



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

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

**RERA/CC/755/2019  
RERA/AO/443/2020**

Smt. Minakshi Mehta, W/o Sri Arun Kumar Mehta,  
R/o Ratanpur, Supaul, Karjain Bazar, District-  
Supaul, Bihar-852215.

Present Address:

Corporation Bank, Hajipur Branch, "Bhuwana  
Complex", Rajendra Chowk, Hajipur, District-  
Vaishali-844101, Bihar.

... Complainant

Versus

1. M/s Ghar Lakshmi Buildcon Pvt. Ltd.

Through it's Director, Sri Rahul Kumar, R/o  
House No.5, LF-1 Colony, Shrikrishnapuri, P.S.-  
Shrikrishnapuri, District, Patna, Bihar.

2. Sri Rahul Kumar, Director, M/s Ghar Lakshmi  
Buildcon Pvt. Ltd., R/o Village-Fatehganj,  
Gayakuren, L Dhaga, P.S.-Kotwali, District-  
Gaya, Bihar.

... Respondents

**Present:**

**Sri Ved Prakash  
Adjudicating Officer**

Appearance:

For Complainant : In Person

For Respondents : Sri Ishtiaq Ahmad, Advocate

**ORDER**

06-04-2021

This complaint petition is filed by the complainant,  
Smt. Minakshi Mehta against the Respondent No.1,  
M/s Ghar Lakshmi Buildcon Pvt. Ltd. through it's Director,

Respondent No.2, Sri Rahul Kumar u/s 31 read with Section-71 of Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the “Act, 2016”) for delivery of the possession of Flat No.201 along with car parking space and all amenities in Block-B of the project “Sarita Kunj - Phase-II” of the Respondents or alternatively refund of her paid principal amount Rs.2.00 lacs along with interest thereon and compensation with litigation cost, consequent to non delivery of said flat within the stipulated period.

2. In nutshell, the case of the complainant is that the complainant, Smt. Minakshi Mehta in June, 2018 has booked a 2 BHK Flat having carpet area 728 sq.ft. and Balcony 89.60 sq.ft. along with garage/covered parking space on ground floor on consideration of Rs.22,40,000/- in the Project “Sarita Kunj - Phase-II” of the Respondents and she has paid Rs.2.00 lacs on 18/19 June, 2018 at the time of booking itself to the Respondents. At that time the promoter has not prepared legal documents with respect to the project, so they (Respondents) could not execute Agreement for Sale. In April, 2019, the promoter has got prepared legal documents and then Agreement for Sale/purchase of the said flat could be executed. After execution of Agreement for Sale, the complainant has applied for sanction of home loan from Corporation Bank, Doctors Colony Branch, Hajipur, which was

sanctioned on 07-09-2018, but there was formality to execute Tripartite Agreement between all the three parties, but in spite of due intimation by the Bank to the promoter/Respondents, they avoided to visit the Bank and always took time. Later on the promoter, Respondent No.2, Sri Rahul Kumar started asking the complainant to book her flat in another project. Some time, he stated that he has cancelled booking of her flat and some time he stated that he will sign Tripartite Agreement within 2/3 days and in such a way, he was/is harassing to her. It is further case that prior to filing of the complaint petition in this Court, she has tried more than 10 times by visiting in the office of the Respondents to resolve the issue, but the promoter, Respondent No.2, Sri Rahul Kumar never paid any heed to her request and being fed up with the non-cooperative attitude of the Respondents, the complainant was compelled to file this complaint petition against the Respondents with the above reliefs.

3. On appearance, the Respondents by filing reply, has pleaded *inter-alia* that from the Agreement for Sale itself, it is evident that the same was signed between the parties on 27-04-2019 after receiving Rs.2.00 lacs out of total consideration Rs.19,40,000/- against the booked Flat No.201 in Block-B of the project “Sarita Kunj - Phase-II”. It is further case that after approval of Map from competent authority as well as getting registration of the project from RERA, Bihar, structure up to 4<sup>th</sup> floor of the building has been

completed by the Respondents. Further case is that the Respondents have applied for extension of completion period before RERA, Bihar, which has granted Registration Certificate for completion of the project from 02-04-2019 to 30-10-2019 and after lapse of the said period, the Respondents have applied for further extension of completion period, which has also been granted by RERA, Bihar to complete the same by 18-10-2020. It is further case that in last para. of page-29 of the Agreement for Sale, Payment Plan of the project in question has been described, which has to be followed by the complainant, in which she has completely failed. From the Agreement for Sale itself it is apparent that the complainant has paid only Rs.2.00 lacs as booking amount and thereafter no payment has been made despite several reminders were given to her some time by visiting at her house and some time on telephone call, but the complainant has failed to abide the terms and conditions of the Payment Plan as described in the Agreement for Sale. From letter dated 04-12-2019 filed by the complainant, it would be apparent that even at that time also no payment was made to the Respondents. Further case is that on 24-06-2019 an official letter was sent to the complainant about payment of the instalments of the flat, but she did not take any notice. Now, when the complainant has come to know that the construction has reached up to 4<sup>th</sup> floor and she has failed to abide by the terms and conditions of Payment Plan and she cannot get the flat, she has

