

Jharkhand Real Estate Regulatory Authority

Complaint case no- 43/2018

Punjab National Bank, Asset Recovery Management Branch,

Argora, Ranchi-834002.

----- **Complainant**

- Versus-

1. Shri Sushil Kumar Bhartia, S/O Shri Sanwar Prasad Bharatia, resident of Amarpali Cinema Campus, Gola Road, Sahjadpur, Danapur, Patna-800013.

2. Shri Gopal Kumar Bhartia, S/O Shri Sanwar Prasad Bharatia, resident of Amarpali Cinema Campus, Gola Road, Sahjadpur, Danapur, Patna-800013.

3. Sanjay Kumar Rai (alias Sanjay Kumar Roy) S/O Late Brahma Dayal Roy, resident of Flat no.-202, Shree Maa Apartment, P.N. Bose Compound, Purlia Road, Ranchi-834010.

..... **Respondents**

Complainant represented through

----- Advocate Rajiv Kumar Sinha

Respondents represented through

----- Not represented

Coram: Hon'ble Chairman Shri R.S.Poddar

Hon'ble Member Smt. Seema Sinha

ORDER

1. The complainant Punjab National Bank, A.R.M. Branch, Argora has filed this complaint case against respondents Shri Sushil Kumar Bharatia, Shri Gopal Kumar Bhartia, and Shri Sanjay Kumar Rai. The complainant Bank sanctioned a housing loan of Rs. 20,00,000/- (Rs. Twenty lakhs only) to respondent no.-1 Shri Sushil Kumar Bharatia, for

the purchase of three flats viz. flat no.'s 401, 402 and 403 on the 4th floor of MAA SARDA ENCLAVE, Tipudana, (near Ram Krishna Mission) P.S. Hatia, Distt. Ranchi. Respondent no.-2 is the brother of respondent no.-1 and he is also one of the guarantors in respect of the housing loan taken by his brother. Respondent no.-3, Shri Sanjay Kumar Rai, proprietor of M/s Raj Constructions, is the builder and developer of the project MAA SARDA ENCLAVE mentioned above. He (Shri Sanjay Kumar Rai) is also one of the guarantors on behalf of respondent no.-1, in respect of the housing loan of Rs.20,00,000/- (Rs. twenty lakh only) sanctioned to respondent no. 1. The housing loan had been sanctioned on 27-12-2006 in favour of respondent no.- 1, and the amount was credited into the account of the builder/developer i.e. in the account of Shri Sanjay Kumar Rai (respondent no.-3). A Tripartite Agreement and several other security documents including Agreement of Housing loan and Agreement of Guarantee were executed between the Bank and the respondents to the effect that, on completion of the flats in question, respondent no.2 shall hand over possession of the flats along with conveyance of title in favour of respondent no.1 and that the allottee/borrower (respondent no. 1) shall mortgage the said flats to the Bank as security for the said loan.

2. The complainant Punjab National Bank, A.R.M. branch, Argora has filed this complaint case and has prayed for issuance of direction to respondent no-3 Sanjay Kumar Rai (proprietor Of M/s Raj Construction and guarantor in respect of the housing loan sanctioned to respondent no. 1), for executing registered deed of conveyance in favour of allottee/borrower i.e. respondent no-1, in respect of the property in question so as to pave the way for the Bank to realize the outstanding loan against respondent no.1. It has also been prayed that direction be given to respondent no. 1 Gopal Kumar Bhartia, to

mortgage the said flats forthwith to the bank as soon as respondent no-3 transfers the title by executing a registered sale-deed in his favour. It has also been prayed that the respondents should be restrained, by means of suitable injunctions, from transferring, encumbering, alienating or in any way dealing with the property in question without first paying and liquidating the claim of the complainant Bank. The complainant Bank has further prayed for direction to respondent no-1 and 3 to pay adequate compensation to the Bank in terms of section-18 of the Real Estate (Regulation and Development) Act, 2016.

