



**REAL ESTATE REGULATORY AUTHORITY (RERA)**  
**IN THE COURT OF ADJUDICATING OFFICER**  
4<sup>TH</sup> & 6<sup>TH</sup> FLOOR, BIHAR STATE BUILDING CONSTRUCTION CORPORATION CAMPUS  
HOSPITAL ROAD, SHASTRI NAGAR  
PATNA-800023

**RERA/CC/1341/2020**

**RERA/AO/389/2020**

Smt. Leela Singh, W/o Sri Birendra Prasad Singh,  
R/o A-I, Snehi Path, West Patel Nagar, P.S.-L.B.S.  
Nagar, Patna-800023.

... Complainant

Versus

1. M/s Kazari Infratech Pvt. Ltd.

Through it's Director,

2. Sri Satish Kumar, Director, S/o Sri Ganesh  
Roy.

- Address of Redspodents No.1 & 2:  
Damodar Nagar, Sector-A, Adalpur,  
P.S.-Hajipur Sadar District-Vaishali, Bihar-  
844101.

... Respondents

**Present:**

**Sri Ved Prakash**  
**Adjudicating Officer**

Appearance:

For Complainant

Sri Atul Kumar Pandey, Advocate

For Respondents

1. Sri Sharad Shekhar, Advocate

2. Sri Satish Kumar, Director

**ORDER**

22-06-2021 This complaint petition is filed by the complainant, Smt. Leela Singh against the Respondent No.1, M/s Kazari Infratech Pvt. Ltd. through it's Director, Respondent No.2, Sri Satish Kumar u/s 31 read with Section-71 of Real Estate (Regulation and Development) Act, 2016

(hereinafter referred as the “Act, 2016”) for refund of her principal amount Rs.7,98,000/- along with interest thereon and as per terms and conditions of the Agreement on buy back of Plot No.C-482 of the project “Kazari Greens”, the Respondents must pay an additional amount @ 18% yearly on basic sale price and actual external development charge paid by her to the Respondents and compensation of Rs.6,25,560/- for her economical, physical and mental harassment with litigation cost, consequent to non-delivery of plot allotted to her.

2. In nutshell, the case of the complainant is that the complainant, Smt. Leela Singh has purchased a plot No.C-482 having area of 1200 sq.ft. in the project “Kazari Greens” situated at Mauza-Murthan, P.S.-Sonepur, Sub-Registry and Sub-Division-Sonepur, Sadar Registry and District-Saran (Chhapra), Survey Plot No.1284, Khata No.35, Thana No.49, Anchal-Sonepur of the Respondents in the year 2016. Further case is that as per Agreement, the Respondents were liable to hand over possession of the plot within a period of 36 months from the date of registration with grace period of 6 months. The Respondents are liable to pay compensation @ Rs.5/- per sq.ft. per month of the area of the plot for the period of delay. However, the Respondents have agreed to buy back the plot after 3 years from the date of registration and mutation paying an additional amount @ 18% yearly of basic sale price and actual external development charge paid to them. Further case is that at present there is no development on the site of the project since purchase of the plot and she has also not received any allotment notice/letter till

date and when she tried to communicate to Respondent No.2, Sri Satish Kumar with regard to sell back the plot to them, the conversation was always delayed for some time by him and later on denied to buy back the land by them. She has further stated that she has become fed up with the attitude of the Respondents, so she has filed this complaint case with the above reliefs against the Respondents.

3. On appearances, the Respondents have filed reply pleading *inter-alia* that they have started the project “Kazari Greens” registered in RERA, Bihar. Thereafter, the complainant has booked a plot no.C-482 measuring 1200 sq.ft. in the above mentioned project situated at Mauza-Murthan, P.S.-Sonepur, Sub-Registry and Sub-Division-Sonepur, Sadar Registry and District-Saran (Chhapra), Survey Plot No.1284, Khata No.35, Thana No.49, Anchal-Sonepur on payment of total consideration Rs.7,98,000/-. Further case is that the work of the project “Kazari Greens” was initiated, but there was an advent of flood in that area engulfing and submerging the land area under it’s wrath. When where of flood quenched, Covid-19 pandemic spread in it’s foot, which had simply stalled the project work. Due to delay caused in completing the project “Kazari Greens”, the complainant had asked the Respondents to buy back the land, as the complainant wanted to cancel the registration of Absolute Sale Deed, which was executed by the Respondents in her favour. Further case is that the Respondents have agreed upon the complainant’s request and have paid Rs.4.00 lacs and they have also admitted to buy back the aforesaid plot from the complainant by payment of the principal amount along with reasonable

raising of amount, as the delay caused at the time of re-registration of the plot under the Respondents' title. Hence, in the above facts and circumstances, the instant case is fit to be dismissed.

