

Ranchi

Before Adjudicating Officer

Jharkhand Real Estate Regulatory Authority, Jharkhand, Ranchi

Present ----- Ranjeet Kumar Choudhary

Dated 22nd Day of December, 2021

Complaint Case No. 88/2019

Manjeet Kaur Marwa & Resham Marwa,
Flat No. 32, Geetanjali Enclave, N Road, Bistupur,
Jamshedpur, Jharkhand, Pin- 831 001

--- Complainants

VERSUS

1. Ram Ayodhya Singh (Land Owner),
401 & 402, ST- 8, Shiv Ranjani Complex,
Tata Kandra Road, Near Ashiana More, Adityapur,
Dist.- Seraikela-Kharsawan,
Jharkhand, Pin- 831 013
2. Star India Awas Pvt. Ltd. through its
CMD, Shashi Bhushan Prasad

--- Respondents

Complainants Represented through --- Manjeet Kaur Marwa (Self)

Respondent No. 1 --- Mr. Ritesh Singh, Ld. Advocate

Respondent No. 2 --- Md. Imtiyaz, Ld. Advocate
--- Mr. Sharad Shekhar

ORDER

1. The instant case has been brought by the Complainants Manjeet Kaur Marwa & Resham Marwa Devi against the Respondents Ram Ayodhya Singh (Land Owner) & Shashi Bhushan Prasad, CMD, Star India Awass Pvt. Ltd. with reliefs that illegal construction of wall done by Respondent No. 1 may kindly ordered to be demolished and original layout of the passage be restored in front of Shop No. 27 of Shiv Ranjani Complex situated at Adityapur, Dist.- Seraikella- Kharsawan.

2. The instant case was brought by the Complainants against the Respondent No. 1 only but on the direction of the Authority, vide the Order dated 12.09.2019 Shashi Bhushan Prasad, CMD, Star India Awass Pvt. Ltd. was impleaded as Respondent No. 2.

3. In nutshell, it is the case of the Complainants that on 05.08.2008 they entered into an agreement for sale for purchase of Commercial Shop Bearing No. 27 in the ground floor of Shiv Ranjani Complex and Deed of Perpetual Sub Lease was executed on 07.01.2012. It is said that on or about 27.03.2015, Respondent No. 1 constructed a wall on both side of passage of Shop No. 27 of the Complex resulting in blocking of the passage. The

Complainants approached different Authorities with their grievances but of no avail. Hence this case.

4. On being noticed, the Respondent No. 1 appeared this Court and contested the case by filing show cause alongwith some documents. In the show cause he has denied that he has encroached upon the common area and Complainants have filed frivolous Complaint against him at the behest of Promoter Star India Pvt. Ltd. It is further said that Real Estate Regulatory Authority is not empowered to decide title/share allocation dispute between the Landlord and the Promoter. It is further said that Complainants are not even legal allottees in the eye of law for the reasons that Development Agreement clearly restricts the Promoter from selling the flats/shops to anybody including the Complainants unless the share of landlord has been handed over to him in the said Shiv Ranjani Complex. It is further stated that Arbitration Proceeding was initiated between the Landowner and Promoter with respect to this property which was decided in favour of the Landowner/Respondent No. 1. Hence, it has been prayed that Complaint brought by the Complainants may kindly be dismissed.

5. As stated above on the direction of the Authority, Developer/Respondent No. 2 was made party in the present case and on being noticed he also appeared before this Court and contested the case brought by the Complainants. Respondent No. 2 had denied that he has done any construction in the passage of the Commercial Complex and he has authorised any person including the Respondent No. 2 to do so. It is further said that he has not done any violation of the terms and conditions of the

Development Agreement. Hence it has been prayed Complaint brought by the Complainants may kindly be dismissed.

6. The only point arising out of this case for determination is whether the Complainant is entitled to get relief as prayed for or not ?

FINDINGS

7. I have already heard Complainant Manjeet Kumar Marwa as well as Ld. Counsels for the Respondent No. 1 and Respondent No. 2 at length. A number of documents have been filed by both the sides. I have gone through the entire documents filed by the parties. From perusal of the case record it is apparent that this Authority had constituted a committee of technical staffs of Jharkhand Real Estate Regulatory Authority (JHARERA) to visit the spot and submit enquiry report. Accordingly, the expert committee visited the spot and did enquiry on 07.02.2020 and submitted report. The enquiry report is on the record. Perusal of this enquiry report indicates that the committee consulted Adityapur Municipal Corporation with regard to building plan of the Commercial Complex named as “Shiv Ranjani Complex” and it was told by the Nagar Aayukt that the map has been approved by Adityapur Industrial Area Development Authority (AIADA) and this map is not available in his office. Therefore, enquiry with regard to construction of wall in Commercial Complex could not be done.

8. From perusal of the case record it appears that Complainants approached several Authorities for redressal of their grievances but no fruitful result came out. I find that due to dispute between the Respondent No. 1 / Land Owner and Respondent No. 2 / Developer, the wall in the

Commercial Complex has been constructed. It appears to me that it is the Respondent No. 1 who has constructed this wall in the passage of the Commercial Complex in front of Shop No. 27. There is no dispute that Agreement for Sale between Complainants and the Respondent No. 2 was executed on 05.08.2008 and deed of perpetual sub lease was executed on 07.01.2012. It is also apparent that on or about 27.03.2015 this wall has been erected on both sides of the passage of Commercial Complex. No doubt the Respondent No. 2 / Developer has not constructed this wall. There is nothing on the record to show that he has not constructed the building as per building plan. If the wall has been constructed on both sides of the passage and if it is not in building plan, it is certainly encroachment. The relief sought by the Complainants does not come within the purview of RERA Act. For removal of illegal construction, Complainants can approach competent Authority. There is nothing on the record to show that any deviation from building plan has been done by the Developer. The present dispute does not appear to be a dispute between Flat Owner and Developer. It is true that vide JHARERA Circular No. 01/2019 dated 20.11.2019, this Authority has brought the Land Owner within the definition of Developer but this Circular has been made effective with immediate effect while the present dispute is of the year 2015 and obviously at that time Land Owner was not considered to be Developer. Again I will like to say that present dispute appears to be a case of encroachment of land by a person regarding which Complainants can approach competent Authority like Adityapur Nagar Nigam or Sub-Divisional Magistrate, Seraikella-Kharsawan. This Authority cannot give any relief to the Complainants.

CONCLUSION

In the circumstances it is hereby

ORDERED

That the present Complaint brought by the Complainants is not maintainable and accordingly it is hereby dismissed. Complainants are directed to approach competent Authority as stated above for redressal of their grievances. If any petition for removal of encroachment is filed by the complainants before Nagar Ayukta, Saraikela-kharsawa , he will procure building plan from Adityapur Industrial Area Development Authority for perusal and if this construction is found encroachment , he will get it demolished after giving an opportunity to be heard to the Respondent no 1

Dictated & Corrected
By me

Ranjeet Kumar Choudhary
Adjudicating Officer
JHARERA

Adjudicating Officer
JHARERA