getting the state government takes or acquires the land for any departments/organizations. Mr Sanjay Singh advocate stated that the circle rate of land would be lower than the market price and hence state Government may not pay the market price for the land. Mr Punit Kumar Advocate stated the period of payment by the buyer should be reduced in the instant case. He requested the Authority to get the proper due-diligence done on the proposals so that the Authority gets fair value of the assets. Mr Puneet Sidharth, Advocate however supported the present proposal submitted by the Respondent company stating that this was a step in right direction. He however cautioned the Authority that necessary due diligence should be exercised before acceptance of the proposal.

Mr Punit Kumar, Advocate stated that the promoter should provide the data of collection of funds Project-wise so that an accurate assessment could be made of the funds that have been diverted. He stated that many allottees of the respondent company have not filed their complaints with the Authority as yet and they may be filing their complaints in future. Hence, the Authority may direct the respondent company to furnish entire information so that a realistic assessment could be made of the requirement of funds for refund to the consumers.

Most of the Complainants however were sceptical of the Plans submitted by the Learned counsel of the respondent company and said that the promoter (Mr Alok Kumar) was an unreliable person and couldn't be trusted as he has illegally diverted hundreds of crores of rupees from large number of Projects without initiating them. They claimed that he had run away from the state. They stated that the Authority must undertake rigorous due-diligence exercise before accepting any plans submitted by the Promoter.

The operative part of the proceedings held online through video conferencing mode is as follows :

The learned lawyer for the respondent submitted that the proceedings are being conducted on the presumption of diversion of funds by the respondent company. The Bench pointed out that given the observations of the statutory auditors on the annual accounts of the respondent company for the financial year 2017-18, large number of complaints for refunds , the fact that construction has not even started in several projects after taking full payment in many cases some years back and admittedly the respondent has no liquid assets including funds available, it is not unreasonable to assume that the money taken by the respondent company from home buyers for unapproved projects has been diverted for some other purposes/projects. It was also noted that the respondent companies have not submitted the audited annual accounts of the Agrani group of companies for the financial years 2018-19 & 2019-2020 and annual statement of accounts of each registered projects for the financial years 2018-19 & 2019-2020, required under Section 4 (2) (I) (d) of the RERA Act 2016 till date, which by itself is also a serious offence under the Companies Act .

An audited balance sheet would give the true and fair picture of assets and liabilities of the respondent company and also enable the Authority to come to a definite conclusion on the use of funds collected from the homebuyers.

The Bench directed the respondent to submit, without any further delay, the quarterly progress reports, project wise, as prescribed in Section 11(1) of the RERA Act . In addition he was directed to furnish the details of amount collected, used and lying unspent, project wise duly certified by the Chartered accountant in practice in terms of Section 4 (2) (I) (d) of the RERA Act and Rule 4(2)(b) of the Bihar Real Estate (Regulation and Development) Rules 2017, hereafter referred as the Bihar RERA Rules .

The respondent was also directed to submit project wise statement of assets created from the funds received from the allottees, the liabilities and the details of cases for refunds in relation to that project, including those involved in cases filed before RERA immediately and not later than one week from the date of hearing. Copies of such statements would also be sent by the respondent to all the concerned applicants who are petitioners before the Authority.

The Bench noted non-compliance of its earlier directions to furnish the annual audited accounts and gave one week's time to the respondent to furnish the financial details of the promoter as prescribed in Rule 16(c) of the Bihar RERA Rules . The Bench pointed out that non -compliance of its directions would be viewed seriously and the Authority would not hesitate to invoke the provisions of the RERA Act and Bihar RERA Rules to enforce its directions .

The views of the applicants as well as their learned counsels were taken in respect of Plan 1 which was submitted by the respondent earlier. According to this proposal all the development agreements with landowners would be cancelled and then the promoter would be able to return the money received from landowners in form of nuns which is expected to be around Rs 13.75 crore and would be deposited in RERA to be further refunded to the allottees. The Bench noted that preliminary enquiry done by the Authority has indicated that the landowners may not have any money left with them and this may not be able to address the issues of the complainants. Many complainants and the learned lawyers for the complainants expressed doubts on the transparency of the procedure to be adopted and sincerity of the respondent to deposit the money.

After hearing both the parties the Bench directed that while the process of giving statement of project-wise assets and liabilities is underway, the Authority may allow the respondent to proceed with Plan 1 on the following conditions:

- i) the names , addresses of the landowners , project wise , would be given to RERA who will be summoned to appear as allottees on the assigned date of hearing ;
- ii) A representative of RERA would be associated in all discussions so that the money gets transferred directly to RERA
- iii) Shri Sanjay Singh, learned lawyer for the respondent kindly agreed to be associated in this process
- iv) The complainants can also nominate one person on their behalf, if they so desire .

In reference to Plan 2 involving sale of land in village Dhawalpura, it was pointed by one complainant Shri Nawal Kishore Prasad that the market value of land at Dhawalpura is much more than what was quoted by the respondent. The Bench requested him to assist RERA in fetching the best price, and also observed that any other person can also volunteer in this process. The respondent would give all support in this exercise. The respondent was also directed to submit a certified copy of the agreement for sale entered into by them with Mr Ajay Singh for Dhawalpura land so that the same could be treated as benchmark.

Some complainants expressed their willingness to take equivalent plot of land at Dhawalpura/ Permanandpur, Sonapur in lieu of cash refund. The Bench directed that all the complainants who are willing to adjust their refund claim against land may send their willingness by email to RERA .

The Bench decided that henceforth cases would be bunched and heard project wise in which landowners would also be associated as allottees. The respondent

would give information about the year of initiation of the projects within one day so that the cases can be listed for hearing.

As these matters have been pending for quite sometime it was decided that the matter would be heard daily, project- wise, starting from 15 June.

List the cases concerning IOB Nagar Block K and Block L on 15.6.2021. The respondent would ensure that all relevant information for these projects is submitted to RERA with copy to the complainants by 11.6.2021.

Sd/-	Sd/-	Sd/-
(Navin Verma)	(R.B.Sinha)	(Nupur Banerjee)