

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

**RERA/CC/538/2019**  
**RERA/AO/133/2019**

Smt. Anamika, w/o Sri Vijay Kumar,  
r/o Village-Tehti, P.O.-Silhourih, P.S.-  
Marhowrah, District-Saran.

**Present address:**

Flat No.103, Manmohan Palace, Akashvani  
Road, P.S-Shastri Nagar, Khajpura, Patna-  
800014.

... Complainant

Versus

1. Sri Bhushan Kumar Singh,  
C/o Sri Bindeshwari Prasad Singh,  
Village- Jalalpur, P.S.- Rupaspur, P.O.-  
Sahay Nagar (Dhanaut), Danapur.

**Present Address:**

Ram Nagari More, Above HDFC Bank ATM,  
Ashiana-Digha Main Road, Ashiana Nagar,  
P.S.-Rajiv Nagar, Patna-800025.

2. M/s Vision Land Pvt. Ltd. through its  
Managing Director, Vision Rupak Mall,  
Rupak Cinema Campus, Bari Path, Patna-  
800004.

... Respondents

**Present:**

**Sri Ved Prakash  
Adjudicating Officer**

**Appearance:**

For Complainant

: Sri Shekhar Singh, Advocate

For Respondents

: Sri Saurabh Bishambhar, Advocate

**ORDER**

28-10-2020

This complaint petition is filed by the complainant,  
Smt. Anamika against the landlord, Respondent No.1,

Sri Bhushan Kumar Singh and Respondent No.2, M/s Vision Land Pvt. Ltd. through its Managing Director, u/s 31 read with Section 71 of Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the “Act, 2016”) for execution and registration of Sale Deed with respect to the concerned flat No.309 in project “Vision Galaxy Apartment” and also alternatively grant compensation as per Section 18 of the Act, 2016 for her economical, mental and physical harassment.

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- 2 In nutshell, case of the complainant is that the complainant, Smt. Anamika is house wife and part-time tutor and her husband is junior telecom officer in B.S.N.L., Khajpura, Patna. The Respondent No.1 is land owner of the “Vision Galaxy Apartment” situated at Jalalpur, Aparna Colony, Rupaspur, Patna. Respondent No.2 is Developer of above Apartment. In September, 2012, the Respondent No.1 approached to the complainant and persuaded her to buy a flat in “Vision Galaxy Apartment” from the share of land owner and upon his persuasion and recommendation of one Indrajeet Kumar Singh, the complainant has become ready to purchase the flat. The Respondent No.1 has shown the Development Agreement and other papers with respect to the Apartment, in office of Respondent No.2. Thereafter, a

registered Agreement for Sale No.26686 on 09-10-2012 with respect to the flat No.309 in “Vision Galaxy Apartment” having super built up area 933 sq.fts. with car parking space and proportionate share in land was executed between the parties on consideration of Rs.18,54,501/-. The complainant paid Rs.1,05,000/- towards consideration as advance and got money receipt from the Respondent No.1. It was agreed in Agreement for Sale that the rest amount will be payable at the time of registry of the flat, which will be done after 3 months of completion of the construction. But, after execution of the Agreement for Sale, the Respondent No.1 started demanding further money. As per term of the Agreement for Sale, the complainant was not obliged to pay any sort of money towards the consideration amount, but due to repeated insistence of the Respondent No.1 and upon assurance given by him for the earliest delivery of the flat, the complainant’s husband somehow managed to pay him Rs.2,65,900/- in cash in the month of January, 2013, for which he was compelled to sell his property at Jaipur. It is further case that the Respondent No.1 kept on convincing the complainant that early payment of the part of consideration

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amount would enable him to complete and hand over the flat to the complainant at the earliest. The complainant and her husband had earlier applied for Home Loan for which the builder company had earlier provided 'No Objection' vide letter dated 12-10-2012 to the AXIS Bank and which was sanctioned from AXIS Bank on 05-09-2012 with the terms and conditions mentioned in the said sanction letter. When the complainant demanded Completion/Occupancy Certificate to fulfil the terms and conditions of the Bank Loan for disbursement of the rest part of the consideration amount, the Respondent No.1 has stated that she should wait for some time, as lot of work was still to be carried out. But, due to non-cooperation of the Respondent No.1, the sanctioned loan could not be disbursed. On further demand of the money by the Respondent No.1 vide letter dated 04-02-2013, he had acknowledged that 20% of the consideration amount was paid till that date and 80% of the amount was due and demanded Rs.12,98,151/- out of rest consideration. Again the complainant paid Rs.81,000/- through D.D.O. No.001936 dated 23-03-2013 of AXIS Bank, which was earned by the complainant through tuition fee.