4. On basis of the pleadings of the parties and submissions of the complainant, her husband and Director, Respondent No.2, Sri Satish Kumar as well as learned layers of both the parties, the following points are formulated to adjudicate the case:-

- (i) Whether the complainant is entitled for refund of her principal amount Rs.7,98,000/- along with accrued interest thereon against the Respondents?
- (ii) Whether on buy back of the plot No.C-482 of the project "Kazari Greens" by the Respondents from the complainant, she is entitled for additional amount @ 18% on basic sale price and actual external development charge paid by her to the Respondents?
- (iii) Whether the complainant is entitled for compensation of Rs.6,25,560/- for her economical, physical and mental harassment against the Respondents?
- (iv) Whether the complainant is entitled for litigation cost against the Respondents?

Pointa No.(i) and (ii):

5. Admittedly, the complainant has booked on 06-02-2016 plot No.C-482 measuring 1200 sq.ft. @ Rs.700/- per sq.ft. on total cost of

Rs.8,40,000/- in the project "Kazari Greens" of the Respondents. Later on 13-05-2016 the Respondent No.1, M/s Kazari Infratech Pvt. Ltd. through it's Director, Respondent No.2, Sri Satish Kumar executed registered absolute Sale Deed No.2171 in favour of the complainant, Smt. Leela Singh with respect to the Plot No.C-482 area 1200 sq.ft. in their project "Kazari Greens" situated at Mauza-Murthan, P.S.-Sonepur, Sub-Registry and Sub-Division-Sonepur, Sadar Registry and District-Saran (Chhapra), Bihar, Survey Plot No.1284, Khata No.35, Thana No.49, Anchal-Sonepur on price of Rs.1,21,000/-. The complainant has filed photocopies of Agreement dated 06-02-2016 and absolute Sale Deed No.2171 dated 13-05-2016, which support her case. The complainant has further filed photocopies of money receipts no.569 dated 04-02-2016 worth Rs.2,10,000/- paid through cheque to the Respondents, money receipt no.866 dated 13-04-2016 worth Rs.5.00 lacs paid in cash to the Respondents, money receipt no.945 dated 25-04-2016 worth Rs.88,000/- paid through cash to the Respondents, which were issued by the authorised signatory of the Respondents in favour of the complainant. Further, the Respondents in their reply have also admitted payment of Rs.7,98,000/- by the complainant. Hence, it is established that the complainant has paid principal amount Rs.7,98,000/- to the Respondents out of total consideration Rs.8,40,000/-.

6. The Respondents have promised in clause-7 of the Sale Deed that they shall deliver possession of the plot to the purchaser/complainant within 36 months from the date of execution of Sale Deed and after providing necessary infrastructure especially road, sewer and water in the

township by the company, but subject to timely payment by the purchaser towards the basic sale price and other charges, if any, and Force Majeure conditions or any Government/Regulatory Authority's action, inaction or omission and reasons beyond the control of the company. However, the Respondents shall be entitled for compensation-free grace period of 6 months in case the development is not completed within the stipulated period mentioned above. Further, if the company fails to give possession of the said plot within 36 months plus grace period of 6 months from the date of execution of this Deed and after providing all necessary infrastructure in the township by the company or for any reasons other than the reasons stated above, then the company shall be liable to pay the purchaser compensation @ Rs.5/- per sq.ft. of the plot area per month for the entire period of such delay. The adjustment of compensation shall be done at the time of conveying/delivery of the plot.

7. The Sale Deed dated 13-05-2016 was executed by the Respondents in favour of the complainant. So, the Plot No.C-482 of the project should have been delivered to the complainant within 42 months including grace period, completed in all respect, from the date of registration, which has ended on 13-11-2019. It is correct that the project "Kazari Greens" has been registered with RERA, Bihar bearing Registration No.BRERA P 01058-1/756/R-811/2019 dated 31-10-2019 for a validity period of 4 years, 2 months commencing from 31-10-2019 and ending on 31-12-2023. But it is also correct that the Respondents have failed to deliver possession of the plot within the stipulated period. The

Respondents have stated in their reply that when the work started in the project, then that area was engulfed and submerged with flood water. Further when whole of the flood quenched, Covid-19 pandemic spread on it's foot, which had stopped the land development work. The complainant could not deny the submissions of the Respondents on this issue raised by them in their defence for haltage of the project development. It shows that the Respondents have correctly submitted that the area of the project was flooded with water and thereafter, Covid-19 pandemic spread, so the work could not be proceeded. From the above material facts, it is clear that the Respondents will take time till December, 2023 to complete the project and at present they are not in position to hand over possession of the Plot No.C-482 to the complainant completed in all respect. The complainant cannot be asked to wait indefinite period for delivery of possession of her plot, as there may be requirement of plot for construction of residential building within her suitable period, which also finds support from the ruling of Hon'ble Supreme Court of India passed on 25-03-2019 in Civil Appeal No.3182/2019 Kolkata West International City Pvt. Ltd. Vs. Devashish Rudra, wherein the Hon'ble Court has held that:-

