



REAL ESTATE REGULATORY AUTHORITY (RERA)

IN THE COURT OF ADJUDICATING OFFICER

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

**1. RERA/CC/753/2019
RERA/AO/233/2019**

Smt. Savita Sah, D/o Late Bharat Sah,
R/o A/416, Hazari House, South-West Corner of
Park, A.G.-Colony, Patna-800025.

**2. RERA/CC/754/2019
RERA/AO/234/2019**

Sri Sita Ram Singh, S/o Sri Indradeo Singh,
R/o A-488, South of Park, A.G. Colony, Patna-
800025.

... Complainants

Versus

1. M/s Nesh India Infrastructure Pvt. Ltd.
Through it's Managing Director:
2. Sri , Managing Director of M/s Nesh India
Infrastructure Pvt. Ltd.
-Both Residents of Commercial Block,
Tiruvantapuram City, A.G. Sector, Ashopur,
Khagaul, Danapur, Patna-801503.

... Respondents

Present:

**Sri Ved Prakash
Adjudicating Officer**

Appearance:

For Complainant

- Sri Ram Babu Sah, Advocate

For Respondents

- Sri Vinod Kumar Sinha, Advocate

ORDER

09-03-2021

These complaint petitions are filed by the complainants named
above against the Respondent No.1, M/s Nesh India Infrastructure
Pvt. Ltd. through it's Managing Director, Respondent No.2,

Sri Shashi Bhushan Sinha, u/s 31 read with Section-71 of Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as the “Act, 2016”) for compensation @ Rs.8,000/- per flat per month along with interest thereon from September, 2015 till delivery of possession of their allotted flats and further for proportional compensation in monetary terms as per prevailing market rate for additional constructed area from G+5 to G+7 and also for compensation for their physical and mental harassment with litigation cost, consequent to non-delivery of flats allotted in their share within the stipulated period.

2. In nutshell, the case of the complainants named above is that each of these complainants, Smt. Savita Sah and Sri Sita Ram Singh was/is owner of the piece of land measuring 2000 sq.ft. allotted him/her by Alok Sahkari Grih Nirman Samiti, a society registered under Bihar & Orissa Co-operative Societies Act, 1935. The promoter/developer had proposed to develop a residential building namely “Tiruvantapura A.G. Enclave” on the piece of land measuring 9978.297 sq.mtr. owned by 40 odd land owners. It is further case that these complainants executed registered Development Agreement No.21945 dated 25-08-2011 along with unregistered supplementary Agreement with the Respondent No.1, M/s Nesh India Infrastructure Pvt. Ltd. through its Managing Director, Respondent No.2, Sri Shashi Bhushan Sinha for development of their land. In Development Agreement, it was agreed that the builder shall provide flats of super built-up area of 2.25 times of land area 2000 sq.ft. i.e. (2.25 x 2000) 4500 sq.ft. to each complainant along with parking

space for a four wheeler vehicle with each flat. It was further agreed in the Supplementary Agreement that the builder shall give 3 flats each of 1440 sq.ft. namely; Flat No.C/311, C/312 and D/104 to the complainant, Smt. Savita Sah and Flat No.B/207, B/309 and D/103 to the complainant, Sri Sita Ram Singh. It was also agreed in the Agreement that the complainant will not have to pay anything to the developer at the time of delivery of possession of the allotted flats. It was also stipulated that the project would be completed within two and half years of signing of the Agreement with a grace period of six months. It was also agreed in the Agreement that if the developer fails to complete construction of the flats within the stipulated time frame, the developer shall be liable to pay to each of the land owner compensation @ Rs.8,000/- per flat per month. It was further provided under clause-21 of the Development Agreement that if the said multi-storied building is further expended upward, the share of additional construction shall be distributed proportionately between the land owners and developer.

