

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

**RERA/CC/182/2019
RERA/AO/38/2019**

Sri Bipin Kumar, s/o Sri Banaras
Garain, r/o House No.165, 18-A, Beside
Ruban Hospital, Patliputra Patliputra
Colony, P.S.-Patliputra, District-Patna
(Bihar), PIN-800013. ... Complainant

Versus

1. M/s Agrani Homes Real Marketing
Pvt. Ltd., AHRM, Khan Villa, Near
B.D. Public School, P.S. Budha
Colony, District-Patna, 800001
2. Sri Alok Kumar, C.M.D., Agrani
Homes Real Marketing Pvt. Ltd.,
AHRM, Khan Villa, Near B.D.
Public School, P.S. Budha Colony,
District-Patna, 800001.
3. Sri Rana Ranvir Singh, s/o Sri Ram
Chandra Singh, r/o Vill-Jalpura
(Tapa), P.S.-Chandi, District-
Bhojpur (Bihar).

... Respondents

Present:

**Sri Ved Prakash
Adjudicating Officer**

Appearance:

For Complainant - In Person
For Respondents - Mr. Ankit Kumar, Advocate

ORDER

06-02-2020

This complaint petition is filed by the complainant,
Sri Bipin Kumar against the Respondent No.1, M/s Agrani
Homes Real Marketing Pvt. Ltd. through its C.M.D.,

Respondent No.2, Sri Alok Kumar, Director and Authorised Signatory, Respondent No.3, Sri Rana Ranvir 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 his principal amount Rs.10,00,000/- along with accrued interest, @ 20% per annum and compensation for his mental and physical harassment, consequent to non-delivery of flat allotted to him.

06-02-2020
CONTINUED

2. In nutshell, the case of the complainant is that he has booked a 3 BHK flat on 3rd floor in South-East corner having super built up area 1222 sq.ft. along with one reserve car parking space in project "POWER GRID NAGAR" of the Respondents on consideration of Rs.11,50,000/-, situated at Mauza-Fathepur, P.S.-Gaurichak, Sampatchak, District-Patna. The complainant has paid Rs.3.00 lacs on 18-05-2015 through cheque no.000001 of HDFC Bank and Rs.7.00 lacs through cheque no.000003 dated 13-07-2015 of HDFC Bank to the Respondents and he has got receipts of paid amount from the Respondents and he has to pay rest amount at the time of delivery of possession of the flat. A M.O.U. was also executed between both the parties on 12-09-2015 and it was agreed in the M.O.U. that the flat completed in all respect will be delivered within 36 months with grace period of 6 months after approval of Map from P.M.C. Thereafter, the complainant

06-02-2020
CONTINUED

has visited several times on the site of the project to know the status/progress of construction, but every time it was stated to him that construction of the project will start after 25 days and sometimes it was told that the project has yet to be approved from RERA, Bihar and Fire Clearance from Fire Department is also to be obtained. On 30-05-2018, Senior Business Manager of the Respondents, Sri Manish Kumar Singh has told the complainant that the project has not been approved by RERA, Bihar and the project site is declared "Green Zone", so construction work will not start, then the complainant told the said Manager to give him in writing and provide a 3 BHK flat in some other project, but the Senior Sales Manager has not responded. Hence, being frustrated he has decided to quit from the project and submitted an application for refund of his principal amount with interest. Later on Sri Manish Kumar Singh told the complainant that full money with interest will be refunded within 120 days i.e. till 10th October, 2018. Thereafter, on repeated visits neither the Respondents nor their staffs responded positively towards refund of principal amount. So being tired, the complainant has filed this complaint petition with prayer for above reliefs.

