

Ranchi

Before Adjudicating Officer

Jharkhand Real Estate Regulatory Authority, Jharkhand, Ranchi

Present ----- Ranjeet Kumar Choudhary

Dated 17th Day of August, 2022

Complaint Case No. 07/2021

Jitendra Kumar Sahu,

S/o Late Shiv Prasad Sahu,
Shivaji Chowk, Harmu Road,
P.S.- Sukhdeo Nagar,
District- Ranchi,

--- Complainant

VERSUS

1. M/s Raj Veer Infracon Pvt. Ltd.,

R/o- Ground Floor, Asha Apartment,

Sahjanand Chowk, Anand Nagar,

Harmu Road, P.S.- Argora,

Dist.- Ranchi

At Present- 404, 4th Floor, Eastern Mall

(Pantaloons Building), Dangratoli Chowk,

P.S.- Lalpur, Dist.- Ranchi

2. Sri Amarjeet Girdhar,

R/o- Rashmirathi Apartment,

Chandni Chowk, Kanke Road,

P.S.- Gonda, Dist.- Ranchi

3. Sri Sumit Agarwal,

R/o- Sapphire Garden, Makchund Toli,

Chutia Ranchi

4. Sri Harbinder Singh Bedi,

R/o- Krishna Nagar Colony,

Ratu Road, Ranchi

5. Sri Pratap Parul,

R/o- 404, 4th Floor, Eastern Mall (Pantaloons Building),

Dangratoli Chowk, P.S.- Lalpur,

Dist.- Ranchi

---Respondents

Ld. Counsel for the Complainant ---Mr. Anup Kumar Jha, Ld. Advocate
---Mr. P.K. Sinha, Ld. Advocate

Ld. Counsel for the Respondents ----Mr. Rohit Ranjan Prasad,
---Mr. Jai Prakash
---Mr. Sanjeev Kumar
---Mr. Shailesh Poddar
---All Ld. Advocates

ORDER

1. The instant complaint has been brought by the complainant Jitender Sahu against the respondents M/S Raj veer Infracon Pvt. Ltd & ors with reliefs that respondents may be directed to pay a sum of ₹ 30,42,000 (Thirty lakhs forty two thousands) to the complainant as value of 507 sq. ft carpet area at the rate of ₹ 6,000 per sq. ft , ₹1,21,000(one lakhs twenty one thousands) as interest at the rate of 8% simple from August 2018 till January 2021 on the aforesaid amount of ₹30,42,000, ₹47,25,000 as rental loss from March 2018 to July 2022, ₹,6,69,900 as interest at the rate of 8% simple from the April 2018 till January 2021 on the rental loss and ₹5,00,000 as compensation for mental and physical harassment. All together ₹ 91,18,580 has been claimed by the complainant from the respondents. This relief has also been

sought that respondents may be directed to complete remaining works, obtain completion certificates and occupancy certificates from the competent authority and give possession letter to the complainant.

2. As per complaint petition, it is case of the complainant that he is owner of the land measuring an area of 8 Kathas equivalent to 5760 sq. ft. bearing plot number 384 under Khata number 94 situated at village Ranchi, Harmu Road, P.S. Sukhdevnagar, Dist – Ranchi. Respondent number 1 M/S Raj Veer Infracon Pvt Ltd is a company under the Indian Company Act represented through its director Amrjeet Girdar and ors who are respondents' number 2 to 5. Respondent 2 and the complainant entered into a registered development agreement vide deed number 5087 dated 24/08/2015 for development of the aforesaid land by way of construction of multi storied building thereon. Building plan was sanctioned vide BP number 682/2014 dated 19/09/2015. As per agreement, both the parties were entitled for 50% share and construction was to be completed within 2 years to 2 years and 6 months from date of agreement. Respondents could not complete the construction within the stipulated period. Meanwhile supplementary agreement dated 31/08/2018 was executed between the parties wherein the shares of the parties were defined. As per this agreement, complainant was entitled 50% for the total carpet area but the respondents handed over only 5243 sq. ft. area to him. He is entitled for 507 sq ft more area. It is alleged that

complainant suffered rental loss to the tune of ₹47,85,000(Forty-Seven lakhs eighty-five thousand only) due to delay. It is said that the respondents have not installed power generator, transformer, individual electric connection with meter and some civil works are also pending. Hence this case. A sum of ₹91,18,580(Rupees Ninety-one lakhs eighteen thousand five hundred eighty) has been claimed by the complainant from the respondents under different heads. Xerox copy of several document have been filed by the complainant with complaint petition.

