

COMPLAINT CASE NO. 66/2019

Pabitra Maity, --- Complainant
S/o Sri Ashutosh Maity,
Flat No. A/2B, Basudeo City,
Behind Dr. K.K. Sinha,
First Mark School Street,
P.O.-Lem Baragain, P.S.-Sadar,
Ranchi – 834 009, Jharkhand

-VERSUS-

1. Basudeo Sahu, --- Respondent
S/o Late Shivnath Sahu,
Developer- Promoter- Partner- Builder,
M/s Maa Bhawani Construction,
Flat No. A/3-A, Basudeo City,
Behind Dr. K.K. Sinha,
First Mark School Street,
P.O.-Lem Baragain, P.S.-Sadar,
2. Babu Lal Mahato,
S/o Dashrath Mahato,
Partner, M/s Maa Bhawani Construction,

Naya Toli, Mesra, P.O.-Neori Vikas,
P.S.-Sadar, Ranchi, Jharkhand

3. Fuleshwar Sahu,

S/o Late Parasnath Sahu,
Village- Baragain, P.O.- Lame Baragain,
P.S.- Sadar, District- Ranchi,
Jharkhand

4. Dhiren Sahu,

S/o Late Jagman Sahu,
Village- Baragain, P.O.- Lame Baragain,
P.S.- Sadar, District- Ranchi,
Jharkhand

Complainant represented through --- Self

**Respondent No. 1 represented through --- Sri Dhananjay Kumar,
Advocate**

--- Sri K.N. Mishra, Advocate

Respondent No. 2 represented through --- Sri K.N. Mishra, Advocate

--- Sri K.K. Singh, Advocate

Respondent No. 3 represented through --- Sri Baldeo Saw, Advocate

Respondent No. 4 represented through --- Sri S.K. Das, Advocate

Coram:- Hon'ble Chairman Smt. Seema Sinha

JUDGMENT

23.06.2022

1. The above named Complainant has filed this Complaint Petition against the Respondents (i) Basudeo Sahu, S/o Late Shivnath Sahu (ii) Babu Lal Mahato, S/o Dashrath Mahato are the builder of M/s Maa Bhawani Construction situated at Baragain, P.S.- Sadar, Dist.- Ranchi over R.S. Khata No. 26 under Khewat No. 3, Plot No. 2575, 2576 & 2577, seeking following reliefs:-
 - i) to direct the Respondent to complete the building in accordance with approved building plan sanctioned by the RRDA and also
 - ii) to register the flat in the name of Complainant's wife by executing a sale deed and further
 - iii) to direct the Developer to construct the approach road as per Jharkhand Building Bye Laws.
 - iv) to provide proper drainage

- v) to construct sufficient parking space and to allot the same to the flat owner, to remove the tent house materials from the parking space and other area
- vi) to stop the seepage from the floor of parking area and entry of rain water
- vii) to construct a proper guard room and boundary wall and other facilities as per sanctioned plan.
- viii) it is also prayed to remove the construction made by the builder in violation of the sanctioned plan and also to provide proper water harvesting system and supply of water from Municipal Corporation alongwith other reliefs which are mandatory as per Jharkhand Regional Development Authority Act, 2001
- ix) to construct complete boundary wall, main gate and plantation in the building premises.
- x) to provide intercom facility, DG Set and light fitting in the building premises
- xi) to provide lift from the basement.
- xii) to contribute monthly running maintenance & expenses by the Promoter who is also resident in the said premises.

