

**REAL ESTATE REGULATORY AUTHORITY, BIHAR**

**Before the Single Bench of Mrs Nupur Banerjee, Member**

**Case No.CC/527/2021**

**Sanjay Sinha, M/s Anchita Developer .....Complainant**

**Vs**

**M/s Pramilla Devi and Vijay Nath. ....Respondent**

**Project: Ram Enclave**

**ORDER**

19/07/2023

The matter was last heard on 30.05.2023 and was fixed for orders on 11.07.2023. However due to pre-occupation of the Bench in other matter, order could not be pronounced on the date fixed. On that date both the parties were absent.

The complainant submitted in earlier occasions that the complainant respondent entered into Development Agreement dated 07.12.2011 for the land situated at Mauja – Danapur Sanik Colony, Gola Road Thana code-118 of Patna Municipal Corporation area, measuring an area of a 9(Nine) kathas land. At the time of execution of the development agreement the Respondent no.1 was the legal owner of 6 katha of land and respondent no.-2 was the legal owner of 3 katha of land. The essence of the agreement was that the complainant has to make the building and the respondent will be getting his share of 45% in the super-built-up area including the building and parking space. The remaining 55% shall be under the portion of the builder. The complainant further submitted that the map could not be sanctioned in the year 2012 because Urban Development and Housing Department has restrained all the approval of new projects. In the year 2014 to 2016, the approval of map for construction of building was not allowed by PRDA. In the year 2017, Government of India brought the RERA Act and compliances has to be made and check list of documents has to be verified for applying for RERA Registration. In the year 2019, the respondent demanded extra compensatory amount for delay and so a compensatory Agreement was rendered for an additional amount. The map was sanctioned in the year 2020 and the complainant after corroborating with all the legal formalities of the RERA Act, got the RERA Registration in the year 2020. Now after much difficulty when the complainant started carrying out the work on the aforesaid, land the respondents are creating hindrances in construction of the project. He submitted that as per the provision of the development agreement the project shall be completed within 4 years from the date of passing of sanction map from competent Authorities. Now, the same has been achieved in the year 2020 and the complainant in its full spirit is trying to complete the project within 2024 but the respondents are not allowing him to proceed. Use of muscle power and local goons of the area are used by the respondent to restrain the construction activity. He has send legal notice to respondents. Hence, the complainant seeks petition that the order may be passed to allow the construction of project with immediate effect.

The respondent submitted that they have given the land but the complainant has not constructed the building in time. He has taken ten years in starting the construction over the land. He further submits that they have filed an application in the Civil Court for cancellation of the development agreement. In the suit before Civil Court, status quo has been obtained. The respondents also sent legal notice to the complainant.

Learned counsel for the respondent also submits that in the suit filed before lower court, the petition for arbitration has already been allowed and the parties are directed to take steps for arbitration and put their claims before the learned Arbitrator. Therefore, this court has no jurisdiction in the matter.

He further submits that the matter has now been referred to the Arbitrator and the same matter is also pending before the High Court and also for arbitration. In clause 22 of the Agreement, there is arbitration clause and they have approached the High Court for passing order for appointment of Arbitrator and the High Court has taken cognizance of the matter, so, this court cannot entertain upon the matter.

The complainant in the reply submitted that the final argument has been made and vacated the status quo Order. He also submitted that the injunction Order has been revoked. The respondent submitted that the status quo is continuing. The complainant submitted that the status quo order is dated 05.05.2022 and after that no status quo has been extended and last it was heard on 23.05.2022 where status quo was not extended. Therefore, after 23.05.2022 the status quo order will not exist.

Learned counsel of complainant refers the case of *Nageshwar Singh Swaraj & Ors. Vs. M/s Rukmani Buildtech Private Limited & Ors, REQUEST CASE No.68 of 2019*, and submits that in this case, the Hon'ble Patna High court has observed that the object and purpose of both the statutes i.e., Arbitration Act & RERA Act, are distinct and different, and there is nothing inconsistent or derogation therein. The Arbitration Act was enacted to consolidate and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards as also to define the law relating to conciliation and for matters connected therewith or incidental thereto. Whereas the RERA Act was enacted to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto. Hence, this Authority has Jurisdiction.

The Bench notes the submissions of the Parties and put reliance on Hon'ble Supreme Court recently observation in *M/s Newtech Promoters & Developers Pvt. Ltd. Vs State of U.P & Ors. [2022] (1) RCR (Civil) 357*, where the Hon'ble

Supreme Court observed that under Section 31, the complaints can be filed either with the authority or adjudicating officer for violation or contravention of the provisions of the Act or the rules and regulations framed there under. Such complaint can be filed against “any promoter, allottee or real estate agent”, as the case may be, and can be filed by “any aggrieved person”, and it has to be read with an explanation, “person” includes an association of allottees or any voluntary consumer association registered under any law for the time being in force.

It has further observed by the Hon’ble Supreme court that establishment of the Real estate Regulatory Authority (the Authority) for regulation and promotion of real estate sector and to ensure sale of plot, apartment or building, as the case may be, in an efficient and transparent manner and to protect the interest of consumers in real estate sector and establish the Real Estate Appellate Tribunal to hear appeals from the decisions, directions or orders of the Authority.”

Further, *In Lavasa Corporation Limited v/s Jitendra Jagdish Tulsiani & Others, Second Appeal (Stamp) Nos. 9717 of 2018, 791 of 2018, 792 of 2018*, the Hon’ble Bombay High court has observed that the RERA is, therefore, enacted to provide for establishment of the 'Real Estate Regulation and Development Authority' for regulation and promotion of real estate sector and to ensure sale of plot, apartment or building, as the case may be, in an efficient and transparent manner. The object of the RERA is stated to be to protect the interests of consumers in the real estate sector.

Thus, it has been observed by the Bombay High Court that the RERA is brought on Statute Book to ensure greater accountability towards the consumers and significantly reduce frauds and delays, as also the current high transaction costs. It attempts to balance the interests of consumers and promoters, by imposing certain responsibilities on both. It seeks to establish symmetry of information between the promoter and purchaser, transparency of contractual conditions and set minimum standards of accountability and a fast track dispute resolution mechanism. The RERA, as stated in its 'Objects and Reasons', was enacted for inducting professionalism and standardization in the sector, thus, paving the way for accelerated growth and investments in the long run.

In the light of above discussions and also taking in to the consideration of Judgment of *Nageshwar Singh Swaraj & Ors. Vs. M/s Rukmani Buildtech Private Limited & Ors, REQUEST CASE No.68 of 2019*, referred by complainant as well as observation of Hon’ble Supreme court and Bombay High Court in the above discussed cases, this Bench observes that this Bench can entertain upon the complaint filed by Promoter under section 31 of the RERA Act, 2016 and RERA has jurisdiction to entertain, though having Arbitration clauses in the Agreement.

The Bench also observed that since the development agreement is still in force and no order is brought on record from which it appears that any stay is granted, hence, Bench directs complainant to carry their construction on the project

site and complete the same as per the sanctioned plan and in time frame manner in consonance to grant of registration of Project from the Authority. The Bench further directs the Respondents, land owners to cooperate with the complainant in the construction of work and do not create any hindrance at the Project Site.

With the aforesaid observations and directions, this case is disposed of.

**Sd/-**  
**Nupur Banerjee**  
**Member**