3. Further case of the complainants is that the promoter has violated the terms and conditions of said Agreement and the flats allotted to these complainants were not delivered within the stipulated period. Despite several reminders, the promoter has evaded on one or other pretext and delivery of possession of the flats were not handed over to the complainants. Thereafter, the complainants having no other option, filed Complaint Petition No.81/2018 and 82/2018 before Hon'ble RERA, Bihar and after hearing the parties, the Hon'ble RERA, Bihar allowed these complaint cases and directed the Respondents to hand over possession of

three specified flats to each of the complainants along with a covered parking space for a four wheeler vehicle with each flat to each complainant after taking Completion/Occupancy Certificate of the project within 60 (sixty) days of the order. Further order was passed that these complainants will not have to pay anything to the developer in this respect at the time delivery of possession of the flats, as stipulated in the Supplementary Agreement, except the demand of One Time Maintenance Charges raised by the developer, provided such charges are payable by all other allottees also. The promoters were further directed to follow the provisions of RERA Act, 2016 and rules made thereunder meticulously and discharge their obligations prescribed in the Act. It was further directed that so far as proportionate share on 6th and 7th floor is concerned, the complainant may approach competent Civil Court or Consumer Court for their claims, if they so wish, as the RERA, Bihar Bench has no jurisdiction to take decision on the point. It was further directed that as regards compensation prescribed u/s 18 of the Act, 2016 (compensation under clause 7.2 of the Development Agreement) and damages/compensation on account of mental torture is concerned, the complainants, if they so wish, may file a separate application u/s 31 read with 71 of the Act, 2016 before the Adjudicating Officer of the Authority. The complainants in pursuance of the aforesaid order of the Hon'ble RERA, Bihar Bench, have filed these complaint petitions with above reliefs against the Respondents.

4. On appearance, the Respondents have pleaded *inter-alia* that the reliefs sought by the complainants are completely misconceived and

devoid of merit in the eye of law and hence, these complaint petitions are fit to be dismissed. They have further stated that an Agreement was executed between the complainants and M/s Nesh India Infrastructure Pvt. Ltd. , whereas the present complaint petition has been filed under rule 37(1) of Bihar Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as the “Rules, 2017”) and M/s Nesh India Infrastructure Pvt. Ltd. has not even been made party and therefore, the present complaint petitions are liable to be dismissed on this score alone on account of non-rejoinder of the necessary party. It is further case that time frame that had been indicated in the Agreement for completion of the Plan etc. was sought to be strictly adhered to, but on account of reasons beyond the control of the Respondents, the construction works could not be completed within the schedule time frame on account of ban having been imposed on the on-going construction of multi-storied buildings and Apartments in City of Patna and all over the State of Bihar on account of the order passed by Hon’ble High Court, Patna in series of cases and also on account of scarcity of stone chips and sand due to change in Policy of the Government. There had been no deliberate latches/shortcomings on the part of M/s Nesh India Infrastructure Pvt. Ltd. for delay that had occurred in construction of the building in question and as such the claim for award of compensation in favour of the complainants in the present cases is completely misconceived and devoid of merit in the eye of law. It is further case that in present complaint cases, the provisions contained in Section 12, 14, 18 and 19 of the RERA Act, 2016 are not

applicable and as such any claim for compensation by the complainants is completely misconceived and devoid of merit.

5. Further, it is stated that on account of order dated 10-05-2013 passed by Hon'ble High Court, Patna in C.W.J.C. No.8152/2013 neither the Respondents nor any other builder/developer in the State of Bihar could carry out construction works and it was only after the order dated 23-06-2015 passed by Hon'ble High Court, Patna, the construction works of the multi storied buildings were permitted to continue.
6. Further case of the Respondents is that on account of the complaint of illegal mining of sand and stone chips in the State of Bihar, one CW.J.C. No.17809/2015 was filed before Hon'ble High Court, Patna, which was subsequently converted into Public Interest Litigation (P.I.L.) and on account of orders passed in the said case, supply of sand as well as stone chips remained suspended in the State of Bihar for a considerable period of time between 2015-18. Subsequently, taking note of the order passed by the Principal Secretary, Mines Department-cum-Mines Commissioner, Bihar by order dated 02-04-2018 of the Hon'ble High Court, Patna, the mining of sand and supply of stone chips could be restored and as such, for want of supply of sand and stone chips, the works relating to construction of buildings in the State of Bihar could not be carried out.
7. In aforesaid manner, it is established that it was owing to the reasons beyond control of the Respondents and on account of judicial order having been passed by the Hon'ble High Court, Patna in the aforesaid cases, the construction of the multi-storied building in question

could not be carried out, for which none of the Respondents could be held responsible and thus, the present cases are completely misconceived and devoid of merit in the eye of law and as such, these cases are fit to be rejected/dismissed.