- xiii) to make stairs for approaching water reservoir for making hygienic purpose.
- xiv) to take insurance of the building by the Promoter
- xv) to remove the hazardous construction from the premises which has booked the second fire exit stair case of the building.
- xvi) To install transformer at proper height.
- xvii) To shift the main electric meter in other safe place.
- xviii) to fill the unguarded open pond alongwith monetary compensation

2. The brief facts of the case is that the Complainant had booked a flat on 24.10.2010 in Basudev City in a new multi-storey building complex under construction in year 2010 being promoted and developed by Shri Basudev Sahu of M/s Maa Bhawani Construction, Baragain, P.O.- Lem Baragain, P.S.- Sadar, Ranchi. The land was situated under Khata No. 26, Khewat No. 3, Plot No. 2575, 2576 & 2577. The land was in the name of one Shri Dhiren Sahu & Shri Fuleshwar Sahu. The Promoter Shri Basudev Sahu of M/s Maa Bhawani Construction requested the Complainant to purchase a flat in his project. The Complainant visited the site of construction which is a huge complex consisting of 4 Blocks of multi-storey

building, with a shopping complex, swimming pool, temple, community hall, garden, playing area etc. The Promoter also showed him the RRDA approved Plan No. 1256/80 dated 07.10.2009 according to which the approach road to the said building was purposed to be made about 400 meter away from the main Bargain Road. The Promoter further assured him that he will use best quality materials in the construction of the building and will complete within 2 years. On his assurance the Complainant booked one Flat Bearing No. A/2B on 24.10.2010 of the Basudev City Building on total consideration amount of Rs. 26,53,312/- (Twenty six lakhs fifty three thousand three hundred twelve only). While booking the flats the Complainant asked a copy of the RRDA approved map plan to which the Promoter refused to give. The Complainant insisted for making the agreement against the deal to which the Promoter assured to make it shortly but thereafter he started avoiding it on pretext or the other. However in November, 2013 the Promoter executed an agreement but it was totally one sided. Hence the Complainant requested the Promoter to execute a legal agreement according to law but he flatly refused. Unfortunately by that point of time the Complainant had already made huge payments to the tune of Rs. 5,50,000/- (Five lakhs fifty thousand only). On the other hand the Promoter kept on reminding the Complainant for more payments

although it was not proportionate to the progress of the construction of the building as envisaged in the brochure and also as for the agreement dated 14.11.2011. It is further case of the Complainant that the Promoter received money in the form of cheque or cash against the said flat but he did not bother to issue money receipt despite repeated request. Fortunately most of the payments were made through cheques. Accordingly the Complainant had made payment of total amount of Rs. 26,53,312/-(Twenty six lakhs fifty three thousand three hundred twelve only) which is inclusive of all the dues and liabilities including government tax etc. which is Rs. 1.20 lakhs over and above the agreed amount. It is further case of the Complainant that the Builder did not complete his flat inspite of lapse of time as agreed by the Promoter and on the other hand the land owner of the rented flat asked the Complainant to vacate his flat. The Complainant explained the factual position to the Promoter and requested him to shift to his booked flat which was under construction that time. Under the compelling circumstances and under protest the Complainant had to shift to his under construction Flat No. A/2B. It is further stated that the Complainant had completed the flat by fixing door,window and other accessories etc. on his own cost but the Complainant is still divide off rightful legal possession of the flat. Hence being aggrieved with the conduct of the

Promoter he has filed the instant case against him seeking the reliefs as sought in the Complaint Petition at Para- 5.

The following documents have been filed by the Complainant in support of his case:-

- i) Brochure of Basudeo City Building.....(**Annexure-1**).
- ii) Booking document dated 24.10.2010 of Flat No. A/2B.....(**Annexure- 2**).
- iii) Agreement for sale of Flat A/2B.....(**Annexure- 3**).
- iv) Details of payments made to MaaBhawani Construction.....(**Annexure- 4**).
- v) Copy of SBI Pass Book- Confirming present address of being Resident of Basudeo City.....(**Annexure- 5**).
- vi) RRDA (Ranchi Regional Development Authority)- Approval of Building Plan No. 1256/08 dated 07.10.2009 & 8- Points of Conditions of Approval.....[**Annexure- 6 (i)**].
- vii) JRDA Act, 2001 (Jharkhand Regional Development Authority Act, 2001), Section 37(1): 42- Points Pre-Conditions of Sanction of Building Plan of Basudeo.....[**Annexure- 6(ii)**].

viii) Site Plan & Existing Ground Profile of Block 'A' Floor Plan G+6 & Parking Area Plan of Basudeo City.....[Annexure- 6 (iii)].

ix) Violations of Amenities Guaranteed through Prospectus of Basudeo City.....(Annexure- 7).

x) Video CD of Basudeo City.....[Annexure- 8 (i)].

xi) Live Visual Exposures of Statutory Violations.....[Annexure- 8 (ii)].

