

**JHARKHAND REAL ESTATE REGULATORY  
AUTHORITY**

**Complaint Case No. 34 of 2018**

Promila Devi,

W/o Mr. Sheo Badan Singh,

R/o- House No. Vn/1, Victory Liberty Section

of Bastacolla Colliery, P.O.- Dhansar,

P.S.- Jharia, District- Dhanbad

--- Complainant

-VERSUS-

M/s Nexgen Infra Heights (Pvt.) Ltd.,

through its Director Ravi Kant Singh

B-3, Vinita Villa, Sidharth Nagar, Jaydeo Path,

Rupuspur, District- Patna, Bihar

Branch Address- Ganpati Tower Apartment,

Basement, Behind Prabhataun Grand Mall,

Dhaiya, Dhanbad

--- Respondent

Dated Ranchi the 29<sup>th</sup> Day of December, 2023

Complainant Represented through --- Mr. Shobhakar Mishra,

Ld. Advocate

--- Mr. Ravi Prakash Mishra,

Ld. Advocate

Respondent represented through --- Mr. Nitin Kumar Pasari,

Ld. Advocate

---Miss Sidhi Jalan,  
Ld. Advocate

**Coram: Hon'ble Chairman Shri Ranjeet Kumar Choudhary  
Hon'ble Member Shri Birendra Bhushan**

### **JUDGMENT**

1. The instant case has been filed by the Complainant Promila Devi against the Respondent M/s Nexgen Infra Heights (Pvt.) Ltd. with a prayer to direct the Respondent to handover the flats of her share to the Complainant with Completion Certificate issued from Mineral Area Development Authority (MADA) and setup an enquiry to enquire about use of sub-standard building materials in the construction and also investigate whether the construction has been done as per sanctioned plan.

2. According to Complaint Petition, it is the case of the Complainant that she being owner of the land entered into a development agreement with a Respondent Company on 30.07.2014 for construction of multi-storied residential-cum-commercial Complex know as "**Raj Kamal Plaza**" over a piece of land bearing Plot No. 385 corresponding to Kathta No. 112 measuring an area of 41/4 Kathas + 3.92 Kathas total area 8.17 Kathas within Mouza-Hirapur, Dhanbad. Clause- 8 of the said agreement stipulates about Completion period which is a period of 03 years from the date of

development agreement. Thereafter, Complainant executed general power of attorney in favour of the Respondent. On 15.12.2015, an agreement for division was entered between the parties for allotment of share of flats, office area and shop in the said project. Only 80% work was completed by the builder on the date of delivery of possession of the flat. Hence, it has been prayed Respondent may be directed to handover the possession of the flats of her share to the Complainant with Completion Certificate obtained from MADA within a period of 15 days and setup an enquiry to enquire about sub-standard materials used in the construction and to see whether construction has been done as per sanctioned plan or not ?

3. In this case, initially Respondent did not appear and vide the Judgment dated 15.07.2019 case was disposed of by the Authority. Respondent preferred appeal against this Judgment before Jharkhand Real Estate Appellate Tribunal, Ranchi vide Appeal No. 05/2021 and the Hon'ble Appellate Tribunal allowed the appeal vide the Judgment date 08.05.2023 and remanded the matter to this Authority for passing fresh order in accordance with law after giving proper opportunity to all the necessary parties.

4. When the matter was remanded before the Authority, Respondent duly appeared and filed Written Statement contesting the case and claim of the Complainant. As per Written Statement, the Respondent is a company incorporated under Companies Act, 1956 and is engaged in business of Real Estate. On 30.07.2014,

