

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

**RERA/CC/460/2019
RERA/AO/112/2019**

Sri Rabindra Singh, s/o Sri Hari
Shankar Singh, r/o Vill-Bakrihari, P.O.-
Laukhan, P.S.-Dhaka, District-East
Champaran (Bihar), PIN-845418. ... Complainant

Versus

1. M/s Agrani Homes Real Services
Pvt. Ltd., House No.15, Ward
No.1FA, Patliputra Colony, District-
Patna
2. Sri Alok Kumar, s/o Sri Padum
Singh, Authorised Signatory and
Director, Agrani Homes Real
Services Pvt. Ltd., Yogipur,
Chitragupta Nagar, P.S.-Patrakar
Nagar, P.O.-Lohia Nagar,
Kankarbagh, Patna-800020. ... Respondents

Present:

**Sri Ved Prakash
Adjudicating Officer**

Appearance:

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

ORDER

10-02-2020

This complaint petition is filed by the complainant, Sri Rabindra Singh against the Respondent No.1, M/s Agrani Homes Real Services Pvt. Ltd. through its Authorised Signatory and Director, Respondent No.2, Sri Alok Kumar, 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.7,60,000/- along with accrued interest, @ 18% per annum and compensation for his mental and physical harassment, consequent to non-delivery of flat allotted to him.

2. In nutshell, the case of the complainant is that the complainant, Sri Rabindra Singh has booked a 3 BHK flat in Block-A on 10-05-2017 in project "Agrani Residency" of the Respondents, M/s Agrani Homes Real Services Pvt. Ltd. through its Authorised Signatory and Director, Sri Alok Kumar. Later on, both the parties have executed M.O.U. with respect to said 3 BHK flat having area 1291 sq.ft. on 2nd floor in Block-A and one reserve car parking space in the ground floor/basement and undivided share in the land of the project "AGRANI RESIDENCY" on consideration of Rs.11.00 lacs and applicable Service Taxes. It is also agreed between the parties 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., provided the time for completion shall be deemed to have been extended in the event of non-availability of building materials or due to Government Policies affecting the industry or due to Force Majeure. It is further case that the complainant has paid Rs.7,60,000/- out of total consideration Rs.11,00,000/- plus applicable taxes. Thereafter, the complainant several times visited on the site of the project and then he came to know that the construction of

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the building has not started and project registration has also not been obtained from RERA, Bihar and he has also come to know that RERA, Bihar has issued defect letter to the Respondents, which has still not been complied/removed by the Respondents. The Respondents could not give appropriate answer to the query of the complainant about the start of the project. So, the complainant has decided to cancel the booking and requested to the Respondents to refund his principal amount and when they could not give proper reply to the demand of the complainant, he has filed the present case with the above reliefs against the Respondents.

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3. On appearance, the Respondents have filed reply pleading *inter-alia* that they are ready to refund the principal amount to the complainant in 2 or 3 instalments. They have further stated that the Respondents are in need of adjournment of 4 months, so that they may be able to refund the amount to the complainant and in light of such assurance, the case may be disposed of.

4. 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 principal amount Rs.7,60,000/- along with accrued interest @ 18% per annum against the Respondents ?

(2) Whether the complainant is entitled for compensation for his mental and physical harassment against the Respondents?

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

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Points No.1:

5. Admittedly, the complainant, Sri Ravindra Singh has booked a 3 BHK flat no.205 having super built up area 1291 sq.ft. in project "AGRANI RESIDENCY" of the Respondents in west corner of Block-A in 2nd floor on consideration of Rs.8.00 lac plus amenities charges Rs.3.00 lacs and Service Tax Rs.49,500/- and he has filled-up and signed a K.Y.C. on 10-05-2017 along with Sri Anil Kumar Sinha, Authorised Signatory of the Respondents. It is also admitted case that the complainant has executed a Memorandum of Understanding (M.O.U.) on 15-01-2019 with the Respondent No.1, M/s Agrani Homes Real Services Pvt. Ltd. through its Director, RespondentNo.2, Sri Alok Kumar with respect to the flat no.205 of Block-A. The payment of principal amount Rs.7.60,000/- out of total principal amount Rs.11.00 is detailed in mode of payment of consideration amount in M.O.U. The complainant has further filed photocopies of receipts No.32 dated 28-02-2018 of Rs.3.00 lacs, receipt no.176 dated 27-09-2017 of Rs.2.00 lacs, receipt no.163 dated 16-05-2017 of Rs.2.00 lacs, receipt no.48 dated 25-06-2018 of

