

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

**RERA/CC/536/2019  
RERA/AO/131/2019**

Smt. Akriti Singh, W/o Sri Rupesh Kumar, r/o House No.29 (Mokama House) Behind of Krishna Apartment, Boring Road, P.O. Patliputra, P.S.-Sri Krishnapuri, District-Patna, PIN-800013. ... Complainant

Versus

1. M/s Lakhan Homes Ltd., A-2. Lakhan Sona, Near R.P.S. More, Bailey Road, Patna-800013
2. Sri Sanjay Kumar, Managing Director, s/o Sri Yogendra Singh, r/o Ashram Gali, North Sheikhpura, Bailey Road, P.S.- Shastri Nagar, District-Patna, PIN-800014. ... Respondents

**Present:**

**Sri Ved Prakash  
Adjudicating Officer**

**Appearance:**

For Complainant - Mr. Rakesh Roshan Singh, Advocate  
For Respondents - Mr. Sharad Shekhar, Advocate

**ORDER**

14-02-2020

This complaint petition is filed by the complainant, Smt. Akriti Singh against the Respondent No.1, M/s Lakhan Homes Ltd. through its Managing Director, Respondent No.2, Sri Sanjay Kumar u/s 31 read with Section-71 of Real

Estate (Regulation and Development) Act, 2016 (hereinafter referred as the "Act, 2016") for direction to receive remaining consideration and execute Sale Deed and deliver the of possession of Shop No.201 of the project "Lakhan Sukhbaso" and also to pay compensation for her mental and physical harassment.

2. In nutshell, the case of the complainant is that the complainant Smt. Akriti Singh had booked two shops No.201 and 202 on 20-05-2011 in "Lakhan Sukhbaso" project of the Respondents' company. Situated at Saguna More, which was to be completed within 3 years, but the Respondents failed to complete the project within the stipulated period. It is further case that she has paid total consideration of Shop No.202 up till the year 2015, so the Respondents on getting pressure from her side have executed Sale Deed on 29-06-2018 in her favour with respect to Sop No.202, but in spite of payment of major consideration with respect to Shop no.201, when she requested the Respondents to receive the remaining consideration and execute Sale Deed in her favour for the Shop no.201, then the Respondents stated that since rate of the flat at present has become higher, hence, she has to pay double price of the previously fixed price between them. On such reply of the Respondents, she was surprised and she has come in loss due to delay in construction of the project by the Respondents, as

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she has to pay more stamp duty and taxes. Hence, the Respondents may be directed to receive remaining consideration and execute Sale Deed in her favour and deliver possession of Shop No.201 on the previous booking price settled between the parties. She has further requested to grant compensation for her mental and physical harassment.

3. On appearance, the Respondents have filed reply pleading inter-alia that the provisions of RERA Act, 2016 and Rules thereunder are not applicable in the present case. Further case of the Respondents is that Shop No.202 having area 450 sq.ft. on 2<sup>nd</sup> floor of the project "Lakhan Sukhbaso" along with proportionate share in the land as described in the Sale Deed No.8901 dated 29-06-2018 has already been registered in favour of the complainant. The complainant has paid stamp duty on total valuation Rs.42,01,000/- of Shop no.202, hence, allegation of the complainant is vague and baseless and not sustainable in the eye of law. It is further case that total consideration was set to Rs.34,20,000/- including complete finishing, in which up till now the complainant has paid only Rs.11,09,290/- and the Respondents have communicated to the complainant to pay the remaining price Rs.23,10,710/- against Shop No.201 on 2<sup>nd</sup> floor of the aforesaid building. The complainant herself has admitted that on various occasions from 2015 to 2019, she has paid Rs.11,09,290/- to the

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Respondents against Shop no.,201. The building including the Shop No.201 is completed and the Respondents have given notice to the complainant to take peaceful possession of the Shop, but instead of making residue payment and taking possession, she has filed this case only to take undue advantage. The complainant has not disclosed the exact figure of amount paid by her against Shop No.201 on 2<sup>nd</sup> floor. The allegation of the complainant for charging escalated price by the Respondents is vague and baseless, as the price of the Shop No.201 has already been mutually negotiated between both the parties in the year 2015, which may be seen through Annexure-R-1. The Respondents have never denied the interest of the complainant in terms of the Agreement, but the complainant has showed weak desire to take physical possession of Shop No.201. The complainant has also not taken the matter seriously and meticulously, trying to engulf both the Shops on the amount in question. It is not out of place to mention that the Agreement made between the parties was prior to RERA Act, 2016 came into effect, hence, the complainant cannot dispute in terms of Agreement for Sale at present stage. She has well understood the terms and conditions of the Agreement for Sale. The Respondents have adopted all legal Rules and Regulations and taken necessary steps and due care to construct the building. Due to latches on the part of the complainant, the

Respondents have suffered heavy financial, physical as well as mental loss. Hence, in view of the matter, the instant complaint case has to be dismissed.

4. Now, I have to see as to whether on basis of Oral Agreement for Sale/Booking, this Court has jurisdiction under RERA Act, 2016 to direct the Respondents to execute Sale Deed and deliver possession of the Shop No.201 of “Lakhan Sukhbaso” project of the Respondents in favour of the complainant?

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5. Under the Act, 2016, RERA, Bihar has been established for Regulation and Promotion of the real estate sector in the State. The Authority shall strive to facilitate the Growth and Promotion of healthy, transparent, efficient and competitive real estate sector, while protecting the interest of allottees, Promoters and real estate Agents. The Authority has also established an adjudicating mechanism for speedy dispute redressal regarding registered real estate projects.