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

- (i) Whether the complaint cases filed by the complainants are maintainable against the Respondents?
- (ii) Whether the complainants are entitled for compensation @ Rs.8,000/- per flat per month along with interest since September, 2015 till delivery of possession of their share of flats against the Respondents ?
- (iii) Whether the complainants are entitled for proportional compensation in monetary terms on market rate against the Respondents for additional constructed area from G+5 to G+7?
- (iv) Whether complainants are entitled for compensation for their physical and mental harassment, against the Respondents?
- (v) Whether the complainants are entitled for litigation cost against the Respondents.

Point No.(i):

9. Admittedly, the complainants have executed registered Development Agreement No.21945 dated 25-08-2011 along with unregistered Supplementary Agreement with the promoter, M/s Nesh India Infrastructure Pvt. Ltd. through it's Managing Director, Respondent No.2, Sri Shashi Bhushan Sinha for development/construction of a project "Tiruvantapura A.G. Enclave". The complainants have filed photocopies of the aforesaid Development Agreement as well as Supplementary Agreement on the record. The complainants have filed the present complaint petitions u/s 31 read with Section 71 of Real Estate (Regulation and Development) Act, 2016 for redressal of their grievances against the Respondent No.1 through it's Managing Director, Sri Shashi Bhushan Sinha and they have adopted the procedures as prescribed in Rule 37(1) of the Bihar Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as the "Rules, 2017") for claim of compensation and interest thereon. It is not out of place to note that Notice to the Respondent No.1 was also issued through it's Managing Director, Respondent No.2, Sri Shashi Bhushan Sinha and after appearance, the Respondent No.2 has not only pleaded to protect his interest, but as Managing Director of the Respondent No.1, he took defence of the Respondent No.1, M/s Nesh India Infrastructure Pvt. Ltd. So, there is no illegality in the complaint petitions, rather the Respondent No.1 is treated as party to the case as any action/grievance may be redressed only through Respondent No.2, Sri Shashi Bhushan Sinha. Hence, the submission of the learned lawyer for the Respondents is not

tenable in the eye of law and these complaint cases of the complainants are maintainable against the Respondents.

10. The other argument submitted by the learned lawyer for the Respondents is that these complainants are 'promoters/developers' as per Section 2(zk) of the Act, 2016 and they are not 'allottees', so their grievances cannot be redressed u/s 31 read with Section-71 of the Act, 2016 in this Court, which is vehemently opposed by the learned lawyer for the complainants and he by citing *Banga Danial Babu Vs. M/s Shree Vasudev Construction and Others* vide Civil Appeal No.944 of 2016 SLA (Civil)1633 of 2016 submitted that the land owner is also 'allottee/consumer'. This view was also confirmed by Hon'ble Real Estate Appellate Tribunal (REAT), Bihar in order dated 04-11-2020 in Appeal No.08/2019 – *Sita Ram Singh Vs. M/s Nesh India Infrastructure Pvt. Ltd.* Therefore, these complainants, being land owners, have all rights/reliefs and interest that other flat buyers/allottees/consumers are entitled to.

Hon'ble Supreme Court of India in *Faqir Chand Gulati Vs. Uppal Agencies (P) Ltd.* (2008)10 SCC 345 has held that:-

“there is contract for construction of an Apartment or House for the Appellant in accordance with the specifications and in terms of the contract. There is a consideration for such construction flowing from the land owner to the builder (in the form of sale of an undivided share in the land and permission to construct and own the upper floors). To adjust the value of the extent of land to be transferred, there is

also payment of cash consideration by the builder. But, the important aspect is the abailment of services of the builder by the land owner for a house construction (construction of the owners' share of the building) for a consideration. To that extent, the land owner is a consumer, the builder is a service provider and if there is deficiency in service in regard to construction, the dispute raised by the land owner will a consumer dispute. It will make no difference for this purpose whether the collaboration agreement is for construction and delivery of one apartment or one floor to the owner or whether it is for construction and delivery of multiple apartments or more than one floor to the owner. The principle would be the same and the contract will be considered as one for house construction for consideration.

