

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

**RERA/CC/164/2019  
RERA/AO/22/2019**

Sri Krishna Singh @ Sri Krishna Suryadeo Singh, s/o Sri Suryadeo Singh, r/o Village & Post-Mohanpur, P.S.-Karakat, District-Rohtas, PIN-802212. Presently residing at 9, Jayanti Vastu Vihar, Bihar, Near Village-Tetari Lalganj, Sasaram, District-Rohtas-821115. ... Complainant

Versus

1. M/s Technoculture Building Centre Pvt. Ltd. [M/s Vastu Vihar]
2. Sri Umashankar Pandey, Executive Director, Vastu Vihar, [Brand Name M/s Technoculture Building Centre Pvt. Ltd.], 417, 4<sup>th</sup> Floor, Ashiyana Towers, Exhibition Road, Patna-800001.
3. Project Manager, Vastu Vihar, Sasaram-Unit, Gourakshini, Suman Market, P.O. & P.S.-Sasaram, District-Rohtas-821115

... Respondents

**Present:**

**Sri Ved Prakash  
Adjudicating Officer**

Appearance:

For Complainant : Mr. Sunil Kumar Singh, Advocate  
For Respondents : 1. Mr. Dheeraj Kumar Roy, Advocate  
: 2. Mrs. Shivangi, Advocate

**ORDER**

17-03-2020

This complaint petition is filed by the complainant,  
Sri Krishna Singh @ Sri Krishna Suryadeo Singh against

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the Respondent No.1, M/s Technoculture Building Centre Pvt. Ltd. (Brand Name M/s Vastu Vihar,) through its Executive Director, Respondent No.2, Sri Uma Shankar Pandey and Respondent No.3, Project Manager, Vastu Vihar, Sasaram-Unit u/s 31 read with Section 71 of Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the "Act, 2016") for direction to pay Rs.36,14,377/- as an interest, compensation, litigation cost and repair amount for allotted Duplex "Jayanti-9" and replacement of inferior quality electrical fittings in the said Duplex.

2. In nutshell, the case of the complainant is that the complainant, Sri Krishna Singh @ Sri Krishnadeo Singh is the purchaser of the Duplex "Jayanti-9" of the Respondents M/s Technoculture Building Centre Pvt. Ltd. Project "Duplex Jayanti" in Vastu Vihar, Phase-1, situated at Mouza-Tetari managed and organised by M/s Vastu Vihar, Sasaram Unit-Gaurakshini, Suman Market, Sasaram, District-Rohtas. The complainant and Respondents have executed an Assignment Agreement on 16-06-2014, under which the "Jayanti-9" Duplex was to be completed by the Respondents within 24 months on consideration of Rs.18,60,000/-. It is further case that the complainant complied the terms and conditions and made full payment of the consideration. The Respondents allowed to the complainant to live in the Duplex "Jayanti-9" in the month of

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November, 2015 with the assertion to the complainant to live in the in-completed house for the time being, as the rest construction work will be completed gradually. However, the Respondents did not complete the remaining works of the Duplex "Jayanti-9" and have also not given Possession Letter to the complainant as yet. It is further case that the Respondents have taken Rs.4.46 lacs as Development Cost of the Society, but has expended only Rs.16,000/-. The complainant has paid E.M.I. @ Rs.5,590/- per month for the loan borrowed by him from the Bank. The Respondents have assured to the complainant to complete the grill work as well as interior decoration in the premises of "Jayanti-9" with Wooden Shelf along with oil painting, for which he has paid Rs.2,18,467/- to the Respondents apart from consideration amount RS.18,60,000. But, even then the Respondents have not completed the aforesaid premises of the complainant. It is further case that the complainant has taken loan Rs.2,18,467/- from S.B.I., on interest @ 10.15%, which is being paid by him to the Bank in instalments @ Rs.2840/- per month. The complainant has drawn attention of the Respondents towards fulfilment of the terms and conditions of the Agreement, that after payment of all instalments, the Respondents will have to hand over the premises of "Jayanti-9" within one month. It was agreed that if within 24 months from the start of the construction work, the premises is not delivered to the

