

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

**RERA/CC/300/2019
RERA/AO/141/2019**

Sri Alok Kumar, resident of c/o
Sri Vijay Kumar Singh, Baldeo
Narayan Singh Smrity Bhawan, Near
Deepak Choudhary Lodge, New
Colony, Choudhary Tola, Mahendru,
District-Patna, PIN-800006 ... Complainant

Versus

1. M/s DPM Infrastructure &
Housing Pvt. Ltd.
2. Mr. Pankaj Kumar Singh,
3. Smt. Madhu Kumari,
Director, Indu Shree
Apartment, Sur Sudha Lane,
Boring Canal Road (East), Opp-
Singh Bajaj, District-Patna, PIN-
800001. ... Respondents

Present:

**Sri Ved Prakash
Adjudicating Officer**

Appearance:

For Complainant In person

For Respondents Mr. Mani Shankar Kumar, Advocate

ORDER

31-01-2020

This complaint petition is filed by the complainant, Sri Alok Kumar against the Respondent No.1, M/s DPM Infrastructure & Housing Pvt. Ltd. through its Directors, Respondent No.2, Mr. Pankaj Kumar Singh and

Respondent No.3, Smt. Madhu Kumariu/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.2,34,000/- along with accrued interest and compensation

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2. In nutshell, the case of the complainant is that the complainant, Sri Alok Kumar had booked a 2 BHK flat no.406 on 13-05-2013 in project "Shivdhari Enclave" of the Respondents' company, DPM Infrastructure & Housing Pvt. Ltd. and paid Rs.2,34,000/- through two cheques, in which one was bearing cheque no.410804 dated 13-05-2013 for Rs.50,000/- of SBI, Boring Road, Patna and the other cheque no.410807 dated 21-05-2013 for Rs.1,84,000/- of SBI, Boring Road and he got receipt no.096 dated 16-05-2013 and no.085 dated 21-05-2013 from the Respondents. The Respondents have assured to hand over the flat within 4 years, but there is no progress as yet, Hence, he demanded refund of his principal amount, whereon the Respondent No.2, Mr. Pankaj Kumar Singh has handed over a cheque bearing no.000160 dated 19-02-2019 of Rs.2,34,000/-, but the cheque dishonoured twice due to insufficient fund in the account of the Respondents. Now the Respondents do not make positive response with the complainant to answer about the refund.

Hence, being bound he has filed this complaint petition with the above reliefs against the Respondents.

3. After appearance, the Respondents have admitted in their reply that the complainant has paid Rs.2,34,000/- as booking amount in respect of flat no.406 in project "Shivdhari Enclave" of the Respondents' company. It is further case that the building will be completed within 4 years from the approval of the Map by the competent authority. The Respondents have not fixed any specific date to complete the project. The complainant has shown his inability to purchase the flat. Hence, the Respondents shall return the booking amount after deduction of 2% cancellation charge. However, the Respondents are ready to hand over the said flat in project "Shivdhari Enclave". Hence, in light of above statement, this 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 booking amount Rs.2,34,000/- along with accrued interest against the Respondents?
- (2) Whether the Respondents are entitled to deduct 2% as cancellation charge from the whole booking amount Rs.2,34,000/- of complainant?

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

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

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Points No.1 & 2:

5. Both of these points being inter-related are taken together for discussion. Admittedly, the complainant has booked flat no.406 in project "Shivdhari Enclave" of the Respondents' company, DPM Infrastructure & Housing Pvt. Ltd. and he had paid Rs.2,34,000/- through two aforementioned cheque no.410804 dated 13-05-2013 for Rs.50,000/- and the other cheque no.410807 dated 21-05-2013 for Rs.1,84,000/- both of SBI, Boring Road, Patna to the Respondents, which also find support from photocopies of the booking receipt No.096 dated 16-05-2013 and No.085 dated 21-05-2013 issued by authorised signatory of Respondents. The complainant has filed photocopies of the cheque issued by the Respondent No.2, Sri Pankaj Kumar Singh in the name of complainant, Sri Alok Kumar, which dishonoured twice, due to insufficient fund in the account of the above Respondents, which shows that previously the Respondent was ready to refund simply the principal amount Rs.2,34,000/-, but after filing of the present complaint case in the Court, the Respondents are adamant to refund the principal amount after deduction of 2% as

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cancellation charge. Admittedly, there is no Agreement for Sale executed between the parties, which might have decided the terms and conditions of delivery of the completed flat by the Respondents to the complainant. Though the complainant has booked his flat in the year 2013, when the Act, 2016 was not effective, but the project could not be completed within a reasonable time of 4 years and on enforcement of the Act, 2016 on 01-05-2017, this project was continued, hence the Respondents should have taken RERA, Bihar Registration on or after 01-05-2017, but they have done nothing in this respect. Section 3 of the Act, 2016 says that the Promoter shall not advertise, market, book, sell or offer for sale or invite persons to purchase any plot, flat, building, apartment in planning area, without RERA registration. But, in the instant case, the Respondents have taken advance money for sale of the flat to the complainant without obtaining RERA registration. So, the Respondents have violated the provisions of the Act, 2016 by not taking Bihar RERA Registration at appropriate time. It is also pertinent to note that the Respondents should have provided sanctioned plan, lay-out plan and specifications approved by the competent authority at the time of booking of the flat in favour of the complainant, but they have not done so. As such, they have violated the provisions of Section 11(3) of the Act, 2016. The Respondents