Rs.60,000/-. It shows that admittedly the complainant has paid Rs.7,60,000/- out of total consideration Rs.11.00 lacs, but in spite of assurance, the Respondents have failed to complete and hand over the allotted flat no.205 in Block-A of the project "AGRANI RESIDENCY" to the complainant. It also appears that the Respondents have applied at this stage for Bihar RERA registration of the project, wherein defect letter has been issued to them to remove the same, but up till now, the Respondents have failed to remove these defects. It also shows that the Respondents are reluctant about the progress of the project and have also not even started construction work at site of the project. Any buyer cannot be expected to wait for indefinite period for delivery of possession of the flat. There may be necessity of different types of different persons. The K.Y.C. was executed between both the parties on 10-05-2017 and naturally the complainant has expected that the project may be completed by the middle of 2020, but taking the undue advantage of the circumstances, the Respondents have got signed the M.O.U. by the complainants on 15-01-2019, but for one or other reasons of his necessity, the complainant may not be in position to tolerate delay in possession till indefinite period, as he has invested his valuable money for purchasing the aforesaid flat in the project "AGRANI RESIDENCY" of the Respondents. In such facts and circumstances, the reasons stated by the complainant for

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cancellation of his allotted flat in project of the Respondents appears genuine and the Respondents should have refunded the principal amount along with interest without any deduction, but admittedly, up till now the Respondents for one or other reasons have not refunded the same. Accordingly, I find and hold that the complainant is entitled for refund of his principal amount without any delay and deduction against the Respondents.

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6. The complainant has claimed interest @ 18% per annum on principal amount paid by him to the Respondents. The Respondents are proceeding only towards official works for taking approval of Map from P.M.C. and registration from RERA, Bihar and thereafter they are ready to construct the project as per plan and specifications. So payment of compound interest @ 18% per annum will not only affect the development of the present projects of the Respondents, but also hamper other projects and interest of other home buyers. On other hand, there will be no much effect on the interest of the complainant, as he is going to repudiate himself from the project. I think, instead of levying of compound interest, simple interest will justify the end. As per Rule 17, 18 of Bihar Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as the "Rules, 2017"), Allottee/Developer has to pay 2% above the M.C.L.R. of S.B.I. Presently, M.C.L.R. of S.B.I. for loan of above 2 years and below 3 years is 8.15%

per annum and if 2% is added, it will come to 10.15% . Hence, the Respondents have to pay simple interest @ 10.15% per annum on the principal amount Rs.7.60,000/- paid by the complainant to the Respondents.

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7. Details of principal amount paid by the complainant to the Respondents and the amount refunded and interest payable by the Respondents to the complainant may be seen through the chart as under :-

Date of payment by the complainant	Amount paid by the complainant Rs.	Date of refund by the Respondent	Amount of Refund by the Respondent Rs.	Amount of Interest Rs.
16-05-2017	2,00,000.00	10-02-2020	2,00,000.00	54,856.42
27-09-2017	2,00,000.00	10-02-2020	2,00,000.00	48,034.12
28-02-2018	3,00,000.00	10-02-2020	3,00,000.00	59,280.12
25-06-2018	60,000.00	10-02-2020	60,000.00	9,876.02
TOTAL	7,60,000.00		7,60,000.00	1,72,046.68

On calculation, simple interest @ 10.15% till today comes to Rs.1,72,046.68. Accordingly, the Respondents have to refund the principal amount Rs.7.60,000/- along with simple interest Rs.1,72,047/- @ 10.15% per annum to the complainant. Hence, point no.1 is decided in favour of the complainant and against the Respondents.

Point No.(2):

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.7,60,000/- 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, due to delay in delivery of possession, the complainant has cancelled booking of the flat allotted to him and he will not get another flat of the same area in the same locality at the same rate, which was available to him in the year 2017. The present rate of flat in the said 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 2017. Moreover, the act 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.1,50,000/- which about 19.74% of the principal amount Rs.7,60,000/- paid by the complainant, will be appropriate amount to be paid by the Respondents to the complainant as compensation for his physical and mental harassment. Hence, Point No.(2) is decided in positive in favour of the complainant and against the Respondents.

Point No.3:

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. I think, the complainant would not have incurred

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more than Rs.20,000/- 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.20,000/- as litigation cost against the Respondents. Hence, Point No.3 is decided in positive in favour of the complainant and against the Respondents.

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Therefore, the complaint case of the complainant is allowed on contest with litigation cost of Rs.20,000/- (Rupees twenty thousand only) against the Respondents. The Respondents are directed to refund the principal amount Rs.7,60,000/- (Rupees seven lacs sixty thousand only) along with accrued simple interest till today Rs.1,72,047/- @ 10.15% per annum on Rs.7,60,000/- (Rupees seven lacs sixty thousand only). The Respondents are further directed to pay simple interest @ 10.15% per annum since tomorrow on the remaining principal amount till refund. They are further directed to pay Rs.1,50,000/- (Rupees one lac fifty thousand only) as compensation to the 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.

Sd/-
(Ved Prakash)
Adjudicating Officer
10-02-2020

