



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

**4TH & 6TH FLOOR, BIHAR STATE BUILDING CONSTRUCTION CORPORATION CAMPUS
HOSPITAL ROAD, SHASTRI NAGAR
PATNA-800023**

RERA/CC/1803/2020

RERA/AO/629/2020

1. Sri Vikash Kumar Singh, S/o Sri Ram Swaroop Singh, Moh-Gopalganj, Ward No.7, District-Rohtas, Bihar-802160.
2. Sri Sunil Kumar Singh, S/o Late Bindeshwari Prasad Singh, Mohalla-Gopalganj, Ward No.7, District-Rohtas, Bihar-802160

Present Address:

Saudi Iron and Steel Company (Hadeed),
RMFP/CMC/Maintenance, P.O.Box-10053, Jubail
Industrial City-31961, Kingdom of Saudi Arabia.

... Complainant

Versus

1. M/s Agrani Homes Pvt. Ltd., House No.15, Ward No.1FA, Patliputra Colony, District-Patna-800013.

Corporate Office:

Khan Villa, South-West of B.D. Public School, Budha Colony, P.S.-Budha Colony, District-Patna-800001

Through it's Director:

2. Sri Alok Kumar, Director, S/o Sri Padum Singh, R/o Yogipur, Chitragupt Nagar, P.S.-Patrakar Nagar, P.O.-Lohia Nagar, Kankarbagh, Patna-800020.

... Respondents

Present:

**Sri Ved Prakash
Adjudicating Officer**

Appearance:

For Complainant

- Sri Kishore Kunal, Advocate

For Respondents

- Sri Alok Kumar, Director

ORDER

23-06-2021

The original allottee of this complaint case is complainant

No.2, Sri Sunil Kumar Singh, S/o Late Bindeshwari Prasad Singh,

who has written an Authority Letter by authorising the complainant No.1, Sri Vikash Kumar Singh to contest this case and do all necessary actions on his behalf and as he is at present residing abroad, so the complainant No.1, Sri Vikash Kumar Singh on basis of authorisation letter, as per Section 56 of Real Estate (Regulation and Development) Act, 2016, has filed the present complaint case.

2. This complaint case is filed by the complainant No.1, Sri Vikash Kumar Singh and allottee/complainant No.2, Sri Sunil Kumar Singh against the Respondent No.1, M/s Agrani Homes Pvt. Ltd. through it's Director, Respondent No.2, Sri Alok 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 advanced principal amount Rs.12,50,000/- along with accrued interest @ 18% per annum thereon to the complainants and further for compensation of Rs.10.00 lacs for their economical, physical and mental harassment with litigation cost of Rs.1.00 lac, consequent to non-delivery of flat allotted to complainant No.2, Sri Sunil Kumar Singh.

3. In nutshell, the case of the complainants is that the original allottee-cum-Complainant No.2, Sri Sunil Kumar Singh was allured by fancifulness of the sale brochures, specification details, shown lay out and plans garnished with verbal assurances of the Respondent No.2, Sri Alok Kumar. So, after negotiation, both the parties agreed to sell/purchase a 2 BHK flat in Block-L-of the project "Agrani IOB

