

**IN THE COURT OF ADJUDICATING OFFICER,  
REAL ESTATE REGULATORY AUTHORITY (RERA)  
6<sup>TH</sup> FLOOR, BIHAR STATE BUILDING CONSTRUCTION  
CORPORATION BUILDING  
HOSPITAL ROAD, SHASTRI NAGAR  
PATNA-800023**

**RERA/CC/550/2019**  
**RERA/AO/137/2019**

Sri Rahul Kumar Dokania, S/o Sri Kashi  
Ram Dokania, R/o Aliganj Banka, P.O.-  
Banka, P.S.-Aliganj, District-Banka, PIN-  
813102, (Bihar).

... Complainant

Versus

1. M/s Green Homes Properties Pvt. Ltd.
2. Sri Bipin Kumar Singh, S/o Late  
Chandramauleshwar Singh, Director,  
M/s Green Home Properties Ltd. R/o  
House No.A/9, Road No.18, Rajiv  
Nagar, District- Patna, PIN-800024,  
(Bihar).

... Respondents

**Present:**

**Sri Ved Prakash**  
**Adjudicating Officer**

Appearance:

For Complainant : Sri Bhola Shankar, Advocate

For Respondents : Sri Sanjay Singh Thakur, Advocate

**ORDER**

02-11-2020

This complaint petition is filed by the complainant,  
Rahul Kumar Dokania against the Respondent No.1,  
M/s Green Homes Properties Pvt. Ltd. through its Director,

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Respondent No.2, Sri Bipin Kumar Singh u/s 31 read with Section-71 of Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as the “Act, 2016”) for direction to hand over/deliver the possession of the Flat No.404 of Block-A with car parking space in the project “Panchu Green Homes” and in alternatively to refund the advanced principal amount Rs.31,35,550/- along with accrued compound interest thereon @ 21% per month from 23<sup>rd</sup> December, 2013 till the time of refund. He has further sought relief to direct the Respondents to refund Registration Charges Rs.75,450/- along with compound interest @ 18% per month since the date of payment till date of realisation. He has further sought relief to direct the Respondents to pay compensation of Rs.10.00 lacs for his economical, mental and physical harassment. The complainant has further sought relief to direct the Respondents to pay litigation cost of Rs.50,000/- to him.

2. In nutshell, case of the complainant, Sri Rahul Kumar Dokania is that the Agent of the Respondents contacted and informed him that the Respondent No.1, M/s Green Homes Properties Pvt. Ltd. is one of the best companies in its field

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and advised the complainant to purchase a flat of the Respondent company. The complainant accepted such information as correct and authentic on good faith and well being of his family, he agreed to purchase the flat of the project “Panchu Green Homes” situated at Mohalla-Harihar Path, Road No.10, Indrapuri, District-Patna (Bihar). The complainant visited in the office of the Respondents and contacted Respondent No.2, Sri Bipin Kumar Singh, who informed that the proposed Building Map is duly approved by the competent Architect and the project is also approved by Fire Department, Environment Authority, Bihar etc. He further informed to the complainant that booking of flat of the said project has been started and several flats have been booked and only few flats are remained to be booked. He further informed that the flats of the project are dispute-free and suitable for residential purposes. The complainant accepted the said information as correct and paid booking amount. Later on 23<sup>rd</sup> December, 2013 both the parties executed registered Agreement for Sale with respect to Flat No.404 of Block-A with one reserve car parking space on the ground floor of the said project “Panchu Green Homes” on

consideration of Rs.34.00 lacs, The complainant paid Rs.31,35,550/- to the Respondent No.2, as per terms and conditions out of above total consideration Rs.34.00 lacs. The complainant never violated the terms and conditions of the said Agreement for Sale, rather he has followed the schedule of the payment as stated in the Agreement for Sale. The Respondents have accepted Rs.31,35,550/-. The complainant has arranged Home Loan from Bank of India and has already paid Rs.8,51,412/- by way of interest to the Bank.

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3. Further case of the complainant is that Clause-11 of the Agreement for Sale provides that the construction of the building shall be completed till December, 2014 with grace period of six months, however, the time of completion shall be deemed to have been extended in event of non-availability of building materials, save as provided herein if the builder is not able to give possession of said unit to the buyer on account of reasons mentioned above or on account of any other reasonable cause, the buyer shall be entitled to receive back the entire money paid by him/her/them to the builder together with consideration of said unit. The Respondents

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have not discharged their obligation as per Clause-11 of the Agreement for Sale. The Respondents have not completed the construction of the building within the period as prescribed under the said Agreement for Sale. The complainant visited the site and requested to expedite the construction work and deliver the flat, after completing the construction work, to the complainant. The Respondents assured that the construction of the building shall be completed as early as possible. Later on, when the complainant visited in the office of the Respondents situated at Patna and requested to hand over possession of the flat, after completion, the representative of the Respondents informed that the said flat has already been sold to one Sri Manoj Kumar Verma through registered Sale Deed dated 11-09-2017 and the Respondents are ready to refund the entire amount and after the aforesaid sale, a sum of Rs.12,50,000/- was transferred in the account of the complainant, without his knowledge and consent. The Respondent No.2 has given false representation and made false assurance to the complainant and agreed to abide the terms and conditions stipulated in the Agreement. The