Complainant entered into development agreement with Respondent Company for construction of multi-storied building over 8.17 Kathas of land out of which an area of 4.5 Katha was owned by Complainant and rest area was owned by another lady named Sita Devi. As per development agreement, 50% of the constructed area was allotted to landowners in proportion of their land sharing ratio and 50% of total constructed area/vacant land was to be retained by the Respondent. Rs. 15,00,000/- (Fifteen lakh) only was to be paid by the Respondent to the landowners each with rider that Rs. 10,00,000/- (Ten lakh) only will be refunded after completion of the project. Subsequent to development agreement, power of attorney was executed on 06.08.2014 by the landowners. Thereafter, sanctioned plan was issued by Mineral Area Development Authority (MADA) and there were certain differences of opinion between Respondent and landowners and then revised plan was submitted by the Respondent in April, 2015 which came to be sanctioned in January, 2016. In December, 2015, an agreement of division was carried out between the parties and recital of this division agreement would transpire that it was to form part of development agreement dated 30.07.2014. Subsequently, this agreement of division was slightly modified in respect of one flat (Flat No. 401) and original division stood changed accordingly by agreement of division dated 14.11.2016. Subsequent to initiation of construction, the landowners wanted to modify the sanctioned development plan to the extent of changing the first floor originally

sanctioned for residential purpose into a commercial complex and a result of which Respondent had to apply for amendment in original development plan. When the application for amendment pending before MADA, construction was put on hold. The malafide of landowner can be manifested from the notice dated 06.02.2017 served upon the Respondent wherein without referring the re-casting agreement, Respondent was pressurized in terms of original agreement. The amendment in the development plan was duly allowed by MADA in January, 2016 and then construction work restarted and it completed in the end of September, 2018. Subsequent to which Respondent wrote a letter dated 01.11.2018 for payment of outstanding dues and to proceed with the process registry of the said property but the letter was never responded by the Complainant. Respondent further wrote a letter dated 22.12.2018 explaining the reasons for the delay of delivery of possession of the building and requested for refund of security money. Complainant vide letter dated 18.01.2019 claimed that Respondent had not completed the construction work of the apartment. Since, Respondent did not receive security deposit, he had to cancel the sale agreement for allotment of shop to the landowner and adjust the amount paid by the landowner towards the amount of security deposit. This cancellation was duly communicated to the Complainant vide letter dated 17.01.2019. Thereafter, the Complainant instituted this case against the Respondent. The original plan was sanctioned by the MADA and

presently Dhanbad Municipal Corporation (DMC) is exercising the power of sanction of plan and hence neither MADA nor DMC is issuing Occupancy Certificate. The construction work was delayed for the reasons that it was put on hold for a period of 01 year. Hence, it has been prayed to dismiss the case brought by the Complainant.

5. When the matter was remanded by the Appellate Authority, the Respondent filed his written report and against which reply, reply was filed by the Complainant. According to this reply, the statements made by the Respondent in the Show Cause were denied. It is further said that developer failed to show any grounds of delay within the ambit of "Force Majure". It is further said that on 15.12.2015, an agreement for division of shares of the parties were entered into to the extent of allotment of flats, shops, office area and parking of their respective share. This agreement of division and later on recasting of agreement of division dated 14.11.2016 has nothing to do with the development agreement dated 30.07.2014. It is also said that Flat No. 401 in "**Rajkamal Plaza**" was common for both the developer and owners as in the said building, nine flats were constructed and after division of eight flats, Flat No. 1 remained common for both the parties. The area of this flat was 1236 sq. ft. and rate of the flat was fixed at Rs. 2,100 per sq. ft. and after calculation of price it comes to Rs. 25,95,600/- and when parking area amount of Rs. 1,80,000/- (One lakh eighty thousand) only is added, it comes to Rs. 27,75,600/- (Twenty seven lakh seventy five thousand and six hundred) only.