Nagar”. Thereafter, the allottee/complainant No.2, Sri Sunil Kumar Singh has booked one 2 BHK Flat No.508 having area 1080 sq.ft. in Block-L of the project “Agrani IOB Nagar” situated at Mouza-Sarari, Near Danapur Railway Station, P.O. Khagaul, Patna, for which the Respondents through their Authorised Signatory issued Allotment Letter on 01-08-2017, wherein they specifically mentioned the price of the flat Rs.13.00 lacs plus Rs.2.00 lacs as amenities charges, plus G.S.T. After demand by the Respondents, the complainant no.2 has paid Rs.12,50,000/- on different occasions since 30-06-2017 to 11-08-2017, for which the Respondents have issued money receipts in favour of the allottee/complainant no.2, Sri Sunil Kumar Singh. After receipt of the advance principal amount Rs.12,50,000/-, the Respondents started changing their versions and demanded entire consideration amount Rs.15.00 lacs before delivery of possession of the flat, which was denied by the allottee/complainant no.2. Thereafter, the allottee/complainant No.2 has stopped making payment to the Respondents, as there was no progress in construction on site of the project. On other hand, the Respondents were continuously pressurising him to pay the entire consideration amount and has been delaying the matter without any significant progress towards construction of the project. Thereafter, on 18-08-2017, the allottee/complainant no.2, Sri Sunil Kumar Singh on one side and Respondent No.1, M/s Agrani Homes Pvt. Ltd. through it’s Director, Respondent No.2, Sri Alok Kumar on other side executed a Memorandum of Understanding (M.O.U.) with respect to flat no.508

in Block-L of the above project of the Respondents on consideration of Rs.13.00 lacs plus Rs.2.00 lacs as amenities charges, total Rs.15.00 lacs plus G.S.T.

4. The Respondents have promised in M.O.U. that construction of the building shall be completed within 36 months with grace period of 6 months, after approval of Map from P.M.C., provided that 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 (F.M.). Further case of the complainants is that the stipulated period along with grace period of 6 months has passed, but the Respondents have not been able to hand over possession of the flat, as construction of the building/flat has not started as yet. Previously, the allottee/complainant no.2 had heard about good reputation of the Respondents in the Real Estate market and believing the same, he has booked the flat in the said project of the Respondents. But, thereafter, the reputation of the Respondents downgraded drastically, due to non-completion of various projects and the Respondents are sitting over the money of the allottees/purchasers without making any progress in construction of the project. Now, there is no hope left in the minds of the complainants regarding delivery of possession of the flat to the allottee by the Respondents, as still construction of the project "Agrani IOB. Nagar", Block-L, after lapse of 4 years, has not started. The allottee/complainant no.2 has repeatedly requested to the Respondents either to complete the flat and deliver possession of the

same to him or refund his principal amount, but the Respondents have not given any heed to his request. Rather, used his paid principal amount in their other projects. The complainants being fed up with the behaviour of the Respondents, as per request and authorisation of the allottee/complainant no.2, the complainants have filed the present complaint case against the Respondents with above reliefs.

5. On appearance, the Respondents have filed reply pleading *inter-alia* that they are ready to refund the principal amount of the allottee till September, 2021. Further case is that in alternate they are also ready to adjust the principal amount of the allottee, if purchase of the land is done by him in the land of the Respondents situated in the project “Agrani Prakriti Vihar” at Parmanandpur and in light of their assurances, the case may be disposed of.

6. On basis of the pleadings of the parties and submissions of the learned lawyer for complainants and Director, Respondent No.2, Sri Alok Kumar, the following points are formulated to adjudicate this case:-

- (i) Whether the complainants are entitled for refund of their principal amount Rs.12,50,000/-along with accrued interest @ 18% per annum thereon against the Respondents ?
- (ii) Whether the complainants are entitled for compensation of Rs.10.00 lacs for their

economical, physical and mental harassment
against the Respondents?

(iii) Whether the complainants are entitled for
litigation cost of Rs.1.00 lac against the
Respondents?

Point No.(i):