3. On appearance, the Respondents have filed reply pleading *inter-alia* that the project was conceived by the Respondents prior to RERA Act, 2016 come to force, so the matter of the complainant should have been dealt through general law, but

06-02-2020
CONTINUED

the Respondents keeping in mind the aims of the company to provide homes at cheaper rate and safeguard the interest of the complainant, are not going to challenge the jurisdiction of this Court. It is further case that this case was conceived in 2014 and total area of the land was 100 kathas and plan for construction of towers was also completed, but due to ill luck, the entire area of the project fell in "GREEN FOREST AREA" under the new Master Plan of Patna. In the aforesaid circumstances, the project was abandoned and the Respondents could not proceed with the project, which is beyond their control and that is why there is no question of filing application for registration of the project in RERA, Bihar. Since the complainant has withdrawn from the project and sent an application to refund his principal amount along with interest, so the Respondents are ready to settle the disputes and refund the principal amount to the complainant in 2 or 3 instalments and out of principal amount of Rs.10.00 lacs, Rs.7.00 lacs was refunded to the complainant and it is assured that the remaining Rs.3.00 lacs would be refunded soon, for which the Respondents may be provided some time and in light of above assurances, the case may be disposed of.

4. Though the present case was filed in January, 2018 and Notice was issued to the Respondents for appearance, but on appearance learned lawyer on behalf of the Respondents for one or other reasons have taken adjournments to refund the

principal amount and the complainant has also not opposed the same and that is why the case record has become pending since January, 2018 till January, 2020. During this period, it is correct that the Respondents have refunded Rs.7.00 lacs out of total principal amount Rs.10.00 lacs, but still they are in mood to linger the case, so being fed up the complainant has insisted to dispose of the case, hence, after hearing both the sides the case was fixed for order.

06-02-2020
CONTINUED

5. On basis of the pleadings and submissions of the complainant and learned lawyer on behalf of the Respondents, the following points are formulated to adjudicate this case:-

- (1) Whether the complainant is entitled for refund of his remaining principal amount Rs.3.00 lacs out of total paid principal amount Rs.10.00 lacs against the Respondents?
- (2) Whether the complainant is entitled for interest @ 20% per annum against the Respondents?
- (3) Whether the complainant is entitled for compensation for his mental and physical harassment against the Respondents?
- (4) Whether the complainant is entitled for litigation cost against the Respondents?

Points No.1 & 2:

6. Admittedly, the complainant has approached to the Respondents for purchase of a flat in project "POWER GRID NAGAR" at Sampatchak, Patna. After talk with the Respondents the matter of sale/purchase was settled between both the parties and the complainant has booked a flat in the present project "POWER GRID NAGAR" at Sampatchak, Patna. The complainant, Sri Bipin Kumar on one side and Respondent No.1, M/s Agrani Homes Real Marketing Pvt. Ltd. through Respondent No.3, Sri Rana Ranvir Singh, Director and Authorised Signatory of the Respondents on the other side have executed a Memorandum of Understanding (M.O.U.) on 12-09-2015 with respect to the sale/purchase of a 3 BHK flat having super built up area 1222 sq.ft. in South East corner of 3rd floor and one reserve car parking space in project "POWER GRID NAGAR" of the Respondents situated at Mauza-Fathepur, P.S.-Gaurichak, Sampatchak, District-Patna on total consideration of Rs.11,50,000/- and applicable Service Tax extra. It is also agreed between both the parties that the project shall be completed within 36 months with grace period of 6 months after approval of Map from P.M.C., provided 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. The complainant has filed photocopies cheque

06-02-2020
CONTINUED

no.000001 dated 20-05-2015 worth Rs.3.00 lacs and cheque no.000003 dated 13-07-2015 worth Rs.7.00 lacs and has also filed photocopies of receipt no.218 dated 18-05-2015 and receipt no.283 dated 13-07-2015 issued by the Authorised Signatory of the Respondents for receipt of aforesaid cheques. The above payments also find support in Payment Schedule of the M.O.U. executed between the parties. In this way, it is established that the complainant has paid Rs.10.00 lacs prior to execution of M.O.U. between the parties. It is also admitted case that the project has come under "GREEN FOREST AREA" under the new Master Plan of Patna. I think, if the project has come in new Master Plan, it was the responsibility on the part of the Respondents to immediately refund the principal amount to the complainant, but they have not done so, rather they are still lingering refund for one or other reasons and have failed to refund the said amount during hearing of this case and up till now they have refunded only Rs.7.00 lacs and still Rs.3.00 lacs is due against the Respondents, for which they are ready to refund in 2 or 3 instalments, which is completely unreasonable, as the complainant cannot wait for indefinite period to get refund of his remaining principal amount from the irresponsible Respondents.

