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

Case No: RERA/CC/475/2022

Bimal Bihari Agrawal ...Complainant

Vs.

M/s City Makers Pvt. Ltd. ...Respondent

Project: Bankey Bihari Kunj

06/12/2023 **ORDER**

This matter was last heard on 12.09.2023 and was fixed for orders on 07.11.2023. However, due to pre- occupation of the Bench in other matter, order could not be pronounced on the date fixed.

On the last date of hearing i.e. on 12.09.2023 Mr. Diwakar Kumar, Advocate appeared on behalf of the complainant, Mr. Sumit Kumar, Advocate appeared on behalf of the respondent and Mr. Sanjay Prakash Verma, Advocate appeared on behalf of PMC.

This complaint petition by way of review has been filed on behalf of the complainant under Rule 20 of the Bihar RERA (Gen) Regulation, 2021 for reviewing the order dated 30.06.2022 passed in RERA/CC-1232/2020.

In short, the case of the complainant is that the order passed by RERA in C.C.No. 1232/2020 could not be finally adjudicated even some facts were left to be decided. Firstly, when the hearing was taken up in 2021 at each and every date the authorized representative of respondent submitted that he will file reply of notice dated 03.07.2020 which was sent to the respondent company u/s 31 of RERA Act and Rule 36 of RERA Rules, 2017 in compliance of which the respondent has not filed the reply. But on page-3 of the order it is mentioned that the respondent has filed reply on 14.09.2020, which is a cheating. It is stated that as per Rule one copy of the reply must be provided to the complainant He had asked the Legal Section of RERA to provide a copy of the reply filed by the respondent but the Legal Section said that no reply has been filed by the respondent. It is further stated that he, in the last hearing of the case clearly mentioned that though four flats of his share are in his custody but the developer has not provided the possession of the flat, neither the keys of three flats, nor the possession letters of all the four flats are provided by the developer, but in the order it is mentioned that the developer handed over the possession of four flats to the complainant which is a highly disappointing statement. In the order it is also mentioned that the developer has not completed the construction of the building and has not obtained the occupancy certificate from the PMC. It is also stated that the developer received registration of the said apartment in 2018 for two months which was expired on December, 2018 but he did not apply for re-registration, therefore,

RERA should have declared the developer as defaulter but it failed to do so. After getting registration from RERA in 2018 on false information he started registering the flats in favour of the allottees. The registration acquired by providing false information is invalid and therefore, the registry done by the developer in favour of the allottees is also invalid. It is stated that the developer cheated and violated the rules and regulations of RERA as well as PMC but RERA failed to take any appropriate action against the developer. He has raised the issue in the complaint petition to provide possession letter s of four flats of his share bearing flats No. A/303, B/101, B/202, B/403, allotment of four car parkings, completion and occupancy certificate and compensation of Rs.2,57,90,000/- as per para-6 of the supplementary agreement dated 29.04.2014 but the Bench did not pass any order regarding possession letters and parkings. Regarding occupancy certificate, no timeline is provided to the respondent. Therefore, all his grievances remained unsettled which need to be finally adjudicated. Hence, this review.

A reply has been filed on behalf of the respondent on 12.09.2023 stating therein that the instant case is not maintainable before the Authority on facts and also on law. The Authority has no jurisdiction to review its own order dated 30.6.2022 passed in C.C.No. 1232/2022 in view of Regulation 20 of the Bihar Real Estate Regulatory Authority (General) Reg., 2021 which was substituted by Bihar RERA (Amdt.) General Regulation, 2022 vide Notifn.No.1 dated 22.08.2022 i.e. two days prior to filing of this review petition which provides for "rectification of order". It is stated that the rectification of the order dated 30.06.2022 is also not maintainable on the ground that the complainant has preferred an appeal bearing REAT Appeal No.69/2022 and 70/2022 with respect to the project in question which have already been disposed of by the Hon'ble Appellate Tribunal. It is further stated that it is not clear under which provision the complainant has filed the instant complaint petition. Normally the complaint has been filed u/s 31 of the RERA Act and rectification u/s 39 of the RERA Act and there is no provision for review of the order passed by the Authority. It is also stated that the complaint petition filed by the complainant is neither on affidavit nor verified by the complainant. Hence, for all these reasons this complaint petition under review is not maintainable in the eye of law. Hence, it is fit to be dismissed.

In view of the last proceeding dated 17.07.2023 and 12.09.2023 the Corporation has not filed any submissions with regard to this case.

A petition has been filed on behalf of the complainant on 12.09.2023 stating that he has filed a petition on 25.08.2022 for possession letters of flats A/303, B/101, B/202, B/403 in his share, allotment letter of four car parkings, balance payment of 283 sq.ft. as per supplementary agreement dated 29.04.2014 and compensation as per para 6 of the said agreement. He submitted that the flats are in his possession but without O.C. and possession letter he cannot sell the flat. On 12.04.2023 the PMC has given a report that the occupancy certificate of the project cannot be issued as the map submitted

by the developer for O.C. is invalid. The registration of the project is invalid. Therefore, without valid registration and O.C. conveyance deed executed by the respondent in favour of the purchasers is also invalid, which is clearly mentioned in the judgment dated 19.05.2023 passed by the BREAT, Patna in REAT Appeal No.69/2022 and 70/2022. The respondent has contravened the provisions of Sections 3, 4, 11 and 17 of the RERA Act .

Regulation 20 of the Regulation, 2021 reads thus:

> "20. Rectification of order. - Any person may file rectification petition in reference to order passed u/s 31 of the Act as provided in Section 39 of the Act along with a fee of Rs.100/- (Rupees one hundred only)."

Perused the records.

The Authority notes that the complainant must have filed the petition as per Regulation 20 of the Bihar Real Estate Regulatory Authority Regulation, 2021.

On perusal of the records, the Authority observes that the complainant has filed a fresh complaint petition for reviewing the order dated 30.06.2022 passed in C.C.No.1232/2020. The Authority notes that Section 39 of the Real Estate (Regulation and Development) Act, 2016 does not give power to the Authority for review of its order. This petition seeks a substantive change in relief which is not covered in the category of "error apparent on the face of record". Therefore, the second complaint petition for review of its own order is not maintainable.

It is, accordingly, dismissed as not maintainable with a liberty to the complainant to file a proper petition.

Sd/-
Nupur Banerjee
Member