7. Admittedly, both the parties have negotiated for sale
/purchase of a 2 BHK flat in the project “Agrani IOB Nagar”, Block-L
of the Respondents. Thereafter, the allottee/complainant no.2 booked
a 2 BHK flat no.508 in Block-L of the aforesaid project “Agrani IOB
Nagar” of the Respondents. Later on 01-08-2017 the authorised
signatory of the Respondents issued an allotment letter with respect
to the above flat to the complainant No.2 mentioning the price of the
flat Rs.13.00 lacs plus amenities charges Rs.2.00 lacs total Rs.15.00
lacs, plus G.S.T. Thereafter from 30-06-2017 to 11-08-2017 the
allottee/complainant no.2 has paid Rs.12,50,000/- to the
Respondents, wherein he has paid Rs.3,50,000/- to the Respondents
through NEFT on 30-06-2017, for which the authorised signatory of
the Respondents has issued money receipt no.5964 dated
08-08-2017. Further, on 11-08-2017, the allottee/complainant No.2
has paid Rs.9.00 lacs through RTGS to the Respondents, for which
the authorised signatory of the Respondents has issued money receipt
no.5976 dated 12-08-2017. The complainants have filed photocopies
of Allotment Letter dated 01-08-2017 and above stated money
receipts, which support the allotment of Flat No.508 of the above

project “Agrani IOB Nagar” to the complainant no.2, Sri Sunil Kumar Singh and payment of Rs.12,50,000/- to the Respondents by him. Thereafter, on 18-08-2017 a M.O.U. for Sale/Purchase of a 2 BHK flat No.508 having super built-up area 1080 sq.ft. with one reserve free car parking space in Block-L of the project “Agrani IOB Nagar”, situated at *Mouza-Sarari*, Near Danapur Railway Station, P.S.- Danapur, P.O.-Khagaul, District-Patna of the Respondents was executed between the allottee/complainant No.2, Sri Sunil Kumar Singh on one side and Respondent No.1, M/s Agrani Home Pvt. Ltd., through it’s Director, Respondent No.2, Sri Alok Kumar on other side on consideration of Rs.15.00 lacs plus G.S.T., out of which the payment of principal amount Rs.12,50,000/- including Service Tax is mentioned in the M.O.U. itself. The complainants have filed photocopy of the M.O.U. dated 18-08-2017, which supports the case of the complainants.

8. The Respondents in M.O.U. dated 18-08-2017 have promised that construction of the building shall be completed within 36 months with grace period of 6 months, after approval of Map from P.M.C., provided that time of completion shall be deemed to be extended in the event of non-availability of building materials or delay due to Government Policies affecting the industry and/or delay due to Force Majeure, provided that if the developer/vendor is not able to give possession of the said flat to the buyer/vendee on the above account or any reasonable cause, the buyer/vendee may not be entitled to any damage whatsoever, but shall be entitled to receive back the entire

money paid by him to the developer/vendor. However, in Clause-4 of the M.O.U., the Respondents have assured that if the developer/builder shall not hand over possession of the unit within the stipulated period and buyer/vendee wanted to get his money back, then the developer/builder shall return the payments made by the buyer/vendee or if the buyer/vendee wanted to get the scheduled flat, the developer/vendor shall pay simple interest on the total payment made to the developer/vendor over the delayed period to the buyer/vendee or buyer/vendee shall be at liberty to transfer/adjustment of his said flat with the other flat of the vendor/developers, constructed/under construction/proposed housing project.

The Respondents have not got proper approval of the Map from P.M.C. and they have also not applied for registration of the project in RERA, Bihar. It shows that the Respondents are completely reluctant about their responsibility towards the interest of the complainants. The Respondent in their reply have stated that they are ready to refund the principal amount of the complainant No.2 till September, 2021 and in alternate they are also ready to adjust the principal amount of the complainant No.2, if purchase of the land is done by him in their land situated in the project "Agrani Prakriti Vihar" situated at Parmanandpur. From all these facts, it is clear that the Respondents are unable to complete the project within the required time of the complainants and that is why it is reasonable for the complainants to make request to cancel allotment of flat of

complainant No.2 and demand refund of principal amount, as they cannot be asked to wait indefinite period for delivery of possession of the flat, which also find support from the ruling of the Hon'ble Supreme Court of India in Fortune Infrastructure and Others Vs. Trevor D. Lima and Others (2018)5 SCC 442. Accordingly, the complainants are entitled for refund of their principal amount Rs.12,50,000/- from the Respondents without delay and deduction.

