REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR
Before the Single Bench of Mrs. Nupur Banerjee, Member

Case No: RERA/CC/1068/2021

Nand Kishore Sharan ...Complainant

Vs.

M/s Sudami Homes Pvt. Ltd. ...Respondent

Present: For Complainant: Mr. Jai Ram Singh, Advocate

For Respondent: Mr. A.K.Sinha, Advocate

17/08/2023 **ORDER**

This 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.

The complainant has filed a complaint petition against the respondent u/s 7 of the Real Estate (Regulation & Development) Act, 2016 with the following reliefs:

(i) Issue notice to the respondent for filing show cause and further order to stop the construction as well as order not to create the third party interest till disposal of this complaint case;
(ii) Order to cancel the RERA registration number as it was obtained against the provision of Section 4 of the RERA Act, 2016.

In this matter, the complainant has stated that the respondent has obtained RERA registration certificate vide RERA Registration No. BRERAP01031-1/733/R-473/2019 with suppression of material facts that on the same plot another development agreement was existed with another promoter, which comes against the provision of Section 4(2)(L) of the Act. The promoter has suppressed the material fact that Survey Plot No.338 Khata No.207 measuring 21 decimals is free from all encumbrances. It is stated that the complainant was a promoter of the said plot, who has executed a registered development dated 29.07.2011 with the land owner of the said plot. Before execution of registration of the development agreement the land owner of the plot has received Rs.26.00 lakh and also threaten to murder for which a complaint Case No. 1970/2019 was filed against the land owner of the said land which is still pending before the ACJM, Danapur.

It is further stated that without cancelling the registered document dated 29.07.2011 executed between the land owner of the said plot and the complainant, the concerned land owner has executed another registered development agreement dated 14.08.2018 between the land owner and the respondent company and obtained registration certificate vide RERA registration No.BRERAP01031-1/733/r-473/2019 from RERA which fact was concealed by the respondent company.

In pursuance to receipt of the complaint petition, a notice was issued to the respondent company to file their reply. In response to the said notice, the respondent has filed their reply/ show cause stating therein that the complaint

case is not maintainable either in law or on facts and the complaint case is barred by the Rule of Estoppel and Acquiescence and law of Limitation. It is stated that none of the allegations made in the complaint petition is admitted. The respondent has not suppressed any material fact while obtaining RERA registration. It is further stated that the respondent had complied with all the requisites as per section 4(2)(a) to (k) of the Act, 2016 and has also filed a declaration supported by an affidavit as per section 4(2)(I) of the Act. He has also filed all the deeds/ documents appertaining to title of Sri Jai Kumar Singh and his two sons. It is also stated that the promoter had entered into development agreement with Sri Jai Kumar Singh and his two sons on 14.08.2018 and at that time there was no encumbrance whatsoever w.e.f. the said piece of land. It is also stated that it is true that Jai Kishore Singh earlier entered into a development agreement dated 29.07.2011 with the complainant but the said development agreement stood cancelled on 24.01.2017. As such, there was no encumbrance upon the said piece of land on 14.08.2018when the development agreement was concluded in between Jai Kumar Singh and the promoter. Hence, there was no violation of Section 4(2)(I) of the Act, 2016 by the promoter as alleged.

It is further stated that Jai Kumar Singh had entered into development agreement dated 29.07.2011 with the complainant w.r.t. the aforesaid piece and parcel of land whereby the complainant had agreed to develop the aforementioned piece of land and to construct a multi-storeyed residential building complex over there on the condition of sharing of constructed area in terms of flats and parking spaces in the ratio of 50:50. According to the said development agreement the complainant was duty bound to complete the entire project and deliver the possession of 50% constructed area to Jai Kishore Singh, the landowner, within three years from the date of approval of construction plan with a grace period of six months but he failed to perform his commitment even after lapse of the stipulated period. It is also stated that the complainant even failed to get the map for the project approved by the competent authority. Thereafter, after cancellation of development agreement dated 29.07.2011, Jai Kishore Singh and his two sons has entered into development agreement with M/s Sudami Homes Pvt. Ltd. on 14.08.2018.

It is further stated that even after lapse of almost 4 years and 8 months from the date of execution of development agreement dated 29.07.2011, when the complainant did not take any steps towards implementation of terms, Jai Kumar Singh sent a legal notice to the complainant on 06.04.2016 and 20.05.2016 intimating that the said development agreement had come to an end by efflux of time and therefore, the same has been rescinded. Thereafter the complainant responded to the legal notice dated 20.5.2016 by sending reply on 03.06.2016 in which the complainant falsely alleged that the possession of the land was delivered to him by Jai Kishore Singh, the land owner, after 3 months from the date of execution of the development agreement dated 29.07.2011 and the Bihar Govt. had stopped approval of map since June, 2011 which was still continuing, therefore, he was unable to complete the construction work within stipulated time. In response to the reply dated 03.06.2016 the land owner Jai Kishore Singh again sent a legal notice to the complainant on 28.06.2016 contradicting the allegations levelled by the complainant. The complainant did not respond to the said legal notice, therefore, Jai Kishore Singh got one more legal notice dated 02.09.2016 served

upon the complainant requesting him to come to the District Sub-registration office, Patna for execution of a Deed of Cancellation failing which the land owner shall be constrained to cancel the said development agreement unilaterally. Even after publication of the said notice the complainant failed to respond, therefore, Jai Kishore Singh proceeded with cancellation of development agreement dated 29.07.2011 and got a Deed of Cancellation registered on 24.01.2017 at the District Registry Office, Patna. It is stated that in this background the landowners have validly executed the development agreement dated 14.08.2018 in favour of M/s Sudami Homes Pvt. Ltd. which has obtained RERA registration without violating any provisions of the Act. Hence, the instant complainant petition is devoid of merit and is fit to be dismissed.

On 19.05.2022 learned counsel for the complainant submitted that the complainant is the Ex-builder and the first development agreement has been executed between the complainant and the landowner for the same land but later on without cancelling the development agreement with the complainant, the landowner entered into the agreement with the respondent and obtained registration of the project. Hence this complaint is for revocation of registration on the ground of misrepresentation. On that date the Bench directed the complainant to implead the landowner as a party respondent in this case.

In compliance to the said order the complainant has filed a petition on 29.06.2022 for adding the name of the landowner, namely, Jai Kishore Singh as respondent in this case.

Learned counsel for the complainant reiterated his submissions as raised in the complaint petition.

Learned counsel for the respondent has also reiterated his submissions as stated in their show cause/ reply by adding that the building is already complete.

On 20.09.2022 the Bench directed the Registration Wing to examine each and every aspect of the matter and take appropriate decision in view of the allegations levelled. In compliance to the direction of the Authority dated 20.09.2022 the Registration Wing submitted its report on 26.04.2023 finding that "the complainant is neither the landowner nor the promoter or allottee and in this case, interest of allottees has been generated and the project appears to be nearing completion as per QPR submitted by the promoter. Therefore, this project may not be revoked."

From the submissions made by both the parties and in view of the report submitted by the Registration Wing, it is clear that the first agreement was done by the landowner with the complainant on 29.07.2011 and the second development agreement was done by the landowner with the respondent promoter on 14.08.2018. It means that the first promoter was unable to mature his project during these seven years and automatically the agreement period expires by efflux of time. It is also made clear that the present promoter has mostly completed the project and the interest of allottees is involved in this project. So, at this juncture it is not possible to revoke the registration obtained

by the respondent. The complainant is at liberty to approach the competent Civil Court for getting his agreement reviewed.

With the aforementioned liberty, this petition is disposed of.

Sd/-
Nupur Banerjee
Member