

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

**RERA/CC/448/2019
RERA/AO/105/2019**

1. Sri Aniket Kumar, s/o Sri Shiv Narayan Prasad, Sardar Patel Marg, Maurya Vihar Colony, Near Vaishanavi Hospital, Atta Chakki Mill, Kumhrar, Transport Nagar, District-Patna, PIN-800026. ... Complainant

Versus

1. M/s Grih Arambh Developers Pvt. Ltd.
2. Sri Madhukant Verma, Director,
- 1158-A, Shanti Sadan, Boring-Patliputra Road, District-Patna, PIN-800013. ... Respondents

Present:

**Sri Ved Prakash
Adjudicating Officer**

Appearance:

For Complainant - In Person

For Respondents - Mr. Brijendra Kumar, Advocate

ORDER

27-02-2020

This complaint petition is filed by the complainant, Sri Aniket Kumar against the Respondent No.1, M/s DPM Infrastructure & Housing Pvt. Ltd through its Director, Respondent No.2, Sri Madhukant Verma 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 remaining principal amount Rs.53,550/- along with accrued

interest and compensation, consequent to non-delivery of flats allotted to him.

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2. In nutshell, the case of the complainant is that the complainant, Sri Aniket Kumar had booked two flats – one flat no.604 in Block-K and the other flat no.405 in Block-Tower-B, both having area 1260 sq.ft. @ Rs.800/- per sq.ft. The considerations of each flat was Rs.10,08,000/- and the complainant has paid Rs.51,000/- for each flat as booking amount and he has got money receipt no.033 dated 20-05-2017 with respect to the flat no.604 in Block-K and receipt no.010 dated 28-02-2017 with respect to flat no.405 in Block Tower-B from the Respondents Grih Aarambh Developers Pvt. Ltd. in the project “Sports City” through its Director, Madhukant Verma. It is further case that the Respondents did not start the work for one and half years and therefore, the complainant has decided to cancel the booking of the flats and he wanted refund of his booking amount Rs.1,02,000/-paid to the Respondents. On repeated demand, the Respondents have handed over a cheque, but the same was dishonoured, due to insufficient fund in their account. Later on the Respondents have refunded Rs.48,450/- on 13-04-2019 , but the rest amount could not be refunded, in spite of repeated requests, hence being fed-up with the

behaviour of the Respondents, the complainant has filed the present complaint case with the above reliefs.

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3. On appearance, the Respondents have filed reply pleading *inter-alia* that it is admitted that the complainant has booked two flats on 24-02-2017 and 28-02-2017 and deposited Rs.51,000/- for each flat, but it is wrong to say that they have told lie to him about the start and completion of the project. It is further case that they are ready to refund the amount of the complainant and since he has deposited the cheque on 09-11-2018 without asking them and that is why the cheque was dishonoured. However, they are still ready to refund the amount to the complainant at the earliest and as per their assurance the case of the complaint may be disposed of.

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

- (1) Whether the complainant is entitled for refund of remaining principal amount Rs.53,550/- along with accrued interest on the principal amount Rs.1,02,000/- against the Respondents?
- (2) Whether the complainant is entitled for compensation against the Respondents for his mental and physical harassment?

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

Points No.(1) :

4. Admittedly, the complainant has booked two flats in project "Sports City" of the Respondents, M/s Grih Aarambh Developers Pvt. Ltd. – one flat no.G-405 in Block Tower at 4th floor and the other flat no.604 in Block-K at 6th floor and both have having area 1260 sq.ft. each @ Rs.800/- per sq. ft. on total consideration of Rs.1,08,000/- each of the Respondents. The complainant has paid Rs.51,000/- on 28-02-2017 against flat no.405 in Block-Tower and Rs.51,000/- against flat no.604 in Block-K of the project "Sports City" and he has got receipt no.010 dated 28-02-2017 and receipt no.033 dated 29-05-2017 with respect to each payment. Agreement of Sale could not be executed between both the parties with respect to the flats and before execution of Agreement for Sale the complainant on 08/09-08-2018 has submitted a letter for cancellation of booking of the flats to the Respondents on the ground that there was some family and financial problems, so he is willing to cancel the booking of the flats with the Respondents and has demanded refund of the paid principal amount Rs.1,02,000/- from the Respondents. However, the complainant in his complaint petition has pleaded the reason for cancellation of booking due to delay in start and

