

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

**RERA/CC/124/2018  
RERA/AO/12/2018**

Sri Mayank Chaudhary, C-186, Ground Floor ,  
Vidyalaya Marg, Gate No.4, Ashok Nagar, Ranchi ... Complainant(s)  
(Jharkhand), PIN-834002

Versus

M/s Agrani Homes Pvt. Ltd.,  
Through Mr. Alok Kumar, Director, House  
No.15, Ward No.1 FA, Patliputra Colony,  
Patna-800013.

... Respondent(s)

**Present:**

**Sri Ved Prakash  
Adjudicating Officer**

Appearance:

For Complainant(s)

1. Mr. V.R.P. Singh, Advocate
2. Mr. Mrityunjay Kumar, Advocate

For Respondent(s)

1. Mr. Durga Narayan, Advocate
2. Mr. .Mohit Raj, Advocate
3. Ms. Manisha Singh, Advocate

**ORDER**

29-08-2019

This complaint petition is filed by the complainant, Mayank Chaudhary, u/s 31 read with Section-71 of Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as the "Act, 2016") against the Respondent, M/s Agrani Homes Pvt. Ltd. through its Director, Mr. Alok Kumar to refund principal amount Rs.16,00,000/- along with

accrued interest thereon as well as compensation for his mental and physical harassment.

29-08-2019  
CONTINUED

2. In nutshell, the case of the complainant is that the complainant, Mayank Chaudhary in April, 2014 has booked a flat No.205 having area of 1300 sq.ft. on 2<sup>nd</sup> floor with one reserve car parking space on consideration of Rs.16,00 lacs including Service Tax Rs.47,598/- in the project "Agrani Royal City, Shivala", Patna of the Respondents company Agrani Homes Pvt. Ltd. Later on, an M.O.U. was also executed on 11-04-2014 with respect to the said flat and the complainant has paid Service Tax Service Tax Rs.47,598/- on 29-11-2013 through cheque No.366107. He has paid Rs.6.00 lacs on 01-02-2014 through cheque No.000001 and Rs.8.00 lacs on 01-02-2014 through cheque No.000002 and he has also paid cash Rs.1.00 lac on 24-03-2014 through Money Receipt No.1010. The Respondent has committed to hand over the flat within 3 years with grace period of six months after approval of Map from P.M.C. But, till date construction work has not started. So, on 14-07-2018, the complainant has sought cancellation of allotment of flat, through a letter and demanded refund of total principal amount Rs.16.00 lacs from the Respondent. But, on repeated request for refund of the said amount, the Respondent paid no heed. So, the complainant has filed this complaint petition with the above reliefs.

3. On appearance, the Respondent has filed reply wherein he has denied the allegation of the complainant and has stated that M.O.U. was executed prior to RERA Act, 2016, so the case of the

29-08-2019  
CONTINUED

complainant has to be dealt under general law. But, keeping in mind the aims of the company to provide house at cheaper rate, he admits the jurisdiction of this Court. It is further case that the Respondent has disclosed every circumstances to the complainant before signing the M.O.U. and on agreement with the terms and conditions he has signed thereon. But, on 14-07-2018, he has cancelled booking of the flat. The company has no control over the clearance of fire and approval of Map etc. So some time was taken in such process. However, the Respondent is ready to refund the principal amount as per M.O.U. Hence, the complaint petition of the complainant may be dismissed with cost.

4. On basis of the pleadings of the parties and submissions of the learned lawyers, the following points are formulated for adjudication of this case:-

- (1) Whether as per M.O.U., the complainant is entitled for principal amount along with accrued simple interest of nationalised Bank?
- (2) Whether the complainant is entitled for compensation for his mental and physical harassment?

5. Points No.1 & 2: Both of these points being inter-related are taken together for discussion. Admittedly, M.O.U. executed on 11-04-2014 between both the parties and the complainant has sought cancellation of allotment of flat on 14-07-2018 on ground of

29-08-2019  
CONTINUED

non-commencement of the project. It is also admitted case that the complainant has paid Rs.16.00 lacs to the Respondent as total consideration of the flat No.205 allotted to him. It is further admitted that prior to filing of the complaint case, the Respondent has refunded nothing, but after filing this case, the Respondent has refunded Rs.2.00 lacs on 29-01-2019 out of total consideration Rs.16.00 lacs paid by the complainant. Now, the respondent has to refund remaining principal amount Rs.14.00 lacs along with accrued interest on total principal amount. The Respondent has also to refund Service Tax paid to the Government, which he may adjust in his future projects.