complainant, the Respondents will pay the interest on the whole amount to the complainant @ 0.05% per month. Since the Respondents have not handed over the Duplex “Jayanti-9” complete in all respect till today, the liability for payment of interest on the whole amount to the complainant at the above rate, is fixed on the Respondents. It is further case that the Respondents have not paid proper attention in construction work, so every roof and beams are sagging somewhere and irregular in shape, which cannot be rectified and it can only be hide. Further due to lack of proper supervision and bad workmanship like poor plastering, rough flooring, re-slopping of floors, adding items not worked out during construction etc. require rectification. The Respondents have used sub-standard material in doors and windows including improper fittings, which require replacement. It is further case that sub-standard materials for electrification like Switches, Switch Boards including improper fittings and wiring have been used and proper safeguards against supply of high voltage, short circuit, safety earthing measures etc. are not provided. Hence, all these items require replacement. The Respondents have given provision for a *Puja Ghar* in their brochure, which has not been constructed in the Duplex “Jayanti-9” of the complainant. Construction of hidden parts of the building like slabs, beams, lintels etc. in material and construction process have not been provided with strength, which causes weakness in the building

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and requires maintenance urgently. The complainant has himself issued Notice on 17-10-2017 and 04-05-2018 through his learned lawyer, Sri Ravindra Prasad Singh, to the Respondents by unfolding the deficiencies, but in spite of receipt of the same, the Respondents have done nothing. Hence, this complaint petition is filed within the statutory period from the cause of action arose on 17-10-2017 with prayer for above reliefs.

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3. On appearance, the Respondents have pleaded *inter-alia* that the complaint petition is frivolous, baseless, misleading. The complaint petition in Para-4 appears not only incorrect and false, but also contrary to each other. It is further case that admittedly the complainant has occupied the premises in November, 2015 and now he has filed the present complaint petition with a malafide intention only to evade payment of Rs.25,833/- to the Respondents. Apart from the unit cost of Rs.18,60,000/-, the complainant has to pay an amount of Rs.1,07,000/- towards the cost of extra works, Rs.75,000/- towards legal documentation charges/expenses and an amount of Rs.62,300/- towards Service Tax. Hence the complainant has to pay total Rs.21,04,300/- to the Respondents. But, the complainant has admittedly made payment of Rs.20,78,467/- only. Hence, the complainant has to pay remaining amount of Rs.25,833/- to the Respondents. It is further case that in spite of several demands for payment of the dues, the complainant

has avoided to make payment and now with a view to keep money of the Respondents, the complainant has filed the present frivolous complaint case in the present Court. The Respondents have not only completed the works as per terms of Agreement within stipulated time, but they have also done some extra works on request of the complainant, which was not agreed in Agreement. On perusal of the Agreement, it will clearly appear that the complainant has to pay for extra works done by the Respondents. It is further case that as per para-4(ii) of the complaint petition, the complainant has paid an amount of Rs.18,60,000/- as unit cost and as per para-4(v) of the complaint petition, the complainant has paid an amount of Rs.4.46 lacs as Development Cost and as per para-4(vi) of the complaint petition, the complainant has paid an amount of Rs.2,18,467/- for Wooden Shelf. Oil Painting etc. Hence, as per details of payment stated by the complainant, it appears that he has paid total Rs.25,24,467/-. However, the complainant has himself elaborated in para-4(viii) that Rs.20,78.467/- has been paid to the Respondents. Hence, the complaint petition appears frivolous and should be dismissed with cost. The complainant has stated that the Respondents have constructed Road, Boundary Wall, Drainage, Kids Park, Two Gates, Temple and on other hand, he has alleged that the Respondents have not developed the Society, which shows that the complainant petition is false, misleading and filed with ulterior motive. The

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Respondents have provided facilities in common area, water supply and security guard, but the complainant is not making payment towards the use of the same and representing himself as an influential person of the society and causing nuisance. Hence, in light of above pleadings, the petition of the complainant is fit to be dismissed with cost.

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4. After appearance of the Respondents on 05-03-2019, reply was filed by them on 28-03-2019. Thereafter the arguments of the parties started and they were heard in detail and lastly, the record was fixed for order on 27-01-2020, but on that date the order could not be passed, as I was suffering from illness. Hence, after hearing the parties, the order is being passed today.