Thereafter, the loan of the complainant was sanctioned by H.D.F.C. Bank on 23-04-2013 vide file No.607912812/VINI Service Centre, Patna. Again the complainant demanded Completion/Occupancy Certificate from the Respondent, but the Respondent No.1 failed to provide these Certificates and demanded money saying that the same is urgently required for completing the construction of the project. As per frequent demands by the Respondent No.1, the complainant made arrangement from different sources and paid the following amounts in cash towards consideration amount:-

- (i) Rs.2,34,000/- was paid during 24-04-2013 to 31-12-2013.
- (ii) Rs. 2,52,000/- was paid during 01-01-2014 to 15-07-2014.
- (iii) Rs.1,48.000/- was paid during 01-08-2014 to 08-12-2014.
- (iv) Rs.1.54.000/- was paid during 04-01-2015 to 30-06-2015.

3. The complainant's husband has got Personal Loan from Bihar Post & Telegraph Society and Union Bank of India. The husband of the complainant has also withdrawn

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some money from E.P.F. and has surrendered Insurance Policy of L.I.C. In this way, the complainant had already paid a total amount of Rs.12,39,900/- to the Respondent No.1 towards the consideration money of Rs,18,54,501/-. The Respondent No.1 on pretext of installation of modular kitchen has taken Rs.1,90,000/- from the complainant. After payment of aforesaid amount towards the consideration money for flat No.309, the Respondent No.1 did not execute Sale Deed of the aforesaid flat in favour of the complainant. The complainant has come to know that Sale Deeds have been executed in respect of few flats in the said project "Vision Galaxy Apartment" in favour of respective buyers, but Respondents are avoiding to execute Sale Deed of the concerned flat in favour of the complainant. The complainant and her husband repeatedly tried to contact the Respondent No.1 and visited several times at the construction site, but the Respondent No.1 always misbehaved and threatened for dire consequences. The complainant and her husband were badly treated and abused by the Respondent No.1. Hence, she tried on 22-07-2017 to lodge F.I.R., but when the Police come to

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know that the matter is related with land/flat, denied to lodge F.I.R. and advised to lodge complaint in the Court against the Respondent. Later on 24-04-2017, a Legal Notice was served on the Respondent No.1, for execution of Sale Deed within one month from receipt of the Notice. But, instead of execution of Sale Deed, Respondent No.1 replied the Legal Notice on 11-08-2017, wherein he wrongly denied the claim of the complainant. Later on 16-08-2017 a Notice through learned lawyer was sent to the learned lawyer of the Respondents, but every effort became fruitless. It is further case that due to fraudulent act of the Respondent No.1, the complainant has filed complaint case No.3943(C) of 2017, wherein prima-facie case u/s 406 IPC was found against the Respondent No.1 and summon was issued to him by the learned Court. In order to pressurise the complainant, the Respondent No.1 has also a filed a counter complaint case No.3412(C)/2017 before learned C.J,M., Patna against the complainant, her husband and her father Sri Ajit Kumar Singh on wrong allegations. The husband of the complainant is a Government employee and her father is a retired person. Hence, apprehending the fear of facing long

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litigation and unnecessary harassment, the complainant got pressurised and puzzled and having no option, she entered into compromise with Respondent No.1. Thereafter, the Respondent No.1 withdrew the aforesaid complaint case No.3412(C)/2017, which was finally allowed to be withdrawn vide order dated 05-11-2018 by learned Sub. Judge-cum-A.C.J.M., Patna. The Respondent No.1 handed over the amount of Rs.6,78,500/- to the complainant in the manner stated in the Joint Compromise Petition. The Respondent No.1 was *inlarged* on anticipatory bail by the Hon'ble High Court, Patna vide order dated 11-01-2019 in Criminal Miscellaneous No.57911/2018. It is further case that despite there being valid registered Agreement for Sale of flat, in the project, neither she was handed over the flat in question nor any compensation has been paid to her by the Respondents. Now due to escalation of price of property, she is not able to buy other flat for herself and as such, she is residing in a rented flat. The above registered Agreement dated 09-10-2012 is still subsisting and para no.2 of the same provides compensation by the Respondent No.1 to the complainant. As such, being fed up with the behaviour of the



Respondent No.1, she has filed this complaint petition against the Respondents.

