

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

RERA/CC/161/2018
RERA/AO/21/2018

Sri Achal Kumar, S/o Sri Surendra Prasad
Singh, Flat No.309/B, Durga Marine Drive
Apartment, Near Dujra Devi Asthan, Rajapur
Pul, Patna-800001

... Complainant

Versus

1. M/s Agrani Homes Pvt. Ltd. 3/9 S.K.
Puri, Boring Road, Patna-800001

Through it's Director,

2. Sri Alok Kumar, S/o Sri Padum Singh,
Director, M/s Agrani Homes Pvt. Ltd.,
Yogipur, Chitra Gupta Nagar, P.S.-
Patrakar Nagar, P.O. Lohia Nagar,
Kankarbagh, Patna-800020

... Respondents

Present:

**Sri Ved Prakash
Adjudicating Officer**

Appearance:

For Complainant : 1. Sri Suresh Prasad, Advocate
2. Sri Subanash Kumar Sinha, Advocate
For Respondents : Sri Ankit Kumar, Advocate.

ORDER

04-11-2020

This complaint petition is filed by the complainant,
Sri Achal Kumar 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 refund of his advanced principal amount Rs.15.00 lacs and accrued interest thereon @ 18% per annum as well as compensation of Rs.5.00 lacs for his economical, mental and physical harassment, consequent to non-delivery of flat allotted to him.

2. In nutshell, the case of the complainant is that the complainant, Sri Achal Kumar has booked a 3 BHK Flat in Block-P of project “I.O.B. Nagar” at Sarari, Danapur, Patna of the Respondent No.1, M/s Agrani Homes Pvt. Ltd. Thereafter, a Memorandum of Understanding (M.O.U) was also executed on 27-03-2015 between the complainant, Sri Achal Kumar and Respondent No.1, M/s Agrani Homes Pvt. Ltd. through it’s Director, Respondent No.2, Sri Alok Kumar for sale/purchase of a 3 BHK Flat in their project “I.O.B. Nagar” at Sarari, Danapur, Patna on consideration of Rs.15.00 lacs as One Time Payment. The Respondents have promised to the complainant to complete and deliver possession of the flat within 3 years. The complainant has paid Rs.15.00 lacs and got receipts from the Respondents for such payment. As there was no progress in the project after 2 years, the complainant requested the Respondents in May, 2017 to cancel his allotment and refund his principal amount. The Respondents have assured that the principal amount will be

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refunded within 3 months, but there was no refund. Hence, he has sent Legal Notice on 22-03-2018 to the Respondents for refund of his principal amount, but there was no response. It is further case that at present neither the Map of the project has been approved from the competent authority nor a single brick has been laid on the site of the project. It is further case that in spite of repeated requests by the complainant for the refund of principal amount, there was no response from the side of the Respondents. Hence, he has been thrown in much economical, mental and physical harassment. Therefore, he being fed up with the behaviour of the Respondents, has filed the present complaint case with the above reliefs against the Respondents.

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3. On appearance, the Respondents have filed reply and pleaded *inter-alia* that they are always abiding the order of the Court and refunding the advanced principal amount to the complainant. Further case is that the Respondents are ready to refund the total principal amount of the complainant, but they require some time and will refund in installments. They have further pleaded that in light of their promise and assurance, the case may be disposed of.
4. On basis of the pleadings and submissions of the learned lawyer for the complainant and learned lawyer for the

Respondents, the following points are formulated to adjudicate the case:-

- (i) Whether the complainant is entitled for refund of his principal amount Rs.15.00 lacs along with accrued interest @ 18% per annum thereon against the Respondents?
- (ii) Whether the complainant is entitled for compensation of Rs.5.00 lacs against the Respondents for his economical, mental and physical harassments?
- (iii) Whether the complainant is entitled for litigation cost against the Respondents?

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Point No.(i):

5. Admittedly, the complainant has booked a 3 BHK Flat in Block-P of the project "I.O.B. Nagar", Sarari, Danapur, Patna of the Respondent No.1, M/s Agrani Homes Pvt. Ltd. Thereafter, on 27-03-2015 a Memorandum of Understanding (M.O.U) was executed between the complainant, Sri Achal Kumar 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 for sale/purchase of a 3 BHK Flat in Block-P of the project "I.O.B. Nagar" on consideration of Rs.15.00 lacs as One Time Payment. Though the complainant has not filed M.O.U. on the record, but

he has filed photocopies of receipts showing payment of principal amount and the same received by the Respondents, in which Receipt No.1454 dated 27-03-2015 is for payment of Rs.5.00 lacs and Receipt No.1457 dated 22-04-2015 is with respect to the payment of Rs.10.00 lacs by the complainant to the Respondents, which support the payment of the total advance consideration amount Rs.15.00 lacs by the complainant to the Respondents. It is further case of the complainant that it was promised / assured by the Respondents orally as well as in M.O.U. that the project shall be completed and flat will be delivered to the complainant within 3 years. The complainant has stated that after 2 years of execution of M.O.U., there was no progress on the site of the project. Thereafter, on 16-05-2017 he has sent a letter to the Respondents to refund his principal amount after cancellation of the flat allotted to him. Whereon, the Respondents have assured that the principal amount of the complainant will be refunded within 3 months, but there was no move to refund the said amount. Then, he has sent a Legal Notice to the Respondents on 22-03-2018. However, the Respondents have not properly responded on said Notice. The complainant has filed photocopies of letter dated 16-05-2017 and Legal Notice dated 22-03-2018, which support his contentions for making requests to the Respondents to refund his money. The complainant has

