



**REAL ESTATE REGULATORY AUTHORITY (RERA)  
IN THE COURT OF ADJUDICATING OFFICER**

**4<sup>TH</sup> & 6<sup>TH</sup> FLOOR, BIHAR STATE BUILDING CONSTRUCTION CORPORATION CAMPUS  
HOSPITAL ROAD, SHASTRI NAGAR, PATNA-800023**

**RERA/CC/681/2019  
RERA/AO/171/2019**

Sri Baidya Nath Pathak, S/o Late Sudama Pathak,  
R/o Ram Nagar, Raj Compound, Near Parvati Kanya  
School, P.S.-Ram Nagar, District-Bettiah (West  
Champaran), Bihar-845106.

... Complainant

Versus

1. M/s Grih Vatika Homes Pvt. Ltd.,  
Through: it's Chief Managing Director and  
Director
2. Sri Ranjit Kumar Jha, Chief Managing Director,
3. Smt. Anita Kumari, Director,

Address of Respondents No.1, 2 and 3:

Address-1:

26, A.N. Path, North Shrikrishnapuri, Boring Road,  
P.S.-Shrikrishnapuri, Patna, Bihar-800001.

Address-2:

Ground Floor, Dipti Roy Complex, Opp:  
Shrikrishnapuri Post Office, Shrikrishnapuri, P.S.-  
Shrikrishnapuri, Boring Road, Patna, Bihar-800001.

... Respondents

**Present:**

**Sri Ved Prakash  
Adjudicating Officer**

Appearance:

For Complainant ... Sri Dheeraj Kumar Roy, Advocate

For Respondents ... Sri Ankit Kumar, Advocate.

**ORDER**

01-03-2021

This complaint petition is filed by the complainant,

Sri Baidya Nath Pathak against the Respondent No.1, M/s Grih

Vatika Homes Pvt. Ltd. through Respondent No.2, Sri Ranjit Kumar Jha Chief Managing Director and Respondent No.3, Smt. Anita Kumari Director u/s 31 read with Section 71 of Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the "Act, 2016") for refund of his remaining principal amount Rs.6.00 lacs along with monthly compoundable interest @ 18% on the entire principal amount Rs.11.00 lacs from respective date of payment till it's realisation with compensation of Rs.5.00 lacs and litigation cost of Rs.50,000/-, consequent to non-delivery of flat allotted to him.

2. In nutshell, the case of the complainant, Sri Baidya Nath Pathak is that Respondent No.2, Sri Ranjit Kumar Jha and Respondent No.3, Smt. Anita Kumari along with one Sri Rana Pratap Singh approached him as well as his son, Sri Abhishek Kumar Pathak and introduced themselves as Managing Director, Director and Sales Officer of the Respondent company and requested them to book a flat in their proposed Apartment "Green Vatika" at Gola Road, Patna. The Respondent No.2 contacted the complainant and his son by referring the name of one Manish Kumar, r/o Near CNG Refilling, Rukanpura, Bailey Road, Patna, who is friend of son of the complainant. The Respondents offered to get a flat booked by making payment of only Rs.11,000/- and further assured that the next payment will be demanded only after commencement of the construction work and thereafter the remaining amount shall have to be paid as per progress of the construction work. Believing on the representation and words of the Respondents, the son of

the complainant booked a flat No.202 having area 1290 sq.ft. in Block-A of the project "Green Vatika" situated at Gola Road, Patna in the name of the complainant, Sri Baidya Nath Pathak on consideration of Rs.33,96,000/- including all charges and taxes, out of which he paid Rs.11,000/- as booking amount, for which the Respondent No.3, Smt. Anita Kumari has issued money receipt no.586 dated 03-04-2015. Further case is that after one week, telephone call received from the office of the Respondents and it was informed that construction work has been started and as such Rs.10.00 lacs may be paid within a week. Thereafter, the complainant and his son received several phone calls from the Respondent No.2 and 3 and they demanded immediate payment, failing which his booking would be cancelled. Thereafter, believing on the representation of the Respondents, the complainant paid Rs.3,90,000/- to the Respondents, for which money receipt no.615 dated 18-04-2015 was issued by the Respondents and thereafter the complainant requested some time for further payment. Later on, the complainant made payment of Rs.2.00 lacs on 17-07-2015 and Rs.4.00 lacs on 31-08-2015, against which money receipts no.645 dated 17-07-2015 and no.839 dated 31-08-2015 were issued by the Respondents. Accordingly, within five months the complainant paid Rs.10.00 lacs and requested from the Respondents to execute Agreement for Sale with respect to the flat allotted to him. But, the Respondents started making lame excuses. When the complainant pressurised to execute Agreement for Sale, the Respondent No.2, Sri Ranjit Kumar Jha communicated a message to the

