

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

**RERA/CC/543/2019
RERA/AO/135/2019**

Smt. Shanti Devi, w/o Sri Jung Bahadur
Chaudhary, Akashwari Road, Khajpura,
Patna-800014.

... Complainant

Versus

1. M/s Agrani Homes Pvt. Ltd.
2. Alok Kumar, S/o Sri Padum Singh,
C.M.D., Agrani Homes Pvt, Ltd.,
House No.15, Ward No.1FA,
Patliputra Colony, Patna-800013.

... Respondents

Present:

**Sri Ved Prakash
Adjudicating Officer**

Appearance:

For Complainant : Mr. Rakesh Roshan Singh

For Respondents : Mr. Ankit Kumar, Advocate

ORDER

03-03-2020

This complaint petition is filed by the complainant, Smt. Shanti Devi against the Respondent No.1, M/s Agrani Homes Pvt. Ltd. through its C.M.D., Respondent No.2, Sri Alok Kumar u/s 31 read with Section 71 of Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the "Act, 2016") for payment of interest at Bank rate on valuation of her land, consequent to non-delivery of her share of flats in the

project completed in all respect. She has further sought relief against the Respondents for compensation for her mental and physical harassment and also for delivery of possession of her share of flats in the project "I.O.B. Nagar".

03-03-2019
CONTINUED

2. In nutshell, the case of the complainant, Smt. Shanti Devi is that Respondent No.2, Alok Kumar, C.M.D. of Respondent No.1, M/s Agrani Homes Pvt. Ltd. approached to the complainant-cum-landlord for construction of a multi storied Apartment on her land and after final talk, the matter was finalised between both the parties and thereafter a registered Development Agreement dated 31-07-2014 was executed between them for construction of a multi storied Apartment having area 19 decimal over Thana No.44, Touzi No.5473, Katha No.159, Survey Plot No.1443, situated in Mauza-Sarari, Pargana-Phulwari, Survey Thana-Danapur, present Thana Shahpur, District-Patna. It was also agreed in the Development Agreement that after approval of Map from competent authority, the Developer shall build the project (name not mentioned) within 3½ years with grace period of 6 months. It was also agreed that after completion of the building/project, 45% share shall go to landlord and 55% shall go in the share of Developer. It is further case that both the parties have agreed that all essential pre-requisites like appointment of Architect, obtaining approval of the Map from

03-03-2019
CONTINUED

the competent authority etc. would be done by the Developer and all expenses will also be borne by him (Developer). It is further case that almost 5 years have passed, but till today the project has not been started even after execution of Development Agreement on 31-07-2014. Further case is that in Development Agreement dated 31-07-2014, the total market value of the land of the complainant was assessed Rs.57.00 lacs, hence, the Respondents should have paid at least the interest per month on valuation of the land of complainant. The Respondents have got possession of land on 31-07-2014 and if period of construction of 4 years including grace period is deducted, then also the Developer should have paid arrear of interest at Bank rate on valuation of land of the complainant since August, 2018 to the complainant. In spite of several reminders regarding quick completion of the project, the Developer has not moved forward to start the construction, complete the project and deliver possession of share of flats to the complainant. The Respondents have not paid any attention towards the request of the complainant, hence this case is filed against them with the prayer of the above reliefs.

3. On appearance, the Respondents have filed reply pleading *inter-alia* that since the complainant is also a Promoter as per Section 2(zk) of the Act, 2016, so this case is not maintainable and hence, fit to be dismissed. Further, proposed time for completion of project is counted from the date of

approval of Map and the Respondents are always ready to construct the project over the land of the complainant. Further the complainant has taken handsome amount from the complainant, and there is no terms mentioned in the Agreement about further payment, so the complaint petition of the complainant is without any substance and the complainant is not entitled for any relief. Hence, the complaint petition may be dismissed.