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Respondent No.2 has fraudulently and dishonestly deceived and induced the complainant into entering the Agreement for Sale and the complainant, believing upon the assurances given, also made payment on various dates for the purpose of purchase of the flat. In this way, the Respondent No.2 has acted in complete contravention to the terms stipulated in the Agreement for Sale and the act of the Respondent No.2 is not heeding to any request of the complainant shows dishonesty and malafide intention on the part of the Respondent No.2 in discharging his duties and liabilities under the Agreement for Sale. Therefore, the complainant has filed this complaint petition against the Respondents with above reliefs.

4. On appearance, the Respondents have filed reply pleading *inter-alia* that the present complaint petition is not maintainable in present Court, because the project in question was completed long back in June, 2014. Hence, the provisions of RERA Act, 2016 are not applicable in the present case. Moreover, on the date of dispute, there were two alternative remedies to the complainant i.e. either to approach the Municipal Commissioner by filing a vigilance

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case or else file a case before Hon'ble State Commission, Patna under the Consumer Protection Act, 1986. Further case of the Respondents is that the project is not required to be registered in RERA, Bihar as per provision of Section-3 of the Act, 2016, as the said project was completed in June, 2014. To support this submission, a copy of absolute Sale Deed No.7531 dated 30-06-2014 in favour of Smt. Kalavati Devi, W/o Sri Shyama Kant Pandey is enclosed along herewith the reply. So far as Completion Certificate is concerned, there is no practice of issuing the same by the Patna Municipal Corporation (P.M.C). Hence, the said Certificate cannot be provided by anyone in the State of Bihar and same proposition has been held by RERA, Punjab in case of Sri Vikramjeet Singh Vs. State of Punjab and Others. Further case of the Respondents is that since the concerned project is registered and approved by P.M.C. on 17<sup>th</sup> February, 2011 vide P.M.C. Plan Case No.NOP / Mainpura / PRN-5-89/10 and the alleged violation has taken place before the commencement of RERA Act, 2016. Hence, the complainant's remedy lies under the prevalent law, which is still continued. Hence, the complaint petition

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may be dismissed on this ground itself. Further case of the Respondents is that the complainant contacted the Respondent No.2 for purchase of the flat and after due verification of the proposed Map, he agreed to purchase the flat in the project “Panchu Green Homes”. Further, the contents of para-4(i), 4(ii) are not required to be commented, as these are matter of record. But, some parts of the statement of para-4(iii) of the complaint petition are correct, but the rest parts pertaining to the following of payment of consideration schedule, are false and denied, which will be evident from the fact that although the consideration amount of Flat No.404 was Rs.34.00 lacs, but the complainant did not pay the entire consideration amount as per Clause-6 of the registered Agreement for Sale Deed dated 23<sup>rd</sup> December, 2013. Hence, the Respondents are duly entitled to cancel the Agreement for Sale and since the Agreement for Sale is registered, therefore, as per settled law, the terms and conditions contained therein are binding on both the parties. Though the flat was completed in June, 2014 itself, but the complainant did not pay the entire amount and paid only Rs.31,35,550/- till 21-06-2016 out of



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the total consideration of Rs.34,00,000/-, so the claim of the complainant is bad in law. In reply to the statement of para-4(iv) of the complaint petition, it is submitted that since the project was completed in June, 2014, so the contention of the complainant as to Clause-11 of the Agreement for Sale will not apply. Further case of the Respondents is that in reply to statement in para-4 (v), it is submitted that Block-A in question was completed in June, 2014 and those buyers, who paid entire consideration amount within the time, the Respondents have executed absolute Sale Deed in their favour. In entire project, it is only the complainant who has filed complaint case with malafide intention for material gains. Even though the Respondent No.2 started refunding advance consideration on oral request of the complainant and paid Rs.12,50,000/- to the complainant since 3<sup>rd</sup> October, 2017 till 17<sup>th</sup> July, 2019, but the complainant, even after receipt of handsome amount, did not deposit in the Bank against Home Loan and, therefore, Respondent No.2 has stopped the payment. The complainant has obtained a Gas Agency from refunded amount and that is why he kept on receiving the refund amount. The complainant neither

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sent any Legal Notice nor filed any complaint for more than two years and thereafter this complaint case has been filed with ulterior motive, otherwise he would have objected to the refund. In reply to the statement contained in para-4(vi) of the complaint petition it is submitted that the story narrated in the said paragraph is false and denied. The correct fact is that the Sale Deed in favour of Sri Manoj Kumar Verma on 11<sup>th</sup> September, 2017 was done, because the complainant failed to pay the entire consideration amount and also because the complainant was not interested in taking of flat and was more interested in taking Gas Agency in Banka. Therefore, he took back the refunded amount. It is also relevant to state that Respondent No.2 has sent 4 letters between July, 2014 to December, 2016 for making payment of consideration amount, failing which the Agreement will be cancelled, but yet the complainant has paid only Rs.31,35,550/- till 21<sup>st</sup> June, 2016. Hence, the Respondent No.2 was left with no other alternative, except to cancel the Agreement for Sale. In reply to statement contained in para-4(vii) and 5(viii), are false and denied and it is the complainant, who has violated the terms and conditions of