3. On the other hand the Respondent No. 1 Basudeo Sahu appeared in this case after receiving the notice and filed his Reply. The name of the Respondent No. 2 has been deleted from this case as he has left the project vide order dated 19.09.2019. It has been stated on behalf of the Respondent No. 1 in his Reply that this case is not maintainable as it is a false, frivolous and vexatious and is liable to be dismissed with compensatory cost. It has further been submitted that this case is barred by the principle of law under the provision of The Real Estate (Regulation & Development) Act, 2016. It is also submitted that this case is bad for non-joinder and mis-joinder of necessary party as well as barred by law of limitation. It is also submitted that the Complainant has filed the present case against the Respondent No. 1 on the basis of unregistered agreement dated

14.11.2011 to sale the Flat Unit No. A2B on the 2ndstorey, Block-A, Area- 1668 sq. ft. in Basudeo City. The agreement dated 14.11.2011 clearly shows that landowner namely Fuleshwar Sahu and Dhiren Sahu have executed a development agreement in favour of the Respondent No. 1 on 04.07.2008 by which the landowner has empowered the Respondent No. 1 to execute sale deed with the landed property morefully described in 1st Schedule of the said agreement. It has further been submitted that now the landowners have revoked the power of attorney on 12.02.2019 which was executed in favour of the Respondent No. 1 and hence he is unable to execute sale deed in favour of the Complainant and secondly the Complainant had also not fulfilled the agreement dated 14.11.2011 to execute the sale deed during the period of holder of power of attorney by the Respondent No. 1. It is also submitted that the Complainant has taken possession in the flat illegally without allotment of possession letter and enjoying peaceful possession since year 2013. It is also submitted that during the pendency of this case both the landowners namely Fuleshwar Sahu and Dhiren Sahu have also been made party and they have filed their written statement on 19.09.2019. It is also submitted that in Para- 4 (f) it has been mentioned that they have revoked the power of attorney given to the Respondent No. 1 by registered deed of Revocation as the

Respondent No. 1 was misusing the power of attorney. It is further submitted that both the landowners have mentioned at Para- 8.2 in his written statement that in agreement dated 14.11.2011 landowner had never given consent to execute the agreement for sale in favour of the Complainant and as such the agreement dated 14.11.2011 is null and void. It is also submitted that the agreement dated 14.11.2011 reveals that the purchaser shall get the sale deed executed in his favour within 3 years from the date of execution of the agreement on payment of entire consideration amount of flat including all misc. charges and tax but the Complainant has never fulfilled the same. It is further submitted that a Partition Suit has also been filed by the landowners being Suit No. 423/2014 which is pending in the Civil Court, Ranchi and Title Suit No. 419/2018 pending in the Court of Sub- Judge- XII, Ranchi and during the pendency of the Suit any transaction of land is illegal according to Section- 52 of the Transfer of Property Act. Hence the Complainant is not entitled for any relief as claimed in the light of agreement dated 14.11.2011.

4. In this case both the landowners namely Dhiren Sahu and Fuleshwar Sahu appeared on the direction of Court and filed their Reply. So far landowner Dhiren Sahu is concerned he has submitted that he has been made party in this case as Opposite Party No. 3 being the

landowner of the property bearing Khata No. 3, R.S. Plot No. 2575, 2576, 2577 measuring an Area of 90 decimal and rest 30 decimal of land belongs to Fuleshwar Sahu over which the multi-storey building has been constructed by the Builder Basudeo Sahu(Respondent No. 1). It is further submitted that the Respondent No. 1 Basudeo Sahu approached to Respondent No. 3 (Dhiren Sahu) and requested to give his land for development of multi-storey building and he will get several numbers of flat in his share. It is also submitted that the Respondent No. 3 accepted his offer and thereafter the Respondent No. 1 executed a Development Agreement dated 04.07.2008 with him which was written in English and the same was not translated into Hindi before obtaining his thumb impression on the same. It is also submitted that since the Respondent No. 1 being his relative he has blind faith upon him and as such he put his thumb impression upon the Development Agreement. The Respondent No. 1 explained him that he will be given 25% of flat out of 28 numbers of flat. It is also stated that the Developer denied to give a single flat after completion of building which was handed over in the year 2012. Hence he has filed a Consumer Case being No. 3/2016 before the State Consumer Forum which is pending for final disposal. It is further stated that the Developer with a malafide intension and on the strength of power of