9. The complainants have also claimed interest @ 18% per annum on the paid principal amount Rs.12,50,000/- from the Respondents. The Respondents have retained the principal amount of the complainant No.2 since 30-06-2017 till date. So naturally, the Respondents have to pay the interest on respective principal amount for the retention period, which also find support from the ruling of the Hon'ble Supreme Court of India in Alok Shankar Pandey Vs. Union of India and Others passed on 15-02-2007 in Appeal (Civil) 1598/2005, wherein the Hon'ble Court has held that:

“it may be mentioned that there is misconception 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 on principal amount 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 principal amount Rs.12,50,000/- to the complainants along with

accrued simple interest @ 9.30% per annum thereon since the date of payment of respective amount by the complainant No.2 to the Respondents till the refund of the said amount by the Respondents to the complainants. Accordingly, Point No.(i) is decided in positive in favour of the complainants and against the Respondents.

Point No.(ii):

10. The complainants have also claimed compensation of Rs.10.00 lacs for their economical, physical and mental harassment against the Respondents. As per Section 72 of the Act, 2016, the Respondents have been benefitted with the advance principal amount Rs.12,50,000/- paid by the allottee/complainant No.2 and still the said amount is lying with the Respondents and they are using the same in their business development. The Respondents are avoiding delivery of the flat/refund of the advanced principal amount to the complainant No.2/allottee. Presently, a flat of same area will not be available to the complainants in the same locality at the same price, which was available in the year 2017, rather at present the price of the flat would have been much higher. The complainant No.2/allottee has paid Rs.12,50,000/-, out total consideration Rs.15.00 lacs, which is about 83% of the total consideration. The Respondents are running the present as well as other projects and improving their business. In addition, in spite of repeated assurances in the Court, the Respondents have not refunded the advance principal amount to the

complainants. 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 No.2/allottee to the Respondents, duration of the amount retained by the Respondents as well as proportion of loss to the complainant No.2/allottee and benefit to the Respondents. In such facts and circumstances, I think, Rs.2,13,000/-, which is about 17.00% of the advance principal amount Rs.12,50,000/- paid by the allottee/complainant No.2 to the Respondents, may be appropriate amount of compensation to the complainants for their economical, physical and mental harassment. Accordingly, Point No.(ii) is decided in positive in favour of the complainants and against the Respondents.

Point No.(iii):

11. The complainants have visited repeatedly to the office of Respondents and they have contacted to the Respondents as well as their staffs several times for refund of their advanced principal amount, but neither the Respondents nor their staffs have given any heed to their request till filing of the complaint case in this Court. Though the complainants have not brought any document on record as proof of actual expenditure incurred by them, but I think, the complainants would not have incurred more than Rs.15,000/- for conveyance to the office of the Respondents, A.O. Court in RERA, Bihar, engagement of lawyer, remittance of Court Fee, paper work etc., which must be paid by the Respondents. Accordingly, I find and hold that the complainants are entitled for Rs.15,000/- as litigation cost

against the Respondents. Hence, Point No.(iii) is decided in positive in favour of the complainants and against the Respondents.

Therefore, the complaint case of the complainants, Sri Vikash Kumar Singh and Sri Sunil Kumar Singh 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.12,50,000/- (Rupees twelve lacs fifty thousand only) to the complainants along with accrued simple interest @ 9.30% per annum to the complainants since the date of payment of respective amount by the allottee/complainant No.2 to the Respondents till refund of said amount by the Respondents to the complainants. The Respondents are further directed to pay Rs.2,13,000/- (Rupees two lacs thirteen thousand only) to the complainants as compensation for their economical, physical and mental harassment. The Respondents are further directed to comply the order within 60 (sixty) days, failing which the complainants are entitled to get enforced the order through process of the Court.

Sd/-
(Ved Prakash)
Adjudicating Officer
RERA, Bihar, Patna
23-06-2021