

**JHARKHAND REAL ESTATE REGULATORY AUTHORITY**

**IN THE COURT OF CHAIRMAN, RERA**

**Present ----- Ranjeet Kumar Choudhary**

Dated Ranchi the 08<sup>th</sup> day of November, 2023

**Complaint Case No. 40 of 2022**

**Raj Kumar,**

S/o- Sri Lal Babu Chaudhary,

R/o- Mohalla- Hanuman Nagar,

Kali Mandir Road,

P.S.- Patrakar Nagar, District- Patna,

Presently residing at Mahamaya Apartment,

B- Block, Harihar Singh Road,

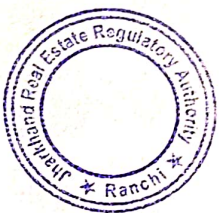
Ranchi, Jharkhand

Partner of Kosut Builder and Developer Pvt. Ltd.

-----Complainant

-Versus-

1. **Smt. Rita Singh,**



**D/o- Sri Durga Prasad Singh**

2. Smt. Geeta Kumari,

W/o- Sri Akhileshwar Prasad

3. Sri Ram Singh,

4. Sri Ram Niwas Singh,

Both Sons of- Late Durga Prasad Singh

All R/o- Village- Sindhuyar Morabadi,

P.S.- Bariyatu, Ranchi, Jharkhand

5. Sri Kailash Kumar,

S/o- Sri Jawahar Prasad,

R/o- Village- Chandpur- Bella,

P.S.- Jakkanpur, District- Patna.

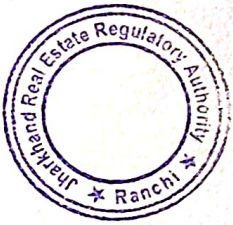
Managing Director of Kosut Builder and Developer Pvt. Ltd.

6. Sri Biswajeet Kumar,

S/o- Sri Yogendra Singh

R/o- Village- Pragati Nagar,

Sipara, P.S.- Phulwarisharif,



District- Patna, Bihar

--- Respondents

Complainant Represented through

--- Mr. Krishna Kumar,

Ld. Advocate

Respondent No. 1 to 4 Represented through --- Mr. J.P. Agarwal ,

Ld. Advocate

---Mr. P.K. Mahto,

Ld. Advocate

Respondent No. 5 Represented through --- Mr. Alok Kumar ,

Ld. Advocate

---Mr. Rahul Kumar,

Ld. Advocate

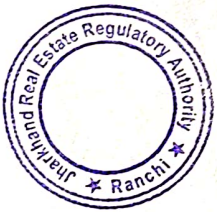
Respondent No. 6 Represented through --- None

### JUDGMENT

1. The instant Complaint has been brought by Complainant Raj Kumar against the Respondents with reliefs that it may be held that after act upon over the development agreement, cancellation of power of attorney by the landowners is illegal and void and it may be held that

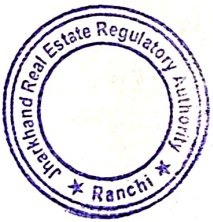
Complainant is entitled for 1/3<sup>rd</sup> share in the share of the developers. Adequate compensation for mental agony and physical harassment has also been sought.

2. According to Complaint Petition, it is the case of the Complainant that Respondent No. 5 Kailash Kumar is Managing Director of the project named "**Sri Kosut Builders and Developers Pvt. Ltd.**" and Complainant was one of the partner in the said project. Respondent No. 5 and Complainant entered into a development agreement with Respondent No. 1 to 4 on 22.07.2010 for construction of a multi-storied building at mouza Sinduar, Morabadi, Ranchi with terms and conditions that 34% of built-up area will go to the landowners and 66% portion will come in the share of developers. 42 flats were scheduled to be constructed. Subsequently, Respondent No. 5 inducted Respondent No. 6 in the construction company as partner and a registered deed of partnership was executed on 14.05.2012. Total 39 flats were constructed and 3 flats remained for construction because maternal uncle of the landowners namely Mahendra Singh had illegally occupied about 2 Katthas of land. Complainant sent a legal notice to Mahendra Singh on 19.05.2014 to vacate the land and his this conduct annoyed the landowners. They revoked the power of attorney dated 17.04.2012 executed in favour of all three developers. They revoked the power of attorney on 27.06.2014 and on same date they executed fresh power of



attorney in favour of rest two partners (Respondent No. 5 & 6) and left the name of the Complainant. Complainant has invested capital in construction of 39 flats and not only that he was physically involved in the construction. Complainant has invested about 90 Lakh in purchasing building materials from market on his credit. Revocation of power of attorney dated 17.04.2012 by the landowners is illegal and it is fraud with the Complainant. Hence, it has been prayed that it may be declared cancellation of power of attorney by the landowners is illegal and necessary order may be passed for delivery of possession of 1/3<sup>rd</sup> share of developer's share to the Complainant. Compensation has also been sought for physical harassment and mental agony caused to the Complainant.