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the Agreement for Sale. So far refund of the amount is concerned, the Respondent No.2 is still ready to refund the remaining principal amount, but so far interest is concerned, Respondent is not at fault, rather the complainant himself is a defaulter. Therefore, the very demand of interest is bad in law. Hence, it should be rejected. Moreover, since there is Bank Loan against the flat in question, therefore, it should be ensured that the amount to be received from Respondent No.2 should first of all go to the creditor Bank and excess amount is to be realised by the complainant. Demand for cost of litigation and compensation should be rejected for the ends of justice. The complainant is not entitled for any relief claimed. Hence, the complaint case is fit to be dismissed.

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

- (i) Whether the present complaint petition of the complainant is maintainable against the Respondents?
- (ii) Whether this Court may direct the Respondents to deliver the possession of concerned Flat No.404 with car parking space in Block-A of the

project “Panchu Green Homes” to the complainant?

- (iii) Whether the complainant is entitled to get refund of Rs.31,35,550/- along with accrued compound interest thereon @ 21% per month from 23-12-2013 till its realisation against the Respondents?
- (iv) Whether the complainant is entitled for refund of Registration Charges Rs.75,450/- with compound interest @ 18% per month from the date of payment till realisation against the Respondents?
- (v) Whether the complainant is entitled for compensation of Rs.10.00 lacs for his economical, mental and physical harassment against the Respondents?
- (vi) Whether the complainant is entitled for litigation cost of Rs.50,000/- against the Respondents?

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Point No.(i):

6. The learned lawyer on behalf of the Respondents submitted that the present complaint case of the complainant is not maintainable. Further submission is that the project “Panchu Green Homes” is not required to be registered in RERA, Bihar, because the project was completed in June 2014 itself. In support of the above submission, a copy of Sale Deed No.7531

dated 30-06-2014 in favour a buyer namely Kalawati Devi, W/o Sri Shyama Kant Pandey is already annexed with the record. The same proposition has been held by RERA, Punjab in the case of Vikramjeet Singh and Others Vs. State of Punjab and Others. Moreover, the alleged violation took place before commencement of RERA Act, 2016, hence, the complainant's remedy lie under the prevalent law, which is still continuing. He further submitted that the Development Agreement Deed No.15808 dated 04-06-2011 between the Builder/Developer and Land Owner was executed and as per terms and condition No.12 of the said Development Agreement, the project was to be completed within 3 years from the date of its registration, which expired on 03-06-2014 itself, so no question of enforcing the provision of RERA Act, 2016 arises in the present project. Further, in condition No.13 of the aforesaid Deed it is mentioned that six months grace period was allowed to the Builder/Developer, which also expired on 03-12-2014 and .it shows that the project was completed before enforcement of the Act, 2016 on 01-05-2017. He further submitted that the Agreement for Sale Deed No.28139 dated 23-12-2013 was executed between both the parties, which says that the project

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shall be completed till December, 2014 with grace period of six months. It shows that the project shall be completed till June, 2015. Hence it is clear from the Deed itself that the project was completed much prior to the commencement of the Act, 2016 on 01-05-2017. The learned lawyer for the Respondents further submitted that there is not practice/provision for issuing of Completion/Occupancy Certificates by Municipal Corporation/competent authority for showing completion of the project to the Builder. Hence, these Certificates cannot be provided to anyone in the State of Bihar, which may be verified from the office of Patna Municipal Corporation (P.M.C.). Hence, this criteria cannot be the basis for drawing conclusion in respect of completion of the project.

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The learned lawyer for the complainant opposed the submission of the learned lawyer for the Respondents and submitted that these submissions are baseless, as these are against the law and facts of the case. He submitted that the project "Panchu Green Homes" has not been completed till 01-05-2017, as the Respondents have failed to produce Occupancy/Completion Certificate in the Court, which may be the proof of the completion of the project prior to the

enforcement of the Act, 2016 on 01-05-2017. As per Section-3 (2) (b) of the Act, 2016 non-production of the Completion Certificate of the project proves that the project is still incomplete and as per first proviso of Section-3 (1) of the Act, 2016, it requires registration, as it is on-going. He further submitted that it is correct that the project completion date was mentioned as December, 2014 with grace period of six months, which finds mentioned in para-11 of the Agreement for Sale dated 23-12-2013 executed between the parties, but the above Sale Deed No.7531 dated 30-06-2014 was executed by the Respondents in favour of Smt. Kalawati Devi, prior to the completion of the project only with a view to create false evidence in their favour. If the execution of Sale Deed is presumed to be a proof of completion of the project, then the Respondents have executed the Sale Deed No.8960 dated 11-09-2017 in favour of Sri Manoj Kumar Verma after enforcement of the Act, 2016 on 01-05-2017. Further, the ruling of RERA, Punjab is not applicable in the present case. Hence, from any corner of law and facts, this case is maintainable against the Respondents.