Respondent/Developer was to pay Rs. 13,87,800/- (Thirteen lakh eighty seven thousand and eight hundred) only to the landowner against this flat which is half of the amount of Rs. 27,75,600/- (Twenty seven lakh seventy five thousand and six hundred) only. Respondent issued two Account Payee cheques in favour of the landowner but both the cheques were dishonoured. It is further said that in the recasting of agreement dated 14.11.2016, it is mentioned that due to paucity of fund, developer is not in a position to give money. Hence, it was agreed that developer will allot Shop No. S-5 on the ground floor, having a super-built up area of 534 sq. ft. in favour of the landowners and accordingly he issued allotment letter. The rate of the shop was fixed at Rs. 4,502 sq. ft. and the total cost of the shop comes to Rs. 24,04,068/- (Twenty four lakh four thousand and sixth eight) only. Owners were to pay a sum of Rs. 10,14,268/- (Ten lakh fourteen thousand and two hundred and sixty eight) only and eventually developer received the said amount and even after receiving the amount, he sold a shop to a third party. Other facts raised by the Respondent in his reply were denied in this counter reply.

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 as per development agreement, the

Respondent/Builder did not complete the construction work and construction workmanship is not as per approved plan. Respondent has not registered his flat with Jharkhand Real Estate Regulatory Authority (JHARERA). He has also argued that present case filed by the Complainant is very much maintainable. It is his further argument that agreement of the division was signed between the parties on 15.12.2015 and developer issued two cheques in favour of the landlords as partial discharge of his liabilities with respect to Flat No. 401 but both the cheques were dishonoured. A fresh recasting agreement of division was entered between the parties wherein Shop No. S-5 was allotted to the landlords but very cunningly Respondent sold the flat to a third party even after receiving the half of the consideration amount fixed for the shop. He has drawn our attention to this fact that developer has issued declaration dated 26.07.2017 in favour of a purchaser Kiran Devi wherein it is declared that developer would handover the flat to the said purchaser by March, 2018. This clearly indicates that project was not completed by March, 2018. Hence, he has prayed that the case brought by the Complainant may be allowed and reliefs sought by her may be granted.

8. The Ld. Counsel appearing for the Respondent submitted otherwise. He has argued that proceedings before the Hon'ble Tribunal is beyond jurisdiction as per Section- 31 of the Real Estate (Regulation & Development) Act (in short RERA Act). It is only the association of allottees or any Voluntary Consumer Association can file

Complainant and not the landowner. He has further argued that if any delay has occurred in the construction, it is only because of the Complainant and prevailing circumstances. The completion period mentioned in the development agreement was subject to "Force Majure" and developer was entitled for extra time in case of such happening. The construction was delayed only for reason that it was put on hold for a period of one year as the Respondent had applied for alteration in the original development plan, which was done in pursuance of request made by the landowner. He has also argued that Complainant has wrongly stated that her consent was not taken for re-sanction of development plan. It is his further argument that Respondent has obtained Completion Certificate from Architect which shows that project is already complete. So far as Occupancy Certificate is concerned, there is problem because MADA has issued sanctioned plan and now this power has been vested with Dhanbad Municipal Corporation and hence neither MADA nor DMC is issuing Occupancy Certificate. Hence, he has prayed to dismiss the case brought by the Complainant.

9. Having heard the arguments adduced by both the parties and perusing the documents annexed with Complaint Petition and Written Statement, I come to this conclusion that first of all I have to decide whether the case brought by the Complainant under RERD Act is maintainable or not ? The Ld. Counsel for the Respondent has taken this plea that case brought by the Complainant is not maintainable in

view of the Section -31 of the RERD Act. He has argued that it is only the association of allottees or any voluntary consumer association can prefer complaint before this Authority. Since the Complainant is co-developer, she cannot file case u/s 31 of the RERD Act. Perused the Section- 31 of the RERD Act, which states as under:-

*31. (1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter allottee or real estate agent, as the case may be.*

*Explanation.-* For the purpose of this sub-section “person” shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

*(2) The form, manner and fees for filing complaint under sub-section (1) shall be such as may be specified by regulations.*

10. Section- 31 of the Act clearly stipulates that any aggrieved person may file complaint with authority. In the present case, certainly the landlord is aggrieved person. In the present case, she is supposed to get only two flats of her share. Obviously, she has not entered into the development agreement with the Respondent for construction of building for her commercial use. In the present case, she comes within the purview of allottee who had not been allotted her share by the

Respondent/Builder and as she is an aggrieved, Hence, we are of the view that Complainant is entitled to file case u/s 31 of the RERD Act before the Authority and the case is very much maintainable.