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should have also specified the date of delivery of possession of the flat as per Section 13(2) of the Act, 2016. They should have also disclosed the information to the complainant about the schedule of the completion of the project. But they did nothing, so also they have violated the provisions of Section 19 of the Act, 2016. The Respondents have applied for registration before RERA, Bihar through application ID No.RERAP295201800434-1 and altogether 4 defects were found in their application and they were informed on 27-09-2018 through letter No.RERA/PRO.REG-344/2018/531, but till now they have failed to rectify these defects. The complainant has filed recent photographs of the site of project "Shivdhari Enclave" whereon there is no progress and simply some piling work is done by the Respondents. It shows that still there is no work done by the Respondents on site of the project. In this way, neither there is RERA registration nor they have furnished Plan, Map etc. to the complainant nor there is any Agreement for Sale nor they have disclosed the stage of the flat to the complainant nor the time of delivery of the possession. So, on what basis the Respondents are willing to deduct 2% cancellation charge is unknown. Rather, in my mind, it is the adamant and selfish behaviour of the Respondents that they will not refund the whole principal amount, whatever the complainant may do

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against them. It is also to be noted that in the above circumstances, the Respondents have also done criminal act by issuing cheque towards refund of his principal amount knowing that there is insufficient fund in their account and the cheque issued is bound to bounce, so if the complainant would have been advised, he might have lodged criminal case against the Respondents u/s 138 of Negotiable Instrument Act, 1881. It is also to be added that if there would have been progress in the works of the project and the complainant would have decided to cancel booking of the said flat, the Respondents would have right to deduct 2% as cancellation charge or deduct whatever might have been fixed between the parties in Agreement for Sale. But, here this is not the case of the Respondents, rather they themselves have failed to do their responsibilities of up-keeping the works in desired phase and handing over possession of the completed flat to the complainant. In this way, I come to the conclusion that the complainant is entitled for refund of his principal amount Rs.2,34,000/- along with accrued interest thereon. But, the Respondents are not at all entitled to deduct cancellation charge @ 2%. The Respondents are constructing the project "Shivdhari Enclave" as well as other projects in Patna and also in other districts of Bihar, so levying of compound interest on principal amount may cause financial burden on the

Respondents and it will also adversely affect the interest of other buyers. So, instead of levying compound interest on the principal amount of the complainant, simple interest may be appropriate to be levied for calculating interest on the above principal amount of the complainant.

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6. As per Rule 17 and 18 of Bihar Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as the "Rules, 2017") the Respondents have to pay 2% above the MCLR of SBI. Now MCLR of SBI is about 8.20% for 3 years or more and if 2% is added, it will come 10.20%.

The date of payment of principal amount and refund may be understood through a chart as under:-

Date of Payment of Principal Amount	Principal Amount Rs.	Date of Refund	Amount of Refund Rs.	Interest Rs.
16-05-2013	50,000.00	31-01-2020	50,000.00	34,209.55
21-05-2013	1,84,000.00	31-01-2020	1,84,000.00	1,25,634.20
TOTAL	2,34,000.00		2,34,000.00	1,59,843.75

On calculation @ 10.20%, the accrued simple interest will come Rs.1,59,843.75 as on today. So, the Respondents have to refund booking amount Rs.2,34,000/- along with accrued simple interest Rs.1,59,844.00 to the complainant. Accordingly, Point No.1 is decided in positive in favour of the complainant and against the Respondents and Point No.2 is decided in negative against the Respondents and in favour of the complainant.

Point No.3:

7. 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.2,34,000/- paid by the complainant till it 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 his allotted flat, as he cannot wait for indefinite period. The complainant will not get another flat in the same locality at the same rate, which was available to him at the time of booking in the year 2013. The present rate of flat in the said locality has not come on record, but naturally the rate of flats would have gone very high in comparison to the rate available in the year 2013. Though the Respondent is running the project in the name of "Shivdhari Enclave", but there is very slow progress. So, taking all situations in mind and the amount paid by the complainant, I think, Rs.25,000/- will be the appropriate amount to be paid by the Respondent to the complainant as compensation for his mental and physical harassment. Accordingly, Point No.3 is decided in positive in favour of the complainant and against the Respondent.

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Point No.4:

8. 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. In think, the complainant would not have incurred more than Rs.15,000/- 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.15,000/- as litigation cost against the Respondent. Hence, Point No.4 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.15,000/- (Rupees fifteen thousand only) against the Respondents. The Respondents are directed to refund the principal amount Rs.2,34,000/- Rupees two lacs and thirty four thousand only) along with accrued simple interest **Rs.1,59,844.00** (Rupees one lac fifty nine thousand eight hundred and forty four only) @ 10.20% on said amount to the complainant. The

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Respondents are further directed to pay simple interest @ 10.20% on remaining principal amount since tomorrow till actual payment to the complainant. They are further directed to pay Rs.25,000/- (Rupees twenty five thousand only) as compensation to 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.

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Sd/-
(Ved Prakash)
Adjudicating Officer
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