attorney sold the entire land of Dhiren Sahu to his wife and to other relatives by virtue of registered deed of sale. When the landowners Dhiren Sahu and Fuleshwar Sahu came to know about the misuse of power of attorney by the Respondent No. 1 then they revoked the power of attorney by registered Deed of Revocation and due to this reason the Builder (Respondent No. 1) filed false criminal case against the landowner Fuleshwar Sahu being Complaint Case No. 1320/2019 which is pending in the Court of Judicial Magistrate, Ranchi and other criminal case being G.R. Case No. 699/2016 has been filed against Dhiren Sahu which has been dismissed vide Order dated 28.05.2019. It is prayed by the landowner Dhiren Sahu that the Builder may be directed to handover 6 numbers of flat to him out of 28 numbers of flat and further directed to give compensation of Rs. 1,13,64,973/-(One crore thirteen lakhs sixty four thousand nine hundred seventy three only) for loss occurred due to not handing over his share of flats alongwith other reliefs as mentioned in the written statement. So far Fuleshwar Sahu (Respondent No. 4) is concerned he has also filed written statement stating the more or less same thing as the Respondent No. 3 stated in his written statement.

The following lists of documents have been filed on behalf of the Respondent No. 4 :-

- i) PhotoCopy of Joint Development Agreement made on 05.06.2008 between Mr. Fuleshwar Sahu (Respondent No. 4) and Maa Bhawani Construction represented by its Director Mr. Basudeo Sahu (Respondent No. 1)(**Annexure-i**).
- ii) PhotoCopy of Supplementary Joint Development Agreement made on 04.07.2008 between Mr. Fuleshwar Sahu and Maa Bhawani Construction represented by its Director Mr. Basudeo Sahu.....(**Annexure-ii**).
- iii) PhotoCopy of Joint Development Agreement made on 04.07.2008 between Mr. Dhiren Sahu (Respondent No. 3), Mr. Fuleshwar Sahu and Maa Bhawani Construction represented by its Director Mr. Basudeo Sahu..... (**Annexure-iii**).
- iv) PhotoCopy of approved plan map sanction from R.R.D.A., Ranchi.....(**Annexure- iv**).
- v) Photo Copy of registered Power of Attorney given by Fuleshwar Sahu to Basudeo Sahu..... (**Annexure-v**).
- vi) PhotoCopy of Revoked Power of Attorney by the Respondent No. 4.....(**Annexure-vi**).
- vii) PhotoCopy of legal notice sent to Respondent No. 1 by Respondent No. 4 to give the information regarding the revocation of power of attorney.....(**Annexure-vii**).

viii) PhotoCopy of legal notice sent by Respondent No. 1 to Respondent No.4.....(Annexure- viii)

5. On the basis of above pleadings the following issues have been framed:-

- i) Whether this Complaint Case filed by the Complainant is maintainable in its present form ?
- ii) Whether there is any cause of action for the present case ?
- iii) Is this Complaint Case is barred by limitation ?
- iv) Whether this case is bad for non-joinder and mis-joinder of necessary party ?
- v) Whether this case is barred by jurisdiction of this Authority ?
- vi) Whether the Complainant is entitled for the reliefs as claimed for ?

