



**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/1233/2020**

**RERA/AO/346/2020**

Sri Manish Kapildeo Singh, S/o Sri Kapildeo Singh, C/o M-13/4, Nav Sainik Bihar, Dolfin Hill, Vishakhapattanam-430005.

**Present Address:**

C/o Dr. Abhishek, Flat No.201, Usha Krishna Enclave, Adarsh Colony, Bhootnath Road, Agamkuan, Patna-800026.

... Complainant

Versus

1. M/s Agrani Homes Pvt. Ltd., House No.15, Ward No.1FA, Patliputra Colony, District-Patna.

Through it's Director:

2. Sri Alok Kumar, Director, S/o Sri Padum Singh, R/o Yogipur, Chitragupt Nagar, P.S.- Patrakar Nagar, P.O.-Lohia Nagar, Kankarbagh, Patna-800020.

... Respondents

**Present:**

**Sri Ved Prakash  
Adjudicating Officer**

**Appearance:**

For Complainant

- Sri Kishore Kunal, Advocate

For Respondents

- Sri Alok Kumar, Director

**ORDER**

03-03-2021 This complaint petition is filed by the complainant, Sri Manish Kapildeo Singh against the Respondent No.1, M/s Agrani Homes Pvt. Ltd. through it's Director, Respondent No.2, Sri Alok Kumar, u/s 31

read with Section-71 of Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as the “Act, 2016”) for delivery of possession of flat as per agreed specification in other project or refund of his advanced principal amount Rs.7,40,000/- along with accrued interest, @ 24% per annum thereon and compensation of Rs.10.00 lacs for his economical, physical and mental harassment with litigation cost of Rs.1.00 lac, consequent to non-delivery of flat allotted to him.

2. In nutshell, the case of the complainant is that the complainant, Sri Manish Kapildeo Singh was allured by fancifulness of the sale brochures, specification details, lay out plan and verbal assurances of the Respondent No.2, Sri Alok Kumar about their project “Agrani Royal City” (IOCL), Shivala Chowk, Danapur, Patna. On 07-11-2013, the complainant booked a flat in the said project and paid Rs.50,000/- through cheque no.299308 dated 09-11-2013 of S.B.I. as first instalment, for which money receipt no.431 dated 11-11-2013 was issued by the Respondents. Thereafter, on 14-11-2013 the complainant has paid Rs.1,90,000/- through cheque no.007642 dated 14-11-2013 of S.B.I., for which money receipt no.446 dated 14-11-2013 was issued by the Respondents. Thereafter, the complainant has paid Rs.5.00 lacs through R.T.G.S. to the Respondents on 27-01-2014, for which money receipt no.356 dated 27-01-2014 was issued by the Respondents. Thereafter, the complainant Sri Manish Kapildeo Singh on one side and Respondent No.1, M/s Agrani Homes Pvt. Ltd. through it’s Director, Respondent No.2, Sri Alok Kumar on other side executed Memorandum of Understanding

(M.O.U.) on 03-02-2014 for sale/purchase of a flat having super built up area 1100 sq.ft. with one reserve car parking space on basement/ground floor in Block-A of the project "Agrani Royal City" (IOCL), situated at Shivala Chowk, Danapur, Patna of the Respondents on consideration of Rs.14,43,260/- inclusive of Service Tax Rs.43,260/-. After demand by the Respondents, the complainant has paid Rs.7,40,000/- on different occasions since 11-11-2013 to 27-01-2014, for which the Respondents have issued receipts in favour of the complainant. After receipt of the advance principal amount Rs.7,40,000/-, the Respondents started changing their versions and demanded entire consideration amount Rs.14,43,260/- before delivery of possession of the flat, which was denied by the complainant. Thereafter, the complainant has stopped making payment to the Respondents, as there was no progress on site of the project. On other hand, the Respondents were continuously pressurising the complainant to pay the entire consideration amount and have been delaying the matter without any significant progress towards construction of the project.