5. On basis of the pleadings of the parties, submissions of the complainant along with his learned lawyer and learned lawyer for the Respondents, the following points are formulated to adjudicate the case:-

(1) Whether this Court has jurisdiction to entertain the present complaint petition of the complainant, who is already occupying the premises of "Jayanti-9", in project "Jayanti Duplex" of the Respondents since November, 2015, which is unregistered with RERA, Bihar?

(2) Whether the complainant is entitled for alleged interest against the Respondents @ 0.05% on total

payment made by the complainant to the Respondents for delayed period in completion of the project/unit "Jayanti-9"?

- (3) Whether the complainant is entitled for charge/cost of repairing of premises "Jayanti-9" and replacement of inferior quality of electrical materials etc. used therein against the Respondents?
- (4) Whether the complainant is entitled for compensation against the Respondents for his physical and mental harassment?
- (5) Whether the complainant is entitled for litigation cost against the Respondents?

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Points No.(1), (2) and (3):

6. All these points are inter related, hence, these are being discussed together. Admittedly, the complainant Sri Krishna Singh has purchased 2.295 decimal (1000 sq.ft.) Thana No.148, Halka No.05, Khata No.29, Plot No.192, Residential vacant Block No.JE- land in Mauza-Tetari, P.S.-Sasaram, District-Rohtas, from Sri Uma Shankar Pandey on consideration of Rs.1,15,000/-to construct residential Duplex through Sale Deed No.13048 dated 08-10-2014 and he has also taken possession of land on the same day from the Respondents. It is also admitted case that both the parties have executed unregistered Assignment Agreement, wherein Duplex "Jayanti-9" was to be constructed by the Respondents within 24



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months. Though date of execution is not mentioned in the Deed, but complainant has stated that it was executed on 16-06-2014. Admittedly, the complainant is residing in the “Jayanti-9\_ Duplex since the month of November, 2015, which shows that prior to expiry of 24 months since 16-06-2014, the Respondents have given possession of the premises “Jayanti-9“ to the complainant. After taking possession of the Duplex “Jaynti-9”, neither the complainant has disclosed the deficiencies as stated in the complaint petition to the Respondents nor he has written any letter to them in this regard, which may certify the claim of the complainant about the defects in construction of the Duplex. Thereafter, on 17-10-2017, the complainant has sent a letter to the Respondents to rectify the defects, which he could not establish in the Court that the same was received by the Respondents. However, the complainant has also filed a Legal Notice dated 04-05-2018 issued to the Respondents through his learned lawyer, Sri Ravindra Kumar Singh, wherein he has defined the defects in the building and requested the Respondents to remove the same. It is not out of place to mention that the RERA Act, 2016 has come into effect on 01-05-2017, which has come into the knowledge of all including the complainant. It shows that the complainant was sitting silent since the time of taking possession of the premises of “Jayanti-9” till enactment of the Act, 2016 and after the Act, 2016 came into effect, he

became alert and started trying to create cause of action for filing complaint petition before this Court. I think, if there was defect in the Duplex "Jayanti-9" at the time of taking possession by the complainant, he should have taken written undertaking from the side of the Respondents about the detail of defects and removing of the same within a specified time, but he did nothing. Hence, it appears that there is force in the submissions of the learned lawyer for the Respondents that the complainant has tried to create cause of action for filing of the present complaint petition in the Court.

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7. The complainant and his learned lawyer submitted that up-till-now neither the Respondents have delivered Completion Certificate nor possession letter to him, so there is problem to the complainant with respect to the Bank loan and it also certifies that the Duplex "Jayanti-9" is still incomplete, whereon the learned lawyer for the Respondents submitted that since the complainant is residing in the Duplex "Jayanti-9" since long back in November, 2015, there was no need for delivery of possession letter. Further, up-till-now in Bihar, most of the builders have not obtained Completion Certificate from the competent authority, in spite of completion of project, as the same is not issued by competent Authority. In like manner, the Respondents have also not got Completion Certificate with respect to present project. He further submitted that there is no relationship of Developer and

Allottee between the Respondents and complainants, as the complainant is already owner of the premises and he has given contract for construction of the Duplex "Jayanti-9" as per Assignment Agreement to the Respondents and after finishing, he has taken delivery of possession, so if there was any problem like defects etc., the complainant should have submitted his grievances before the Civil Court/Consumer Court, but he did nothing towards these proceedings, as he was not in mood to file any case, but on demand of dues amount Rs,25,833/- he has filed the present complaint case only to take revenge against the Respondents and also to avoid the said payment.

