

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

**RERA/CC/388/2019
RERA/AO/85/2019**

Sri Akhilesh Kumar Maury,
s/o Sri Subh Narayan Prasad, r/o
Village & Post-Yadavpur, Harsidhi,
District-East Champaran (Bihar), PIN- ... Complainant
845422.

Versus

1. M/s Agrani Homes Real Marketing Pvt. Ltd., C/o Alok Kumar, House No.15, Patliputra Colony, Patna-800013.
2. Sri Alok Kumar, Director, House No.15, Patliputra Colony, Patna-800013.
3. Sri Rana Ranvir Singh, s/o Sri Ram Chandra Singh, Authorised Signatory and Director, r/o Village-Jalpura (Tapa), P.S.-Chandi, District-Bhojpur (Bihar) ... Respondents

Present:

**Sri Ved Prakash
Adjudicating Officer**

Appearance:

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

ORDER

28-02-2020

This complaint petition is filed by the complainant,
Sri Akhilesh Kumar Maury against the Respondent No.1,
M/s Agrani Homes Real Marketing Pvt. Ltd. through its

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Director, Respondent No.2, Sri Alok Kumar and Authorised Signatory-cum-Director, Respondent No.3, Sri Rana Ranvir Singh 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.14.00 lacs along with accrued interest @ 18% per annum and compensation, consequent to non-delivery of flat allotted to him.

2. In nutshell, the case of the complainant is that in the year 2016, he approached to the Respondents for purchase of a flat and after talk, he settled a flat of the Respondents' Company through its Directors. The complainant has booked on 31-08-2016 a flat no.201 in Block-F having super built up area 1300 sq.ft. in project "Agrani P.G. Town" on consideration of Rs.14.00 lacs excluding Service Tax Rs.63,000/- in Village-Sarari, Danapur with the Respondents. Thereafter, a Memorandum of Understanding (M.O.U.) was executed between the complainant, Sri Akhilesh Kumar Maury on one side and M/s Agrani Homes Real Marketing Pvt. Ltd. through its Director-cum-Authorised Signatory, Sri Rana Ranvir Singh on other side with respect to the above flat. It was agreed between both the parties that the Respondents shall complete the flat in all respect within a period of 48 months with grace period of 12 months, after approval of

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Map through the competent authority concerned, provided the time for completion shall be deemed to have been extended in event of non-availability of building materials or delay due to Government Policies affecting the industry or due to Force Majeure. The complainant has paid total consideration Rs.14.00 lacs to the Respondents. The complainant tried to know the status of the project after a brief period of 5-6 months, but he was told new time limit for start of the project and it was stated that the delay in construction was due to delay in approval of the project by the concerned authority. It was also stated that the project will be completed before completion of 4 years from the date of Agreement. But, actually no work started. It is further case that when the complainant visited RERA, Bihar Website, it was found that the Respondents have sought registration in RERA, Bihar through Application ID No.RERA-AP2811201700051-5 for only 4 Blocks-A, B C and D and there was nothing mentioned about Block-F, wherein he has booked his flat and executed Agreement. When he enquired from the Respondents to know about submission of application for registration in RERA, Bihar, it was answered by the Respondents that he should not

worry about it and the same will be completed in time. Thereafter, on 03-05-2019 he enquired from the Respondents about the status of the project, but he got no satisfactory reply from them. Hence, the complainant has filed this case against the Respondents with prayer for the above reliefs.

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3. On appearance, the Respondents have filed reply pleading *inter-alia* that they are ready to refund the principal amount of the complainant in 2 or 3 instalments and presently they have refunded Rs.4.50 lacs to the complainant and ready to refund the remaining amount at the earliest. So, they may be provided 4 months time for refund of the amount to the complainant and in light of above assurances, the complaint petition may be disposed of.
4. On basis of the pleadings 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 his principal amount Rs.14.00 lacs along with accrued interest @ 18% per annum thereon against the Respondents?
 - (2) Whether the complainant is entitled for compensation for his physical and mental harassment against the Respondents?

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

Point No.1:

5. Admittedly, the complainant has booked flat no.201 having super built up area 1300 sq.ft. in Block-F in project "Agrani P.G. Town" situated at Sarari, Danapur of the Respondents with one reserve car parking space on consideration of Rs.14.00 lacs plus extra Service Tax Rs.63,000/- on 31-08-2016. Later on, both the parties have executed M.O.U. with respect to the above flat and thereafter the complainant has paid total Rs.14.00 lacs as consideration and got money receipts dated 05-09-2016 for payment of Rs.8.00 lacs and receipt no.1679 dated 09-11-2016 for Rs.6.00 lacs from the Respondents. It was agreed between both the parties that the flat will be completed within a period of 48 months with grace period of 12 months, after approval of Map from the concerned authority, provided the time for completion shall be deemed to have been extended in the event of non-availability of building materials or delay due to Government Policies affecting the industry or due to Force Majeure. If the Respondents are unable to give possession of the said flat to the buyer for any reasonable cause, the buyer may not be entitled to any damage whatsoever, but shall be entitled to receive back the entire money paid by the Vendee to