complainant that the construction is going on in full swing and delivery of possession of the flat will be handed in 2017 and therefore, the Agreement of Sale will be executed only after payment of 33% of the total consideration. Hence, the complainant made further payment of Rs.1.00 lac to the Respondents, against which money receipt no.1316 dated 15-12-2016 was issued by the Respondents. The Respondents did not execute Agreement for Sale even after receipt of 33% of the total consideration, then doubt arises in the mind of the complainant and he visited on the site of the project and found that there was no development in construction work. The complainant felt cheated and approached to the Respondents and enquired about the false representation to him. Thereafter, the Respondents started narrating another story for justifying the delay. They stated in their defence that there is scarcity of building materials like stone chips, sand etc. in the market and RERA, Bihar is delaying in approval of the project. However, they assured that approval is going to be granted and soon they will not only execute Agreement for Sale, but also construction will be started at war footing. But, it never happened. Losing hope, the complainant in February, 2019 requested to the Respondents to cancel his allotment and return his entire amount with interest, for which Respondent No.2, Sri Ranjit Kumar Jha asked for written request. Then, the complainant has given a written application to the Respondents, which was acknowledged by Accountant of the Respondents and thereafter, the Respondents cancelled the booking on 25-02-2019 and the complainant was assured that the principal amount

with 18% interest will be refunded within 90 days. But, the Respondents did not keep their promise and refunded only Rs.3,50,000/- in 4 instalments. Thereafter, the complainant made several attempts to contact the Respondents, but they did not refund the remaining amount. When the Respondents did not refund the remaining amount and also did not give attention towards the request of the complainant, then he decided to approach this Court. During this period, the complainant informed to the Respondents that he is going to file case against them. Then, they refunded Rs.1,50,000/- on 15-10-2010 and till filing of this complaint petition, they refunded only Rs.5.00 lacs and they are still liable to refund Rs.6.00 lacs along with compensation and interest. Hence, the complainant being fed up with the behaviour of the Respondents, have filed this complaint petition against them with the above reliefs.

3. The Respondents have filed reply pleading *inter-alia* that the entire events have occurred before enforcement of RERA Act, 2016 on 1<sup>st</sup> May, 2017. So this case being not maintainable, may be dismissed. Further case is that the complainant was allotted Flat No.202 in Block-A of the project "Green Vatika" of the Respondents in the year 2015 on total consideration of Rs.33,96,000/-, but he has paid only Rs.10.00 lacs, out of which the Respondents have refunded Rs.5.00 lacs prior to filing of this case. The Respondents are ready to comply the order of RERA and they have already refunded Rs.1,50,000/- out of Rs.6.00 lacs during hearing of this case. The Respondents are still ready to deliver

possession of the flat to the complainant in the said project, which is under construction and further they are ready to register Agreement for Sale in favour of the complainant, but the complainant is withdrawing from the project, so as per terms and conditions reached between the parties in the year 2015, the Respondents will refund the rest amount only after deduction of the Service Tax etc., as the complainant has also to follow the terms and conditions agreed between the parties. The complainant has already received back Rs.6,50,000/- out of total Rs.10.00 lacs paid in 2015, so the complainant is misleading to the Court and he has intention only to harass the Respondents, so also, this case has to be dismissed.

4. On basis of the pleadings of the parties and submissions of the learned lawyers of both the parties, following points are formulated to adjudicate the case:-

- (i) Whether the complaint case of the complainant, Sri Baidya Nath Pathak is maintainable against the Respondents?
- (ii) Whether the complainant is entitled for refund of his remaining principal amount Rs.6.00 lacs along with monthly compoundable interest @ 18% on entire principal amount Rs.11.00 lacs against the Respondents?
- (iii) Whether the complainant is entitled for compensation of Rs.5.00 lacs against the Respondents for his economical, physical and mental harassment?

(iv) Whether the complainant is entitled for litigation cost of Rs.50,000/- against the Respondents?