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8. As per Section-31 of the Act, 2016;

*"Any aggrieved person may file a complaint with the Authority or the Adjudicating Officer, as the case may be, for violation or contravention of the provisions of this Act or Rules and Regulations made thereunder against any Promoter, Allottee or Real Estate Agent, as the case may be."*

The complainant has purchased the land of project "Jayanti-9" premises from the Respondents and thereafter, he has executed an Assignment Agreement with them. Section 2(d) of the Act, 2016 says that *"Allottee means the person whom a Plot, Apartment or Building, as the case may be, has been allotted, sold or otherwise transferred by the Promoter and includes the person, who subsequently acquires the said*

*allotment through sale, transfer or otherwise, but it does not include a person to whom such Plot, Apartment or Building, as the case may be, is given on rent*". In the present case, the Respondents have not only sold the Plot of "Jayanti-9" in project "Jayanti Duplex" Tetari, Sasaram to complainant, but also they have entered in to Assignment Agreement on consideration of Rs,18,60,000/- to construct the premises "Jayanti-9". So, naturally, for the Respondents/Promoter, the complainant is allottee. Hence, there is no force in submission of the learned lawyer for the Respondent that the complainant is not allottee of the Respondents.

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9. The Assignment Agreement between the parties was executed, wherein the contents it is scribed that the complainant has purchased the land through Sale Deed No.13048 dated 08-10-2014, so the complainant being owner has right to visit on site of the project and he might have disclosed the defects to the Respondents, but he has not done so during construction or soon thereafter. The complainant himself has engaged the Respondents to construct the said Duplex as per his requirement on the terms and conditions laid-down in Assignment Agreement. Now, after more than 3 years of residing in the house, the complainant has turned up to file the present complaint petition in the Court. In this reference 1<sup>st</sup> Proviso of Section-3 of the Act, 2016 says,

*“provided that the projects that are on-going on the date of commencement of the Act and for which the Completion Certificate has not been issued, the Promoter shall make an application to the authority for registration of the said project within a period of 3 months from the date of commencement of this Act”.*

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The Respondents have stated that the project has already been completed prior to 01-05-2017, so there is no need for the Occupancy Certificate/Completion Certificate in the concerned project. As such, the project is not on-going and there was no necessity for registration in RERA, Bihar and that is why the Respondents have not applied for registration in RERA, Bihar. I think, if the project is completed prior to 1<sup>st</sup> May, 2017, there is no need for RERA, Bihar registration, but for scrutiny/enquiry of the project, whether it is new/on going/completed project, the production of Occupancy Certificate/Completion Certificate is necessary. The Respondents have not produced Occupancy / Completion Certificate in the Court. The Respondents are hammering that except the complainant, no other member/resident of the project has complained about defects of his/her premises. But, I think, it is not criteria to check the completion of project, rather the legal requirement for showing that the project is completed prior to enforcement of RERA Act, 2016 on 01-05-2017 is to produce Occupancy Certificate/Completion

Certificate, which has not been produced in the Court by the Respondents with respect to the present project. Hence, in absence of production of Occupancy/Completion Certificate of the project "Jayanti Duplex" of "Vastu Vihar, Phase-I", Tetari at Sasaram is deemed as 'on going' with respect to the liabilities/duties of the Respondents towards the complainant.