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7. Admittedly, Deed of Development Agreement No.15808 dated 04-06-2011 was executed between land owner Panchu Rai and

others on one side and Developer, M/s Green Home Properties Pvt. Ltd., through its Director, Sri Bipin Kumar Singh on other side with respect to the developing of a multi-storied building/project namely; “Panchu Green Homes” on Khata No.750, 755, Plot No.1388, 1387, Area 38.017 decimals situated at Mauza-Mainpura, Mohalla-Indrapuri, Sahay Road, Thana No.2, New Thana Patliputra, Old P.S.-Phulwari, District, Patna.

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It is also case that in clause no.12, 13 of the above Deed, it was agreed between them that the project shall be completed within 3 years from the date of its registration with grace period of six months. It is also admitted case that deed of registered Agreement for Sale No.28139 dated 23-12-2013 was executed between the complainant, Sri Rahul Kumar Dokania on one side and Respondent No.2, Sri Bipin Kumar Singh on other side as Director of Respondent No.1, M/s Green Homes Properties Pvt. Ltd. for purchase/sale of Flat No.404 of Block-A of the said project on consideration of Rs.34.00 lacs and Earnest Money Rs.5.00 lacs to be paid at the time of booking. It was further agreed in para-11 of the said Deed between these two parties that the building shall be completed up to December, 2014 with grace period of six months, provided the time of completion shall



be deemed to be extended in event of non-availability of building materials. It shows that the building should have been completed till June, 2015. Now, it is pertinent question whether the project was completed till June, 2015 or not? The Respondents have submitted that the project was completed within time and in proof they have filed registered Sale Deed No.7531 dated 30-06-2014 executed in favour of Smt. Kalawati Devi, W/o Sri Shyamakant Pandey and they have also submitted that several other deeds may be produced as proof of completion of the project prior to enforcement of the Act, 2016 on 01-05-2017. The learned lawyer for the Respondents has emphasised that in similar case, RERA, Punjab in Vikramjeet Singh and Others vs. The State of Punjab and Others has held that *“there is no need for registration of the project with RERA and complaint petition will not lie against the Builder in RERA, whose project is not registered with RERA”*, which has been opposed by the learned lawyer for the complainant.

On this issue, it is relevant to look into the ruling which will make it clear. Hon’ble Chairman, RERA, Punjab in para-9 of his Order has held that *“Thus, I have no hesitation in holding that under the RERA Act complaints can be instituted*

*against the Promoters only in relation to the projects, which have been registered with the Authority. Complaints against other promoters/projects can be filed in other Forums/Courts available under the law". But, on this issue with due respect to the Hon'ble Chairman, RERA, Punjab I am not agree and the ruling is only advisory for this Court and not mandatory. I think that if following conditions are fulfilled, the complaint case may be entertained in this Court;*

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- (i) the alleged violation though commencing before the commencement of RERA Act must be continuing till date,*
- (ii) the lalleged violations must also constitute a contravention of the RERA Act, Rules and Regulations made thereunder,*
- (iii) the issue should not have been decided or pending in any Forum or Court before approaching this Court".*

Long before execution of Development Agreement dated 04-06-2011, the Bihar Apartment Act, 2006 was notified on 23-09-2006, wherein Section-7 (2) (i) obtaining of Completion Certificate from competent authority has been made compulsory

to the Promoter before making delivery of possession of Apartment/Flat to the buyer. The Respondents have got its title from Section-5 of the above Act, 2006 to transfer any flat to any buyer, to which they have mentioned in para-14 of their Development Agreement as well as in present Agreement for Sale of the complainant. But, following of other provisions has been forgotten by them. It is also to be noted that after Apartment Act, 2006, Bihar Municipal Act, 2007 was passed, wherein again in Section 327 obtaining of Completion Certificate from competent authority has been made compulsory. Again Bihar Building By-laws was passed on 8<sup>th</sup> December, 2014 through Notification No.577/578, wherein Section-15, 16 the provisions have been stated in detail about issuing of Completion/Occupancy Certificate. The Respondents may submit that since their project was completed prior to December, 2014, so they were/are not bound to follow the provisions of Bihar Building Bye-laws, 2014, but they must keep in mind, as discussed above, law of obtaining of Completion/Occupancy Certificate was available much prior to Bihar Building Bye-laws, 2014.

