

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6398 of 2023

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Sunil Kumar S/o Late Birendra Kumar R/o- Golghar, P.O.- G.P.O. Patna, P.S.-
Gandhi Maidan, Town and District- Patna- 800001.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Old Secretariat, Patna.
2. The Principal Secretary, Urban Development and Housing Department, Govt. of Bihar, Vikas Bhawan, New Secretariat, Bailey Road, Patna.
3. The Real Estate Appellate Tribunal, Bihar, Fourth Floor, Pant Bhawan, Patna- 800015, through its Secretary.
4. The Real Estate Regulatory Authority, Bihar having its office at 2nd Floor, Telephone Exchange Building, BSNL, Patel Nagar, Patna- 800023, through its Secretary.
5. The Executive Officer, Nagar Parishad Khagaul, Danapur, Dist.- Patna.
6. The Mukhiya, Lakhni Bigha, Danapur, Patna.
7. Mr. Uma Shankar, Architect, Aryan Architects having its office at Plot No. 54, Jyotipuram Colony, Ambedkar Path, Jagdeo Path, Patna- 14.
8. M/s R.R. Builders and Developers, represented through its Director, namely Sudha Singh, W/o Late Rajesh Kumar, R/o 122A, Ashiana Nagar, Phase-I, Patna- 800025.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Jitendra Acharya, Advocate Mr. Purushottam Kumar Jha, Advocate
For the State	:	Mr.Yogendra Pd. Sinha (AAG-7)
For the Respondent No. 4 :		Mr. Jainandra Kumar, Advocate
For the Respondent No. 5 :		Mr. Sunil Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 26-07-2023

1. The present writ petition has been filed seeking the following reliefs:-

*“1. (i) To hold and declare that the
action of the Respondent No. 2
(Principal Secretary, Urban*



Development and Housing Department, Govt. of Bihar, Patna) in not complying with the order dated 22.11.2022 passed by the REAL ESTATE APPELLATE TRIBUNAL BIHAR at PATNA in REAT APPEAL No. 12 of 2022 is highly illegal, arbitrary, malafide, malicious and unsustainable in the eye of law and on facts both and is fit to be deprecated by this Hon'ble Court in strong words.

(ii) A writ in the nature of mandamus may kindly be issued by this Hon'ble Court, commanding the Respondent No. 2 to comply with the order dated 22.11.2022 passed by the REAL ESTATE APPELLATE TRIBUNAL, BIHAR at PATNA in REAT APPEAL No. 12 of 2022 (Annexure-1 to this writ petition) in its true letter and spirit, whereby the REAL ESTATE APPELLATE TRIBUNAL, BIHAR has held in an unambiguous term that:-

"19. In view of the aforesaid discussions, the Tribunal find



and hold that landowners' status is of allottees and are entitled for issuance of allotment letter as well as possession of allotted flats as per agreed share incorporated under the development agreement dated 6.2.2016. It has also come to the notice of the Tribunal that the promoters are engaged in selling apartments without completing the project and without obtaining completion and occupancy certificates. In view of section 11(4)(a) promoter is responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per agreement till execution of sale deed of all apartments to the allottees or common areas to association of allottees therefore, it is mandatory obligation of the promoter to obtain completion certificate or occupancy



certificate or both as applicable from the relevant competent authority and to make available such certificates to the allottees individually and also to the association of allottees thereafter to execute registered conveyance deed in favour of allottees along with undivided proportionate title of common areas to association of allottees as provided under section 17 of the Act. Before parting with the judgment the Tribunal came across disturbing facts which cannot be overlooked, in the case at hand initially building map plan of the project was sanctioned by local Mukhia though the place where the project is situated falls under Nagar Parishad, Khagaul, Danapur, Patna. A Mukhiya is neither a competent authority for sanctioning building map plan, in any provision of Bihar Municipality Act, 2007 nor empowered under Bihar Panchayati Raj Act, 2006. In this



project II towers have been constructed comprising total number of 1088 flats on the basis of building map plan sanctioned by incompetent authority. It is a matter of concern that the Authority registered such projects not qualified for registration even jeopardized interest of large number of allottees. Interestingly on 15.3.2022 a building map plan earlier not sanctioned by a competent authority was revalidated by Executive Officer, Nagar Parishad, Khagaul. Notice was issued to the Executive Officer to explain how building plan was revalidated, initially he replied that he has sanctioned a fresh map plan but a building plan is sanctioned prior to initiating construction and not after construction in other words a building plan is to be sanctioned prior to commencement of the project only after issuance of



commencement certificate issued by competent authority but later on he shifted his stand that building map plan was revalidated but again he acted contrary to law; only a legally acceptable or valid sanction map plan can be revalidated on expiry of period for which sanction was granted, which is normally three years. It is a matter of serious concern. Let a copy of this judgment be sent to the Principal Secretary, Urban Development and Housing Department, Govt. of Bihar for conducting an enquiry in the concerned matter by appropriate authority and to take appropriate steps in accordance with law."

