



**IN THE COURT OF ADJUDICATING OFFICER,
REAL ESTATE REGULATORY AUTHORITY(RERA), BI-
HAR, PATNA**

RERA/CC/583/2019
RERA/AO/149/2019

Smt. Damayanti Devi, W/o Sri Rabindra Nath
Chaubey, Bhojpur Colony, Ram Lakhan Path, Road
No.08, Kankarbagh, District-Patna, PIN-800020. ... Complainant

Versus

1. M/s Ashwani Enterprises Pvt. Ltd.,
Address-1:
Krishna Building (2nd Floor), S.P. Verma Road,
Patna-800001.
Address-2:
B-126, Harinagar, Ghantaghar, New Delhi-
110064.
Address-3:
Ashwani Residency, NH-98, Bagha Tola, Ya-
kubpur, Nagwan, P.S.-Janipur, Phulwarisharif,
District-Patna, PIN-801505
2. Sri Ashwani Kumar Singh, Managing Director,
s/o Late Hari Dayal Singh, RF/254, Lohiya Na-
gar, OPP: Urvashi Sales, Kankarbagh, Sam-
patchak, District-Patna. ... Respondents

Present:

Sri Ved Prakash
Adjudicating Officer

Appearance:

For Complainant : Sri Dhananjay Kashyap, Advocate
For Respondents : Sri Ashwani Kumar Singh, Director

ORDER

05-01-2021

This complaint petition is filed by the complainant,
Smt. Damayanti Devi, against the Respondent No.1,
M/s Ashwani Enterprises Pvt. Ltd. through its Director,

Respondent No.2, Sri Ashwani Kumar Singh u/s 31 read with Section-71 of Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as the “Act, 2016”) for refund of her principal amount Rs.1,50,000/-along with compound interest @ 2% above the M.C.L.R. of S.B.I. from the respective date of payment by the complainant till realisation and compensation Rs.1.00 lac for her physical, financial and mental harassment.

05-01-2021
CONTINUED

2. In nutshell, the case of the complainant is that the complainant, Smt. Damayanti Devi approached to the Respondents for purchase of a 2 BHK flat and after talk the flat was finalised and thereafter, Agreement for Sale was executed on 11-12-2013 between the complainant, Smt. Damayanti Devi and Respondent No.1, M/s M/s Ashwani Enterprises Pvt. Ltd. through its Director, Respondent No.2, Sri Ashwani Kumar Singh for sale/purchase of a 2 BHK flat in project “Ashwani City”, Sonepur of the Respondents. The complainant paid Rs.1,50,000/- through 3 cheques consisting of cheque no.241233 dated 07-10-2013 worth Rs.51,000/-, cheque no.241238 dated 11-12-2013 worth Rs.50,000/- and cheque n0.241234 dated 07-10-2013 worth Rs.49,000/- and she got money receipts of all these payments from the Respondents. The said project was cancelled unilaterally by the Respondents without any information to the complainant. After getting in-

formation of cancellation of the project, the complainant approached to the Respondents for refund of her principal amount Rs.1,50,000/-, which she has paid as booking amount to the Respondents, but they on one or other pretext, evaded refund. Later on 20-12-2017, the Respondents have issued a letter to the complainant with the assurance of a scheme of refund of Rs.1,86,000/- in monthly instalments starting from 20-02-2018 to 20-05-2018. But, despite assurance, no refund of booking amount was made by the Respondents. Thereafter, the complainant has issued a legal notice through her advocate, but there being no response from the side of the Respondents and being fed-up with the behaviour of the Respondents, she filed this complaint case with the above reliefs.