11. From perusal of the documents filed by the parties, it is an admitted position that on 30.07.2014, development agreement was executed between the Complainant and Respondent for construction of multi-storied building namely "**Rajkamal Plaza**". From perusal of Para- 14 of this development agreement, it is manifests that developer agreed to pay Rs. 5,00,000/- (Five lakh) only to the owners as non-refundable amount and Rs. 10,00,000/- (Ten lakh) only is refundable amount. It is also crystal clear that in this development agreement not only the Complainant Promila Devi rather another landlady Sita Devi was also party. This Sita Devi has no grievances against the Respondent/Builder. Para- 8 of this development agreement indicates that within a period of 03 years from the date of the development agreement, possession will be given to the owners and if Respondent/Builder fails to do so, the Rs. 15,00,000/- (Fifteen lakh) only given to the landowners will be forfeited. As per development agreement, possession of the constructed area in the apartment was to be handed over to the Complainant by 30.07.2017. On 06.08.2014, registered general power of attorney was executed by the landlords including the Complainant in favour of the Respondent/Builder. Plan was approved by the MADA on 28.11.2014. As per submission, some modifications were required in the construction and as such

application was filed before MADA for revision of the plan and on 10.01.2016, revised plan was passed by the MADA. Complainant has taken this plea that without her knowledge this revised plan was passed. Her this plea that she had no knowledge regarding passing of revised plan is concerned, does not appear to be convincing. Moreover, there are documents on the case record to show that revised plan alongwith letter (**Annexure- 4 filed by the Respondent**) written to the developer as well as landlord were sent by Executive Engineer, MADA on 08.01.2016. Document of agreement of division was executed between the parties which is **Annexure- 5**. In the Para- 8 of this division agreement, it is written that this agreement shall be treated as part of development agreement dated 30.07.2014. It is true that there is no specific averment in this agreement for division that period for completion of the project has been extended but with the help of Para- 8 of the division agreement, it can be inferred that there is deemed extension of the period of construction. Obviously, after sanction of revised plan dated 10.01.2016, the construction work in the project commenced and within 36 months from this date work of the construction ought to have completed. It means that by 30.01.2019, Respondent/Builder was supposed to complete the construction work and handover share of the Complainant to her. Respondent has filed Completion Certificate dated 18.02.2020 in which date of completion of the project is not mentioned. But from the correspondence made between the parties, (**Annexure- 6, 7 & 8 filed by the Respondent**)

it can be inferred that construction work of the project was completed by the end of year 2018. Hence, we do not feel that project was not completed within the stipulated period.

12. From perusal of the reply dated 05.03.2019 given by the Complainant to the Respondent, it is apparent that Complainant has forfeited Rs. 10,00,000/- (Ten lakh) only refundable advance given to her by Respondent during execution of development agreement. We feel that she is liable to refund this amount to the Respondent before taking possession of the flats of her share.

13. From perusal of the material available on the case records, it is apparent that when the agreement of division was executed, all the flats except Flat No. 401 were divided amongst the parties and with respect to Flat No. 401, it was decided that builder will give landowners, the price of half portion of this flat @ Rs. 2,100 per sq. ft. The price of this flat which is Flat No. 401 comes to Rs. 25,95,600/- (Rs. 2,100 per sq. ft. x 1,236 sq. ft. = Rs. 25,95,600/-). When parking amount @ Rs. 1,80,000/- (One lakh and eighty thousand) only is added, it comes to Rs. 27,75,600/- (Twenty seven lakh seventy five thousand and six hundred) only. The share of the Complainant comes to Rs. 13,87,800/- (Thirteen lakh eighty seven thousand and eight hundred) only. Respondent issued cheque with respect to this amount in favour of the Complainant and the same was dishonoured and as such case u/s 138 of Negotiable Instruments Act was filed by the Complainant against the Builder. The matter went to local police and