However, where the contract is a true Joint Venture, the position will be different. In a true Joint Venture, Agreement between the land owner and another (whether a recognised builder or fund provider), the land owner is a true partner or co-adventurer in the venture where the land owner has say or control in the construction and participates in the business and management of the Joint Venture and has a share in the profit or loss of the venture. In such a case, the

land owner is not a 'consumer' nor is the other co-adventurer in the joint venture a 'service provider'".

Hon'ble Apex Court in *Sujeet Kumar Banerjee Vs. Rameshwaram* (2008)10 SCC 366 and in other series of cases including the cases cited by the learned lawyer for the complainant, has opined the same view.

11. From the above discussion, it is clear that the land owner apart from providing land is neither involved in construction nor in development, share and profit etc. of the project "Tiruvantapuram A.G. Enclave". So, it is established that these complainants are not 'promoter' as prescribed in Section 2(zk) of the Act, 2016, rather they are 'allottees' like other buyers of the flats and they are entitled to claim delivery of possession of their flats, compensation and interest etc. against the promoter/builder/Respondents and accordingly, these complaint cases are maintainable against the Respondents.

12. Another issue on the point of maintainability raised by the learned lawyer for the Respondents is that the provisions contained under rule 37(1) of the Rules, 2017 demonstrate that an aggrieved person may file a complaint case with the Adjudicating Officer for interest and compensation as provided u/s 12, 14, 18 and 19 of the Act, 2016, but in the present cases these provisions are not applicable for award of compensation as the same is mis-conceived and devoid of merit, which is opposed and submitted by the learned lawyer for the complainants that as per rule 8(2) of the Rules, 2017, rights and interests of the allottees agreed in the Agreement before commencement of the Act, 2016 are enforceable under the Act, 2016. It is settled principle that no person can

be compelled to re-write an Agreement after coming of new law/act in operation. He further submitted that the promoter shall be responsible for all obligations/responsibilities and functions under the provisions of this Act or Rules and Regulations made thereunder or to the allottee as per Agreement for Sale. Further, Section 18(1)(b) says where the 'allottee' does not intend to withdraw from the project, he shall be paid by the 'promoter' interest for every month till handing over of the possession of the flat at such rate as may be prescribed. He further submitted that the Respondents/builders have grossly violated these provisions and failed to discharge their contractual obligations and consequently these complainants have suffered a lot in various ways and for redressal of the same, these complaint petitions are filed before this Court.

13. As discussed in above paragraphs, these land owners/complainants are equally allottees u/s 2(d) of the Act, 2016 and all rights/liabilities are available to them like other allottee/buyer/transferee under the Act, 2016. The Respondents have promised in Clause-7 of the Development Agreement to complete the project within two years and six months with grace period of six months from the date of sanction of Plan or the hand-over of the vacant possession of the land to the developer by such happening as is beyond the control of the developer including Force Majeure. It shows that the construction of the project "Tiruvantapuram A.G. Enclave" should have been completed till 24-08-2014 as zero date was the date when the vacant physical possession was taken by the developer after approval of Plan by the competent authority, but the same could not be completed and flats of the land owners/complainants could

not be handed over to them within such schedule time. So, as per terms of the Development Agreement, the Developers/Respondents are liable to their responsibilities towards the complainants.

14. Previously, the complainants have filed complaint cases No.81/2018 and 82/2018 before Hon'ble RERA, Bihar, Patna for delivery of possession of their share of flats after issue of Completion/Occupancy Certificate, damages and compensation for delay in handing over the possession as well as compensation for physical and mental harassment caused to them by the builder. After hearing the parties, Hon'ble RERA, Bench has allowed other reliefs to the complainants against the Respondents, but directed that these complainants should file separate complaint petition u/s 18 of the Act, 2016 as per Clause-7.2 of the Development Agreement before the Adjudicating Officer, RERA, Bihar u/s 31 read with section 71 of the Act, 2016, which has been confirmed by the Hon'ble REAT, Bihar on 04-11-2020 in Appeal No.08/2019. In this way, it is established that these Respondents are liable/responsible towards the complainants with respect the project "Tiruvantapuram A.G. Enclave" and hence, these complaint petitions are maintainable against the Respondents.