(iii) To hold and declare that the Map of the Multi Storied Buildings so sanctioned in favour of Sanchhar Nagar of M/s R. R. Builders & Developers either by the Mukhiya, Lakhni Bigha, Danapur, Patna on 20.07.2016 or by the Executive



Officer, Nagar Parishad Khagaul, Danapur, District-Patna on 15.02.2022 are wholly unauthorised, as such, the said two (2) maps dated 20.07.2016 and 15.02.2022 deserve to be set aside by this Hon'ble Court and consequent thereupon the Building in hand deserve to be extended identical and similar treatment as has been extended to the TWIN TOWER of Noida, Uttar Pradesh.

(iv) To hold and declare that the action of the Real Estate Regulatory Authority, Bihar in registering the Project of Sanchar Nagar of R.R.Builders & Developers is highly illegal, arbitrary, malafide, malicious and unsustainable in the eye of law and on facts both and is fit to be deprecated by this Hon'ble Court in strong words and consequent upon such declaration the Real Estate Regulatory Authority. Bihar may be suitably directed to cancel the registration of Sanchar Nagar of R.R.Builders & Developers.



(v) To hold and declare that the action of the Respondent No. 7 in submitting false report as regards the completion of the project in hand is false, mischievous illegal and is far from truth, and for such illegal and unauthorised action of the Respondent No. 7, the authorities concerned of the State Govt. of Bihar may be suitably directed to cancel the registration of the Respondent No. 7 as "Architect".

(vi) To hold and declare that the action of the Respondent No. 8 in registering the flats to the allottees of the Flats in Sanchar Nagar, even without having occupancy certificate and their action in allowing the allottees of the Flats in Sanchar Nagar to live therein is highly illegal, arbitrary, malafide, malicious and unsustainable in the eye of law and on facts both and is fit to be deprecated by this Hon'ble Court in strong words.

(vii) A writ in the nature of



mandamus may kindly be issued by this Hon'ble Court commanding the authorities concerned of the State Govt. of Bihar to cancel such illegal and unauthorised Registration of Flats in Sanchar Nagar and in turn they may further be suitably directed to take appropriate action against the unauthorised occupants in the flats of Sanchar Nagar."

2. At the outset, reference is made to Section 57 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the 'Act, 2016'), which is reproduced herein below:-

"57. Orders passed by Appellate Tribunal to be executable as a decree.-

(1) Every order made by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of civil Court, and for this purpose, the Appellate Tribunal shall have all the powers of a civil Court.

(2) Notwithstanding anything contained in sub-section (1), the Appellate Tribunal may transmit any



order made by it to a civil Court having local jurisdiction and such civil Court shall execute the order as if it were a decree made by the Court.

This clause relates to the orders passed by the Appellate Tribunal to be executable as a decree.

Sub-clause (1) provides that every order made by the Appellate Tribunal under the proposed legislation shall be executable by the Appellate Tribunal as a decree of civil Court, and for this purpose, the Appellate Tribunal shall have all the powers of a Civil Court.

Sub-clause (2) provides that notwithstanding anything contained in sub-section (1), the Appellate Tribunal may transmit any order made by it to a civil Court having local jurisdiction and such civil Court shall execute the order as if it were a decree made by that Court. (Notes on Clauses)."

3. In view of the aforesaid, the learned counsel for the petitioner seeks liberty on behalf of the petitioner to file appropriate execution petition



before the Real Estate Appellate Tribunal, Patna under Section 57 of the Act, 2016. Liberty so sought is granted.

4. It is needless to state that in case appropriate execution petition is filed within a period of two weeks from today, the Real Estate Appellate Tribunal, Patna shall consider the same and take appropriate action, in accordance with law, forthwith.

5. The writ petition stands disposed off.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	01.08.2023
Transmission Date	N/A