adopted another idea by filing this complaint case against the Respondents for getting her booked flat. In the aforesaid circumstances, it is clear that the complainant has failed to abide the terms and conditions and particularly in making payment as per schedule of Payment Plan, after execution of Agreement for Sale and she has filed this complaint case only to put pressure on the Respondents to get the said flat and compensation etc. It is quite natural that if payment is not made on time, how the builder would complete the building within the stipulated time? The Respondents have already intimated the complainant about cancellation of the booking of flat in question. From the above facts, it is clear that the entire allegations levelled against the Respondents are out and out false and fabricated and it is the complainant, who has failed to make payment on due time, due to which she was informed that her booking of the flat was cancelled owing to her failure to abide by the terms and conditions of Payment Plan as described in the Agreement for Sale. Hence, on the basis of above materials, the case of the complainant may be disposed of.

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

- (i) Whether in light of the Agreement for Sale dated 27-04-2019, the complainant is entitled on payment of remaining consideration to get

executed a registered Sale Deed and delivery of possession of the Flat No.201 in Block-B of the project “Sarita Kunj – Phase-II” from the Respondents?

- (ii) Whether the complainant is entitled for refund of her paid principal amount Rs.2.00 lacs along with accrued interest thereon against the Respondents?
- (iii) Whether the complainant is entitled for compensation against the Respondents for her economical, physical and mental harassment?
- (iv) Whether the complainant is entitled for litigation cost against the Respondents?

Point No.(i) and (ii):

5. Admittedly, the complainant, Smt. Minakshi Mehta has booked a 2 BHK Flat No.201 in Block-B of the project “Sarita Kunj – Phase-II” of the Respondents. Later on 27-04-2019 an Agreement for Sale was executed between the complainant, Smt. Minakshi Mehta on one side and Respondent No.1, M/s Ghar Lakshmi Buildcon Pvt. Ltd. through its Director, Respondent No.2, Sri Rahul Kumar on other side for sale/purchase of a 2 BHK Flat No.201 in Block-B having carpet area 728 sq.ft. and Balcony 89.60 sq.ft along with garage/covered parking space of on ground floor

on consideration of Rs.22,40,000/-, out of which the complainant has paid Rs.2.00 lacs at the time of booking, which also find place in Agreement for Sale itself.

The Respondents have promised to complete and hand over possession of the flat along with complete common area with all specifications, amenities and facilities of the project till 30-10-2019, unless there is delay or failure due to war, flood, draught, fire, cyclone, earthquake or any other calamities caused by nature affecting regular development of the project (Force Majeure). The Respondents have stated in their reply that after approval of Map from the competent authority as well as after getting registration of Block-B of the project from RERA, Bihar, construction up to 4<sup>th</sup> floor has been completed by them. The complainant has filed photocopy of Agreement for Sale, wherein Bihar RERA registration of the project has been described as BRERA P00 273-2/353/R-504/2019 dated 12-03-2019. The Respondents have sought extension of the completion for further period of the project from RERA, Bihar, which has been granted for the period from 31-10-2019 to 18-10-2020. It shows that the project of the Respondents is in finishing stage.

6. Admittedly, the complainant has paid only Rs.2.00 lacs at the time of booking and thereafter, she has failed to pay anything. Hence, as per terms and conditions described in the Agreement for Sale, the complainant has to pay the remaining consideration

Rs.20,40,000/- for purchase of the above flat. As per Schedule of Payment agreed in the Agreement for Sale executed between the parties, the complainant has to pay total consideration in the following manner:-

- (a) At the time of booking 10%.
- (b) At the time of execution of Agreement for Sale 15%.
- (c) After completion of foundation 15%.
- (d) After completion of ground floor roof casting 10%.
- (e) After completion of 1<sup>st</sup> floor roof casting 10%.
- (f) After completion of 2<sup>nd</sup> floor roof casting 10%.
- (g) After completion of 3<sup>rd</sup> floor roof casting 10%.
- (h) After completion of 4<sup>th</sup> floor roof casting 10%.
- (i) After completion of brick works 5%.
- (j) At the time of handing over possession 5%.