First proviso of Section-3 (1) of the Act, 2016 says *“provided that project that are on-going on date of commencement*

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*of this Act and for which 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 3 months from the date of commencement of this Act". Further, Section-3 (2) (b) of Act, 2016 says that "no registration of the project is required where the Promoter has received Completion Certificate for real estate project, prior to commencement of this Act". Section 11 (4) (b) of Act, 2016 says that "the Promoter shall be responsible to obtain Completion Certificate or Occupancy Certificate or both from competent authority as per local laws or other laws for the time being in force and make it available to the allottees individually or to Association of allottees, as the case may be".*

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The basis of the Respondents for showing Completion of the project is executed Sale Deeds prior to enforcement of the Act, 2016 on 01-05-2017 in favour of the buyers, but whether such project is completed or not before the transfer to the buyers has not come on the record. So, there should be any law to follow for showing the Completion, which is missing in the hands of the Respondents, except certain Sale Deeds. In this respect, I am agree with the submissions of the learned lawyer for the complainant that if execution of Sale Deeds is presumed to be

proof of completion of the project, then they had executed a Deed No.8960 in favour of Sri Manoj Kumar Verma on 11-09-2017, after enforcement of the Act, 2016 on 01-05-2017. Hence, execution of Sale Deeds in favour of buyers cannot be basis for showing completion of the project.

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Now turning to the above ruling of Vikramjeet Singh, it can be safely said that non-registration of on-going project is contravention of the first proviso of Section 3 (1) of the Act, 2016. It is also to be mentioned that the principle of 'double jeopardy' does not apply in respect of the Respondents, as they have knowingly and intentionally contravened the provisions of Section-3 of the Act, 2016 and they cannot escape from the consequences of subsequent contravention in continuation of the same. It shall amount to double rewarding for contraventions by declaring complaint petition not maintainable. I further think, if it is decided to reject the complaint on account of non-registration of the project with RERA, Bihar, there will be a miscarriage of justice, if a Builder/Developer knowingly and intentionally not register the project with RERA.

The complainant has stated in the complaint petition that he has not filed complaint petition in any other Court, so

the third condition of above rule is fulfilled, but so far as the other conditions are concerned, neither the Respondents have produced Completion Certificate/Occupancy Certificate nor applied for registration of the project in RERA, Bihar. Hence, from the above discussed materials, it is established that the Respondents have contravened the provisions of RERA Act, 2016. It is also to be added that neither the Respondents have delivered Flat No.404 of Block-A of the project, as per Agreement for Sale dated 23-12-2013 to the complainant nor refunded the advance principal amount Rs.31,35,550/- to the complainant. So, naturally the allegations of the complainant alleged in the complaint petition have to be enquired and adjudicated by this Court.

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8. The other issue has been raised by the learned lawyer for the Respondents for non-maintainability of complaint petition and he submitted that the Hon'ble Real Estate Appellate Tribunal, Bihar in REAT Appeal No.1/2019 – M/s Pukhraj Developers Vs. Om Prakash Tiwari and Others on somewhat similar facts and circumstances has set aside the order dated 19-11-2018 of Adjudicating Officer, RERA, Bihar and allowed the Appeal on basis of non-application of the provisions of the

Act, 2016, particularly Section-18 of the Act, 2016, as in said case, the Agreement for Sale was executed on 17-10-2012. Though even after lapse of 3 years from the date of Agreement, the project was not started and money of the complainant was refunded in the year 2016 without any interest and even there was admission of taking of money by the Developer. But, the Hon'ble Tribunal held the complaint case not maintainable. Whereon, the learned lawyer for the complainant opposed and submitted that the above order of the Hon'ble Tribunal is not applicable in the present case, as the facts of the present case are different from the facts of the case of the order of the Hon'ble Tribunal.

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9. On perusal of above order of the Hon'ble Tribunal passed on 24-01-2020 in Pukhraj Developers Pvt. Ltd. Vs. Om Prakash Tiwari and Others, it appears that the facts of the present case are different from the above case, as the facts of Pukhraj Developers were that the Agreement for Sale was executed on 17-10-2012, but the Builder did not start construction for more than 3 years. So, the complainant requested to cancel the Agreement for Sale and demanded refund of the advance money Rs.6,02,000/- with interest and

compensation, but the builder refunded only capital amount Rs.6,02,000/- on 29-10-2016, but without interest and compensation for retention period. It will be seen that in that case the money was refunded on 29-10-2016, prior to enforcement of RERA Act, 2016 on 01-05-2017 and that is why Appeal was allowed and order dated 19-11-2018 of Adjudicating Officer, RERA, Bihar was set aside. But, in the present case, still there is neither delivery of possession of the flat nor the Respondents have refunded the advanced principal amount to the complainant. So, this cited order of the Hon'ble Tribunal is not applicable in the present case.

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10. The other issue for non-maintainability of the complaint petition of the complainant is raised by the learned lawyer for the Respondents is that since there was no mentioning of the interest in the Agreement for Sale executed between the parties, the complaint petition against the Respondents for the same cannot be maintainable. Whereon, the learned lawyer for the complainant opposed and submitted that non-mentioning of interest in Agreement for Sale will not save the neck of the Respondents from paying the interest accrued on the principal amount paid to the Respondents.