The Respondents have promised that construction of the building shall be completed within 36 months with grace period of six months after approval of Map from P.M.C., provided that the time for completion shall be deemed to have been extended in the event of non-availability of building materials or delay due to Government Policies affecting the industry or due to Force Majeure. Further case of the complainant is that even after expiry of aforesaid grace period, the Respondents have not been able to hand over possession of the flat, as construction of the

building/flat has not been started as yet. Previously, the complainant had heard about good reputation of the Respondents in the market and believing the same, he has booked the flat in the project of the Respondents. But, thereafter, the reputation of the Respondents downgraded drastically, due to non-completion of various projects and the Respondents are sitting over the money of the allottees/purchasers without making any progress in construction of the project. Now, there is no hope left in the mind of the complainant regarding delivery of possession of the flat to him by the Respondents. He has repeatedly requested to the Respondents either to complete the flat and deliver possession of the same to him or refund his principal amount, but the Respondents have not given any heed to his request. Rather, used his paid consideration amount in their other projects. The complainant being fed up with the behaviour of the Respondents has filed the present complaint case against the Respondents with above reliefs.

3. On appearance, the Respondents have filed reply pleading *inter-alia* that they are ready to refund the principal amount of the complainant. Further case is that they are also ready to adjust the principal amount of the complainant, if purchase of the land is done by him in the land of the Respondents situated in the project “Agrani Prakriti Vihar”, Parmanandpur and in light of their assurances, the case may be disposed of.
4. On basis of the pleadings of the parties and submissions of the learned lawyer for complainant and Respondent No.2, Sri Alok Kumar, the following points are formulated to adjudicate this case:-

- (i) Whether the complainant is entitled for delivery of possession of flat in other project of the Respondents having same specifications or refund of his principal amount Rs.7,40,000/- along with accrued interest thereon @ 24% per annum against the Respondents?
- (ii) Whether the complainant is entitled for compensation of Rs.10.00 lacs for his economical, physical and mental harassment against the Respondents?
- (iii) Whether the complainant is entitled for litigation cost of Rs.1.00 lac against the Respondents?

Point No.(i):

5. Admittedly, after negotiations, both the parties have agreed for sale /purchase of a 3 BHK flat in Block-A of the project “Agrani Royal City”, Shivala Chowk Danapur of the Respondents. Thereafter, a Memorandum of Understanding (M.O.U.) dated 03-02-2014 for Sale of a 3 BHK flat having super built-up area 1100 sq.ft. with one reserve car parking space on basement/ground floor in Block-A of the project “Agrani Royal City”, Shivala situated at Shivala Chowk, Danapur, Patna of the Respondents was executed between the complainant, Sri Manish Kapildeo Singh on one side and Respondent No.1, M/s Agrani Homes Pvt. Ltd. through it’s Director, Respondent No.2, Sri Alok Kumar on other side on consideration of Rs.14,43,260/-, out of which the complainant has paid Rs.50,000/- inclusive of Service Tax Rs.1,545/- at the time of booking, which is

mentioned in the M.O.U. itself. The complainant has filed photocopy of the M.O.U. dated 03-02-2014, which supports the case of the complainant. According to the complainant, Sri Manish Kapildeo Singh, he has paid Rs.50,000/- through S.B.I. cheque no.299308 dated 09-11-2013 at the time of booking to the Respondents, for which the Respondents have issued money receipt no.431 dated 11-11-2013. It is further stated that he has paid Rs.1,90,000/- through S.B.I. cheque no.007642 dated 14-11-2013 on 14-11-2013, Rs.5,00,000/- through R.T.G.S. on 27-01-2014, total Rs.7,40,000/- out of consideration Rs.14,43,260/- due to persistent demand by the Respondents and their staffs. The complainant has filed photocopies of receipts of all these payments, which support that the complainant has paid Rs.7,40,000/- to the Respondents.

6. The Respondents in M.O.U. dated 03-02-2014 have promised that construction of the building shall be completed within 36 months with grace period of six months, after approval of Map from P.M.C., provided that time of completion shall be deemed to have been extended in the event of non-availability of building materials or delay due to Government Policies affecting the industry or delay due to Force Majeure, provided that if the developer/vendor is not able to give possession of the said flat to the buyer/vendee on the above account or any reasonable cause, the buyer/vendee may not be entitled to any damage whatsoever, but shall be entitled to receive back the entire money paid by him/her to the developer/vendor. However, in Clause-4 of the M.O.U., the Respondents have assured that if the developer/builder shall not hand over possession

of the unit within the stipulated period and buyer/vendee wanted to get his/her money back, then the developer/builder shall return the payments made by the buyer/vendee along with simple interest to the buyer/vendee or if the buyer/vendee wanted to get the scheduled flat, the developer/vendor shall pay simple interest on the total payment made to the developer/vendor for the delayed period to the buyer/vendee or buyer /vendee shall be at liberty to transfer/adjustment his/her said flat with other flat of the vendor/developer constructed/under construction / proposed housing project.