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completion of the project, which he has not made basis in cancellation letter dated 08/09-08-2018 submitted to the Respondents. However, since the Respondents have retained the principal amount to the complainant for some time and they have used it in their business, so they must pay interest on the principal amount retained by them. It appears that the Respondents are running the present project as well as other projects, so levying of compound interest will not only hamper their business, but also it will adversely affect the other consumers of the Respondents, but on the other hand it will not have much effect on the complainant, as he is repudiating himself from the project in hand. The Respondents have refunded Rs.51,000/- to the complainant on 14-02-2020, so now Rs.2,550/- of the complainant have remained with the Respondents. Accordingly, I think, instead of compound interest, levying of simple interest will justify the end. As per rules 17 and 18 of the Bihar Real Estate (Regulation and Development) Rules, 2017, 2% above the M.C.L.R. of S.B.I. has to be paid on the principal amount paid by the complainant to the Respondents. The present M.C.L.R. of S.B.I. is 8.05% for loan for more than 2 years but less than 3 years. Hence, the Respondents have to pay simple interest @ 10.05% on the principal amount Rs.1,02,000/- since the respective date of payment. Accordingly, the principal amount paid by the

complainant to the Respondent and the respective amount of refund by the Respondents to the complainant may be seen through the chart as under:-

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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.
28-02-2017	48,450.00	13-04-2019	48,450.00	10,344.33
20-05-2017	51,000.00	14-02-2020	51,000.00	13,990.92
28-02-2017	2,550.00	27-02-2020	2,550.00	767.12
TOTAL	1,02,000.00		1,02,000.00	25,102.37

On calculation, the simple interest @ 10.05% per annum on Rs.1,02,000/- has come to Rs.25,102.37/-. Accordingly, the Respondents have to refund the remaining principal amount Rs.2,550/- along with accrued simple interest @ 10.05% till today Rs.25,102/- to the complainant. Hence, Point No.(1) is decided in positive in favour of the complainant and against the Respondents.

Point No.(2):

5. The complainant has also claimed compensation against the Respondent for his mental and physical harassment. As per Section 72 of the Act, 2016 the Respondents are benefitted by using the amount of Rs.1,02,000/- paid by the complainant in their business without giving delivery of possession of the flats to the complainant. Now the complainant may not get flats of same area in the same locality at the same rate, which were available to him in the year 2017. However, the complainant

has cancelled booking of flats on 08/09-08-2018 on the ground of some family and financial problem and has added the reason in addition to delay in start of the project. So, it can be very well said that the complainant has not cancelled the booking of the flats only due to delay in completion of the project and delivery of the flats, rather he has cancelled the booking due to his family and financial problem. Hence, the complainant is also proportionately responsible for the cancellation of booking like the Respondents. Accordingly, the complainant cannot be compensated much amount, which he was expecting for his mental and physical harassment, as he is also sharer in responsibility for cancellation of booking of the flats. Though the present rate of flat has not come on record, but naturally the rate of flat would have been gone high. The complainant has paid only meagre amount Rs.1,02,000/- out of total consideration of Rs.20,16,000/- for two flats. At the same time, the complainant is also responsible for the said cancellation. So, I think, Rs.5,000/-, which is about 5% of the principal amount Rs.1,02,000/- paid by the complainant to the Respondents may be appropriate amount for compensation to the complainant for his physical and mental harassment. Accordingly, Point No.(2) is decided in positive in favour of the complainant and against the Respondents.

Point No.(3):

6. The complainant has visited several times to the Respondents office, met with them and their staffs and requested for refund of their paid principal amount, whereon, the Respondents and their staffs did not give more attention towards the requests of the complainant, 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 them and their staffs and also for filing the present complaint case in RERA, Bihar, preparation of documents, payment of Court Fee etc. Though the complainant have not brought on record the actual expenditure incurred by him for this purpose, but I think, in all the process the complainant would not have incurred more than Rs.2,000/-, which must be paid by the Respondents. Accordingly, Point No.(3) 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.2,000/- (Rupees two thousand only) against the Respondents. The Respondents are directed to refund the remaining principal amount Rs.2,550/- (Rupees two thousand five hundred fifty only) along with accrued simple interest Rs.25,102/- (Rupees twenty five thousand one hundred two only) till today @ 10.05% per

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annum on principal amount since the respective date of payment by the complainant to the Respondents till refund of particular amount. The Respondents are further directed to pay simple interest @ 10.05% on remaining principal amount Rs.2,550/- (Rupees two thousand five hundred fifty only) since tomorrow till refund of said amount. The Respondents are further directed to pay Rs.5,000/- (Rupees five thousand only) as compensation to the complainant for his mental and physical harassment. The Respondents are 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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