6. Agreement for Sale means “An Agreement entered into between the Promoter and allottee” (see Section 2(d) of the Act, 2016). It is also to be added at the same place that Section-13(1) of the Act, 2016 says that a Promoter shall not accept any sum more than 10% of the cost of the apartment, plot or building, as the case may be, as an advance payment or as application fee, from a person without first entering in to a written Agreement for Sale with such person and register the

said Agreement for Sale, under any law for time being enforce. It means the Developer/Promoter should not have received more than 10% of the consideration amount fixed between the parties without registered Agreement for Sale.

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7. The complainant has stated that she has booked 2 Shops No.201 and 202 in "Lakhan Sukhbaso" project of the Respondents on 20-05-2011. Admittedly, there was oral Agreement for Sale between both the parties for sale of above Shops. Later on 01-02-2013 Agreement for Sale and Sale Deed dated 29-06-2018 with respect to one of the Shops No.202 were executed and registered by the Respondents' Managing Director, Mr. Sanjay Kumar through Authenticated Power of Attorney holder. Mr. Lalit Kumar in favour of the complainant, Smt. Akriti Singh on consideration of Rs.16,20,000/- after stamp duty payment on valuation of property Rs.42,01,000/-, but Agreement for Sale with respect to Shop No.201 remained oral one.

8. However, there is dispute between both the parties on the point of terms, conditions and consideration of Agreement for Sale of Shop no.201 of same "Lakhan Sukhbaso" project. Though the complainant has not disclosed the terms, conditions and consideration of Agreement for Sale in the complaint petition, but her learned lawyer has submitted that the price of both these Shops No.201 and 202 were same

Rs.16,20,000/- (each) as mentioned in the Agreement for Sale dated 01-02-2013 and Sale Deed dated 29-06-2018 executed by the Respondents in her favour with respect to Shop No.202. The complainant has admittedly paid Rs.11,09,290/- to the Respondents and has stated that remaining amount will be paid at the time of execution of Sale Deed and delivery of possession of Shop No.201. Whereon, the learned lawyer for the Respondents submitted that consideration of Shop No.201 was fixed Rs.34,20,000/- between the parties, in which the complainant has paid Rs.11,09,290/- on various occasions from 2015 to 2019 and on payment of remaining consideration Rs.23,10,710/- the Respondents will execute Sale Deed in favour of the complainant. He further submitted that the Respondents have never denied the interest of the complainant in terms of Agreement for Sale, but the complainant has shown weak desire to take physical possession of Shop No.201.

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9. The present project "Lakhan Sukhbaso" is not registered with RERA, Bihar. The Respondents have stated that since the project was completed prior to RERA Act,2016 came into effect on 01-05-2017, so there was no need to get it registered with RERA, Bihar. The complainant has not brought any evidence on record to show that "Lakhan Sukhbaso" is still ongoing project, so action may be taken against them for non-

registration with RERA, Bihar and they may be directed to comply the provisions of RERA Act, 2016.

10. Now, I may see as to what evidence is brought by the complainant to substantiate her claim for terms and conditions of Oral Agreement for Sale/Booking and consideration of Shop No.201 of "Lakhan Sukhbaso" project. I have seen from the record that the complainant has not disclosed terms and conditions as well as consideration of sale/purchase of Shop No.201 in her complaint petition. She has also failed to produce any documentary evidence to show the exact consideration of Shop No.201. There is no detailed discussion in the contents of Agreement for Sale dated 01-02-2013 and Sale Deed dated 29-06-2018 about consideration and terms and conditions of Shop No.201. I have to further add that in eye of law unless and until there no other evidence, it cannot be presumed to be correct that price/consideration mentioned in Sale Deed dated 29-06-2018 for Shop No.202 will also be the same for Shop No.201. The complainant has failed to produce the evidence that consideration of Shop No.201 was also settled in 2011, while the consideration of Shop No.202 was set between them and on settlement, the Respondents have received advance money Rs.51,000/- on 20-05-2011 and issued receipt thereof. The complainant has also not put forward any evidence to support as to why she paid more than 10% of the

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price/consideration of Shop to Respondents, when the price of Shop No.201 was only Rs.16,20,000/-. At the same time, the Respondents have also not produced any evidence that price / consideration of Shop No.201 was/is Rs.34,20,000/- settled between the parties in the year 2015, but the case is filed by the complainant, so here burden of proof is on shoulder of complainant to prove her case with strong probability.

11. This Court is a Quasi-judicial Court and it is established u/s 31 read with Section 71 of the Act, 2016 for specific purpose of receiving complaint petition from aggrieved persons against Developer/Allottee/Agent, who is violating the provisions of this Act/Rules/Regulations made thereunder. The present case is not simple case of refund of amount Rs.11,09,290/- paid to the Respondents or for direction to modify the defective construction or to compensate for defaults, rather it is a case brought on basis of Oral Agreement for Sale/Booking to direct the Respondents to execute Sale Deed for Shop No.201 after receiving remaining consideration. Here, either of the parties has not filed terms, conditions and amount of consideration and they are also not agree with each-other, rather stating different terms, conditions and consideration of Shop No.201 on basis of their Oral Agreement for Sale. I think, enquiry of such type of cases cannot/should not be conducted in limited jurisdiction of this Court, as such cases do not fall under the

Provisions of RERA Act, 2016. In the above facts and circumstances, it is fit case to be filed, enquired and decided by Civil Court. Hence, if the complainant is advised, may file a Civil Suit before competent Civil Court for redressal of her grievances.

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Therefore, in light of above observations, this complaint case of the complainant is disposed of.

Sd/-  
(Ved Prakash)  
Adjudicating Officer  
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