03-03-2019
CONTINUED

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

- (1) Whether the complaint case is maintainable in view of provisions of the Act, 2016, against the Respondents?
- (2) Whether the complainant is entitled for interest at Bank rate on valuation of her land as detailed in Development Agreement, against the Respondents?
- (3) Whether the complainant is entitled for compensation against the Respondents for her mental and physical harassment?
- (4) Whether the complainant is entitled for delivery of possession of her share in the project completed in all respect against the Respondents?

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

Point No.(1):

03-03-2019
CONTINUED

5. The learned lawyer for the Respondents submitted that admittedly the complainant is owner of 19 decimal land in Thana No.44, Touzi No.5473, Katha No.159, Survey Plot No.1443, situated in Mauza-Sarari, Pargana-Phulwari, Survey Thana-Danapur, present Thana Shahpur, District-Patna and as per provision of Section-2(zk) of the Act, 2016, the complainant is also a Promoter, so being Promoter of the Project, he cannot file complaint case against the Co-Promoters/Respondents in this Court, as such, this case is not maintainable. But on other hand, the learned lawyer for the complainant submitted that the complainant is entitled to file this case for interest as well as compensation against the Respondents, as they are not building the project as per Development Agreement and in eye of law the complainant is allottee. As such, this Court has jurisdiction to entertain the complaint petition of the complainant.

In Section 2(zk) of the Act, 2016 “promoter” means:-

- (i) *A person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an*

existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or

(ii) A person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or

(iii)

03-03-2020
CONTINUED

*Explanation:-**For the purpose of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the persons who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder;*

6. Any person, who constructs or causes to be constructed a building or a building consisting of apartments etc. with the purpose of selling shall be a “promoter” under the Act. Any person, who chooses to construct a building or a building consisting of apartments etc. without a purpose of selling will not fall within the definition of “promoter”. Furthermore, even if some of the apartments are not sold, such person who is

constructing apartments shall fall within the definition of “promoter”. The text here is ‘intent to sell’ and not ‘actual sale’

The Hon’ble Supreme Court in *Faqir Chand Gulati vs. Uppal Agencies (P) Ltd.*, (2008) 10 SCC 345 has held that in “joint venture agreements” or “development agreements” or “collaboration agreements” between a landholder and a builder, the landholder provides the land. The builder puts up a building. Thereafter, the land owner and builder share the constructed area. The builder delivers the “owner’s share” to the landholder and retains the “builder’s share”. The landholder sells/transfers undivided share(s) in the land corresponding to the builder’s share(s) of the building to the builder or his nominees. The usual feature of these agreements is that the landholder will have no say or control in the construction. Nor will he have any say as to whom and at what cost the builder’s share of apartments are to be dealt with or disposed of. His only right is to demand delivery of her share of constructed area in accordance with the specifications. Second type of agreements are neither contracts for construction nor contracts for sale of the apartments, but are contracts entered for mutual benefit and profit and in such contract, they are not service providers to the landowners, but a co-venture with the landholder in a “joint venture”, in developing the land by putting up multiple-housing (apartments) and sharing the benefits of the project. In this regard, an illustration of joint

03-03-2020
CONTINUED

venture may be of some assistance. An agreement between the owner of the land and a builder, for construction of apartments and sale of those apartments so as to share the profits in a particular ratio may be a joint venture, if the agreement discloses an intent that both parties shall exercise joint control over the construction/development and be accountable to each other for their respective acts with reference to the project. In the instant case, there are various terms in the agreement between the appellant and the first respondent which militate against the same being a "joint venture". Firstly, there is a categorical statement in the said agreement that the agreement shall not be deemed to constitute a partnership between the owner and the builder. The land owner is specifically excluded from management and is barred from interfering with the construction in any manner and the builder has the exclusive right to appoint the architects, contractors and sub-contractors for the construction. The builder is entitled to sell its share of the building as it deemed fit, without reference to the landowner. The builder undertakes to the landowner that it will construct the building within 12 months from the date of sanction of building plan and deliver the owner's share to the landowner. The builder alone is responsible to pay penalties in respect of deviations and for payment of compensation under the Workmen's Compensation Act in case of accident. Secondly, there is no community of interest or common/joint

03-03-2020
CONTINUED

control in the management, nor sharing of profits and losses. The landowner has no control or participation in the management of the venture. The requirement of each joint venture being the principal as well as agent of the other party is also significantly absent. Such an agreement is not a joint venture, as understood in law.