*“it would be manifestly unreasonable to construe the contract between the parties as requiring the buyer to wait indefinitely for possession”.*

The complainant has waited for more than 1 year and 7 months after the stipulated period 13-11-2019, so a reasonable time was provided by her to the Respondents to complete the project and hand over her allotted

plot, but the Respondents are unable to complete the project as yet. So, the claim of the complainant for cancellation of her allotment of plot and demand for refund of her principal amount appears reasonable, which has also been accepted by the Respondents and consequently they have refunded approx. Rs.4,50,000/- out of total principal amount Rs.7,98,0000/- paid by the complainant to the Respondents.

8. The complainant has claimed that in Agreement the Respondents have assured to buy back the plot after 3 years from the date of registration and mutation and as per Agreement an additional amount @ 18% yearly on the basic price and actual external development charge paid to the company has to be paid to her, which is opposed by the learned lawyer for the Respondents and he submitted that presently neither delivery of plot is being made to the complainant nor she has got mutated the plot in her name and she herself has sought cancellation of allotted plot, so she is not entitled for any benefit of clause-16 of the booking/agreement, but she may be paid some additional amount for her satisfaction.

On going through the Agreement as well as Sale Deed executed between the parties, it appears that the Respondents have agreed to buy-back the plot No.C-482 of the project after 3 years from the date of registration and mutation. Though it is correct that 3 years have passed from the registration of the Sale Deed, but till date the complainant has not got mutated the concerned plot in her name. It is also correct that she has also not got delivery of the plot, so it is quite un-natural for her to claim additional amount @ 18% yearly at basic sale price etc.



However, keeping in mind the reasonableness of the fact, the complainant may be provided a lump sum amount on re-sale to the Respondents to justify the end. Therefore, on re-sale of plot No.C-482 of the project "Kazari Greens" in favour of the Respondents, they have to pay additional amount Rs.40,000/- along with refund of the principal amount and other reliefs to the complainant.

9. The complainant has claimed interest on the paid principal amount Rs.7,98,000/- to the Respondents, whereon the Respondents in their Agreement/Sale Deed have stated that in case of their default to hand over the plot to the complainant, they shall refund the principal amount to her, but they shall not be liable to pay interest on her principal amount. Naturally, the Respondents have retained the respective principal amount of the complainant since February, 2016 till date, so the Respondents have to pay interest on respective principal amounts for the retention period, which also find support from the ruling of Hon'ble Supreme Court of India in Appeal (Civil) 1598/2005 - Alok Shankar Pandey Vs. Union of India and Others passed on 15-02-2007 wherein the Hon'ble Court has held that:

*"it may be mentioned that there is mis-conception about the interest. Interest is not a penalty or punishment at all, but it is normal accretion on capital. For example; if 'A' had to pay 'B' certain amount, say 10 years ago, but he offers that amount to him today, then he has pocketed the interest on the principal amount. Had 'A' paid that amount to 'B' 10 years ago,*

*'B' would have invested that amount somewhere and earned interest thereon, but instead of that 'A' has kept that amount with himself and earned interest on it for this period. Hence, equity demands that 'A' should not only pay back the principal amount, but also the interest thereon to 'B'.*"

The Hon'ble Apex Court in the above ruling has allowed interest @ 12% per annum. Now, I have to see as to how much rate of interest may be allowed to the complainant against the Respondents? The rule 17, 18 of the Bihar Real Estate (Regulation and Development) Rules, 2017 says:

*"the rate of interest payable by the promoter to the allottee or allottee to the promoter, as the case may be, shall be 2% above the P.L.R./M.C.L.R. of State Bank of India (S.B.I.) prevailing on due date of amount and the same has to be paid within 60 days."*

Presently, the MCLR of SBI is 7.30% per annum for a home loan of 3 years or more and if 2% is added, it will come 9.30% per annum. Hence, the Respondents have to refund the remaining principal amount Rs.3,48,000/- or whatever the due amount, to the complainant along with the accrued simple interest @ 9.30% per annum on total principal amount Rs.7,98,000/- since the date of payment of respective amount by the complainant to the Respondents till refund of the said amount by the Respondents to the complainant. Accordingly, Point No.(i) and (ii) are

decided in positive in favour of the complainant and against the Respondents.