3. On being noticed, Respondent No. 1 to 4 appeared and contested the case by filing Written Statement. It is said that on 22.07.2010, answering Respondents had entered into development agreement with **M/s Kosut Builders and Developers Pvt. Ltd.** through its Managing Director Kailash Kumar (Respondent No. 5). After execution of agreement, construction company committed several irregularities and hence on 27.06.2014, answering Respondents cancelled the power of attorney and executed fresh power of attorney on same date in terms of settlement between the parties after mediation. Respondent No. 5 declared that Complainant is no longer Director of **M/s Kosut Builders**



and Developers Pvt. Ltd. Thereafter, again some disputes developed and on 14.05.2015, these Respondents revoked power of attorney dated 27.06.2014 and on 09.04.2018, they executed a fresh power of attorney in favour of Respondent No. 5 alone. It is further said that Complainant has filed Complaint Case No. 2091/2014 in the court of A.C.J.M., Ranchi which is still pending. Hence, it has been prayed to dismiss the case brought by the Complainant.

4. Respondent No. 5 also appeared and contested the case by filing a separate Written Statement. It is said that grievance of the Complainant cannot be redressed by the Hon'ble Tribunal. It is said that initially there were two partners namely Kailash Kumar (Respondent No. 5) and Lal Babu Choudhary, the father of the Complainant, who had entered into development agreement with the landowners. Complainant made fraud with the Respondent No. 5 by doing misappropriation of funds and grabbed the money which were taken from the purchasers for which Respondent No. 5 lodged FIR against him vide Bariyatu P.S. Case No. 359/2015 under different sections of IPC. Then he alongwith other partner Bishwajeet Kumar ousted the Complainant from partnership and Complainant and his father admitted their guilt by giving undertaking to the Respondent No. 5. Landowners have also revoked the power of attorney given to the developers including the Complainant and subsequently they executed fresh power of attorney in favour of



developers leaving the name of the Complainant. Complainant executed one sale deed in favour of Naresh Prasad without taking the consent of Respondent No. 5. Subsequently, Bishwajeet Kumar also committed fraud and he was also ousted from the partnership by the Respondent No. 5. Landowners executed fresh power of attorney on 09.04.2018 in favour of Respondent No. 5 alone, who is Managing Director of the company. It is further said that Complainant has given one letter to the Respondent No. 5 in which he has admitted that he has committed fraud by not giving his partnership amount of Rs. 30,00,000/- (Thirty lakh) only to the company and his father has grabbed Rs. 60,00,000/- (Sixty lakh) only which was procured from flat purchasers. Hence, it was prayed that Complaint brought by the Complainant may be dismissed.

5. Respondent No. 6 did not appear before the Court despite issuance of notice and paper publication and vide the Order dated 11.09.2023, case was ordered to be heard ex-parte against him.

6. The only point arising out of this case for determination is whether the Complainant is entitled for reliefs as claimed for ?

### **FINDINGS**

7. The Ld. Counsel appearing for the Complainant supported his case. He has argued that Respondent No. 1 to 4 have committed wrong by revoking power of attorney given to the Complainant and Complainant is



entitled for 1/3<sup>rd</sup> share in the share allotted to the developers. He has further argued that Complainant is entitled for compensation.

8. The Ld. Counsel appearing for the Respondent No. 1 to 4 submitted that case brought by the Complainant is not maintainable. These Respondents had entered into development agreement with **M/s Kosut Builders and Developers Pvt. Ltd.** through its Managing Director Kailash Kumar. Of course, Complainant was one of the partner in this company but subsequently he was ousted from the company by its Managing Director due to his misdeeds. These Respondents rightly cancelled the power of attorney executed in favour of the Complainant and there rightly executed fresh power of attorney. The story narrated by the Complainant regarding illegal possession of 2 Kathas of land by the uncle of these Respondents is wrong.