On this issue, though I shall discuss in detail on the interest point at later stage, but at this place I am to mention this aspect that only non-mentioning of interest in the Agreement for Sale cannot be the basis for non-maintainability of the complaint petition.

11. The next issue has been raised for non-maintainability of complaint petition by the learned lawyer for the Respondents is that though the complainant has got refunded Rs.12.50 lacs till 17-07-2019, but he did not pay the same against the Bank loan and used this amount for taking Gas Agency at Banka district and that is why there being ill motive on part of the complainant, he kept silence for more than 2 years and now he has filed the present case and he is also not ready to settle the dispute through dialogue and filed F.I.R. only to harass the Respondents. On other hand, the learned lawyer for the complainant opposed and submitted that the complainant is still ready to get settled the case through dialogue, but it is false to say that the complainant has not deposited the amount received from the Respondents, rather it is true that the complainant has deposited more than Rs.8.00 lacs against the interest of the loan amount borrowed from the Bank.

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For deposit of loan amount in Bank, it was open to the Respondent No.2 to talk with the Bank authorities with knowledge of the complainant and he would have deposited the loan amount with interest in Bank on behalf of the complainant, which he has not done. It is also to be noted that instead of loan deposit/payment to the complainant, Respondent No.2 has stopped the refund and he is making one or other excuse for non-refund of the principal amount. So, it appears that the Respondents are not free from ill intention. In this way, again the complaint case appears maintainable.

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12. The learned lawyer for the Respondents further raised the issue that since the Respondents have sold the concerned flat to other person, Sri Manoj Kumar Verma and this Court has no jurisdiction to cancel the said Sale Deed, so complaint petition is not maintainable. On other hand, the learned lawyer for the complainant submitted that though it is correct that this Court has no jurisdiction to cancel the Sale Deed registered and executed by the Respondent No.2 in favour of Sri Manoj Kumar Verma, but this Court has authority/jurisdiction to enquire and decide the other reliefs sought by the complainant against the

Respondents. So, it is wrong to say that the complaint case is not maintainable against the Respondents.

Though it is correct that this Court has no jurisdiction to cancel the executed and registered Sale Deed in favour of Sri Manoj Kumar Verma with respect to Flat No.404 of Block-A in project “Panchu Green Homes”, but it is also correct that the other issues related with the subject can be enquired and decided with by this Court on the allegations of the complainant. So also, this submission on behalf of the Respondents appears not correct.

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From the above discussed materials, it is apparently clear that the complaint petition filed by the complainant for seeking reliefs against the Respondents may be enquired and decided by this Court, as the complaint petition is maintainable. Accordingly, Point No.(i) is decided in positive in favour of the complainant and against the Respondents.

Point No.(ii):

13. Admittedly, the Respondents have executed registered Sale Deed No.8960 dated 11-09-2017 in favour of a stranger namely, Sri Manoj Kumar Verma, with respect to the Flat No.404 of Block-A in project “Panchu Green Homes” on consideration of

Rs.27.00 lacs, for which they have previously executed registered Agreement for Sale No.28139 dated 23-12-2013 in favour of the complainant, Rahul Kumar Dokania on consideration of Rs.34.00 lacs, which shows that the Respondent No.2, Sri Bipin Kumar Singh had so ill will with the complainant that he has gone up to such extent that he has sold the same Flat No.404 to Sri Manoj Kumar Verma on consideration of Rs.27.00 lacs i.e. Rs.7,00,000/- less than agreed with the complainant, Sri Rahul Kumar Dokania and advance principal amount Rs.31,35,550/- was taken from him. It also appears that after execution of Sale Deed in favour of Sri Manoj Kumar Verma, the Respondents have also delivered possession of the concerned flat to him. I further think that whatever reasons may be for execution and delivery of possession of the flat in favour of Sri Manoj Kumar Verma , but now I have to say that this Court has limited jurisdiction only to adjudicate the cases relating to Section-12,14, 18 and 19 of the Act, 2016. Hence, this Court lack jurisdiction to cancel the said Sale Deed No.8960 dated 11-09-2017 executed in favour of Sri Manoj Kumar Verma. This Court has also no jurisdiction to transfer the delivery of possession in favour of the complainant, for which, if advised, the complainant may knock the doors of

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competent Civil Court. But, at this juncture, I find and hold that this Court has no jurisdiction to direct the Respondents to deliver the possession of concerned Flat No.404 of Block-A in project “Panchu Green Homes” to the complainant. Accordingly, Point No.(ii) is decided in negative in favour of the Respondents and against the complainant.