Point No.(i):

5. The learned lawyer for the Respondents has much emphasised that the complainant has booked a flat in the year 2015 and paid Rs.10.00 lacs to the Respondents and after cancellation of allotment of the flat, the Respondents up-till-now have refunded Rs.6,50,000/- to the complainant and these events have occurred much before enforcement of RERA Act, 2016 on 1<sup>st</sup> May, 2017, so this Court has no jurisdiction to entertain the complaint case of the complainant and hence, this case of the complainant may be dismissed. On other hand, the learned lawyer for the complainant submitted that the project “Green Vatika” of the Respondents is still incomplete and the Respondents have to get registration of the project as per Section-3 of the Act, 2016 and as such, this Court has jurisdiction to decide the dispute between the parties with respect to the said project, which is ‘ongoing’ on the date of enforcement of the Act, 2016 on 1<sup>st</sup> May, 2017.

Admittedly, the Act, 2016 was enforced on 1<sup>st</sup> May, 2017. Section 3 (2) (b) of the Act, 2016 says:-

“3. (2) Notwithstanding anything contained in sub-section(1), no registration of the real estate project shall be required-

(a) xxx      xxx      xxx      xxx      xxx  
xxx      xxx      xxx      xxx      xxx.

*(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act.”*

6. Now, if the project “Green Vatika” is completed prior to 1<sup>st</sup> May, 2017, there is no need of RERA, Bihar registration, but for scrutiny/enquiry of the project whether it is new /ongoing/completed as on 1<sup>st</sup> May, 2017, production of Occupancy/Completion Certificate is necessary. The Respondents have not filed Occupancy/Completion Certificate on the record. Hence, it will be presumed that the project “Green Vatika” of the Respondents was ongoing as on 1<sup>st</sup> May, 2017 and hence, this project should have been registered with RERA, Bihar for rights/duties/liabilities of the Respondents towards the allottees.

First proviso of Section-3 of the Act, 2016 says:-

“3. (1) xxx xxx xxx xxx  
xxx xxx xxx xxx.

*Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act.”*

7. The Respondents have already applied for registration of the project “Green Vatika” with RERA, Bihar through their application No.RERA P182201800165-1. On it’s scrutiny, there were four defects found by the officials of RERA, Bihar and thereafter letter No.RERA/pro.REG-515/2018-



750 dated 01-11-2018 was issued to the Respondents to remove these defects. But, till now they have not cured/removed these defects and that is why up-till-now the project "Green Vatika" could not be registered. It shows that the Respondents themselves know that the project "Green Vatika" was ongoing as on 1<sup>st</sup> May, 2017 and that is why they are bound with the duties towards the allottees with respect the project "Green Vatika". The liabilities of the Respondents towards the complainant for refund of Rs.11.00 lacs is continuing since the year 2015, so either the Respondents should have handed over flat no.202 in Block-A of the project "Green Vatika" or they should have refunded the principal amount of the complainant, in which they have completely failed and that is why the complainant has approached this Court against the Respondents. Hence, there is no substance in the argument of the learned lawyer for the Respondents regarding maintainability of this case. Hence, the present complaint case of the complainant, Sri Biadya Nath Pathak is maintainable against the Respondents under section 12, 18 of the Act, 2016. Accordingly, Point No.(i) is decided in positive in favour of the complainant and against the Respondents.

Point No.(ii):

8. Admittedly, the complainant, Sri Baidya Nath Pathak has booked on 03-04-2015 flat no.202 having area 1290 sq.ft. in Block-A of the project "Green Vatika" of the Respondents on consideration of Rs.33,96,000/-, out of which the complainant has paid Rs.11,000/- to the Respondents at the time of booking, for which Respondent No.3, Smt. Anita Kumari has issued money receipt no.586 dated 03-04-2015 with her signature, which supports the case

of the complainant. It is also not out of place to mention that no Agreement for Sale has been executed between the parties, which might have decided the terms and conditions on completion of the building as well as payment schedule of the consideration etc.