The learned lawyer for the Respondents submitted that in spite of several reminders given to the complainant some time by visiting at her house and some time on telephone calls to pay the instalments of consideration, she has failed to abide by the terms and conditions of the Payment Schedule as described in the Agreement for Sale. He further submitted that from letter dated 04-12-2019 filed by the complainant, it would be apparent that even at that time also the complainant has not made payment to the Respondents. Further on 24-06-2019, the complainant was informed to pay the remaining instalments, but she did not take



notice and ultimately her allotment of flat was cancelled and the same was sold to some other purchaser. Whereas, on the other hand, the husband of the complainant submitted that as per Agreement for Sale, registered notice/information about the payment has to be given to the complainant, which has not been given to her. He further emphasised that the Respondent No.2 has not taken part in Tripartite Agreement, which was to be executed between the complainant, bank and the Respondents and also not sent information to the complainant as to why he is not taking part in Tripartite Agreement. He further submitted that he along with the complainant has met several times to the Respondents and their staffs, but they always avoided to provide any information about the payment and ultimately without prior information to the complainant, they cancelled her allotment of flat, which is illegal in the eye of law.

7. On rival claims of the parties on the issue of payment of instalments of consideration and information, it has to be scrutinized in light of the provisions agreed between the parties during execution of Agreement for Sale. In clause-29 of the Agreement for Sale between the parties, it is described that all Notices have to be served on the allottee/promoter as contemplated by this Agreement and shall be deemed to have been duly served, if sent to the allottee or promoter by Registered Post at their respective address specified therein. The Respondens have filed photocopy of

two letters issued by them to the complainant to show that the information about payment of instalment of consideration has been given to her and when in spite of knowledge she has failed to pay the due instalments, her allotment of flat has been cancelled by the Respondents. But, on going through the letters, it appears that no specific date of issuance of these letters has been mentioned and most importantly the postal receipts from which the information given to the complainant, which might have proved the genuineness of sending information of payment of due instalment of consideration, has not been filed by the Respondents. Hence, the claim of the Respondents that they have duly informed to the complainant about the payment of due instalments of consideration, appears not reasonable. On the other hand, it is also important to note that it was the responsibility of the complainant to take information about the stage of construction of the project from the Respondent No.2 and his staffs by visiting at the site of the project, instead she along with her husband visited 10 times at the office of the Respondents and requested them for taking part in Tripartite Agreement, but not enquired about the payment. When she has visited in the office of the Respondents several times, why she has not enquired about the payment of remaining principal amount, is not understandable. From the record itself it is clear that she had two important occasions to pay the instalments of the consideration; firstly when she has knowledge that after making payment of 10% of the

consideration Rs.2.00 lacs at the time of booking, as per Agreement, she has to pay 15% of the consideration at the time Agreement, so she should have paid 15% of the consideration at the time of execution of Agreement for Sale, but she did not do so. Secondly, when she has visited at the office of the Respondents several times, she would have known about the stage of construction, but in spite of knowledge of the stage of construction, instead of making payment of due instalments, she has tried to get enforced her own view over the Respondents, which shows that she has no interest in getting delivery of the flat and now trying to justify her incorrect approach/attitude, which is not tenable in the eye of law. The husband of the complainant has much emphasised that the Respondent No.2, Sri Rahul Kumar has not visited at the bank for signing Tripartite Agreement for disbursement of home loan, but miserably the complainant has not filed any such Form of Tripartite Agreement, which necessitates signature of the Respondent No.2. The complainant has also not filed any letter issued by the bank to the Respondents, which may prove that in spite of letter/notice to the Respondent No.2, Sri Rahul Kumar, he has avoided to attend and execute the Tripartite Agreement. Hence, from all the corners, it appears that the fault is on the part of the complainant in not getting the stage of construction of the project and non-payment of due instalments of the consideration as per Schedule of Payment as described in the Agreement for Sale.

The complainant has filed photocopy of home loan sanction letter dated 07-09-2019 issued by the Corporation Bank, wherein there is space for signature of sanctioning authority of the bank as well as signature of the borrowers, whereon the sanctioning authority of bank has signed on 11-09-2019, but neither the complainant nor her husband, Sri Arun Kumar Mehta has signed as borrowers. Presently, up to 4<sup>th</sup> floor structure of the project has been constructed by the Respondents and till now, as per Schedule of Payment described in the Agreement for Sale, 90% of the consideration has to be paid by the complainant, but as of now she has paid only 10% of the consideration, which clearly shows her failure to stick to the payment schedule and it is not at all appreciable in the eye of law. Hence, from all corners, the complainant can not be held innocent and not responsible for non-payment of remaining instalments, after making payment of only Rs.2.00 lacs at the time of booking of flat. Therefore, I find that Respondents have rightly cancelled the booking of allotment of the flat of the complainant, due to her failure to abide by the agreed payment schedule and in such circumstances, the Respondents are free to sell the concerned flat to other interested purchaser, in order to up-keep the work of their project.