06-02-2020
CONTINUED

7. The complainant has demanded interest @ 20 per annum on the total principal amount paid by the complainant to the Respondents. It has come to the knowledge that the

Respondents are running other projects in Patna and other parts of Bihar and have invested his personal income as well as receipts of instalments from home buyers in their other projects. However, the claim of interest @ 20% per annum on the principal amount appears very high, which has to be reasonable, so that it may not adversely affect the business of the Respondents as well the interest of other home buyers. I also think levying of compound interest on principal amount may also hamper development of the business of the Respondents. Hence, instead of compound interest, simple interest may justify the end. Accordingly, I think, it is proper to levy simple interest on the principal amount paid by the complainant on different occasions to the Respondents. As per Rule 17 and 18 of Bihar Real Estate (Regulation and Development) Rules, 2017, Allottee/Developer has to pay 2% above the M.C.L.R. of S.B.I. The present M.C.L.R. of S.B.I. on loan for 3 or more years is 8.20% and if 2% is added, it will come 10.20%. The Respondents retained the principal amount paid by the complainant for more than 3 years, so the Respondents have to pay simple interest @ 10.20% per annum on the principal amount paid by the complainant. Therefore, I find and hold that the Respondents have to pay simple interest @ 10.20% per annum on the principal amount Rs.10.00 lacs paid by the complainant since the date of payment by the complainant to the Respondents till the date of refund by the

06-02-2020
CONTINUED

Respondents to the complainant. In such view of the matter, Points No.1 and 2 are decided in positive in favour of the complainant and against the Respondents.

Point No.3:

8. The complainant has also claimed compensation applicable under the Act, 2016. As per Section 72 of the Act, 2016, the Respondents have been benefitted with the amount of Rs.10,00,000/- paid by the complainant till the amount is refunded to the complainant. The Respondents have used the above amount in their business without giving delivery of the said flat to the complainant. Now, the complainant has cancelled booking of his flat due to Master Plan, but he will not get another flat of same area in similar locality at the same rate, which was available to him at the time of booking in the year 2015. The present rate of flat in the similar locality has not come on record from either side, but naturally the rate of flats would have gone very high in comparison to the rate available in the year 2015. Moreover, the act of the Respondents caused mental and physical harassment to the complainant. So, taking all situations in mind and the amount paid by the complainant, I think, Rs.1,30,000/-, which is 13% of the principal amount Rs.10,00,000/- paid by the complainant, will be appropriate amount to be paid by the Respondent to the complainant as compensation for his physical and mental harassment.

06-02-2020
CONTINUED

Point No.4:

9. The complainant has visited repeatedly to the office of Respondents and he has consulted to the Respondents as well as their staffs several times for refund of his advance 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. In think, the complainant would not have incurred more than Rs.25,000/- for conveyance to the office of the Respondents, A.O. Court in RERA, Bihar, Court Fee, paper work etc., which must be paid by the Respondents. Accordingly, I find and hold that the complainant is entitled for Rs.25,000/- as litigation cost against the Respondents. Hence, Point No.4 is decided in positive in favour of the complainant and against the Respondents.

Therefore, the complaint case of the complainant is allowed on contest with litigation cost of Rs.25,000/- (Rupees twenty five thousand only) against the Respondents. The Respondents are directed to refund the remaining principal amount Rs.3,00,000/- (Rupees three lacs only) along with accrued simple interest @ 10.20% per annum on said amount Rs.3,00,000/- (Rupees thee lacs only) since 18-05-2015, the date of payment by the complainant to the Respondents till refund by Respondents to complainant. The Respondents are

06-02-2020
CONTINUED

further directed to pay accrued simple interest @ 10.20% on paid principal amount Rs.7.00 lacs (Rupees seven lacs only) since 13-07-2015, the date of payment by complainant to Respondents till the date of refund by Respondents to the complainant. They are further directed to pay Rs.1,30,000/- (Rupees one lac thirty thousand only) as compensation to complainant for his physical and mental harassment. The Respondents are directed to comply the order within 60 (sixty) days, failing which the complainant is entitled to enforce the same through process of the Court.

06-02-2020
CONTINUED

Sd/-
(Ved Prakash)
Adjudicating Officer
06-02-2020