4 On appearance, the Respondent No.1 has filed rejoinder pleading *inter-alia* that the entire matter of complaint petition is upheld by *doctrine of resjudicata* whereon the Hon'ble High Court, Patna in Criminal Miscellaneous Case No.57911/2018 has already made following observations:-

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*“It is jointly submitted by the parties and a joint petition has been filed to the effect that the issue has been reconciled between the parties on the term to the effect that the petitioner will return Rs.6,78,500/- to the complainant and that will be treated as total advance amount irrespective of amount of money, which has been claimed in the complaint petition. Out of Rs.6,78,500/-, Rs. 2,78,500/- has already been paid to the complainant and for remaining amount i.e. Rs.4,00,000/-, a Demand Draft of Bank of India, Ashiana Nagar Branch, Patna has been produced. Let it be handed over to the learned lawyer for the*

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*complainant Opposite Party No.2 for being handed to the complainant, Opposite Party No.2, who is present in the Court. It is expected from the learned Counsel for the complainant O.P. No.2 to make endorsement to that effect on the record. As per joint petition filed before this Court, the complainant will file an appropriate application before the concerned Court below to the effect that the issue has been resolved and she is no longer inclined to prosecute the complaint petition.*

*It is submitted by the learned Counsel for the complainant O.P. No.2 that in view of the compromise petition arrived between the parties, the complainant O.P. No.2 is not opposing the prayer for anticipatory bail of the petitioner.*

*In view of specific terms of the settlement arrived between the parties as been incorporated in para-3 to 5 of the joint petition (which will be discussed at later stage) the parties have settled the disputes.”*

5. It is crystal clear from the order of the Hon'ble Court that the instant matter has already been adjudicated and since the matter has been resolved, the complainant has no *locus-standi* again to approach this Court on the same cause of action, as the order of the Hon'ble Court is binding on both the parties.

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6. Further case of the Respondent No.1 is that though it is admitted that registered Agreement for Sale was executed between the parties with respect to sale of concerned flat No.309 in "Vision Galaxy Apartment" on consideration of Rs.18,54,501/-, but it is false that the Respondent No.1 approached to the complainant to purchase the flat, rather the complainant herself has approached to the Respondents. The contents of the para-4.4 of the complaint petition are entirely absurd, as selling of the property in Jaipur is the complainant's personal decision and Respondent No.1 could not be made liable for the act of her family decision. It is also false that the Respondent No.1 was making pressure to the complainant for early payment and this plea has been created to establish base of the present case. The contents of the para4.5 are false and fabricated. The truth is that the

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complainant has booked this flat, but she is lacking financial capacity and it is an established fact that any person purchasing the flat will have to pay the consideration amount. Arranging for that amount, whether he/she sells his/her personal property is entirely his/her personal decision. None can be made accused for the same. The question of Completion Certificate / Occupancy Certificate arises when the building is entirely completed and fit for human habitation. From each points of the complaint petition it has been established that the complainant at present period is weaving her spindles, which is settled by the Hon'ble High Court. The contents of the para 4.6 is truth only to the fact that letter has been sent whereupon, as a courtesy call, each prospective flat owners has been sent letters for clearing some amount and at present the entire complaint petition has no worth, as the matter has been set at rest by the Hon'ble High Court. In reply to para-4.7, it is submitted that same amount has been returned and received by the complainant in form of cheque no.01176 dated 15-02-2017. In reply to the para-4.8, it is submitted that it is not concern of the Respondents that the complainant was