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

Point No.(ii):

15. The learned lawyer for the Respondents by citing order dated 10-05-2013 passed by Hon'ble High Court, Patna in C.W.J.C.

No.8152/2013 – Narendra Mishra Vs. State of Bihar and Others, submitted that there was complete ban on construction, maintenance, finishing of buildings under construction in the State of Bihar and after order dated 23-06-2015 was passed by the Hon'ble High Court, Patna, the construction work of the buildings was permitted to continue. He further submitted that on account of complaint of illegal mining of sand and stone in the State of Bihar, a C.W.J.C. No.17809/2015 was filed before the Hon'ble High Court, Patna, which was subsequently converted into Public Interest Litigation (P.I.L.), but as per order of Hon'ble High Court mining of sand and stone chips remained suspended in the State of Bihar for a considerable period between the year 2015-18 and subsequently, taking note of the order passed by the Principal Secretary, Mines Department-cum-Mines Commissioner, Bihar by order dated 02-04-2018 of the Hon'ble High Court, Patna, the mining of sand and supply of stone chips could be restored and as such, for want of supply of sand and stone chips, the works relating to construction of buildings in the State of Bihar could not be carried out.

On other hand, the learned lawyer for the complainant submitted that for a moment if the submission of the learned lawyer for the Respondents is accepted as correct, then also the Respondents have delayed in delivery of flats for more than 3 years, 3 months and 5 days, for which each of the complainants is entitled for compensation of Rs.10,39,634/- @ Rs.8,000/- per flat per month including interest @ 8.95% per annum.

16. The Development Agreement along with Supplementary Agreement was signed on 25-08-2011 between both the parties and the completed flats, as per Clause-7 of the Agreement, should have been handed over within 3 years including grace period of 6 months. It was also agreed in Supplementary Agreement that approval of the Plan must be taken before November, 2011, otherwise Agreement will be treated as null and void and the land will go under the possession of land owner automatically. Though the date of approval of Plan is not given on the record and RERA, Bihar registration is obtained by the developer on 25-01-2019 vide Registration No.BRERA P00417-5/460/R-371/2019, but it is admitted position that the Plan was approved prior to November, 2011. It was also agreed in para-7.1 of the Development Agreement that zero date shall be the date when vacant physical possession of land taken by the developer after the plan is approved by the competent authority. In such circumstances, date of execution of Development Agreement is presumed as the date of taking possession of the land by the Respondents and time of delay will be counted since 25-08-2011 for completion of the project.
17. In Clause-7.2 of the Development Agreement, the developer has promised that in the event the developer fails to complete the construction as per plan within the time frame stipulated above, the owners shall be entitled to and developer shall be liable to pay to the owners compensation @ Rs.8,000/- per flat per month for entire share of the land owners area, if the same is unconstructed and not handed over to them.

18. Admittedly, the Hon'ble High Court, Patna on 10-05-2013 in C.W.J.C. No.8152/2013 – Narendra Mishra Vs. State of Bihar and Others has stayed new construction of commercial/residential flats in the State of Bihar, which was later permitted on 23-06-2015. Later on 17-02-2017 in C.W.J.C. No. 17809/2015. Hon'ble High Court, Patna has suspended the sand mining and supply of stone chips in the State of Bihar and after order dated 02-04-2018 of the Hon'ble High Court, the mining of sand and supply of stone chips could be restored. For the calculation of delay in completion of the project "Tiruvantapuram A.G. Enclave", it is seen that if 3 years including 6 months grace period is added, the project should have been completed till 24-08-2014.

The learned lawyers of both the parties are of the unanimous opinion that since the order dated 10-05-2013 of the Hon'ble High Court, Patna, the construction of the apartments/projects in the State of Bihar was banned and it could be lifted only on 23-06-2015 by the order of Hon'ble Court. Hence, the construction remained banned for 2 years 1 month and 13 days, which has caused delay in construction of the project. It is further stated by the learned lawyer for the Respondents that the Hon'ble High Court, Patna has suspended mining of sand and supply of stone chips in the State of Bihar for a considerable period in the year 2015-18. Hence, it is clear from the order of the Hon'ble High Court, Patna that mining of sand and supply of stone chips was suspended on 17-02-2017 and it could be restored on 02-04-2018. In this way, it is clear that the supply of sand and stone chips remained suspended up to 02-04-2018. So, for computation of delay in delivery of