However, the complainant has paid Rs.2.00 lacs at the time of booking of the flat, which should have been refunded by the Respondents immediately after cancellation of the booking of the

said flat. Instead, by retaining Rs.2.00 lacs of the complainant, the Respondents have used the said amount in their business development. So, the Respondents have to refund the paid principal amount Rs.2.00 lacs to the complainant without delay and deduction.

8. The complainant has also claimed interest on the paid principal amount Rs.2.00 lacs. Admittedly, the Respondents have retained the said amount of the complainant since 18/19 June, 2018 till date, so they have to pay interest on the retained principal amount Rs.2.00 lacs for the said retention period.

Hon'ble Supreme Court in Alok Shankar Pandey Vs. Union of India and Others on 15-02-2007 in Appeal (Civil) 1598/2005 has held that *"the interest is not a penalty/punishment at all, but it is normal accretion on capital"* and Hon'ble Court has allowed interest @ 12% per annum on the principal amount.

Now, the question is as to how much interest is to be paid by the Respondents to the complainant in the present case.

On same issue, rule 17 and 18 of Bihar (Regulation and Development) Rules, 2017 says:-

*"the interest payable by the promoter to the allottee or by allottee to the promoter, as the*

*case may be, shall be 2% above the prevalent Prime Lending Rate/M.C.L.R. of S.B.I. on the date on which the amount becomes due and the same has to be paid within 60 days”.*

Presently, the M.C.L.R. of S.B.I. for a home loan of for 2 years or more is 7.20% and if 2% is added, it will become 9.20% per annum. The Respondents are running the present as well as other projects in Patna, so if compound interest is levied, there will be much adverse effect on the business development of the Respondents. Moreover, it will also hamper the interest of other buyers of the projects. But, there will be no much effect on the complainant, as she is repudiating herself from the project. Hence, instead of compound interest, the Respondents have to pay simple interest on the retained principal amount of complainant, which may justify the end. So, the Respondents have to pay accrued simple interest @ 9.20% per annum on the retained principal amount Rs.2.00 lacs of the complainant since 18<sup>th</sup> June, 2018 till the date of refund by the Respondents to the complainant.

Accordingly, Point No.(i) is decided in negative against the complainant and in favour of the Respondents and Point No.(ii) is

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

Point No.(iii):

9. The complainant has also claimed compensation against the Respondents for her economical, physical and mental harassment. The claim of compensation should be decided keeping in mind the advance principal amount paid by the complainant to the Respondents, duration of amount retained by the Respondents as well as proportion of loss to the complainant and benefit to the Respondents. In such view of the matter, I find that Rs.30,000/-, which is about 15% of principal amount Rs.2,00,000/- paid by the complainant to the Respondents, may be appropriate amount for compensation for her economical, physical and mental harassment. Accordingly, Point No.(iii) is decided in positive in favour of the complainant and against the Respondents.

Point No.(iv):

10. The complainant has visited several times to the office of the Respondents, met with them and their staffs and requested to resolve her problem or alternatively refund of her paid principal amount, but the Respondents and their staffs did not give any attention towards her request, 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, preparation of documents for filing the present complaint case in RERA, Bihar, payment of Court Fee etc. Though the complainant has not brought any document on the record to show the actual expenses incurred by her in these activities, but I think, in all these processes the complainant would not have incurred more than Rs.10,000/-, which must be paid by the Respondents. Accordingly, Point No.(iv) is decided in positive in favour of the complainant and against the Respondents.

Therefore, the complaint case of the complainant, Smt. Minakshi Mehta is partly allowed on contest with litigation cost of Rs.10,000/- (Rupees ten thousand only) against the Respondents. The claim of complainant for execution of registered Sale Deed and delivery of possession of the Flat No.201 in Block-B of the project “Sarita Kunj – Phase-II” of the Respondents is rejected/dismissed, but the Respondents are directed to refund the advanced principal amount Rs.2.00 lacs to the complainant along with accrued simple interest @ 9.20% per annum thereon since the date of payment of respective amount by the complainant to the Respondents till refund the said amount by the Respondents to the complainant. The Respondents are further directed to pay Rs.30,000/- (Rupees thirty thousand only) to the complainant for her economical, physical and mental harassment. The Respondents





are further 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.

Sd/-  
(Ved Prakash)  
Adjudicating Officer  
RERA, Bihar, Patna  
06-04-2021