Points No.(iii) and (iv):

14. Admittedly, as per registered Agreement for Sale dated 23-12-2013, the complainant has paid Rs.31.35,550/- till 21-06-2016 out of total consideration Rs.34,00,000/- to the Respondents. The complainant has also stated that he has paid Rs.75,450/- as Registration Charges for registration of the said Agreement for Sale, so only Rs.2,64,450/- has to be paid to the Respondents. The complainant has submitted that the Bank of India has sanctioned Loan of Rs.21,50,000/- and still Rs.3,89,000/- has to be disbursed by the Bank, which may be released at the time of registration of the Sale Deed of the concerned flat allotted to him by the Respondents. The complainant has further stated that instead of execution and registration of the Sale Deed by the Respondents with respect to concerned flat in his favour, the Respondents have started

refunding of advanced principal amount without information and knowledge to him. Whereon, the learned lawyer for Respondents has submitted that the Respondents have sent letters on 15-07-2014, 20-01-2015 and 17-06-2016 to the complainant with respect to the payment of balance amount, wherein they have stated to the complainant that if the balance amount is not deposited with them, then they will be free to cancel the Agreement for Sale executed in his favour, but when the complainant did not pay the balance consideration to them, then on 05-12-2016, the Agreement for Sale dated 23-12-2013 was cancelled and they have stated to the complainant that the entire paid amount will be refunded to the complainant and the same should be paid to the Bank towards the Home Loan, which has been obtained against the concerned flat. The learned lawyer for the complainant opposed the submissions of the learned lawyer for the Respondents and submitted that the complainant has been depositing the interest with the Bank and still on receipt of the principal amount, he will deposit the same along with interest in the Bank.

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15. On going through these letters filed by the Respondents, it appears that there is no receiving of the

complainant on any of the letters and if these were sent through Post Office/Courier Service to the complainant, then the proof of Postal Receipts/Receipts issued by the Courier should have been produced on the record, which has not been done by the Respondents. It shows that the Respondents have unilaterally and arbitrarily tried to cancel the Agreement for Sale, in which they have not succeeded, as any registered instrument or Deed like Agreement for Sale may be cancelled only through registered instrument or through competent Civil Court, which they have not done in the present case.

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However, if the Respondents would have refunded the total advanced principal amount either to the Bank or to the complainant, the matter might have been otherwise, but non-refunding of the total amount and refunding of only token amount Rs.12,50,000/- shows some otherwise ill will on the part of the Respondents towards the complainant. It appears that there is no fault on part of the complainant and he is being punished by the Respondents without any wrong on his part. The ill will on the part of the Respondents is also clear from the fact that they have transferred the concerned flat to a stranger, Sri Manoj Kumar Verma simply on consideration of Rs.27.00

lacs i.e. about Rs.7.00 lacs less than the agreed consideration with the complainant i.e. Rs.34.00 lacs. The Respondents might have taken/received remaining consideration amount Rs.2,64,45/- from the complainant and would have executed and registered Sale Deed in his favour, which for one or other reasons, they have not done. Hence, I come to the conclusion that the complainant is entitled for refund of his total principal amount Rs.31,35,550/- without any deduction.

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16. The complainant has claimed compound interest @ 21% compounded every month on principal amount Rs.31,35,550/- against the Respondents. He has further stated that he is paying E.M.I. along with interest to the Bank against the Bank Loan and has paid Rs.8,51,412/- to the Bank by way of interest till 31-08-2019. The Respondents have opposed the claim for interest and submitted that the conditions of Agreement for Sale is binding on both the parties and since there is no condition to pay interest and hence, demand of interest and compensation is bad in law and the same has to be rejected/dismissed.

17. On going through the discussed materials of the case, it is better to see the views of Hon'ble Appex Court in the ruling



(2007) 3 SCC - Alok Shankar Pandey Vs. Union of India and Others on interest, which says “*it may be mentioned that there is mis-conception about the interest. Interest is not penalty or punishment at all, but it is normal accretion on capital. For example; if ‘A’ had to pay ‘B’ a 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’.*”. It shows that it is fair duty of the Respondents to refund the principal amount to the complainant along with interest accrued thereon, as the complainant is also paying interest to the Bank.

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Now, I have to scrutinise what amount/percentage of interest may be proper in the present case, as 21% interest appears much higher. In the above reported case, the Hon’ble Appex Court has allowed 12% interest on principal amount. Rule 17, 18 of Bihar Real Estate (Regulation and Development) Rules, 2017 has prescribed that “*the interest payable by the*

*Promoter/Allottee shall be 2% above the M.C.L.R. of S.B.I. and that must be paid within 60 days of due date*". Presently, the M.C.L.R. of S.B.I. is 7.3% per annum for 3 years or more. Hence, if 7.3% is added with 2%, the same will become 9.3% per annum for 3 or more years. The complainant has further demanded 21% monthly compoundable interest, but the same is not appropriate, as the Bank is not levying such a rate of interest on the complainant. So, I think, compound interest @ 9.3% half yearly compoundable is genuine to be imposed on the Respondents, which will justify the end. Therefore, I find and hold that the Respondents have to refund total advanced principal amount Rs.31,35,550/- along with accrued compound interest @ 9.3% compounded half yearly since respective date of payment by the complainant to the Respondents till date of refund by the Respondents to the complainant.

