

Ranchi

Before Adjudicating Officer

Jharkhand Real Estate Regulatory Authority, Ranchi

Present ----- Ranjeet Kumar Choudhary

Dated 31th day of March, 2021

Complaint Case No.- 95/2019

Birju Sahu, S/o Lt. Dev Nandan Sahu,

R/o Bariyatu Road, Morabadi,

P.S.- Bariyatu, Dist. – Ranchi, at present

Village – Bargain, P.S. Sadar, Dist. - Ranchi

--- Complainant

VERSUS

1. Devika Construction & Developers Pvt. Ltd.,
315, 3rd Floor, Panchwati Plaza, Kutchery Road,
P.S. Kotwali, Ranchi
2. G.K. Singh S/o Shri Shyam Bihari Singh,

- R/o Ratu Road, P.S. Sukhdeo Nagar,
Ranchi,
3. Rajesh Kumar Balmiki
 4. Birendra Kumar Singh
- (All Directors of Devika Construction & Developers Pvt. Ltd.)
5. Naresh Kejriwal, Executive of Devika Construction & Developers Pvt. Ltd.

--- Respondents

Complainant Represented through

--- Sri Kundan Kumar
Verma, Ld. Advocate
Sri Jitendra Kumar
Singh, Ld. Advocate

Respondents No. 1 to 5 represented through

--- Sri Vikrant Sinha,
Ld. Advocate
Kanhaiya Kumar,
Ld. Advocate
Saurav Raj, Ld.
Advocate
Abhishek Kumar, Ld.
Advocate
Rakesh Shukla, Ld.
Advocate

ORDER

1. The instant complaint has been brought by the complainant Birju Sahu against the respondents Devika Construction & Developers Pvt.

Ltd, G.K. Singh, Rajesh Kumar Balmiki, Birendra Kumar Singh & Naresh Kejriwal with reliefs that on Adjudication Respondents may be directed to execute and register sale deed of shop premises in favour of the Complainant and this relief has also been sought that they may be directed to pay Rs. 50,00,000/- as compensation to the Complainant.

2. As per the complaint petition, it is the case of the complainant that he owned and possessed the land situated in Village Morabadi, Thana No. 192, P.S. Bariyatu, Dist. – Ranchi having Plot No. 1602, 1627, 1603 & 1604 apertaining to Khata No. 162, 134 & 161, total area measuring 40 Kathas against which there were land dispute in between the father of the Complainant and one Pratima Bakshi who were claiming their title over the land by facing Suit No. T.S. 82/1992 in the Court of Munsif, Ranchi. Respondents happens to be Builder by profession desired to raise construction over the said land but due to dispute it was difficult for them to do any construction work on the land in question. Respondent No. 2 offered Complainant to provide him shop premises of 100 ft. x 4 each total 400 sq. ft. on the ground floor in front side of north-west of proposed building and 50 sq. ft. space on the 2nd floor of said building. Believing the version of the Respondent No. 2, Complainant withdrew T.S. No. 82/1992 and Misc. Case No. 28/1993 in good faith and on 2nd February, 2005 an agreement in writing was executed duly signed by the Complainant and Respondent No. 2 as Director of the Company. After a long gap of time construction over the land was done and at that time supplementary agreement dated 28.07.2013 was executed between the parties and

according to this agreement four shops at ground floor from north-west side of the front side of the building was allotted to the Complainant and remaining part of 50 sq. ft. is still awaited in consideration thereof. As per agreement dated 02.02.2005, Respondents are bound to execute the registered sale deed in favour of the Complainant or his nominee. Complainant requested the Respondents to registered the sale deed of the shop premises but they deferred the matter on one pretext or other. On 10.12.2016 while the Complainant was in newly allotted shop premises situated in front side facing main door from north-west corner, now known as shop no. 3, 4 & 5, one Mangal Pathak alongwith his cousin and his wife came there and started claiming shop no. 4 & 5. Complainant opposed the same and shown his agreement to them but they lodged Complaint before Bariyatu Police Station against the Complainant. After investigation police submitted final report in this case. Thereafter, Complainant obtained certified copy of alleged sale deed on 28.07.2018 and perusal of deed no. 731 dated 05.02.2016 indicated that Respondents have sold and transferred shop no. 5 to one Mangal Pathak and shop no. 4 to one Hema Kumari, W/o Mukesh Kumar. It is said that Respondents have committed breach of trust by executing sale deeds of shop no. 4 & 5 in favour of others. Hence it has been prayed that Respondents may be directed execute registered sale deed of shop no. 4 & 5 in favour of the Complainant and pay Rs. 50,00,000/- to him as compensation.