05-01-2021
CONTINUED

3. Notice was issued to the Respondents through Post Office, but the same could not be served. Later on, Gmail was also issued by the Court, which was served on the Respondents including the Managing Director, Respondent No.2, Sri Ashwani Kumar Singh, but he did not appear in person or through any authorised representative. Again Notice was issued through Special Messenger, Sri Sumant Kumar, I.T. Boy of RERA, Bihar, who served the Notice on wife of the Respondent No.2, Sri Ashwani Kumar Singh and after receipt of the Notice, the Respondent No.2, Sri Ashwani Kumar Singh appeared in the Court through video conferencing, who submitted that the

principal amount Rs.1,50,000/- of the complainant will be refunded shortly. However, during the hearing itself it was submitted that the principal amount Rs.1,50,000/- of the complainant was refunded to her.

4. Now, after appearance of the Respondent, the following points are formulated to adjudicate the case:-

(i) Whether the complainant is entitled for accrued compound interest @ 2% above the M.C.L.R. of S.B.I. on principal amount Rs.1,50,000.- paid to the Respondents?

(ii) Whether the complainant is entitled for compensation of Rs.1.00 lacs against the Respondents for her economical, physical and mental harassments?

(iii) Whether the complainant is entitled for litigation cost against the Respondents?

Point No.(i):

5. Admittedly, both the parties have executed Agreement for Sale on 11-12-2013 for sale/purchase of one 2 BHK flat in Plan-A of "Ashwani City", Sonapur project to be developed by the Respondents. The complainant has filed photocopy of the Agreement for Sale dated 11-12-2013, which supports the allegation of the complainant. The complainant has stated that she has paid Rs.1,50,000/- as advance principal amount for payment of consideration, in which she has paid Rs.51,000/-

05-01-2021
CONTINUED

through S.B.I. cheque no.241233 dated 29-07-2013, for which receipt no.1562 dated 07-10-2013 was issued by the Respondents. The complainant has further paid Rs.49,000/- through SBI cheque no.241234 dated 07-10-2013, for which the Respondents have issued receipt no.1563 dated 07-10-2013 in favour of the complainant. The complainant has further paid Rs.50,000/- through SBI cheque no.241238 dated 11-12-2013, for which the Respondents have issued receipt no.1870 dated 11-12-2013. The complainant has filed photocopies of all these three money receipts on record, which support her claim of payment of Rs.1,50,000/- to the Respondents. The complainant has stated that the Respondents were not proceeding towards construction of the project, rather they have unilaterally cancelled the same without information to her. Hence, she sought relief for refund of paid principal amount Rs.1,50,000/- from the Respondents, but they evaded to refund the said paid money on one or other pretext, due to which she has issued letter dated 03-09-2018 for refund of her principal amount, photo copy of which is filed by the complainant on record, which supports her pleading for refund of the said amount. Further she has stated that the Respondents have issued letter dated 20-12-2017 with the assurance to refund her paid principal amount through cheques in instalments from 20-02-2018 to 20-05-2018 for refund of total Rs.1,86,000/-.

05-01-2021
CONTINUED

05-01-2021
CONTINUED

The complainant has filed photocopy of the said letter issued by the Respondents, which also supports her claim pleaded in the complaint petition. When the Respondents failed to refund the assured amount, she has issued Legal Notice dated 26-07-2019 to the Respondents demanding her paid principal amount Rs.1,50,000/- along with interest@ 12% per annum. But, the Respondents for one or other reasons did not refund the amount. It shows that the complainant with the purpose of purchasing a 2 BHK flat in “Ashwani City”, Sonpur has paid Rs.1,50,000/- through 3 cheques and in spite of lapse of long period, the Respondents neither informed her about the developments of the project nor demanded further consideration from her, rather unilaterally cancelled the project itself. In such circumstances, the complainant has well established her case against the Respondents for refund of Rs.1,50,000/- as principal amount, but the Respondents, in spite of assurances, have not taken any positive steps towards the refund of her principal amount. Accordingly, the complainant is entitled for refund of her paid principal amount Rs.1,50,000/- without any delay and deduction.

Admittedly, the Respondents have refunded the total principal amount Rs.1,50,000/- to the complainant.