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moving for arrangement of money and part of statement that she requested for several documents, are false and fabricated. In reply to re-numbered para 4.8 and 4.9, it is submitted that these are false and baseless and no cash amount ever has been paid. In reply to para-4-10, it is submitted that there was no mention of modular kitchen in the prospectus provided to the complainant, so such a plea is entirely false and it is just a created story of the complainant. The facts of para-4.11. to 4.13 are false and baseless. In reply to para-4.14 to 4.16, it is submitted that the Respondent No.1 has lodged Complaint No.3412/2017, which has been withdrawn in light of the settlement in the Hon'ble High Court. In reply to para-4.17 to 4.18, it is submitted that dispute has already been settled, but malice intention of the complainant is that she is not losing her interest from the property, whereupon, the Respondent No.1 is now free to sell the said property to 3<sup>rd</sup> person. In reply to para-4.19 to 4.22, it is submitted that the matter has already been settled before the Hon'ble High Court and the settled amount has been received by the complainant, so there is no provision to re-agitate the same matter in the present Court.

Now, the Agreement for Sale dated 09-10-2012 is of no worth and this complaint petition may not be entertained by this Court and it is fit to be rejected/dismissed.

7. On the basis of the pleadings of the parties and submissions of the learned lawyers on behalf of both the parties, the following points are formulated to adjudicate the case:-

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- (1) Whether compromise petition dated 10-01-2019 executed between both the parties and filed in Criminal Miscellaneous Case No.57911/2018 before the Hon'ble High Court and order passed thereon will act as a *estoppel/resjudicata* against the complainant in filing of the present complaint petition on the basis of same facts against the Respondents?
- (2) Whether the complainant is entitled to get executed and registered Sale Deed in her favour with respect to the concerned flat No.309 of "Vision Galaxy Apartment" of the Respondents in her favour?
- (3) Whether the complainant is entitled to get compensation against the Respondents as per

Section-18 of Real Estate (Regulation & Development) Act, 2016?

- (4) Whether the complainant is entitled to get litigation cost against the Respondents?

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Point No.(1):

8. Admittedly, a registered Development Agreement No.4584 dated 25-02-2010 was executed between the landlord Sri Pankaj Kumar Singh and Respondent No.1, Sri Bhushan Kumar Singh on one side and Developer, M/s Vision Land Pvt. Ltd. through its Managing Director, Sri Harsh Kumar Singh on the other side for construction of a multi-storied building "Vision Galaxy Apartment" on the land of Khata No.139,130, 142, Plot No. 267, 268, 249, area 136.24 decimal situated at Mouza-Jalalpur, Aparna Colony, P.S.-Rupaspur, District-Patna. It is further admitted case that a registered Agreement for Sale No.26686 dated 09<sup>th</sup> October, 2012 was executed between Respondent No.1 landlord Sri Bhushan Kumar Singh and the complainant, Smt. Anamika, w/o Sri Vijay Kumar for sale/purchase of Flat No.309 of "Vision Galaxy Apartment" having super built up area 933 sq.ft. on consideration of Rs.18,54,501/- and

complainant has paid Rs.1,05,000/- as advance consideration to the Respondent No.1. It was agreed between both the parties (para-4 of the Deed) that within 3 months after completion of the “Vision Galaxy Apartment”, the complainant has to pay the rest amount of consideration and get executed and registered the Sale Deed from the Respondent No.1. Now, question arises as to when the project “Vision Galaxy Apartment” was / is completed by the Respondents/Developer? It appears Registration Certificate No.BRERA P00209-1/252/R-414/2019 dated 07-02-2019 was issued by RERA, Bihar with respect to the project “Vision Galaxy Apartment” commencing from 07-02-2019 and ending with 31-02-2021. However, claim and counter claim have been pleaded on the time and date of completion of the project, which is not needed to be further discussed here, in light of the above Registration Certificate issued by the RERA, Bihar with respect to the concerned project. Hence, from all materials it is established that the project is still on-going as per proviso of Section 3(1) of RERA Act, 2016.