6. Admittedly, in para-5 of M.O.U. it was scribed that if the developer/vendor fails in delivery of possession of said flat to the vendee/complainant for any reasonable cause, the buyer/vendee/complainant will not be entitled for any damage, but he shall be entitled to receive back the entire money paid by him to the vendor along with simple interest (floating rate of any nationalised Bank). Now, about 5 years and 4 months have passed, but the Respondent could not show any reasonable cause as to why the construction of project has not started. So, cancellation of booking for the said flat by the complainant appears reasonable and the Respondent will be responsible for refund of principal amount along with accrued interest on the prevailing MCLR of the SBI to the complainant. As per Rule 17 and 18 of Bihar Real Estate

29-08-2019  
CONTINUED

(Regulation and Development) Rules, 2017, the Respondent has to pay 2% above the MCLR. At present, MCLR of SBI is 8.45% and if 2% is added the rate of interest will come 10.45%. Hence, the Respondent has to pay the accrued interest @ 10.45% on the principal amount to the complainant.

The payment made by the complainant to the Respondent, refund made by the Respondent to the complainant and simple interest @ 10.45% on principal amount may be seen through a chart as under:-

Payment made by the complainant		Refund made by the Respondent		Interest payable by the Respondent Rs.
Date	Amount Rs.	Date	Amount Rs.	
14-12-2013	2,000,000	29-01-2019	2,00,000.00	1,07,100.57
14-12-2013	4,00,000.00	29-08-2019	No	2,38,584.47
24-03-2014	1,000,00.00	29-08-2019	No	56,747.32
12-04-2014	9,00,000.00	29-08-2019	No	4,82,467.91
<b>TOTAL</b>	<b>16,00,000.00</b>	29-08-2019	No	<b>8,84,900.27</b>

Thus, as on today the simple interest on principal amount Rs.16.00 lacs comes to Rs.8,84,900.27 and this amount has to be paid by the Respondent to the complainant along with remaining principal amount Rs.14,00 lacs. Hence, as on today total amount to be paid by the Respondent to the complainant is Rs.22,84,900.27.

29-08-2019  
CONTINUED

7. The complainant has also claimed compensation for his mental and physical harassment. As per Section 72 of the Act, 2016, the Respondent has been benefitted with the amount of Rs.16.00 lacs paid by the complainant and still Rs.14.00 lacs is with the Respondent, which he is using in his business. The complainant has booked the flat in the year 2014, which was to be delivered to him within 3 years and six months. But the Respondent has not started the work of the project as yet, in spite of lapse of more than 5 years. Now the price of flat in the said locality has much increased in comparison to the years 2014. Though the present price of flats in the same locality has not come on the record from either side, but naturally the price would have near about multiplied. The complainant has paid total consideration amount Rs.16.00 lacs to the Respondent and on other hand, the Respondent is running business of other projects and also improving his business. In spite of assurance in the Court, by the learned lawyer of the Respondent, he failed to refund the principal amount, except Rs.2.00 lacs. So being bound, the Court after hearing the parties, kept the case for passing of the final order. Hence, taking all situations in to consideration, and the amount paid by the complainant, I think Rs.4.00 lacs, which is 25% of total consideration will be appropriate amount to be paid by the Respondent to the complainant as compensation for mental and physical harassment.

29-08-2019  
CONTINUED

8. The complainant has visited repeatedly to the office of the Respondent and has consulted him as well as the staffs several times for refund of his principal amount, but neither the Respondent nor his staffs have given any heed to his request till filing of this case. In my opinion, the complainant would not have incurred more than Rs.15,000/- for conveyance to the office of the Respondent, A.O. Court in RERA, Bihar, paper documentation etc., which must be paid by the Respondent to the complainant. Cost of Rs.1,000/- was imposed on the Respondent on 16-04-2019 and 27-05-2019 respectively for non-compliance of orders passed by this Court during proceedings of the case. So this amount will also be added in cost of Rs.15,000/-. Accordingly, I find and hold that the complainant is entitled for litigation cost of Rs.17,000/- from the Respondent.

29-08-2019  
CONTINUED

9. From the above discussions of the facts, documentary evidence and other materials on record, it is apparently clear that the complainant has well established his complaint case against the Respondent and both these points are decided in positive in favour of the complainant and against the Respondent. Accordingly, I find and hold that the complainant is entitled for remaining principal amount Rs.14.00 lacs and accrued simple interest Rs.8,84,900.27 @ 10.45% per annum. The complainant is also entitled for an amount of Rs.4.00 lacs as compensation for mental and physical

harassment along with the litigation cost of Rs.17,000/- against the Respondent.

Therefore, the complaint case of the complainant is allowed on contest with the cost of Rs.17,000/-(seventeen thousand only) against the Respondent. The Respondent is directed to refund remaining principal amount Rs.14.00 lacs to the complainant. The Respondent is further directed to pay accrued interest Rs.8,84,900.27 as on today on total principal amount Rs.16.00 lacs @ 10.45% per annum to the complainant. The Respondent is further directed to pay interest @ 10.45% per annum on remaining amount Rs.14.00 lacs till actual payment. He is further directed to pay Rs.4.00 lacs as compensation to the complainant for his mental and physical harassment. The Respondent is directed to comply the order within 60 (sixty) days, failing which the complainant is entitled to enforce through process of the Court.

Sd/-

(Ved Prakash)  
Adjudicating Officer  
29-08-2019