3. On being noticed, respondents appeared before this court and filed joint written statement contesting the case and claim of the complainant. According to written statement, the case filed by the complainant is misconceived and concocted and same has been filed as arm twisting method just to coerce the respondents. Respondents made several efforts to settle dispute with the complainant and impressed upon him to accept possession of agreed construction but he declined to do so in order to avoid mandatory taxes. It is stated that Government of India in its notification has clarified that land owner entering into development agreement is liable to pay GST. Due to no payment of tax, complainants' share has not been carved out. It is further said that complainant has not made payment of ₹33,00,000(Thirty-three lakhs) which has been invested by the respondents on modified job executed at 5th floor. It is further said that in the development agreement, it is clearly stated that on

occasion of practical difficulties , the time frame given in the development agreement can be extended. Delay has been occasioned due to conduct of the complainant partly and partly due to other factors. After execution of supplementary development agreement, project work was completed at the earliest. It is denied that respondents have given less carpet area to the complainant. It is also denied that the complainant has suffered rental loss due to delay in project. It is stated that complainant has received ₹5,50,000(Five lakh fifty thousand) from the respondents on 18/12/2013 on condition that he would return it after receiving his share but he has not repaid the same. So far as installation of generator is concerned, it is joint liability based on proportionate share of parties and complainant is not in a mood to provide his share. Hence, it has been prayed that the case brought by the complainant may kindly be dismissed. Along with written statement, xerox copy of several documents have been filed.

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

FINDINGS

5. The learned counsel appearing on behalf of the complainant as submitted that it is an admitted fact that complainant had entered into development agreement with respondent company for the

construction of the multi storied commercial cum residential building. Respondents have not formally handed over the possession of share of the complainant in the said construction. They have given oral possession of the share of the complainant which is 507sq. ft less in area and delayed possession of the building has caused rental loss of ₹47,85,000/ to the complaint for the period starting from March, 2018 to July,2020. He has further argued that in order to harass the complainant, respondent lodged police complaint against him but police did not find the case true. He has further submitted that they have not obtained completion certificated from the Ranchi Municipal Corporation. It is his further argument that the present case is very maintainable and complainant is entitled for reliefs as claimed by him.

6. The learned counsel appearing on behalf of the respondents submitted otherwise. It is his argument that the present case is not maintainable as the complainant is not allottee rather he is co-developer being land lord of the land upon which the construction has been done. The complainant being 50% shareholder as per development agreement entered into the development agreement to generate revenue. The learned counsel has drawn my attention toward circular of Jharkhand RERA in order to convince that complainant is not an allottee. Complainant has demanded 507sq. ft more **carpet area** whereas the development agreement was with respect to **super built -up area**. He has further argued that project was completed on time and completion certificate has

been issued by the competent authority. In order to evade liability to pay GST amount, complainant has filed the present case. He has also not returned ₹5,50,000/ loan amount which he had taken from the respondents with promise to return the same without interest on getting possession of the building. It is his further arguments that as per development agreement complainant was to remove any local problem and difficulties in course of developing of project but he did nothing when one Shanti Khalkho raised some objection. Due to said reasons, project work was delayed. So far as installation of generator is concerned, it is joint liability of both the parties but complainant is not ready to pay even a single penny towards installation of generator. Hence he has prayed to dismiss this case brought by the complainant with direction to return loan amount of ₹5,50,000/ to the respondents and also pay GST liability of his share.

7. In the first place, I would like to adjudge whether the case brought by the Complainant is maintainable or not ? In the Section-2(zk) of the Real Estate (Regulation & Development) Act, 2016 (in short RERA Act) the definition of word “promoter” has been given which is as follows:-

(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments for the purpose of selling all or

some of the apartments to other persons and includes his assignees; or

(ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or

(iii) any development authority or any other public body in respect of allottees of—

(a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or

(b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or

(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or

(v) any other person who acts himself as a builder, colonizer, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the

building or apartment is constructed or plot is developed for sale; or

(vi) such other person who constructs any building or apartment for sale to the general public.