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the Vendor along with simple interest. The Respondents could not brought on record the date of approval of the Map of the project "Agrani P.G. Town". However, they have applied for registration of their project in RERA, Bihar through Application No.RERA AP 2811201700051-5, but there was certain defects found by the RERA, Bihar authority and a letter No.RERA/PRO.REG-403/2018-533 dated 27-09-2018 was issued to the Respondents to remove these defects within 15 days, but up till now the Respondents have not removed these defects. Hence, it will be presumed that the Respondents are purely reluctant in the progress of the project, so from any corner they are unable to complete and deliver possession of the concerned flat to the complainant as well as other consumers within time. It is also to be added that there is no date mentioned in the M.O.U. executed between the parties, but the booking was done by the complainant on 31-08-2016 and it is presumed that it is the date of approval of Map and in that case the project should have been completed till 31-08-2021, but as it appears from the record that the project has to start as yet. Hence, it is important to complete the project as assured to the complainant by the Respondents. Accordingly, the complainant is right in his decision to get cancelled the booking of the flat and demand for refund of consideration

amount Rs.14.00 lacs paid by him to the Respondents, without any delay and deduction. It also appears that the Respondents have admitted in their reply that up till now they have refunded Rs.4.50 lacs to the complainant, but details of the same is not brought on the record from either side. However, it is established from record that the complainant is entitled for refund of his principal amount Rs.14.00 lacs at the earliest.

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6. The complainant has claimed compound interest @ 18% per annum on the total paid principal amount Rs.14.00 lacs, but it appears from the record that the Respondents have not only applied in RERA, Bihar for registration, but also making efforts to start the project in hand as well as other projects in Patna and other parts of Bihar. So, levying of compound interest will hamper their business and will also adversely affect the interest of other consumers. So, I think, instead of compound interest levying of simple interest on the Respondents on principal amount of the complainant will justify the end. I further think that 18% is much higher interest, which has to be justified in light of Rules 17 and 18 of Bihar Real Estate (Regulation and Development) Rules, 2017, which says that 2% above the M.C.L.R. of S.B.I. has to be paid to the allottee for loans for more than 2 years. Presently the payment of Rs.4.5 lacs has been made and

pending for more than 4 years of refund of remaining amount, so the present M.C.L.R. 8.15% of S.B.I., will apply in this case and if 2% is added, it will come 10.15%. Hence, the Respondents have to pay simple interest @ 10.15% on the total principal amount Rs.14.00 lacs. Accordingly, I come to the conclusion that the Respondents have to pay simple interest @ 10.15% on principal amount Rs.14.00 lacs paid to the Respondents since the respective date(s) of payment till date of full refund of the said amount. Hence, point No.1 is decided in positive in favour of the complainant and against the Respondents.

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Point No.(2):

7. The complainant has also claimed compensation against the Respondents for his mental and physical harassment. As per Section 72 of the Act, 2016, Respondents are being benefited by using the amount Rs.14.00 lacs paid by the complainant in their business without giving delivery of possession of the flat to him. Now the complainant may not get flat of same area in the same locality at the same rate, which was available to him in the year 2016. The present rate of flat of same area in the same locality has not come on record from either side. However, naturally the price of the flat would have gone very high in comparison to the rate available in the year 2016. The complainant has paid the total

consideration Rs.14.00 lacs to the Respondents. The Respondents are still running their business of building construction. In the above facts and circumstances, I think, a lump sum amount of Rs.2.50 lacs, which is about 17.86% of the advanced principal amount Rs,14.00 lacs, will be appropriate amount to be paid by the Respondents to the complainant for his mental and physical harassment. Accordingly, Point No.(2) is decided in positive in favour of the complainant and against the Respondents.

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Point No.(3):

8. The complainant has visited several times to the Respondents office, met with them and their staffs and requested for refund of his paid principal amount, whereon, the Respondents and their staffs did not give any attention towards the repeated requests of the complainant, which compelled the complainant to file this case. The complainant would have naturally made expenses in travelling to the office of the Respondents to meet them and their staffs and have also incurred expenses for filing the present complaint case in RERA, Bihar, preparation of documents, Court Fee etc. I think, in all the process the complainant would not have incurred more than Rs.25,000/-, 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.25,000/- (Rupees twenty five thousand only) against the Respondents. The Respondents are directed to refund the remaining booking/advanced principal amount out of Rs.14.00 lacs along with simple interest @ 10.15% per annum on the principal amount since the respective date of payment till full refund of the particular amount. The Respondents are further directed to pay Rs.2.50 lacs (Rupees two lacs 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 get enforced the order through process of the Court.

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Sd/-
(Ved Prakash)
Adjudicating Officer
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