recasting of agreement of division was executed between the parties on 14.11.2016 whereby and whereunder developer allotted Shop No. S- 5 to the landowner and it was agreed that amount of landowner share against Flat No. 401 will be adjusted with the price amount of Shop No. S- 5 and balanced amount shall be paid by the landowner to the developer. Complainant paid approximately Rs. 10,14,268/- (Ten lakh fourteen thousand and two hundred and sixty eight) only against the purchase of Shop No. S- 5 but the developer cancelled the allotment of Shop No. S- 5 and sold it to a third party. The Ld. Counsel for the Respondent has drawn my attention towards letter dated 17.01.2019 issued by the Respondent in favour of the Complainant and has submitted that after cancellation of allotment of the shop due to non-refunding of security money by the Complainant, the shop was sold. I find that without giving any prior Legal Notice to the Complainant, the Respondent cancelled allotment of Shop No. S- 5 to her and this act of the Respondent is not legal as per law. Before cancellation of allotment, Respondent must have given prior information to her regarding cancellation and should have given her opportunity to respond. It is apparent that neither the Complainant got share against Flat No. 401 nor she got possession of Shop No. S- 5.

14. Further I find that certainly when this Real Estate (Regulation & Development) Act (in short RERD Act) came into force, the project of the Respondent was ongoing project. It is apparent that by the end of year 2018, the construction of the work was more or less was

completed. This project is a hybrid project. This project is not registered with Jharkhand Real Estate Regulatory Authority (JHARERA). As such Respondent/Builder is directed to get his project registered with JHARERA within 02 months from the date of this Order.

15. Complainant has sought the relief that enquiry may be setup about the standardization of the materials used by the developer in the said project and also to investigate whether the said construction has been done as per plan sanctioned. We fail to understand when the sub-standard materials were used in the construction of the project and there was alleged deviation also, why not Complainant took any step to report these irregularities to the Plan Sanctioning Authority. After lapse of so many years from the date of construction, these matters cannot be looked into.

16. Complainant has sought possession of the flat with Completion Certificate issued from MADA. In this case, one Completion Certificate has been filed issued by the Architect and as per Building Bye Laws of Jharkhand, it is not Sanctioning Authority rather Architect is supposed to issue Completion Certificate. According to Building Bye Laws, Plan Sanctioning Authority issues Occupancy Certificate. Respondent is directed to approach MADA and request them to issue Occupancy Certificate in view of the Order passed by this Authority and handover the same to the Complainant within 03 months from the date of this Order.

## CONCLUSION

17. In the aforesaid circumstances, it is hereby.....

### ORDERED

that (i) within 02 months from the date of this Order, Respondent will handover possession of share of the Complainant to her and she will refund Rs. 10,00,000/- (Ten lakh) only to the Respondent which she has taken as refundable advance at the time of execution of development agreement. Question of registration of the flat in favour of the Complainant does not arise as because as per Circular No. 01/2019 of JHARERA, Complainant is also co-developer.

(ii) Respondent is directed to give total amount of sale deed by which he has sold Shop No. S- 5 alongwith 8% interest per annum to the Complainant within 02 months from the date of this Order. The interest component will be calculated from the date of registration of the shop in question by the Respondent till its realization.

(iii) Respondent is further directed to refund Rs. 10,14,268/- (Ten lakh fourteen thousand and two hundred and sixty eight) only to the Complainant alongwith 8% of interest per annum, the amount which she had paid to the Respondent for purchase of Shop No. S- 5.

(iv) Respondent is directed to register its project with JHARERA within 02 months from the date of this Order.

(v) In the facts and circumstances, parties shall bear their own cost.

18. In the result, the case brought by the Complainant is allowed on contest without cost.