In Section- 2 (zk) (i) it is clearly stated that a person who caused to be constructed independent building or a building consisting of apartments.....will fall in a category of promoter. In the present case admittedly the Complainant is landlord who has given his land to the Respondents to develop it and construct building upon it in which the share of the Complainant would be 50% and certainly this building is residential-cum-commercial building and Complainant has got it constructed to earn money. Further I find that Jharkhand Real Estate Regulatory Authority has issued Circular No. 1/2019 to clarify that landowner will deem to be promoter. In this context Ld. Counsel for the Respondent has filed decision of the Maharashtra RERA (LQ/RERA/2018/44 dated 30.08.2018) and its perusal shows that the Appeal was filed before Maharashtra RERA (Appellate Authority) and the Hon'ble Chairperson was pleased to dismiss this Appeal on this ground that Appeal was preferred by the landowners who presented them to be allottee. Per contra, the Ld. Counsel for the Complainant has filed Circular of Punjab Real Estate Regulatory Authority and has submitted that perusal of this Circular indicates that landowner in all cases cannot be treated as promoter and it depends upon circumstances of each case whether he is promoter or allottee. Landowner is considered as promoter, if

he has a role in development, he only gives right of development but not the power of sale of developed land, if he is to get share in the profit of the project, if there is agreement between the him and the promoter that he will also be a promoter etc.

8. In the first place I would like to make it clear that Jharkhand Real Estate Regulatory Authority is not bound to follow the Circular of Punjab RERA rather this Authority will follow its own Circular which has already been discussed above. Moreover, if the Circular of Punjab RERA is taken into consideration, in that case also, the Complainant will fall in the category of promoter because he has caused the building to be constructed to get share in the profit and use it as commercial purpose.
9. Section- 31 of the RERA Act discuss about filing of the Complaints with the Authority and it is mentioned in the provision that any aggrieved person may filed Complaint. The word “person” has defined in Section- 2 (zg) of the RERA Act and according to this provision landowner does not come within the definition of person.
10. In the circumstances I come to this conclusion that Complainant of the present case is not allottee and in my view only aggrieved allottee can file Complaint before Jharkhand Real Estate Regulatory Authority. Hence in my view the present case filed by the Complainant is not maintainable.
11. The second question which comes before me for adjudication is whether the landowner is liable to pay GST or not? The Ld.

Counsel for the Complainant has submitted that landowner cannot be forced to pay GST to the government. He has further argued that as per agreement, Complainant was not supposed to give any charges to the Respondents as per Para- 12 of the development agreement. In this regard the Ld. Counsel for the Respondents has submitted that payment of GST is statutory liability and Complainant cannot escape from this payment. The Ld. Counsel has filed One Circular of Government of India, Ministry of Finance, Department of Revenue dated 07.05.2019 which is with respect to Frequently Asked Questions (FAQ) and perusal of Sl. No. 39 of this Circular clearly indicates that activity of transfer of development rights by a landowner to a promoter is a supply of service subject to GST. In the present case certainly GST has not been paid by the Complainant and in my view in view of above discussion he is liable to pay GST as claimed by the Respondents.

12. The next question which comes before me for adjudication is whether Complainant has received 507 sq. ft. less area or not ? The Ld. Counsel appearing for the Complainant has submitted that Complainant has received verbal possession of some part of the developed area but no written possession has been handed over to him. He has further argued that Respondents have given 507 sq. ft. less area to him regarding which he has put forward his claim before this Court. The Ld. Counsel for the Respondents has submitted otherwise. He has argued that Complainant has put

forward claim of 507 sq. ft. more **carpet area** whereas the development agreement was with respect to **super built-up area**. He has further submitted that Complainant has already received 50% of super built-up area.

13. Perused the Supplementary Development Agreement dated 31.10.2018. In the Schedule-1 of this Agreement, share of both the parties are mentioned. Not only share rather on which floor they will get their share, is also mentioned. In the Schedule of supplementary agreement, carpet area of both the sides is also mentioned. No doubt as per Schedule-1 of this Agreement, Complainant has received less carpet area than the Respondents but super built-up area is almost same. Respondents have filed original agreement dated 31.08.2018 and in this Agreement there is some difference in Schedule-A when I compare it with the Schedule-A of the Agreement furnished by the Complainant. Certainly either Schedule-1 of the Development Agreement supplied by the Complainant will be correct or Schedule-1 of the Development Agreement supplied by the Respondent will be correct. In this regard both the parties were directed to swear Affidavit regarding genuineness of Schedule-A and both the parties sworn Affidavit to this extent that their document is genuine. I would like to clarify that Complainant has not furnished original Development Agreement while Respondents have file original one. Moreover, I don't find any major difference in both the Schedule-A of the Development Agreement

filed by the parties and at this juncture no opinion can be given as to which one is correct.