Point No.(iii):

10. The complainant has also claimed compensation of Rs.6,25,560/- for her economical, physical and mental harassment against the Respondents. As per clause-7 of the Sale Deed dated 13-05-2016, the Respondents have promised her that if the company will fail to give possession of the plot within 36 months plus aforesaid grace period of 6 months from the date of execution of Sale Deed and after providing infrastructure in the township by the company or for any reason other than the reasons stated above, then the company shall be liable to pay compensation @ Rs.5/- per sq.ft. of the plot area per month for the entire period of such delay. The adjustment of compensation shall be done at the time of conveying/delivery of the plot. In the present case, allotment/delivery of plot has been cancelled on request of the complainant. So, there is no need for adjustment of compensation, but as discussed earlier, delay has occurred in delivery of the possession, but how much delay has occurred, it has to be decided from the fact that the plot should have been delivered till 13-11-2019, but still it has not been delivered to the complainant. The defence of the Respondents is that the plot/project was engulfed with flood water and thereafter Covid-19 spread on its foot, so the work was paralysed and delivery of possession of the plot could not be given to the complainant within the stipulated period. It appears that the reasons assigned by the Respondents for delay in delivery of possession are sound, but some delay has occurred, which

should have been averted. The Respondents should have acted in a positive manner and they should have informed the complainant about the reasons for delay etc. But, they did nothing. So the delay from 13 November, 2019 to March, 2020 has occurred in delivery of possession of the plot by the Respondents to the complainant. In addition to the above, it has been seen that the Respondents have been benefited with the advance principal amount paid by the complainant, as still the said amount is lying with the Respondents and they are using the said amount in their business development. In spite of repeated assurance before the Court, the Respondents have not refunded the total principal amount Rs.7,98,000/- to the complainant. Though it is also fact that till date the complainant has not re-sold the concerned plot No.C-482 to the Respondents, which shows that the complainant has also contributed in haltage of transaction of refund and re-sale between the parties. Now, in the facts and circumstances, it is clear that a plot of same area will not be available to the complainant in the same locality at the same price, which was available to her in the year 2016. Rather, the present price of the plot would have been much higher. The claim of compensation has to be decided in a reasonable manner, keeping in mind the quantum of advance principal amount paid by the complainant to the Respondents, duration of amounts retained by the Respondents as well as proportion of loss to the complainant and benefit to the Respondents. The complainant has paid Rs.7,98,000/- which is about 95% of the total consideration Rs.8,40,000/-. It is also not out of place to mention that the Respondents have refunded principal amount Rs.4,50,000/- to the

complainant during hearing of the present case. In such facts and circumstances, I think, Rs.40,000/-, which is about 12% of the remaining principal amount Rs.3,48,000/- retained by the Respondents may be appropriate amount for compensation to the complainant for her economical, physical and mental harassment against the Respondents. Accordingly, Point No.(iii) is decided in positive in favour of the complainant and against the Respondents.

Point No.(iv):

11. The complainant has visited repeatedly to the office of the Respondents along with her husband and she has contacted to the Respondents and their staffs for refund of her principal amount, but neither the Respondents nor their staffs have given any attention towards her request till filing of this complaint case. Though the complainant has not brought any document on the record as proof of actual expenditure incurred by her in these activities, but I think, the complainant would not have incurred more than Rs.10,000/- for conveyance to the office of the Respondents, A.O. Court in RERA, Bihar, engagement of lawyer, remittance of Court Fee, paper works etc., which must be paid by the Respondents to the complainant. Hence, Point No.(iv) is decided in positive in favour of the complainant and against the Respondents.

Therefore, the complaint case of the complainant, Smt. Leela Singh is allowed on contest with litigation cost of Rs.10,000/- (Rupees ten thousand only) against the Respondents. The Respondents are directed that on execution of Sale Deed of plot No.C-482 of the project "Kazari Greens" by the complainant in their favour, refund the remaining

principal amount Rs.3,48,000/- (Rupees three lacs forty eight thousand only) or whatever may be the due amount, to the complainant along with simple interest @ 9.30% per annum on the total principal amount Rs.7,98,000/- (Rupees seven lacs ninety eight thousand only) since the date of payment of respective amount by the complainant to the Respondents till refund of the said amount by the Respondents to the complainant. The Respondents are further directed that on buy back of the above plot in the project "Kazari Greens" in their favour, pay additional amount Rs.40,000/- (Rupees forty thousand) as compensation to the complainant. The Respondents are further directed to pay Rs.40,000/- (Rupees forty thousand only) to the complainant as compensation for her economical, 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 same through process of the Court.

Sd/-  
(Ved Prakash)  
Adjudicating Officer  
RERA, Bihar, Patna  
22-06-2021