3. We find that respondent no.- 3, Shri Sanjay Kumar Rai, proprietor of M/s Raj Constructions, is not only the builder and developer of the project MAA SARDA ENCLAVE mentioned above, but he is also one of the guarantors on behalf of respondent no.-1, in respect of the housing loan sanctioned to respondent no. 1 for the purchase of the flats. Notices were issued to respondent Opposite Parties through registered speed-post and e-mail. When notices sent by speed-post were returned and E-mails too remained unreplied, finally notices were issued to them through newspaper communiqués which appeared in Hindi Dailies Dainik Jagaran and Prabhat Khabar dated 16-03-2019. In spite of all these notices, Opposite Parties (respondents) failed to appear and failed to file their replies. Hence the case was heard ex-parte on 02-07-2019.

4. We find that the housing loan had been sanctioned on 27-12-2006 in favour of respondent no.- 1, and the amount was credited into

the account of the builder i.e. in the account of respondent no.-3 immediately on the same date. Several security documents viz. Tripartite Agreement of Guarantee, Agreement for Housing Loan, Agreement for Sale etc. were executed between the Bank and the respondents. As per these agreements, on completion of the flats in question, respondent no. 3 was supposed to execute a deed of conveyance of title in favour of respondent no.1 and hand over possession of the flats to allottee/borrower (respondent no. 1) and respondent no. 1 was supposed to mortgage the said flats to the Bank as security for the said loan.

5. Heard the complainant and perused the records. Before considering the matter on merit, it is pertinent to discuss whether this case comes under the purview of the Real Estate (Regulation and Development) Act [RERA Act in short] for consideration by this Authority. **We find that section 31(1) of the Act stipulates that “any aggrieved person may file a complaint with the Authority for any violation and contravention of the provision of this Act or the rules and regulations made thereunder, against any promoter, allottee or real estate agent, as the case may be.”** It is clear from the facts of this case that complainant Bank has financed housing loan amounting to Rs. 20,00,000/- to respondent no- 1 for purchase of three flats bearing flat no- 401, 402 and 403 on 4th floor in **Maa Sarda Enclave** and respondent no- 3, who is the builder and developer of this project, is the guarantor of respondent no-1. It is also clear that the respondents (the borrower and the guarantors) have executed several Security Documents and Agreements in respect of the property financed by the complainant Bank. The legal purpose for which these security documents have been executed, is that the property for which bank finance has been provided, would be mortgaged as security for the loan.

These security documents are judicially enforceable legal documents. The complainant Bank has tried to make out a case that respondent No-3 Sanjay Kumar Rai, is not executing registered deed of conveyance in respect of the flats, in favour of respondent no. 1 and as a consequence, respondent no.-1 is unable to repay the loan taken from the Bank. The complainant Bank has prayed that direction be given to respondent no.-3 to execute registered sale-deed in respect of the flats in question, in favour of respondent No-1, so that the complainant Bank may recover the loan (along with interest thereon) from the respondent no.-1. The complainant has further prayed for direction to be given to respondent no.-1 to mortgage the said flat forth with to the bank by depositing the said sale deed.

6. We find that in the explanation to sub-section (1) of section 31 of the Act, it has been clarified that a "person" can include the association of allottees or any 'voluntary consumer association' registered under any law for the time being in force. But there is no stipulation about the financing Bank being a possible aggrieved 'person' for the purposes of provisions of RERA Act. The complainant Bank has only financed the loan amount of Rs. 20,00,000/- to the respondent no- 1 for purchase of three flats bearing flat no- 401, 402 and 403 (along with common areas). The RERA Act stipulates establishment of Real Estate Regulatory Authorities in order to regulate and promote real estate sector and to protect the interests of the consumers in the real estate sector. Real Estate Regulatory Authority was never conceived to be playing the role of a debt recovery tribunal for bad debts of financial institutions, in the real estate sector.

7. In view of the foregoing discussions and in the light of the provisions of law mentioned above, we do not find any basis for considering the complainant Bank as coming under the purview of aggrieved persons for the purposes of RERA Act. In this view of the matter, the complaint case filed by the complainant Bank is hereby

September 19, 2019

[JHARERA COMPLAINT CASE NO. 43/2018]

dismissed. However it will be open to the complainant Bank to seek other legal remedies and/or measures available to them for recovery of loans.