7. The Respondents have not applied for registration of Block-A of their project “Agrani Royal City”, Shivala Chowk in RERA, Bihar. It shows that neither there is construction on site of the project nor other legal formalities/requirements have been fulfilled by the Respondents for completion of the project “Agrani Royal City”, Shivala. It is stated that the complainant has continuously enquired from the Respondents about the construction of the Apartment, but they have only made excuses over the course of 3 years and always assured him that the construction would be completed within the stipulated time. He has further stated that *prima facie* it seems that the Respondents have diverted the fund collected from the allottees for purchase of more land and construction of other projects. He has further stated that seeing no hope for completion of the project as per his requirement, he has requested the Respondents to cancel his allotment and refund his principal amount along interest. But, the Respondents on one or other grounds have always given false assurances to him for refund of the principal amount along with interest.

8. From the above facts and circumstances, it is clear that the Respondents are unable to complete the present project within the required time of the complainant and that is why it is reasonable for the complainant to make request from the Respondents to cancel the allotment of his flat and demand delivery of possession of completed flat in other project having area in some locality with all amenities as agreed in M.O.U. executed between both the parties or refund his principal amount RS.7,40,000/-, 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.

9. The complainant has also claimed interest @ 24% per annum on the paid principal amount Rs.7,40,000/- from the Respondents. Naturally, the Respondents have retained the respective principal amount of the complainant since 11-11-2013 till date. So the Respondents have to pay the interest on respective principal amount for the 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.

In present case, the Respondents have agreed in M.O.U. that they shall pay simple interest for delayed period. Now, I have to see as to how much rate of interest may be allowed to the complainant against the Respondents.

The rules 17, 18 of the 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 either deliver possession

of flat to the complainant in other project having same specification as agreed in M.O.U. or refund the principal amount Rs.7,40,000/- to the complainant along the accrued simple interest @ 9.30% per annum since the date of payment of respective amount to the Respondents till refund of the said amount by the Respondents to the complainant. Accordingly, Point No.(i) is decided in positive in favour of the complainant and against the Respondents.

Point No.(ii):

10. The complainant has also claimed compensation of Rs.10.00 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 the said amount is lying with the Respondents and they are using the same in their business development. The Respondents are avoiding delivery of the flat/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 2013. 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, neither the Respondents have delivered any flat in other project nor 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 Rs.7,40,000/- out of total consideration Rs.14,43,260 which is about 51% of the total consideration. In such facts and circumstances, I think, if flat in other project is not delivered to the complainant, then the Respondents have to pay Rs.1,00,000/- which is about 13.50% of the advance principal amount Rs.7,40,000/- paid by the complainant to the Respondents, as the same may be appropriate amount of compensation to the complainant for his economical, physical and mental harassment. Accordingly, Point No.(ii) is decided in positive in favour of the complainant and against the Respondents.

Point No.(iii):

11. 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.15,000/- 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 for Rs.15,000/- as litigation cost against the Respondents. Hence, Point No.(iii) is decided in positive in favour of the complainant and against the Respondents.

Therefore, the complaint case of the complainant, Sri Manish Kapildeo Singh is allowed on contest with litigation cost of Rs.15,000/- (Rupees fifteen thousand only) against the Respondents. The Respondents are directed either to receive the remaining consideration and execute registered Sale Deed and deliver possession of a flat in their other project having same specification as agreed in M.O.U. or in case of failure in delivery of flat, refund the principal amount Rs.7,40,000/- (Rupees seven lacs forty thousand only) to the complainant along with accrued simple interest @ 9.30% per annum since the date of payment of respective amount by the complainant to the Respondents till refund of said amount by the Respondents to the complainant. In case of non-delivery of flat to the complainant, the Respondents are directed to pay Rs.1,00,000/- (Rupees one lac only) to the complainant as compensation for his economical, physical and mental harassment. The Respondents are directed to comply the order within 60 (sixty) days, failing which the complainant is entitled to get enforced the same through process of the Court.

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