REAL ESTATE REGULATORY AUTHORITY, BIHAR
Before the Bench of Mr. Ved Prakash, Senior Legal Consultant

Exe. Case No -188/2021
RERA/CC/1052/2020

Mr. Manish Kumar ....Executant(s)

Vs.

M/s Lakshya Bharti Global Infra Corporation Pvt. Ltd. ....Respondent

PROJECT :Global Apartment, Phase -II

For the complainant : Mr. Piyush Kr. Pandey (Adv.)
For the respondent : Ms. Kirti Suman (Adv.)

11.05.2023 PROCEEDING

Shri Dilip Kumar Purvey, father of the executant along with his counsel Shri Piyush Kumar Pandey and Ms. Kirti Suman, learned counsel on behalf of respondent as well as Director of the respondent company are present. Learned counsel for executant files Vakalatnama. Keep t on record.

2. He further files reply to the recall petition dated 31.03.2023 filed on behalf of respondent. He also files photo copies of Dainik Bhaskar dated 23.04.2023 and order dated 17.05.2022 passed by the Hon'ble Tribunal in REAT Appeal no. 19/2022. Keep them also on record.

3. The father of the executant submits that the respondent has no intention to comply the order dated 08.07.2021 passed by the Hon'ble Member, Shri R.B. Sinha in RERA/CC/1052/2020. He further submits that the recall petition dated 31.03.2023 is barred by limitation as the same is filed after 30 days of passing of the order dated 28.02.2023. He further submits that the respondent did not come in the court on call, so the order dated 28.02.2023 for imposing cost of Rs. 200.- per day on respondent may not be recalled. He further submits that the respondent cannot sell car parking space of the executant as per law as the same is collateral of the Flat as mentioned in the agreement for sale. He further submits that the appeal of the respondent has already been dismissed by the Hon'ble Tribunal. He further submits that the Hon'ble Supreme Court in Bhoj Raj Garg vs. Goyal Education and Welfare Society and others has directed that the executing court must dispose of the executing proceedings within six months from the date of filing, which may be extended only by recording reason for such delay. He further submits that the petition dated

31.03.2023 of the respondent, being not maintainable, may be rejected with cost.

4. On the other hand, learned counsel for respondent submits that she was waiting outside the court room as it was over-crowded and she was informed that the serial no would be called out as per decorum. She further submits that the respondent Director and their legal representative were waiting for their case to be called out. When there was no information regarding the matter, and the court staff did not call out for their serial number, so in order to check the serial number of the case, they went in side the court room and then it was found that the order has been passed in the matter imposing a cost of Rs. 200/- per day on the respondent. Hence, the respondent could not attend the hearing proceeding due to non-information. As such, the respondents have no opportunity to make their submissions.

5. She further submits that prior to the proceedings of the matter, the executant's father had fixed a date and time for meeting to compromise the case, but he did not turn up on the scheduled time and date. Further, since the respondent could not avail the opportunity of hearing by the Bench so far, considering the principle of natural justice, an opportunity for being heard should be given to the respondent as well. She further submits that the respondent is ready to comply the order passed by the Hon'ble Member, hence the cost of Rs. 200/- per day imposed vide order dated 28.02.2023 may be recalled.

6. On perusal of the order dated 28.02.2023, it appears that the father of the executant was present at the time of hearing, but the respondent was found absent. Learned counsel for respondent has alleged that their case was not called by the staff of the Bench, so she could not attend the hearing along with Director of the respondent company. She further submits that the respondent is always ready to comply the order dated 08.07.2021 passed by the Hon'ble Member, Shri R.B. Sinha in RERA/CC/1052/2020. She further submits that the cost of Rs. 200/- per day imposed on the respondent to pay to the executant till the execution of sale deed of allotted Flat with car parking space in favour of the executant is not passed after hearing to the respondent/their counsel. Though learned counsel for complainant and father of the executant vehemently opposes the submissions of learned counsel for respondent, but it is a fact that the order dated 28.02.2023 was passed without hearing to the respondent/learned counsel. It may be possible that the call of the staff could not have been heard by the respondents/ their learned counsel, and after hearing, the order dated 28.02.2023 for imposing cost has been passed. It also finds

support from the fact that respondent is ready to comply the order dated 08.07.2021 passed by the Hon'ble Member in RERA/CC/1052/2020. Hence, in such facts and circumstances, the imposition of cost on the respondent appears to be harsh and unreasonable and it should be recalled.

7. Accordingly, the imposition of cost of Rs. 200/- per day on the respondent to pay to the executant is hereby recalled, but at the same time, the respondent is directed to comply the order dated 31.03.2023, otherwise, coercive step shall be taken against them.

Put up on 29.05.2023 for further hearing.

Sd/-
(Ved Prakash)
Senior Legal Consultant
RERA, Bihar