03-03-2020
CONTINUED

7. The basis underlining purpose of the Agreement is construction of a house or an apartment in accordance with the specifications by the Builder for the Owner, consideration for such construction being the transfer of undivided share in land to the builder to construct multi storied building. Such agreement whether called as "collaboration agreement" or a "joint venture agreement", is not a "joint venture".
8. In the instant case, there is a contract for construction of an Apartment for the complainant in accordance with the specifications as per Development Agreement. There is a consideration for such construction flowing from land owner/complainant to the Builder in the form of sale of an undivided share in the land and permission to construct and own certain flats. To adjust the value to the extent of land to be transferred, there may be also payment of cash consideration by the Builder. The important aspect is availing of services of the Builder by the land owner for house construction (construction of landowner share of building for a consideration). To that extent the landowner is a

consumer/allottee and the builder is a service provider and if there is deficiencies in service in regard to the construction, dispute raised by the land owner will be 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 the 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. Hon'ble Apex Court has opined the same view in *Sujit Kumar Banerjee v. Rameshwaran* (2008) 10 SCC 366.

03-03-2020
CONTINUED

9. On going through the provisions of Section 31 (1) of the Act, 2016, it appears that this section has started with the wording any aggrieved person may file a complaint with the Authority or the Adjudicating Officer, as the case may be, for any violation or contravention of provisions of this Act or the Rules and Regulations made thereunder against any promoter, allottee or real estate agent, as the case may be.
10. Hence, in this Section landlord is not forbidden to file complainant case against the Builder. In this way, if the landlord/allottee/builder is aggrieved person, then he/she may file case against each other. Since in the instant case there is deficiency in services of the Respondents and they have not handed over possession of the allotted share of the landlord/complainant within the stipulated time, so the

complainant has right to file complaint case against the Respondents under the provisions of the Act, 2016. Hence, there is no force in the submission of the learned lawyer for the Respondents. Accordingly, Point No.1 is decided in positive in favour of the complainant and against the Respondents.

03-03-2020
CONTINUED

Point No.(2):

11. Learned lawyer for the complainant submitted that neither the Respondents have got the Map of the project approved from competent authority nor produced the same in Court and further they have also not got the project registered in RERA, Bihar. He further submitted that on repeated requests by the complainant, the Respondents have not taken positive steps towards preparation, start and completion of the Complex. On the other hand, the learned lawyer for the Respondents submitted that the project has not been registered in RERA, Bihar, but after approval of the Map from the competent authority, the project will be constructed and completed as soon as possible and during this period, the project registration from RERA, Bihar will also be obtained and thereafter delivery of possession of the share of the complainant will be given soon thereafter

12. The complainant has filed photograph of the site of the project, which shows that the land taken in possession by the Respondents is still lying vacant/barren and no construction work has yet been started. It also appears that neither the

03-03-2020
CONTINUED

Respondents have got the Map of the project approved from the competent authority nor they have filed the same in the Court nor got the project registered in RERA, Bihar, otherwise they would have filed the same in the Court. It also appears that both the parties have executed Development Agreement long back on 31-07-2014 and the project was to be completed within 3½ years with grace period of 6 months from the date of approval of the Map from competent authority. The Respondents have not brought any document on record to show that they have applied for approval of Map after the execution of Development Agreement on 31-07-2014 and still that has not been approved or the Map, which has been approved has not been brought on the record. Hence, in absence of date of approval of the Map, the date of execution of Development Agreement 31-07-2014 may be presumed to be the date of approval of Map. Hence, in such view of the matter, 31-07-2014 is presumed as date of approval of the Map from competent authority. Accordingly, I think, if the project is not completed after 4 years from 31-07-2014, it was legal duty on the part of the Respondents to compensate economically to the complainant for loss caused to her during the period since 31-07-2014 till today. However, the 4 years period of completion of the project may be excluded, as the same might have been used for construction and completion of the project, but thereafter the liability of the Respondents to compensate

