



REAL ESTATE REGULATORY AUTHORITY (RERA)
IN THE COURT OF ADJUDICATING OFFICER
4TH & 6TH FLOOR, BIHAR STATE BUILDING CONSTRUCTION CORPORATION CAMPUS
HOSPITAL ROAD, SHASTRI NAGAR
PATNA-800023

Execution Case No.176/2021

RERA/CC/13/2021

Krishna Gopal Verma Complainant/Executant

Vs

M/s Makan Developers Pvt. Ltd. Respondent

Project: ASHA KRISHNA APARTMENT

ORDER

06/11/2023:

Hearing taken up. Heard Mr. Mayank Rukhaiyar, learned counsel for the executant and Mr. Sumit Kumar, learned counsel for the respondent.

2. The executant has filed this case for execution of the order dated 10.09.2021 passed in Case No.CC/13/2021 by a Double Bench of the Authority comprising of Mr. Naveen Verma, Chairman and Mrs. Nupur Banerjee, Member, whereby the Double Bench of the Authority while disposing of the case, was pleased to direct the respondent-company to provide possession of share of flats to the complainant as per development agreement within 15 days of the order.

3. The executant submits that when the respondent did not comply with the aforesaid order within the stipulated period and the exercise of amicable settlement has also failed then the executant has no other option but to file this execution case. It is further submitted that the respondent is not ready to comply with the order dated 10.09.2021 passed in Case No. CC/13/2021.

4. It is pertinent to mention here that during the pendency of this case the original land owner (complainant/executant) Asha Verma died and in her place Mr. Krishna Gopal Verma her husband has been substituted vide order dated 20.05.2022 passed in this case.

5. This matter was taken up on for hearing on different dates by the Authority and after hearing both the parties directed the respondent company to comply with the order dated 10.09.2021.

6. When the matter was taken up for hearing on 17.06.2022 learned counsel for the respondent has handed over the keys of seven flats out of eight flats to the executant and the keys of 8th flats take on hold on the ground of some dispute between the legal heirs of Asha Verma. In reply, learned counsel for the executant submitted that there is no dispute because all the legal heirs have authorized the substituted executant to take the possession of flats of the share falls in favour of Late Asha Verma. Thereafter this case has been listed on several dates and lastly vide order dated 14.10.2022 this matter has been transferred by the Single Bench of the Authority comprising of Mrs. Nupur Banerjee to the Bench of learned Senior Legal Consultant, Mr. Ved Prakash.

7. After transfer of the matter to the Bench of Senior Legal Consultant the matter has been adjourned on several dates at the instance of the respondent. On 25.04.2023 the Bench of learned Senior Legal Consultant directed the respondent to deliver the possession of Flat no.103 situated on first floor of Asha Krishna Apartment to the complainant as it was already allotted to her and also to pay the penalty of Rs.50,000/- in favour of the Authority and in case of failure to comply the order, further coercive step shall be taken against the respondent. The Bench further directed that a letter be issued to the respondent to that effect and adjourned the matter to 30.05.2023 for further hearing. Against the said order dated 25.04.2023 the respondent filed appeal bearing REAT Appeal No.26/2023 before the Appellate Tribunal challenging the jurisdiction of the Bench of learned Senior Legal Consultant. The Appellate Tribunal vide order dated 07.08.2023 has set aside the order dated 25.04.2023 as the Senior Legal Consultant has no such jurisdiction or authority to pass order in execution proceeding particularly in view of Rule 26 and hence remitted back the matter to the Authority to execute order afresh within 30 days in accordance with law and in case it finds unable to do then send it to the Principal Civil Court as per rule 26 of the Real Estate (Regulation and Development) Rules, 2017.

8. Since vide Office Order No. RERA/TE/Misc./53/2022/152 dated 23.12.2022 the Authority has been pleased to delegate its function of hearing and disposal of the Execution cases which have been filed for enforcing the implementation of the orders passed in complaint cases by it to the Adjudicating Officer RERA, Bihar, hence after remand of the matter this case

has been transferred to this Bench. Thereafter notice was issued to the respondent on 18.09.2023 and pursuant to the notice Mr. Sumit Kumar learned counsel has appeared for the respondent and submits that the matter be kept pending till the final order passed by this Court in compensation matter pending before this court. The submission made by the learned counsel for the respondent is vehemently opposed by learned counsel for the executant. He submits that the reliefs prayed in both the cases are different and this case cannot be stayed till disposal of other case pending before this court. He further submits that since the respondent has failed to fully comply with the order dated 10.09.2021 passed in Case No. CC/13/2021 by a Double Bench of the Authority comprising of Mr. Naveen Verma, Chairman and Mrs. Nupur Banerjee, Member, the respondent is still not taking interest to deliver the possession, hence the execution case may be sent to the learned Civil Court for execution and delivery of possession of the 8th Flat to the executant. Since the respondent has not taken any positive steps to comply with the above order of the Double Bench of the Authority, as it is the responsibility of the Director of the respondent company to deliver possession of flats to the executant within the stipulated period as directed by the Double Bench of the Authority which could not be complied with as yet.

9. In such view of the matter, the executant cannot be left to suffer for indefinite period as the court has to do justice equally for both parties.

10. Therefore, in view of the observation made by the learned Appellate Authority and in the light of Section 40(2) of the RERA Act, 2016, read with rule 26 of the Bihar RERA Rules, 2017 and the request of the executant as also in view of the inability of this Bench to execute the order dated 10.09.2021 passed in Case No. CC/13/2021, this execution case along with the above order of the Double Bench of the Authority is sent to the Principal Civil Court through the learned District Judge, Patna with request to fully execute the order dated 10.09.2021 passed by a Double Bench of the Authority in Case No. CC/13/2021 in its letter and spirit, with a further request to inform the Authority about the outcome of the execution case.

Sd/-

(Amrish Kumar Tiwari)
Adjudicating Officer