FINDINGS

Issue No. 6:-

This issue is the most important issue as the Complainant is aggrieved buy the Respondent No. 1 as he has violated the terms and conditions of the agreement executed between them on 14.11.2011 for purchase of a flat which is morefully described in 4th Schedule on the

total consideration amount of Rs. 26,53,312/- (Twenty six lakhs fifty three thousand three hundred twelve only). From perusal of agreement (**Annexure- 3**) dated 14.11.2011 I find that the Respondent No. 1 has executed an agreement for sale of one flat to the Complainant bearing Unit No. A2B on 2nd Storey, Block- A having super built up area of 1648 sq. ft. more or less and the proportionate share in land in Basudeo City on payment of consideration amount of Rs. 26,53,312/- (Twenty six lakhs fifty three thousand three hundred twelve only). It has also been agreed by the Developer in Para- 8 of the Agreement that he would complete the construction of the unit and deliver the possession of the flat within 3 years subject to the Purchaser's Fulfillment of all the terms and conditions including making payment as per payment schedule of this agreement. At Para- 9 of the said Agreement it has been mentioned that the time of completion shall extend if the same is delayed due to change made in the internal specification of the unit as per the direction of the Purchaser and for any force majeure or for any reason beyond the control of the Developer. I also find that the Purchaser has made payment of Rs. 26,81,464/- (Twenty six lakhs eighty one thousand four hundred sixty four only) through cash and cheque as it is apparent from perusal of (**Annexure- 4 Series**). I also find that the Developer has not completed the entire work of the said flat of the Complainant and hence the Complainant has paid Rs. 92,000/- (Ninety two thousand only) to the

manson personally and got the incomplete work done of his flat by fixing doors, grills etc. The Ld. Lawyer appearing on behalf of the Respondent No. 1 has submitted that the landowners Dhiren Sahu and Fuleshwar Sahu have revoked the power of attorney which was executed in the favour of Respondent No. 1 on 12.02.2019. The Complainant had not fulfilled the terms and conditions of agreement dated 14.11.2011 to execute the sale deed during the period when he was holder of power of attorney and thereafter the Complainant had lodged this case on 02.05.2019 only for harassing the Respondent No. 1. It has further been submitted that the Complainant has taken illegal possession of the flat without obtaining possession letter and is enjoying peaceful possession since year 2013. It is also submitted that he is unable to execute registered sale deed in favour of the Complainant of the said flat as his power of attorney dated 18.12.2010 has been cancelled on 12.02.2019.

Now the points for consideration before me is that whether the landowner is entitled to cancel the power of attorney unilaterally which was granted to the Respondent No. 1 is permissible in law ? In this regard I want quote the decision given by the Hon'ble Andhra Pradesh High Court in Case No. Gaddam Laxmiah And Others vs Vs on 7 April, 2016 in which it has been held at para- 29 of the said judgment that ***“Thus, having regard to the law laid down by the Supreme Court and***

provisions of the Act, in our opinion, whenever registered documents such as Development Agreement-cum-GPA, is sought to be cancelled, execution and registration of such a document/deed must be at the instance of both the parties i.e., bilaterally and not unilaterally. If a deed of cancellation is allowed to be registered without the knowledge and consent of other party to the deed/document, sought to be cancelled, such registration would cause violation to the principles of natural justice and lead to unnecessary litigation, emanating therefrom. In anycase, as stated earlier, in the absence of any provision specifically empowering the Registrar to entertain a document of cancellation for registration without the signatures of both the parties to the document, the deed cannot be entertained. Moreover, if the Registrars are allowed to entertain a deed of cancellation for registration without signatures of both to decide disputed question between the parties. No party to the document would ever approach for cancellation of registered document unilaterally unless there is a dispute with the other party in respect of the subject matter of the document.

“30. In the result, we answer the question in the negative. In other words, we hold that registration and unilateral cancellation of documents such as Development Agreement-cum-General of Power Attorney under the Registration Act is not permissible in law.”