6. The complainant has claimed compound interest @ 2% above M.C.L.R. of S.B.I. in hard copy of the complaint petition,

but on online complaint petition she has claimed compound interest @ 18% per annum on principal amount Rs.1,50,000/-, whereas in legal notice she has claimed interest @ 12% per annum. Presently, the Respondents have appeared in the Court, but they have not filed their reply, so there is only evidence brought by the complainant to adjudicate this case. I think the claim of the complainant for interest @ 12%/18% per annum is much high, as there is no terms and conditions scribed in the Deed of Agreement for Sale executed between the parties on 11-12-2013, which may show that either of the parties has agreed to impose compound interest at @ 12%/18% per annum on the principal amount. It appears that the Respondents have already refunded the principal amount Rs.1,50,000/- to the complainant, so instead of compound interest, levying of simple interest on the principal amount of the complainant will justify the end. Hence, in such facts and circumstances, rules 17 and 18 of Bihar Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as the "Rules, 2017") appears reasonable for imposing interest on principal amount, according to which the Promoters/Respondents have to pay 2% above the Prime Lending Rate of S.B.I. or M.C.L.R. of the S.B.I. on the date on which the amount has become due. The principal amount has been paid by the complainant in the year 2013 and about

05-01-2021
CONTINUED

7 years have passed. Present rate of M.C.L.R. of S.B.I. for Home Loan of above 3 years will be applicable in the present case. The present rate of M.C.L.R. of S.B.I. is 7.30% per annum. Hence, if 2 % is added, the simple interest rate will be 9.3% per annum.

05-01-2021
CONTINUED

Hence, the Respondents have to pay simple interest @ 9.30% per annum on the principal amount Rs.1,50,000/- since the date of payment of the respective amount by the complainant to Respondents till the date of refund of the said amount to the complainant by the Respondents. Accordingly, Point No.(i) is decided in positive in favour of the complainant and against the Respondents.

Point No.(ii):

7. The complainant has also claimed Rs.1.00 lac as compensation against the Respondents for her mental, economical and physical harassment. The said project was unilaterally cancelled by the Respondents and not refunded the principal amount to the complainant. Hence, as per Section-72 of the Act, 2016 the Respondents are benefitted by using the amount of Rs.1,50,000/- paid by the complainant in their business without giving delivery of possession of the flat to the complainant. Now the complainant will not get flat of same area in the same locality at the same rate, which was available to her in the year 2013. The rate of flat would have gone

higher, rather multiplied. So, I think, Rs.20,000/-, which is about 13% of the principal amount Rs.1,50,000/- paid by the complainant to the Respondents, may be appropriate amount for compensation to the complainant for her physical, economical and mental harassment. Accordingly, Point No.(ii) is decided in positive in favour of the complainant and against the Respondents ,

05-01-2021
CONTINUED

Point No.(iii):

8. The complainant has visited several times to the Respondents office, met with them and their staffs and requested for refund of her 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 them and their staffs and also for engaging lawyer, filing of the present complaint case in RERA, Bihar, preparation of documents, payment of Court Fee etc. Though the complainant has not brought any document on the record for showing the actual expenditure incurred by her for this purpose, but I think, in all the processes the complainant would not have incurred more than Rs.7,000/-, which must be paid by the Respondents. Accordingly, the Point No.(iii)

is decided in positive in favour of the complainant and against the Respondents.

Therefore, the complaint case of the complainant, Smt. Damayanti Devi is allowed on contest with litigation cost of Rs.7,000/- (Rupees seven thousand only) against the Respondents. The Respondents are directed to pay simple interest @ 9.30% per annum accrued on principal amount Rs.1,50,000/- since the respective date of payment of said amount by the complainant to the Respondents till date of refund of the said amount by the Respondents to the complainant. The Respondents are further directed to pay Rs.20,000/- (Rupees twenty thousand only) as compensation to the complainant for her mental, economical and physical harassment. The Respondents are 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.

05-01-2021
CONTINUED

Sd/-
(Ved Prakash)
Adjudicating Officer
RERA, Bihar, Patna
05-01-2021