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9. The complainant has stated that she was insisting the Respondent No.1 to receive the remaining consideration amount and execute and register the Sale Deed in her favour with respect to Flat No.309 of “Vision Galaxy Apartment”, but for one or other reasons, the Respondent No.1 was avoiding to execute Sale Deed and hence, she has filed a complaint Case No.3943 (C)/2017 against the Respondent No.1, whereon cognizance was taken u/s 406 I.P.C. by the learned A.C.J.M., Patna and summon was issued against Respondent No.1. In counter, the Respondent No.1 has also filed a complaint case No.3412(C)/2017 against the complainant and others. Later on admittedly both the parties have compromised these complaint cases and during hearing of Criminal Miscellaneous Case No.57911/2018 before the Hon’ble Patna High Court a Joint Compromise Petition on behalf of both the parties was filed (photocopy of the same is available on the record). It is mentioned in para-3 of the compromise petition that *“in terms of the settlement arrived between the parties, the petitioner (herein Respondent No.1, Sri Bhushan Kumar Singh), is ready to return an amount of Rs.6,78,500/- as principal amount to the complainant,*

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*Smt. Anamika, out of which Rs.2,78,500/- has already been paid and the remaining amount of Rs.4,00,000/- is being paid through Demand Draft No.008806 dated 07-01-2019 to be handed over to the complainant before the Hon'ble Court at the time the matter would be taken up". Para-4 says that "as per settlement between the parties, the petitioner has already withdrawn the complaint case No.3412(C)/2017 filed against the complainant and others. The present complainant will also not pursue the complaint case No.3943 (C)/2017 and will withdraw the same upon payment of remaining aforesaid amount to her by the petitioner". Para-5 says that "as a compromise has been arrived between the parties, no claim/counter-claim will remain between the parties relating to the subject matter of the instant case will survive".*

10. The Hon'ble Patna High Court considering the compromise between the parties allowed Criminal Miscellaneous Case No.57911/2018 and granted anticipatory bail to the Respondent No.1 on 11-01-2019 in complaint case No.3943 (C)/2017.

11. Now, on the basis of above facts of the case, I have to see whether the complaint petition filed on behalf of the

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complainant is barred by the principle of *resjudicata* u/s 11 of Civil Procedure Code, 1908 against the Respondent No.1? As per Section-11 of the C.P.C., no suit was filed by the complainant before any Civil Court on the subject in issue against the Respondent No.1, which has been previously heard and finally decided and hence, the complainant cannot file complaint case against Respondent No.1. Explanation first to the Section-9 of the C.P.C. explains that a suit in which the right to property or to an office is contested is a suit of civil nature. In complaint case No.3943 (C)/2017, no such civil right was decided by the Civil Court, rather an offence u/s 406 IPC was found and during the hearing of Criminal Miscellaneous Case No.57911/2018 before the Hon'ble Patna High Court, both the parties have filed joint compromise petition and on basis of which Respondent No.1/accused, Sri Bhushan Kumar Singh was enlarged on anticipatory bail. Hence, I find and hold that Section-11 of C.P.C., which is *resjudicata* is not applicable in the present case and the present complainant has right to file the present complaint petition before this Court against the Respondent No.1.

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12. Before going ahead, I have to discuss that on basis of admission on payment of principal amount by the Respondent No.1 to the complainant in joint compromise petition *estoppel* is applicable against both the parties as per Section-115 Evidence Act, 1872, but *estoppel* must be very clearly pleaded in the complaint petition/written statement, which the Respondent has not pleaded in his reply. Hence, the Respondent No.1 cannot avail the benefit of the provisions of Section 115 of Evidence Act against the complainant. This view is based on ruling of the Hon'ble Court in AIR-1960 Calcutta-146 (Md. Ahmad Vs. Rourffie). However, the complainant has not claimed principal amount, rather she has claimed allotted flat or in alternative compensation, which is not agreed in the said Joint Compromise Petition filed before the Hon'ble Court. Accordingly, as discussed from the legal corners. Point No.1 is decided in negative against the Respondents and in favour of the complainant.

Point No.(2):

13. Admittedly, the complainant has got refunded Rs.6,78,500/- as principal amount from the Respondent

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No.1, which also find support from Joint Compromise Petition and order of Hon'ble High Court, Patna passed in Criminal Miscellaneous Case No.57911/2018. Now, it is established that though both the parties have executed Agreement for Sale on 09<sup>th</sup> October, 2012 with respect to the Flat No.309 of "Vision Galaxy Apartment" for sale/purchase on consideration of Rs.18,54,501/- and the complainant has paid Rs,1.05,000/- out of the above total consideration at the time of execution of the said Deed itself, but complainant has got refunded the above settled principal amount from the Respondent No.1. It shows that the complainant has received back the advance consideration with intention not to get executed and registered the Sale Deed in her favour with respect to the Flat No.309, otherwise instead of receiving back the principal amount, she would have protested and filed the Civil Suit for its enforcement.