possession of the flats to the complainants could start only after 02-04-2018, and after that date, the construction works continued smoothly till 23-03-2020. It shows that the construction works continued since 02-04-2018 till 23-03-2020 i.e. 1 year 11 months and 21 days. For computation of delay period in delivery of possession of the flats, this period since 24-03-2020 to 31-12-2020 has also to be taken in to account, as construction work was suspended during this period, due to Covid-19 lockdown. Thereafter, delay once again started and continued from January, 2021 till date and that has to be added and after addition, the total delayed period in delivery of possession of the flats to the complainants has become 2 years and 3 months. The Respondents have not paid compensation @ Rs.8,000/- per flat per month since due date, so naturally they have to pay compensation along with interest on said compensation amount, as per prescribed law, which also find support from the ruling of Hon'ble Supreme Court of India in Alok Shankar Pandey Vs. Union of India and Others passed on 15-02-2007 in Appeal (Civil) 1598/2005 wherein it was 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. Now, I have to see as to how much rate of interest may be allowed on compensation to the complainant against the Respondents.

The rule 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 pay simple interest @ 9.30% per annum to the complainants on the amount of

compensation for 3 flats of each complainant for a period of 2 years 3 months (total 27 months) @ Rs.8,000/- per flat per month, which comes to Rs.6,48,000/- and simple interest on this amount will come to Rs.1,35,594/- for each complainant. So, the total amount of compensation including interest to be paid by the Respondents to each complainant will be Rs.7,83,594/-. Accordingly, Point No.(ii) is decided in positive in favour of the complainants and against the Respondents.

Point No.(iii):

19. Both the parties have agreed in clause-21 of the Development Agreement that the share of additional construction to be proportionately distributed, if the said multi-storied building is constructed more than G+5. The Hon'ble RERA, Bihar Bench has opined that so far as proportionate share on 6th and 7th floor of the project is concerned, the complainants may approach the competent Civil Court or Consumer Court for their claim, if they so wish, as the Hon'ble RERA, Bihar Bench is unable to decide on this point. Though the view taken by the Hon'ble RERA, Bihar Bench may also be adopted herein, but since in other similar cases of the same project "Tiruvantapuram A.G. Enclave", the Respondents have compromised with other complainants namely; Sri Raj Kumar Sinha and Sri Sanjay Kumar Sinha and they have filed Joint Compromise Petitions and thereafter, Hon'ble REAT, Bihar disposed of Appeal

No.09/2019 on 04-11-2020 on the basis of the compromise arrived between the parties and this Court feels it necessary, without going to the merit of the case, to decide on proportion of share in monetary form for additional area of construction from G+5 to G+7.

20. The Respondents have paid Rs.26,00,000/- to the complainant, Sri Raj Kumar Sinha in lieu of extra area of 740 sq.ft. and Rs.8,50,000/- to the complainant, Sri Sanjay Kumar Sinha in lieu of extra area of 240 sq.ft. and on calculation it will come to Rs.3,513.51 per sq.ft. and Rs.3,541.66 per sq.ft. Hence, from the above facts, it is established that the Respondents have paid Rs.3,500/- per sq.ft. to the above complainants and if this admitted rate is applied in the present cases, the Respondents have to pay Rs.3,500/- per sq.ft. to the complainants for their extra area of flats from G+5 to G+7.

Each of the complainants have got 3 flats of super built-up area 1440 sq.ft. in the 5 storied building and on this basis, the proportionate share of each complainant in G+7 building, as per Clause-21 of Development Agreement, may be calculated as follows:-

In five storied building each of the complainants will get 3 flats and in one 1 storied building he/she will get $\frac{3}{5}$ flats, so in 7 storied building each complainant will get 4.2 flats. In this way, each complainant is entitled for additional $4.2 - 3 = 1.2$ flats in

additional construction beyond G+5 building of 1440 sq.ft., which will be equal to 1728 sq.ft. Now on basis of rate of Rs.3,500/- per sq.ft., the compensation of each complainant for extra area will be Rs.60,48,000/-. Hence, the Respondents have to pay Rs.60,48,000/- to each of the complainants as share for extra construction of G+6 to G+7. Accordingly, Point No.(iii) is decided in positive in favour of the complainants and against the Respondents.