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10. Registration of project in RERA, Bihar may be pre-requisite for filing a complaint case against other party, but there is certain provisions, wherein even if RERA registration is not obtained by the Promoter, he will be responsible with the liabilities of the complainant. Firstly, if the project is unregistered with RERA, Bihar, but 5 years have inot passed since taking possession of the premises by the complainant. Secondly, as per Section-2(a)of the Act, 2016, if any area of land proposed to be developed is not exceeded to 500 sq.mtr. or the number of flats, which is to be developed is not exceeding 8 flats inclusive of all phases, there is not requirement of RERA registration. But if there is any deficiency in services, the sufferer can file complaint u/d 31 of the Act, 2016 for redressal of his/her grievances against the Respondents/Promoter. Hence, the complainant has legal right to file the complainant petition for redressal of his grievances against the Respondents.
11. The complainant has stated that there were several defects in the premises "Jayanti-9" occupied by him after construction by the Respondents. He has filed photographs of

premises showing the defects. The complainant has stated that the roof and beams of the building are sagging somewhere and irregular in shape, which cannot be rectified and it can only be hidden. He has further narrated that due to lack of supervision and bad workmanship, poor plastering roof flooring etc., require rectification. Further he has detected sub-standard materials used in doors, windows and improper electrical fittings, which require replacement. He has also stated that sub-standard materials are used by the Respondents for electrification like Switches, Switch Boards, improper fittings and Wiring etc. Further, there is no provision for safeguards against supply of high voltage, short circuit etc., whereupon the learned lawyer for the Respondents has submitted that the complainant is residing in the said Duplex since November, 2015, but has not properly used the same and that is why the defects have occurred and the Respondents have nothing to do with these defects. He further submitted that no complaint, except the complainant, has been received from any other residents of the project, which shows that he is not properly maintaining the premises, rather using it in very miserable condition, for which the Respondents are not liable in any way. Learned lawyer for the Respondents has further submitted that the complainant is using water, electricity and lighting facilities in common area, but he is not paying to the Respondents for the same, whereon the complainant submitted that no bill has

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been handed over to him and that is why he has not paid for said uses. It shows that there is allegation and counter allegation between the parties about maintenance of the premises.

12. On going through the record, it appears that in Annexure-VI claim no.5 has been unfolded by the complainant, which shows that plaster of walls is in very bad condition. In like manner, at page 4/16, 5/16, 6/16, 7/16, 8/16, 9/16, 10/16, 11/16, 12/16, 14/16 and 15/16 photographs of the walls show that at several places like Balcony, Stair Case, boundary wall, the plaster conditions are very bad, which require rectification. At the same time, it is also seen in the photographs of 3/16 that beams are irregular and disshaped. The slab is deflected, which may be due to bad workmanship. Proper specifications have also not been maintained. It is also seen in the photographs that water is leaked on the public road in frond and back of the premises of the complainant. There is big gap seen between the *Choughat* and wall. Drainage system is also not working properly. Even on the floors cracks are seen in the photograph. Fixing of Windows is not properly finished. Further, on the Stair Case concrete honey combing is seen at photograph. It means, concrete has not been cast properly. It also appears that even concrete mix is not proper and the ratio of mixing is also wrongly scribed in the Assignment Agreement.

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13. I think, since the complainant along with family members is residing in the premises “Jayanti-9” since November, 2015 without any objection and he has not disclosed the defects to the Respondents and as discussed above, he should have taken written Undertaking from the Respondents by narrating these defects to get it removed within a stipulated period. No objection of complainant at the time of taking possession about the defects shows that the complainant is proportionately responsible for these defects like the Respondents. The manner of using in the premises has an important role for creating/enhancing the defects. For illustration, someone is not making white-washing for year to year, non-removal of water logging on the roof for a long time, not cleaning the bath rooms, kitchen etc. may create moisture and that is why there may be cracks in walls and plaster may come out on lintels, which can also be caused due to bad workmanship or use of inferior quality materials by the Promoter, which is seen somehow in the present case. Accordingly, I come to the conclusion that both the parties are proportionately responsible for these defects. It also finds support from the fact that the electrical fittings, switch boards and other appliances were provided when the premises was in possession of the complainant and he has legal right to point out the inferior qualities and bad workmanship to the Respondents, but he has not done so, rather he kept silence for a long times and he

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come with the complaint petition after 2-3 years, which is not acceptable. Considering all pros and cons, the complainant may be paid Rs.1,50,000/- for repair of wall plastering, flooring, cleaning, white washing etc. For fitting of Exhaust Fan he may be paid Rs.5,000/-. For repairing/resetting of beams, the complainant may be paid Rs.1,50,000/-. It is further to be added that for repairing of road in front and back side of the Duplex the complainant may be paid Rs.50,000/-. The complainant may be further paid Rs.50,000/- for replacement of inferior quality materials used for electrical fittings, switches, switch boards, wiring etc. There was also provision for a Puja Room in brochure, which was not constructed by the Respondents, therefore, the complainant may be paid Rs.75,000/- for this purpose.