14. Perusal of case record shows that Complainant was given opportunity to get actual carpet area measured but he showed his inability and in this regard he has filed one Affidavit also which is on the record. From perusal of first Development Agreement dated 24.08.2015 indicates that as per this Agreement (Para-1), it was with respect to super built-up area. As discussed above Complainant has received almost 50% of the super built-up area and it cannot be said that Respondents have given him less area.
15. Now I would like to see whether there is any delay in the construction of the building which caused monetary loss to the Complainant. I find that Complainant has claimed Rs. 47,85,000/- from the Respondents due to delay and non-handing over of landowner's share in stipulated period. Perused the development agreement dated 24.08.2015. As per this agreement were supposed to construct the building within 24 months from the date of passing of the plan by the competent Authority and this period was extendable for another 6 months with joint consent of the parties. Certainly within 2 and half years from the date of passing of the plan, construction has not been done by the Respondents but I find that on 31.08.2018 Supplementary Agreement was executed between the parties. It means that by executing this Supplementary Agreement, Complainant has virtually condoned the delay which has been caused in construction of the building.

Moreover, in Para-8 of the agreement dated 24.08.2015, it is very much mentioned that due to calamities, government order or shortage of building materials this time period may be extended there are documents on the record to show that there was some dispute regarding the land. One Shanti Khalkho was causing some sort of problem and on 24.12.2018, Rs. 50,000/- was paid to her and then she allowed construction of boundary wall around the building. It has not been made clear by the Complainant since when he is in possession over his share in the said building. Further I find that Supplementary Development Agreement was executed on 31.08.2018 whereas Completion Certificate has already been obtained prior to execution of Supplementary Development Agreement which is 19.08.2018. So ,I feel that off course there is delay in the construction of the building as per development agreement but the same has been duly explained by the Respondents. I feel that no compensation can be give to the Complainant regarding this delay.

16. It has been submitted by the Complainant's Lawyer that generator facility has not been provided in the said building. Respondents have admitted that generator has not been provided in the building. The Ld. Counsel for the Respondents submitted that installation of the generator in the building is joint liability of the parties but the Complainant is not ready to give his share. Perused the Development Agreement. There is nothing in the development agreement to show that as to who were supposed to

install generator in the building. It is not mentioned in the development agreement that it is duty of the builder to install generator. Since the Complainant is also Developer and he is owner of 50% share, it is his duty to contribute his share in installation of generator in the building. Respondents are directed to install generator in the building within 3 months from the date of this Order after receiving 50% amount from the Complainant.

17. It has been submitted on behalf of the Respondents that on 18.12.2013, Respondents had given Rs. 5,50,000/- friendly loan without interest with condition that same will be refunded by him after getting possession of his share in the building. **Annexure- 5** is money receipt duly signed by Complainant. The Ld. Counsel has submitted that this money has already been returned to the Respondents 2 or 3 years back but they did not issue any acknowledgment against this payment. Without any documentary evidence, it cannot be believed that Complainant has refunded this money to the Respondents. Complainant is directed to refund this money to the Respondents when final accounting is done between the parties.
18. It has been submitted that Respondents have not obtained any Completion Certificate or Occupancy Certificate from the competent Authority. Respondents have filed Completion Certificate dated 19.08.2018 issued by Virendra Kumar Sinha, Civil Engineer which is **Annexure- 4**. This document has not been denied by the Complainant. It means that on 19.08.2018

building was complete in all respect. But Occupancy Certificate has not been filed by the Respondents. It means that Respondents have not obtained Occupancy Certificate from Ranchi Municipal Corporation or any Grade- 1 Architect. It is duty of the Respondents to obtain the same and provide it to the Complainant within 3 months from the date of this Order.

19. In the circumstances I come to this conclusion that case brought by the Complainant is not maintainable in view of the provisions of RERA Act. Both the parties are directed to settle their disputes in view of the findings given by this Court in its judgment by appointing a mediator.
20. As such, the present case brought by the Complainant is hereby dismissed on contest without cost.

Dictated & Corrected
by me

Adjudicating Officer
JHARERA

Adjudicating Officer
JHARERA