In the instant case I also find that the landowner has unilaterally revoked the power of attorney given to the Respondent which is not permissible in the law. The Respondent has also not completed the entire work of the project within the stipulated time nor he has got his project registered u/s 3 & 4 of the JHARERA Act which makes him liable for the penalty u/s 59 of the RERA Act. Now I want to mention the provision of *Section- 2(zk) which clearly defines “the promoter” which means a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts and existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other person and includes his assignees.....*

Explanation.-For this purpose of this clause, where the person constructs or converts a building into apartments or develops a plot for sale and the persons who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder;

“ The above provision clearly says that the Builder as well as landowners are jointly liable towards the purchasers of flat. From the perusal of agreement I find that the Complainant has paid the entire

consideration amount to the Respondent No. 1 but the Respondent No. 1 neither completed the work of flat of the Complainant inspite of lapse of stipulated time nor he has executed the registered sale deed in favour of the Complainant. Hence I find that the Complainant has proved his case in his favour as such he is entitled for relief as claimed for. So far other amenities are concerned which has to be provided by the Respondent No. 1 has also been not provided to the Complainant. The Respondent has also not completed the entire work of the project as per sanctioned plan inspite of lapse of stipulated time. Hence it is under the jurisdiction of the Municipal Corporation to look into the matter and take necessary action as per law. Accordingly this issue is decided in favour of the Complainant.

Issue No. 1, 2, 3 & 5:-

These issues are interrelated with each others hence I want to discuss these issues together. From perusal of documents as well as the pleadings of the parties I find that it is the admitted position that the Respondent No. 1 did not execute the registered sale deed in the favour of Complainant as his power of attorney was revoked by the landowners (Respondent No. 3 & 4). It is also admitted facts that since the date of coming of RERA Act the Respondent No. 1 has not completed his project as he has not obtain the Completion Certificate hence his projects comes

under the purview of ongoing project and the Respondent has violated Section- 3 of the RERA Act. Hence this Authority has got jurisdiction to entertain this Complaint Case and this Complaint Case is not barred by limitation as well as this case is maintainable in its present form. Accordingly these issues are decided in favour of the Complainant.

CONCLUSION

Having gone through the entire facts and circumstances as well as keeping in view the above discussions I come to the conclusion that the Complainant has fully been able to prove his case and the Respondent No. 1 as well as landowners (Respondent No. 3 & 4) are jointly liable to fulfill the reliefs as claimed by the Complainant. So far the direction given by the Court to the Complainant that he get his flat registered through Municipal Corporation vide Order dated 09.01.2020 the Complainant has submitted before the Authority that there was very long process to get his flat registered through Municipal Corporation. Hence he could not be able to get his project registered through Municipal Corporation. Accordingly it is hereby.....

ORDERED

- i) That the Respondent No. 1 is directed to pay a fine amount of Rs. 1,00,000/-(One lakh only) as he has not registered his project with JHARERA and he is also directed to get his

project registered with JHARERA within one month from the date of this Order failing which he shall be liable for punishment as prescribed u/s 59 of the RERA Act.

- ii) The Respondent No. 1 is directed to get the sale deed executed and registered in respect of the Flat No. A2B in favour of the Complainant within one month from the date of Order failing which he shall be liable to pay a penalty of Rs. 1,00,000/- (One lakh only) to the Complainant failing which fine amount shall be realized through the process of Court alongwith interest @ Rs. 6% per month.
- iii) If the Respondent No. 1 fails to comply the above Order within the stipulated time then the landowners (Dhiren Sahu & Fuleshwar Sahu) are directed to execute the registered sale deed in favour of the Complainant on their respective land within one month failing which defaulter shall be liable to pay a penalty of Rs. 1,00,000/-(One lakh only) to the Complainant and the amount of penalty shall be realized through the process of Court alongwith with interest @ Rs. 6% per month.
- iv) If Respondent No. 1 and landowners (Dhiren Sahu & Fuleshwar Sahu) fail to obey the above Order of this Authority then the Authorized Persons of this Authority is

directed to execute the registered sale deed in favour of the Complainant of the said flats.

- v) The Respondent No. 1 is further directed to pay Rs. 1,00,000/- (One lakh only) to the Complainant as compensation for mental agony and harassment.
- vi) The Respondent No. 1 is also directed to pay Rs. 30,000/- (Thirty thousand only) to the Complainant as litigation cost.

(Seema Sinha),
Chairman,
JHARERA