14. The complainant has claimed interest @ 0.05% on the paid amount to the Respondents by complainant due to delay in completion of the project "Jayanti-9". I think, since the complainant and his family members are residing in the said Duplex since November, 2015, hence, as discussed, he is equally responsible for these defects along with the Respondents. It is also important to add that the complainant is using the premises and the consideration, construction cost and development cost which have been paid by him to the Respondents has been used in construction of the building, so now the claim of interest on the paid principal amount appears

not only unreasonable, but also baseless. Hence, the Respondents cannot be held responsible for payment of interest on the principal amount paid to the Respondents.

On basis of above discussion, Point No.(1) is decided in positive in favour of the complainant and against the Respondents, while Point No.(2) is decided in negative against the complainants and in favour of the Respondents and Point No.(3) is decided in positive in favour of the complainant and against the Respondents.

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Point No.(4):

15. Though the complainant has claimed that he has requested to the Respondents to remove the defects, as he was facing difficulties, but as discussed in previous paras, the complainant after taking possession of the project "Jayanti-9", has neither discussed the defects to the Respondents nor soon after taking possession he has obtained written Undertaking from the Respondents to get the defects removed. It is also clear that after lapse of 3½ years, the complainant has filed the present complaint petition against the Respondents, after enforcement of RERA Act, 2016, but the Respondents also for one or other reasons avoided to remove these defects. There is also allegation levelled against the complainant that he is creating nuisance to the staffs of the Respondents and also not paying bill for consumption of water, electricity and share of other common expenses for engagement of guard, sweeper etc.

One thing is clear that if there were/are defects, whatever percentage of responsibility lies on the complainant, that should have been cleared by the Respondents, but they did not do so. It is also clear that the complainant for redressal of his grievances has become bound to file complaint case, which has caused mental and physical harassment to the complainant and now prices of materials would have gone high in comparison to year 2015 and that is why, he must be paid some amount for these harassments created by the Respondents. In view of the above, I think, Rs.50,000/- may be appropriate amount to be paid to the complainant by the Respondents as compensation. Accordingly, Point No.(IV) is decided in positive in favour of the complainant and against the Respondents.

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Point No.(V):

16. The complainant has repeatedly visited in the office of the Respondents, met with them and their staffs, but they did not give any heed to the request of the complainant. Hence, he was forced to file the present complaint case. I think, for filing of complaint petition, conveyance from Sasaram to Patna and returned back, payment of Curt Fee, engagement of learned lawyer he would have incurred not less than Rs.25,000/-, which must be paid by the Respondents to the complainant. Accordingly, Point No.-(V) is decided in positive in favour of the complainant and against the Respondents.

17. Before discussion of operative portion of the order, it is pertinent to note that there is also responsibility on the shoulder of the complainant to pay the bill for the expenditure for use of electricity for lighting of common area, water supply, engagement of guard, sweeper as well as other common incidental charges. Therefore, the complainant must get such bills and make payments in due course including the arrear since November, 2015.

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Therefore, the complaint petition of the complainant, Sri Krishna Singh @ Sri Krishna Suryadeo Singh is allowed on contest with litigation cost of Rs.25,000/- (Rupees twenty five thousand only) against the Respondents. The Respondents are directed to pay Rs.1,50,000/- (Rupees one lac fifty thousand only) for repair of wall plastering, flooring, cleaning, white washing etc., Rs.5,000/- (Rupees five thousand only) for fitting of Exhaust Fan, Rs.1,50,000/- (Rupees one lac fifty thousand only) for repairing/resetting of beams, Rs.50,000 (Rupees fifty thousand only) for repairing of road in front and back side of the Duplex, Rs.50,000/- (Rupees fifty thousand only) for replacement of inferior quality materials used for electrical fittings, switches, switch boards, wiring etc. and Rs.75,000/- (Rupees seventy five thousand only) for construction of Puja Room to the complainant. The Respondents are further directed to pay Rs.50,000/- as compensation to the complainant for his 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.

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