Point No.(iv):

21. Learned lawyer for the complainants has submitted that after stipulated period of completion of the project, the complainants made several requests to the builder for completion of the project and delivery of 3 flats to each of the complainants. as per Development Agreement, but on each occasion the Respondents have deferred their requests on one or other grounds and stated that the building will be ready within six months and the flats will be delivered to the complainants within the said period. Again, on 08-05-2019 when the complainants met with the Respondents in their office and requested to deliver at least Flat No.D-103 and D-104, which were structurally ready, to both the complainants and the other flats when it will become ready, the builder demanded illegal money as cost of 120 sq.ft. extra construction in each flat on the plea that the flat of 1440 sq.ft. super built up area has now become Rs,1560 sq.ft. When the complainants tried to convince

that there was no increase even an inch in the carpet area or super built up area and hence, they have not to pay anything as per supplementary Agreement. But, the Respondents continuously harassed them. Now, the Hon'ble RERA, Bihar has adjudicated the matter and ordered that there is nothing to pay to the Respondents, which has been confirmed by Hon'ble REAT, Bihar. On other hand, the learned lawyer for the Respondents has not commented during hearing on this aspect, so whatever the learned lawyer for the complainant has submitted appears admitted by the Respondents.

22. The complainants during hearing claimed compensation of Rs.5.00 lacs for their physical and mental harassment. As per Section 72 of the Act, 2016, the Respondents have been benefitted by not paying compensation to the complainants and still said amount is lying with the Respondents and they are using the same in their business development and on the other hand, the Respondents are avoiding delivery of flats falling in the share of the complainants. I think, the claim of compensation has to be decided in a reasonable manner, keeping in mind the quantum of amount, duration of the amount retained by the Respondents as well as proportion of loss to the complainants and benefit to the Respondents. It has also to be kept in mind as to how and what physical and mental harassment has been done to the complainants by the Respondents. In such facts and circumstances, I find that

the Respondents have to pay Rs.1.00 lac for each flat to each complainant. In this way, the Respondents have to pay Rs.3.00 lacs to each complainant as compensation for their physical and mental harassment. Accordingly, Point No.(iv) is decided in positive in favour of the complainants and against the Respondents.

Point No.(v):

The complainants have repeatedly visited to the office of Respondents and contacted to them to know about the position of delivery of the flats in their share, but the Respondents have not given any heed to their requests till filing of the present case. Though the complaints have not brought on record any documents as proof of actual expenditure incurred by them, but I think, each complainant would not have incurred more than Rs.25,000/- for conveyance to the office of the Respondents, RERA, Bihar, engagement of lawyer, paper work, remittance of Court Fee etc., which must be paid by the Respondents. Accordingly, I find and hold that each complainant is entitled for Rs.25,000/- as litigation cost against the Respondents. Hence, Point No.(v) is decided in positive in favour of the complainants and against the Respondents. Therefore, the complaint cases of the complainants named above, Smt. Savita Sah and Sri Sita Ram Singh are allowed on contest with litigation cost of Rs.25,000/- (Rupees twenty five thousand only) to each complainant, against the Respondents. The

Respondents are directed to pay Rs.7,83,594/- (Rupees seven lacs eighty three thousand five hundred ninety four only) to each complainant as compensation due to delay in delivery of flats in their share. The Respondents are further directed to pay Rs.8,000/- (Rupees eight thousand only) per flat per month, as per Development Agreement dated 25-08-2011, to each complainant since tomorrow (10-03-2021) till delivery of flats falling in their share, to them. The Respondents are further directed to pay Rs.60,48,000/- (Rupees sixty lacs forty eight thousand only) to each complainant for extra area of 1728 sq.ft. falling in their share for the construction beyond G+5 i.e. G+6 and G+7. They are further directed to pay Rs.3.00 lacs (Rupees three lacs only) for 3 flats to each complainant as compensation for her/his physical and mental harassment. The Respondents are directed to comply the order within 60 (sixty) days, failing which the complainants are entitled to get enforced the order through process of the Court.

Sd/-
(Ved Prakash)
Adjudicating Officer
RERA, Bihar, Patna
09-03-2021