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further stated that at present neither the Map of the project is approved from the competent authority nor single brick has been laid on the site of the project, hence, he has cancelled the booking, as there was no hope for completion of the project as per his requirement. The claim of the complainant find support from the letter No.RERA/PRO-REG-468/2018/1633 dated 26-12-2019 issued by RERA, Bihar to the Respondents, wherein several defects were found in the application for registration of Block-P of the project "I.O.B. Nagar" of the Respondents. It also appears from this letter that the Respondents have neither filed approved Map of the project nor removed the defects pointed out by the officials of RERA, Bihar. From the above discussion, it is clear that completion of the project is far away and the complainant cannot wait for indefinite period for delivery of possession of the flat. Hence, it is reasonable for the complainant to seek refund of the principal amount against the Respondents. Therefore, I find and hold that the Respondents must refund the principal amount of the complainant without delay and deduction. However, admittedly it is clear that presently the Respondents have refunded total principal amount Rs.15.00 lacs to the complainant.

The complainant has claimed accrued interest @ 18% per annum on the paid principal amount to the Respondents. From

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the above discussed materials, it is clear that the complainant has paid Rs.5.00 lacs on 28-03-2015 and Rs.10.00 lacs on 23-04-2015 and the Respondents have refunded this amount Rs.15.00 lacs to the complainants in the year 2020. So, naturally the Respondents have retained the principal amount of the complainant since 2015 till 2020 and used the same in betterment of their business. Hence, the Respondents have to pay accrued interest on the principal amount of the complainant paid to the Respondents. This view also finds support from the ruling of the Hon'ble Apex Court passed in (2007) 3 SCC-545 Alok Shankar Pandey Vs. Union of India and Others. Now, it is question as to how much interest may be levied on the Respondents on the principal amount Rs.15.00 lacs of the complainant? The claim of the complainant for interest @ 18% per annum on principal amount appears much higher. On this issue, rule-17 and 18 of the Bihar Real Estate (Regulation and Development) Rules, 2017 says that "*2% above the MCLR of the SBI has to be paid by the Promoter/Allottee to the other side within 60 days of due date*". The Respondents are running the present project and other projects in Patna as well as in other Parts of Bihar, so there will be much effect on the Respondents in development of their projects, if compound interest is levied. Moreover, it will also hamper the interest of the buyers. But,

there will be no much effect on the complainant, as he is repudiating himself from this project. So, I think, instead of compound interest, levying of simple interest on the principal amount will justify the end. Presently MCLR of SBI is 7.3% per annum for a loan of 3 years or more and if 2% is added it will come 9.3% per annum. So the Respondents have to pay accrued simple interest @ 9.3% per annum on the principal amount Rs.15.00 lacs since the respective date of payment by the complainant to the Respondents till refund of the same by the Respondents to the complainant. Accordingly, Point No.(i) is decided in positive in favour of the complainant and against the Respondents.

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Point No.(ii):

6. The complainant has also claimed compensation of Rs.5.00 lacs against the Respondents for his economical, mental and physical harassment. The complainant has cancelled booking of the flat due to delay in construction of the project. As per Section-72 of the Act, 2016, the Respondents are benefitted by using the principal amount Rs.15.00 lacs in their business, without giving delivery of possession of the flat to the complainant. Now, the complainant will not get a flat of same area in the same locality at the same rate, which was available to him in the year 2015. So, I think, Rs.2,85,000/- may be

appropriate amount for compensation to the complainant for his economical, mental and physical harassment, as the said amount is about 19% of the principal amount Rs.15.00 lacs paid by the complainant to the Respondents. Accordingly, Point No.(ii) is decided in positive in favour of the complainant and against the Respondents.

Point No.(iii):

7. The complainant has visited several times to the Respondents office, met with them and their staffs and requested for refund of his paid principal amount, whereon the Respondents and their staffs did not give any attention, which compelled the complainant to file this case. The complainant would have naturally incurred expenses in travelling to the office of the Respondents to meet with them and their staffs and also for filing the present complaint case in RERA, Bihar, engagement of lawyer, preparation of documents, payment of Court Fee etc. Though the complainant has not brought on the record, the actual expenses incurred by him in these activities, but I think, in all these processes the complainant would have incurred not less than Rs.25,000/-, which must be paid by the Respondents. Accordingly, Pont No.(iii) is decided in positive in favour of the complainant and against the Respondents.

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Therefore, the complaint case of the complainant, Sri Achal Kumar is allowed on contest with cost of Rs.25,000/- (Rupees twenty five thousand only) against the Respondents. The Respondents are directed to pay accrued simple interest @ 9.3% per annum on the principal amount Rs.15.00 lacs since the respective date of payment by the complainant to the Respondents till refund by the Respondents to the complainant. The Respondents are further directed to pay Rs.2,85,000/- (Rupees two lacs eighty five thousand only) as compensation to the complainant for his economical, mental and physical harassment. The Respondents are 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
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