9. The Ld. Counsel appearing for the Respondent No. 5 submitted that Complainant has embezzled about Rs. 90,00,000/- (Ninety lakh) only money of the company for which criminal case was filed against him and he is no longer Director of the company. For demarcation of share, Complainant is not supposed to file case before Real Estate Regulatory Authority and this Authority is not empowered to allot share to the Complainant.

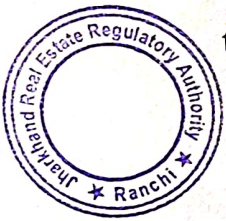


10. Heard and perused the case record including the documents filed by the parties. Also considered the argument adduced on behalf of the parties. No doubt Respondent No. 1 to 4 had entered into development agreement dated 22.07.2010 with **M/s Kosut Builders and Developers Pvt. Ltd.** through its Managing Director Kailash Kumar and Director/Complainant Raj Kumar. Subsequently, Respondent No. 6 was inducted as one of the Director in the company. Xerox copy of partnership deed has been filed and I feel that this partnership deed is not under challenge. When the Respondent No. 6 was inducted in the company as partner, fresh partnership deed dated 14.05.2012 was executed, this deed is on the record. On 17.04.2012, Respondent No. 1 to 4 executed power of attorney in favour of all three partners, xerox copy of this power of attorney is on the record which is an admitted document. Xerox copy of legal notice sent to the landowners by the Complainant is also on the record. It is also an admitted fact that Respondent No. 1 to 4 revoked the power of attorney dated 17.04.2012 and they executed fresh power of attorney in favour of Respondent No. 5 and 6 only. Respondent No. 5 has filed xerox copy of one letter (**Annexure- 5**) written by the Complainant addressed to Respondent No. 5 in which he has admitted that Rs. 90,00,000/- (Ninety lakh) only of the company is with him and he will try to refund it to the company. When the Complainant embezzled the property of the company, Respondent No. 5 instituted FIR against him vide Bariyatu P.S. Case No. 359/2015 under different sections of the IPC.



Xerox copy of written report of this case (**Annexure- 1**) is on the record. Xerox copy of sale deed (**Annexure- 3**) executed by Complainant in favour of Shri Naresh Prasad is also on the record by which he sold one of the flat to a person without the consent of Respondent No. 5 and others. When the dispute cropped up between Respondent No. 1 to 4 and Respondent No. 5, this Respondent No. 5 filed criminal case against Respondent No. 1 to 4 and these Respondent No. 1 to 4 filed ABP No. 1143/2017 in the court of Judicial Commissioner, Ranchi and the matter was referred to mediation center where parties settled their dispute and mutual consent letter was executed jointly by the parties. Mediation report and mutually consent letter are **Annexure-4 & 5**. Thereafter, fresh power of attorney was executed by the Respondent No. 1 to 4 in favour of only Respondent No. 5.

11. After scrutiny of these papers and the documents, it is crystal clear that presently Respondent No. 5 is only office bearer of the construction Company namely **M/s Kosut Builders and Developers Pvt. Ltd.** It is true that when the development agreement was executed, Complainant was one of the partner in the construction company but due to his misdeeds, he was ousted from the construction company and power of attorney given in his favour was revoked by the landowners. Prima facie it appears that huge money of the construction company is with him and he has sold one of the flat to one Naresh Prasad without the consent of the



Managing Director of the company. The grievance of the Complainant is that revocation of power of attorney by the landowners given to him is illegal. This relief cannot be given by this Authority because this relief does not come within the purview of Real Estate (Regulation & Development) Act, 2016 in short RERD Act. The Complainant has demanded 1/3<sup>rd</sup> share in the developer's share. This relief also cannot be given by this Authority because this relief is not within the purview of RERD Act. Only competent Civil Court can decide these matters. There is nothing on the record that Complainant had challenged the revocation of power of attorney by the landowners before any competent Civil Court. He has also not challenged cancellation of partnership deed before proper competent Authority. Cause of action to the Complainant arose in the year 2014 when power of attorney was revoked by the landowners but he has ventilated his grievances before this Authority in the year 2022. Certainly, the Complainant is not entitled for any compensation also.

12. In the facts and circumstances of the case, I do not find any merit in the case brought by the Complainant which is accordingly dismissed on contest without cost.