3. On being noticed Respondents appeared in this case and contested the case and claim of the Complainant by filing show cause. According to show cause, the case brought by the Complainant is not maintainable. It is said that Respondent No. 5 Naresh Kejriwal is not an Executive of Devika Construction rather he is Chartered Accountant. He is not directly or indirectly involved in this case. It is further said that the owner of the property Pratima Bakshi sold and transferred the lands of Plot No. 1602, 1627, 1603 & 1604 apertaining to Khata No. 162, 134 & 161 situated at Village – Morabadi vide sale deed dated 07.07.2014. The Complainant claiming his title over the said property filed T.S. No. 82 of 1992 against Pratima Bakshi. The Complainant had possessed one shop consisting of 30 sq. ft. situated over Plot No. 1602 and after purchasing the above mentioned property, it was settled between the parties that in place of 30 sq. ft., Respondent No. 1 will provide 450 sq. ft. area in proposed marketing complex to him. Accordingly agreement dated 02.02.2005 was executed between the parties. On the request of the Complainant, on 18.07.2013 one supplementary agreement was executed in continuation agreement dated 02.02.2005 and it was agreed that Complainant will be provided 400 sq. ft. area in the ground floor of marketing complex and 50 sq. ft. area in 2nd floor. As per supplementary agreement, Complainant is entitled for only 2 shops of 200 sq. ft. area in the front side of the complex and backside of the complex and 50 sq. ft. area in the 2nd floor of the complex. On the request of the Complainant 450 sq. ft. area was allotted to him in front side of the marketing complex which includes

shop no. 1, 2 & 3. On request of the Complainant, Respondent No. 1 issued possession letter dated 11.01.2016 and after receiving possession letter, he came in peaceful possession of the same. Thereafter, Authorized person of Respondent No. 1 sold shop no. 4 to one Hema Kumari and her minor child and shop no. 5 to Mangal Pathak and minor Siddhartha Bhardwaj. Purchasers of shop no. 4 & 5 came in possession of purchased shop but on 10.02.2016 they were dispossessed from their shops by the Complainant and thereafter Bariyatu P.S. Case No. 57 of 2016 was filed. Owners of shop no. 4 & 5 have also filed Title Suit No. 100 of 2019 and Title Suit No. 102 of 2019 against the Complainant and Respondent No. 1. It is further said that Complainant is enjoying shop no. 1, 2 & 3 and he has grabbed shop no. 4 & 5. It is further said that the reliefs sought by the Complainant is not within the purview of RERA Act. Hence it has been prayed to dismissed the case with cost.

4. The point for determination arising out of this case that whether the complainant is entitled for reliefs as claimed for.?

FINDINGS

5. The learned Counsel appearing on behalf of the Complainant has submitted that it is an admitted fact that Respondent No. 1 through its Director entered into agreement dated 02.02.2005 with the Complainant and subsequently supplementary agreement dated 18.07.2013 was executed between the parties whereby and whereunder

Complainant was supposed to get shop no. 3, 4 & 5 in the marketing complex constructed by Respondent No. 1. There is no denial that Complainant is entitled to get 450 sq. ft. space in the marketing complex which includes shop no. 3, 4 & 5 also. The Ld. Counsel has drawn my attention towards para – 3 of agreement dated 02.02.2005 and also towards para – 3 & 4 of supplementary agreement dated 18.07.2013. He has further argued that by not giving shop no. 3, 4 & 5 to the Complainant, the Respondents have committed criminal breach of trust and cheating with him. The Ld. Counsel has further submitted that in the Complaint Petition relief has been sought regarding execution of sale deed with respect to aforesaid 3 shops but mere declaration that Complainant is entitled to get aforesaid 3 shops will suffice his need.

6. The Ld. Counsel appearing for the Respondents has submitted that the case brought by the Complainant is not at all maintainable as because Complainant is also one of the owner of the marketing complex and he has his share in this building on the basis of agreements dated 02.02.2005 & 18.07.2013. It is beyond imagination that without taking any consideration money how the Respondents will execute sale deed in favour of the Complainant with respect to shop no. 3, 4 & 5. The Ld. Counsel has drawn my attention towards possession letter dated 11.01.2016 and has submitted that as per mutual oral agreement, possession of shop no. 1, 2 & 3 measuring an area of 450 sq. ft. was given to the Complainant. He has further submitted that Complainant has illegally occupied the shop no. 4 & 5 regarding which

criminal case and civil suits were filed by the purchasers of shop no. 4 & 5 whom the Respondent No. 1 through its Directors sold the same. The Ld. Counsel has drawn my attention towards computer generated holding receipt filed by the Complainant and has submitted that in this holding receipt there is reference of shop no. 1, 2, 3, 4 & 5. This holding receipt clearly proves that Complainant has illegally occupied shop no. 4 & 5. Hence he has prayed that the case brought by the Complainant may kindly be dismissed.

7. Perused the case record and the documents filed by the Complainant as well as the Respondents. Also considered the arguments adduced by the parties. There is no dispute that with respect to land over which Marketing complex has been constructed by the Respondents, there was civil litigation between the father of the Complainant and one Pratima Bakshi. It is also undisputed fact that Title Suit No. 80/1992 was filed by the father of the Complainant which was subsequently withdrawn in terms of settlement reached between the parties of that Title Suit. No doubt that the Complainant entered into agreement dated 02.02.2005 with the Respondents whereby and whereunder he was supposed to get 450 sq. ft. area out of which 400 sq. ft. was to be given on the ground floor in the front side of north-west of proposed building and 50 sq. ft. space was to be given of the 2nd floor of the building. Supplementary Agreement dated 18.07.2013 was executed between the parties whereby and whereunder 4 shops measuring 400 sq. ft. was to be provided to the Complainant on the ground floor and 50 sq. ft. area was to be allotted on 2nd floor.