9. The complainant has stated that he has paid Rs.11.00 lacs out of total consideration rs.33,96,000/-, but the Respondents have stated that the complainant has paid only Rs.10.00 lacs to the Respondents out the total consideration Rs.33,96,000/-. In such circumstances, it is required to see as to which version is correct. The complainant has stated that on repeated remand of the Respondents, he has paid Rs.3,90,000/- to the Respondents on 18-04-2015, Rs.2.00 lacs on 17-07-2015 and Rs.4.00 lacs on 31-08-2015. The complainant has filed photocopies of money receipts in respect of these payments, which also support the complaint case narrated by the complainant. The complainant has further stated that within 5 months of the booking, he has paid Rs.10.00 lacs to the Respondents and thereafter he has requested from the Respondents to execute Agreement for Sale in his favour, whereon they have stated that construction of the building was going on in full swing and possession of the flat will be delivered to him in the year 2017 and Agreement for Sale will be executed only after payment of 33% of the total consideration Rs.33,96,000/- and hence, the complainant made further payment of Rs.1.00 lac on 15-12-2016, for which Respondent No.3, Smt. Anita Kumari has issued money receipt no.1316 dated 15-12-2016 in his favour. The complainant has filed photocopy of said money receipt, which once again supports the case of the complainant. On other hand, the Respondents,

except verbal statement, have not filed/produced any documentary evidence to support that no payment was made on 15-12-2016 by the complainant to the Respondents. Hence, from documentary evidence it is established that the complainant has paid Rs.11.00 lacs as advance consideration amount to the Respondents.

10. The Respondents in their reply as well as their learned lawyer during the hearing submitted that since the complainant is withdrawing from the project, so they will refund the principal amount only after deducting Service Charges etc. The complainant has stated that he is suffering from kidney disease and for better treatment he has to go to Chandigarh to consult Dr. Arun Malhotra and he was willing to reside at Patna and that is why he has accepted the proposal of the Respondents to purchase the flat and now he is not in position to wait further and that is why he has cancelled the allotment of the flat through his son, Sri Abhishek Kumar Pathak on 25-02-2019 and after cancellation of allotment, he requested to the Respondents for refund of his paid principal amount along with interest, whereon the Respondents have assured in writing that the amount will be refunded within 90 days after checking of his account.

11. The project "Green Vatika" is still incomplete and the complainant has to wait further for delivery of possession of the flat, which is not possible for him, and he has requested the Respondents for refund of his paid principal amount, as he cannot wait indefinite period for delivery of possession of the flat, which also find support from the ruling of Hon'ble Supreme Court of India in Fortune Infrastructure and Others Vs. Trevor D, Lima and Others (2018)5

SCC 442". The complainant has filed photocopy of the application dated 25-02-2019 submitted to the Respondents for cancellation of allotment of his flat and refund of his paid principal amount along with interest, whereon it was written by the authorised signatory of the Respondents that after checking account of the complainant, the principal amount will be refunded within 90 days. The said period of 90 days has already been completed in May, 2019, but up-till-now the Respondents have not refunded the total paid principal amount of the complainant and presently making unnecessary pleadings that since the complainant is withdrawing from the project, they will deduct Service Charges etc. from the paid principal amount, which shows quite unnatural and adamant behaviour of the Respondents for not refunding the entire paid principal of the complainant. Such stand of the Respondents is also not justified in the eye of law, as the project has already been delayed by the Respondents and they are unable to deliver possession of the flat to the complainant within the stipulated period and that is why being compelled the complainant has demanded cancellation of allotment of the flat and refund of paid principal amount. Hence, the Respondents have to refund the paid principal amount of the complainant without delay and deduction.

12. The complainant has claimed monthly compoundable interest @ 18% on entire paid principal amount Rs.11.00 lacs. Admittedly, the Respondents have retained the respective principal amount of the complainant since 03-04-2015 till date. So, they have to pay interest on respective retained principal amount for the said retention period. Hon'ble Supreme Court of

India in Alok Shankar Pandey Vs. Union of India and Others on 15-02-2007 in Appeal (Civil) 1598/2005 has held that:

*“it may be mentioned that there is mis-conception about the interest. Interest is not a penalty or punishment at all, but it is normal accretion on capital. For example; if ‘A’ had to pay ‘B’ certain amount, say 10 years ago, but he offers that amount to him today, then he has pocketed the interest on the principal amount. Had ‘A’ paid that amount to ‘B’ 10 years ago, ‘B’ would have invested that amount somewhere and earned interest thereon, but instead of that ‘A’ has kept that amount with himself and earned interest on it for this period. Hence, equity demands that ‘A’ should not only pay back the principal amount, but also the interest thereon to ‘B’.”*

The Hon’ble Apex Court in the above ruling has allowed interest @ 12% per annum.