the complainant arises and cause of action also goes in favour of the complainant after 31-07-2018. Accordingly, the Respondents have to compensate the complainant since August, 2018 till today for loss caused to her by the Respondents, due to handing over of the possession of her land to them. It appears that nothing towards in this direction has been done by the Respondents, which may lead to their ulterior motive, as they have also not mentioned their liability for delay in period of completion of the project. It is also correct that the complainant, Smt. Shanti Devi is a rustic lady and she has simply signed on the Development Agreement in very simple Hindi language, but on the other hand, the Development Agreement is written in *Devnagri* script as well as in English, which she cannot be expected to understand, as it is not written as to who has explained the contents of the Deed to her and after understanding she has put her signature in presence of the witnesses. The learned lawyer, who is scribe of the Deed has simply written that as per consent of both the parties, he has prepared draft of the Deed, which is not at all satisfactory and justified, as after scripting he should have read over the same to the complainant and have asked about her satisfaction, then should have taken her signature. But, this procedure is not followed properly and satisfactorily.

03-03-2020
CONTINUED

13. Though it is not scribed in Development Agreement dated 31-07-2014 that on failure of the Respondent to complete the

03-03-2020
CONTINUED

project till 31-07-2018, the Respondent shall pay interest/rent as compensation to the complainant on valuation of her land mentioned in the Deed itself, but it is the Respondent, Sri Alok Kumar, who has got scribed the Deed without insertion of this clause, who should have got mentioned this point like a reasonable Deed of contents. It is not expected from a landlord to wait indefinite period for delivery of possession of her share of flats and Developer may do anything whatever he or she like to do. I think, in eye of law, this should not be allowed to continue. Hence, on failure of completion of project by the Respondents within stipulated period, the complainant must be paid some reasonable amount of interest/rent till delivery of the completed flats in the share of the complainant along with all amenities. In the present case, the project should have been completed on or before 31-07-2018 as per terms and conditions of the Development Agreement dated 31-07-2014, but the same has not been completed, hence, reasonable interest/rent has to be paid by the Respondents to the complainant.

14. The Development Agreement was executed by both the parties on 31-07-2014 with respect to the land of the complainant measuring 19 decimal in Thana No.44, Touzi No.5473, KathaNo.159, Survey Plot No.1443 situated at Mouza-Sarari, Pargana-Phulwari, P.S.-Danapur, present P.S.-Sahpur, District-Patna. The market value of land of the complainant has been assessed Rs.3.00 lacs per decimal and total market

value of the land has been assessed Rs.57.00 lacs on 31-07-2014. It is not scribed in the Deed that interest rate may be claimed on valuation of different dates against the Respondents. In this way, the claim of interest by the complainant is to be calculated on total valuation of land Rs.57.00 lacs on 31-07-2014 on the basis of Development Agreement. As on today, the project has been delayed for 1 year 7 months and 3 days.

03-03-2020
CONTINUED

15. Now, as per Rule 17, 18 of the Bihar Real Estate (Regulation and Development) Rules, 2017, the complainant is entitled 2% above the M.C.L.R. of S.B.I. Presently, the M.C.L.R. of S.B.I. for 2 years is 8.05% and if 2% is added, it will come to 10.05% per annum. So, the complainant is entitled for simple interest @ 10.05% on market valuation of the land of the complainant Rs.57.00 lacs. On calculation, the simple interest @ 10.05% on Rs.57.00 lacs for 1 Year, 7 months and 3 days comes to Rs.9,11,707.98. Hence, the complainant is entitled for simple interest of Rs.9,11,708/- till today for her land against the Respondents. The complainant is further entitled for interest at the same rate 10.05% on same valuation since tomorrow till delivery of possession of her share of flats and other amenities. As such, Point No.(2) is decided in positive in favour of the complainant and against the Respondents.