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18. The complainant has also claimed Registration Charges paid Rs.75,450/- against the Respondents, which has been opposed by the learned lawyer for the Respondents. It is fact that when both the parties were ready for sale/purchase of the flat, then execution and registration of the Agreement for Sale was necessary, but when the Respondents have decided not to

transfer the said flat to the complainant, it is their legal duty to repay all the consequential losses to the complainant, as per Section-72 of the Act, 2016. It is also their fault that they have cancelled Flat No.404 allotted to the complainant and sold it to a stranger, Sri Manoj Kumar Verma. I think, there is no justification on their part to say that now since the Agreement for Sale has been cancelled, they have no liability towards the complainant. As discussed above, I have seen from the record that Stamp Fee Rs.70,000/- plus Rs.450/- total Rs.70,450/- has been deposited. It is also not out of place to mention that there is no details of payment of Rs.5,000/- towards Registration Charges on the record against claim of Rs.75,450/-, so the same cannot be granted to the complainant against the Respondents. In this way, I come to the conclusion that the Respondents have to refund the Registration Charges Rs.70,450/- to the complainant and the said amount may be withdrawn/realised by them through recourse of the Treasury/ Registration Department. However, since the above amount was deposited/expensed in Government Treasury, the Respondents have not been benefitted with this amount. Hence, levying of interest on this amount will not be justified. Accordingly, Points No.(iii) and (iv) are decided in

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positive in the above manner in favour of the complainant and against the Respondents.

Point No.(v):

19. The complainant was hopeful to get Flat No.404 allotted to him by the Respondents, but the Respondents have sold this flat to a stranger, Sri Manoj Kumar Verma on 11-09-2017 through Sale Deed No.8960, so presently the said flat cannot be delivered to the complainant. It also appears from the above discussed materials that the Respondents have not even properly informed to the complainant about cancellation of the allotment and failed to cancel the Agreement for Sale properly. Now, more than 6 years have passed from the execution and registration of the Agreement for Sale, but there is no relief given to the complainant with respect to concerned flat. Presently, the complainant will not get a flat of same area at same locality at same rate. Rather, the price of the flats have been multiplied. But on other hand, the Respondents have been benefitted from the amount of Rs.31,35,550/- paid by the complainant and they have used the same in betterment of their business. So, in such facts and circumstances, as per Section-72 of the Act, 2016, the Respondents have to compensate the

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complainant in proper proportion for his economical, mental and physical harassment. I think, Rs.5,50,000/- will be appropriate amount, which is 17.50% of the advanced principal amount Rs.31,35,550/- to be paid by the Respondents to the complainant. Accordingly, Point No.(v) is decided in positive in favour of the complainant and against the Respondents.

Point No.(vi):

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20. The complainant has requested to the Respondents to execute Sale Deed after receiving the remaining consideration amount, but the Respondents, instead of considering his request, previously executed Sale Deed with respect to the concerned flat No.404 in favour of a stranger, Sri Manoj Kumar Verma and later on denied to refund the remaining advanced principal amount Rs.31,35,550/- and to pay accrued interest thereon. Thereafter, being fed up with the behaviour of the Respondents, the complainant has engaged a lawyer, filed complaint petition, paid Court Fee and visited the A.O. Court, RERA Bihar. So, naturally he has made expenses in conveyance and other discussed activities. In such view of the matter, I think, the complainant would have incurred expenses of not less than Rs. 25,000/- in the said activities, which must be paid by the Respondents.

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

Therefore, the complaint case of the complainant, Sri Rahul Kumar Dokania is partly allowed on contest with cost of Rs.25,000/- (Rupees twenty five thousand only) against the Respondents only with respect to refund of remaining principal amount, payment of accrued interest on total principal amount and compensation for harassment of the complainant. The Respondent No.2, Sri Bipin Kumar Singh, Director of Respondent No.1 is directed to refund the remaining advanced principal amount out of total advance amount Rs.31,35,550/- (Rupees thirty one lacs thirty five thousand five hundred fifty only) along with accrued compound interest on total principal amount Rs.31,35,550/- (Rupees thirty one lacs thirty five thousand five hundred fifty only) @ Rs.9.3% compounded half yearly to the complainant since the date of payment of respective amount by the complainant to the Respondents till date of refund by the Respondent No.2 to the complainant. The complainant is also directed to repay the Bank Loan from the refunded amount by the Respondent No.2 and take part in making mortgage-free the concerned flat No.404 of Block-A of the project "Panchu Green

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Homes”. The Respondents are also directed to pay Rs.5,50,000/- (Rupees five lacs fifty thousand only) as compensation to the complainant for his economical, mental and physical harassment. The relief sought by the complainant for execution, registration and delivery of possession of concerned flat No.404 with parking space in Block-A of the project “Panchu Green Homes” against the Respondents is hereby rejected/dismissed. The Respondents are further directed to comply the order within 60 (sixty) days, failing which the complainant may get enforced the order through process of the Court.

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Sd/-  
(Ved Prakash)  
Adjudicating Officer  
RERA, Bihar, Patna  
02-11-2020