13. Now, the question is as to how much interest will be levied on the Respondents on the respective paid principal amount of the complainant? The Respondents are running the present as well as other projects in Patna and other parts of Bihar, so if compound interest is levied, there will be much effect on the Respondents in

development of their business. Moreover, it will also hamper the interest of other buyers, but there will be no much effect on the complainant as he is repudiating himself from the project. So, I think, instead of compound interest, levying of simple interest on the respective principal amount will justify the end. On this issue, rule 17 and 18 Bihar Real Estate (Regulation and Development) Rules, 2017 says:-

*“the rate of interest payable by the promoter to the allottee or allottee to the promoter, as the case may, shall be 2% above the P.L.R./M.C.L.R. of State Bank of India (S.B.I.) prevailing on due date of amount and the same has to be paid within 60 days.”*

Presently, the MCLR of SBI is 7.30% per annum for a home loan of 3 years or more and if 2% is added, it will come 9.30% per annum. Hence, the Respondents have to refund the remaining principal amount Rs.6.00 lacs to the complainant along the accrued simple interest @ 9.30% per annum on total principal amount Rs.11.00 lacs since the date of payment of respective amount by the complainant to the Respondents till refund of the said amount by the Respondents to the complainant. Accordingly, Point No.(ii) is decided in positive in favour of the complainant and against the Respondents.

Point No.(iii):

14. The complainant has also claimed compensation of Rs.5.00 lacs for his economical, physical and mental harassment against the Respondents. As per Section 72 of the Act, 2016, the Respondents have been benefitted with the advance principal amount paid by the complainant and still some amount is lying with the Respondents and they are using the same in their business development. The Respondents are avoiding refund of the advanced principal amount to the complainant. Presently, a flat of same area will not be available to the complainant in same locality at the same price, which was available to him in the year 2015, rather at present the price of the flat would have been multiplied. The Respondents are running the present as well as other projects and improving their business. In addition, in spite of repeated assurances in the Court, the Respondents have not refunded the advance principal amount to the complainant. The claim of compensation has to be decided in a reasonable manner, keeping in mind the quantum of advance principal amount paid by the complainant to the Respondents, duration of the amount retained by the Respondents as well as proportion of loss to the complainant and benefit to the Respondents. The complainant has paid Rs11.00 lacs out of total consideration Rs.33,96,000/-, which is about 32.39% of the total consideration. In such facts and circumstances, I think, Rs.80,000/-, which is about 13.00% of the remaining principal amount Rs.6.00 lacs paid by the complainant to the Respondents, may be appropriate amount of compensation to the complainant for his economical, physical and

mental harassment. Accordingly, Point No.(iii) is decided in positive in favour of the complainant and against the Respondents.

Point No.(iv):

15. The complainant has visited repeatedly to the office of Respondents and he has contacted to the Respondents as well as their staffs several times for refund of his advanced principal amount, but neither the Respondents nor their staffs have given any heed to his request till filing of the complaint case in this Court. Though the complainant has not brought any document on record as proof of actual expenditure incurred by him, but I think, the complainant would not have incurred more than Rs.20,000/- for conveyance to the office of the Respondents, A.O. Court in RERA, Bihar, engagement of lawyer, remittance of Court Fee, paper work etc., which must be paid by the Respondents. Accordingly, I find and hold that the complainant is entitled to get for Rs.20,000/- as litigation cost against the Respondents. Hence, Point No.(iv) is decided in positive in favour of the complainant and against the Respondents.

Therefore, the complaint case of the complainant, Sri Baidya Nath Pathak is allowed on contest with litigation cost of Rs.20,000/- (Rupees twenty thousand only) against the Respondents. The Respondents are directed to refund the remaining principal amount Rs.6.00 lacs to the complainant along with accrued simple interest @ 9.30% per annum on the entire paid principal amount Rs.11.00 lacs since the date of payment of respective amount by the complainant to the Respondents till refund of the said amount by the Respondents to the complainant. The Respondents are



further directed to pay Rs.80,000/- (Rupees eighty thousand only) to the complainant for his economical, physical and mental harassment. The Respondents are further directed to comply the order within 60 {sixty} days, failing which the complainant is entitled to get enforced the order through process of the Court.

Sd/-  
(Ved Prakash)  
Adjudicating Officer  
RERA, Bihar, Patna  
01-03-2021