Point No.(3):

16. The complainant has met several times with the Respondents and has also visited their office, but they have not paid any attention towards her requests. The Respondents have also done nothing positive towards construction of the project. Though the present rate of flat has not been brought on record from either side, but price of the flats would have gone very high since the year 2014, so naturally the Respondents have caused much loss to the complainant, which has to be compensated in terms of money to the complainant by the Respondents. The interest of land of the complainant is being paid by the Respondents, but in addition, she may be compensated for the loss caused to her due to delay in handing over the possession of the share of flats, for which she has suffered loss as mental and physical harassment. I think, taking into consideration of all circumstances, the complainant may be paid a lump sum amount of Rs.50,000/- by the Respondents, which will justify the end. Accordingly, Point No.(3) is decided in positive in favour of the complainant and against the Respondents.

03-03-2020
CONTINUED

Point No.(4):

17. The Respondents in their reply have admitted that the work of the Complex will be started and completed soon by them. Photograph filed by the complainant shows that up-till-now the Respondents have done nothing towards construction of the building, as presently the land is lying vacant/barren. The Respondents have not brought any evidence on the record to show that they have started the foundation of the building and have done any proper work towards the preparation of the project like; filing of application before the competent authority for approval of Map and RERA, Bihar registration. They have also failed to file any document, which may show their positive attitude towards the start and completion of the project. Hence, it is very difficult for the Respondents to complete the project atonce. But if the Respondents come forward with positive steps, then they may be able to complete the project at the earliest. The Respondents must be careful towards the interest of the landlord as well as purchasers/consumers of the flats. The Respondents have also not submitted details about the duration of completion of the project. Hence, The Respondents may be directed to start and complete the project and deliver

03-03-2020
CONTINUED

possession of share of the complainant within the stipulated time. Accordingly, Point No.(4) is decided in positive in favour of the complainant and against the Respondents.

Point No.(5):

18. In spite of several visits by the complainant in the office of the Respondents and her request, the Respondents and their staffs have done nothing and up till now they have not started construction of the project. The complainant has engaged learned lawyer to prepare the complaint petition and pursue the case in the Court. She has prepared documents, photocopies etc. and has filed this case in the Court with Court Fee etc. and visited several times in the Court on fixed dates and for her all expenses, she must be paid by the Respondents. I think, the complainant would not have incurred more than Rs.10,000/- in all the above process, which must be paid by the Respondents. As such, the Respondents have to pay Rs.10,000/- as litigation cost to the complainant. Accordingly, Point No.(5) is decided in positive in favour of the complainant and against the Respondents.

Therefore, complaint case of the complainant, Smt. Shanti Devi is allowed on contest with litigation cost of

03-03-2020
CONTINUED

Rs10,000/- (Rupees ten thousand only) against the Respondents. The Respondents are directed to pay Rs.9,11,708/- (Rupees nine lacs eleven thousand seven hundred eight only) @ 10.05% per annum as an interest of the land of the complainant till today and they shall further pay the interest at same @ 10.05% per annum since tomorrow till delivery of share of flats and other amenities to the complainant in the present project. The Respondents are further directed to complete the project and deliver share of flats along with other amenities, as agreed in the Development Agreement dated 31-07-2014 within the stipulated time to the complainant. The Respondents are further to pay Rs.50,000/- (Rupees fifty thousand only) to complainant as a compensation for her 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.

03-03-2020
CONTINUED

Sd/-
(Ved Prakash)
Adjudicating Officer
RERA, Bihar, Patna
03-03-2020