Perusal of holding receipt issued by Ranchi Municipal Corporation indicates that Complainant is occupying shop no. 1, 2, 3, 4 & 5 in the Marketing complex constructed by the Respondents. From perusal of the possession letter dated 11.01.2016 indicates that possession of shop no. 1, 2, & 3 having an area of 450 sq. ft. was given to the Complainant and thereafter on 05.02.2016. Respondents executed sale deed of shop no. 4 & 5 in favour of Hema Kumari and her minor son and Mukesh Pathak and minor son Siddhartha Bhardwaj respectively. I further find that when the these purchasers were allegedly ousted from the shop premises, one Mukesh Kumar S/o Ram Narayan Pathak filed criminal case against the Complainant and others and as per submissions in this case final report was submitted by the police after investigation. I further find that these purchasers have filed Title Suit No. 100 of 2019 and Title Suit No. 102 of 2019 against the Complainant as well as the Respondent No. 1 for getting possession of shop no. 4 & 5. Hence it is clear that civil dispute is going on between the Complainant and purchasers of shop no. 4 & 5 in the Civil Court, Ranchi in which Respondent No. 1 is also one of the Defendant.

8. This fact has never been denied by the Ld. Counsel of the Complainant that his client is not in possession over shop no. 1, 2 & 3 having an area of 450 sq. ft. Although this fact has been denied by him that Complainant has forcefully grabbed the shop no. 4 & 5 but holding receipt issued by Ranchi Municipal Corporation indicates that he is in possession over shop no. 4 & 5 also. Whether possession of the Complainant over shop no. 4 & 5 is legal or illegal, no finding is being

given by this court because it may prejudice the case of the parties pending in the Civil Court, Ranchi.

9. Perusal of preamble of the RERA Act clearly indicates that this Act has been promulgated to protect the interest of the **consumers** in the real estate sector. In the present case whether the Complainant will come within the purview of **consumer or not** ? This fact needs discussion. Jharkhand Real Estate Regulatory Authority has issued **JHARERA Circular No. 1 of 2019** in view of Section 37 of the Act. In this Circular it is mentioned that :-

“Whereas, it has been observed that several developers (who actually obtain approvals of building and do construction work) of real estate projects, have entered into arrangement with individuals/organizations like landowners or investors by which the said individuals/organizations are entitled to a share of the total revenue generated from the sale of super built-up area is apartments/buildings or a share is the total area developed or super-built-up area develop/build for sale, which are also marketed and sold by such individuals/organizations.” From perusal of this provision it is apparent that landowners also come within the purview of developer. In the present case the capacity of the Complainant is of landowner and hence he will come within the purview of the developer. For adjudication of dispute between the developers, RERA Act cannot be enforced. Moreover, Complainant has sought relief of registration of shop no. 4 & 5 in his favour by the Respondents and in my view this

relief cannot be given to him because he is himself joint owner of the marketing complex constructed by the Respondents on the basis of agreement and supplementary agreement executed between the parties. Property is sold to a person after receiving consideration money and obviously in the present case Complainant is not inclined to give any consideration money to the Respondents as because he claims himself to be joint owner of the property. The Ld. Counsel for the Complainant has sought relief of declaration that his client is Claimant of the shop no. 4 & 5. For such relief, RERA Act has not been promulgated. Real Estate Regulatory Authority or Adjudicating Officer is not empowered to give such reliefs to any person. To get such reliefs, Complainant can approach Civil Court. Further I find that 2 Title Suits have been filed by the purchasers of shop no. 4 & 5 in which both the parties of the present case are Defendants. I feel that Complainant can set up Counter Claim in this case regarding declaration of his Title over shop no. 4 & 5.

10. From perusal of the case record it is apparent that Respondent No. 5 Naresh Kejriwal is not an executive of Devika Construction and Developers Pvt. Ltd. rather he is Chartered Accountant. Complainant side has not disputed this fact. I feel that Respondent No. 5 has wrongly been added as party in this present case.

11. In the circumstances, I come to this definite conclusion that case brought by the Complainant before this court under RERA Act is not at

all maintainable. Respondents never been asked to execute sale deed with respect to shop no. 4 & 5 in favour of the Complainant. No question arises regarding giving any compensation to the Complainant as no mental agony, financial loss and harassment has been caused to him due to conduct of the Respondents.

ORDER

12. It is hereby

Ordered

that the Complaint brought by the Complainant is hereby dismissed as not maintainable.

Dictated & Corrected
by me

Ranjeet Kumar Choudhary
Adjudicating Officer
JHARERA

Adjudicating Officer
JHARERA