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14. As per Section 10 and 25 of the Indian Contract Act, 1872, consideration is essential in a valid contract. In simple words, 'no consideration no contract'. Hence, one can enforce the contract, if there is a consideration. However, there are some exceptions to this rule; for example,

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Agreement written and registered between two parties on basis of love and affection is enforceable, like Gift. Though it is settled fact that inadequacy of the consideration has no value and such Agreement can be enforceable, but where there is no consideration or no intention to pay consideration it is not enforceable in the eye of law. Hence, though literally the registered Agreement for Sale executed between both the parties dated 09<sup>th</sup> October, 2012 is not cancelled, but legally it cannot be enforced, as neither the complainant has left the principal amount with Respondent No.1 nor she intended to get it enforced, otherwise she would not have demanded and received back the principal amount paid to the Respondent No.1. Therefore, from all corners the complainant is not entitled to get executed and registered Sale Deed on basis of above Agreement for Sale dated 09<sup>th</sup> October, 2012. Accordingly, Point No.2 is decided in negative in favour of the Respondent No.1 and against the complainant.

Point No.(3):

15. The learned lawyer for the Respondents submitted that since the complainant has received back the settled amount from the Respondent No.1, hence, she is not entitled to

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re-agitate the same point and claim compensation against the Respondents. On other hand, the learned lawyer for the complainant submitted that the complainant has simply received back the settled principal amount, which has also been mentioned in Joint Compromise Petition filed before the Hon'ble High Court and in the order of the Hon'ble Court. She has not received interest/compensation on the said principal amount. Hence, she is entitled for compensation against the Respondent No.1.

16. Admittedly, the Respondent No.1 has refunded Rs.6,78,500/- to the complainant on 11-01-2019 when the matter of dispute was heard by the Hon'ble Patna High Court in Criminal Miscellaneous Case No.57911/2018 and the Respondent No.1 was enlarged on anticipatory bail in complaint case No.3943 (C)/2017. It is also admitted case that the complainant has paid principal amount between the execution of Agreement for Sale on 09-10-2012 and refund of the principal amount on 11-01-2019. It is also admitted case that prior to filing of joint compromise petition before the Hon'ble Patna High Court, there was claim and counter-claim between both the parties on payment of principal

amount to the Respondent No.1 by the complainant, which was settled during the compromise and it was fixed at Rs.6,78,500/-. It is also admitted case that neither the Respondent No.1 delivered Flat No.309 to the complainant nor he is ready to deliver and execute Sale Deed in her favour. It is also settled fact that the Respondent No.1 retained the principal amount of the complainant and used the same in his business and has been benefitted, but what met to the complainant from such retention of principal amount with Respondent No.1? Nothing, except refunded principal amount, which she has paid to Respondent No.1 in wish to get a flat, which has been ruined. There is no mentioning in Joint Compromise Petition that the settled principal amount includes interest and compensation, so naturally the complainant may claim interest/compensation before this Court, whenever she likes to do so as per Section-18 of the Act, 2016.

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17. Hon'ble Supreme Court in Alok Shankar Pandey Vs. Union of India and Others on 15-02-2007 in Appeal (Civil) 1598/2005 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'."*

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18. Section-18 of the Act, 2016 also says;

- (i) *“if the promoter fails to complete or is unable to give possession of an apartment, plot or building (a) in accordance with the terms of Agreement for Sale or as the case may be, duly completed by the date specified therein or (b) due to dis-continuance of his business as a Developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case allottee wishes to withdraw from the project, without prejudice to*

*any other remedy available, to return the amount received by him in respect of that apartment , plot building, as the case may be with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act..*

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*Provided that where an allottee does not intent to withdraw from the project, he shall be paid by the Promoter interest for every month of delay till the handing over of the possession at such rate as may be prescribed.”*

19. In light of the above discussed legal positions, it is required for the Respondent No.1 to pay interest including compensation to the complainant. Hon’ble Supreme Court once again in the above ruling, has reiterated that *“we are of the opinion that there is no hard and fast rule about how much interest should be granted and it depends upon the facts and circumstances of the each case. We are of the opinion that grant of interest of 12% per annum is appropriate in the facts of this particular case. However, we are also of the opinion that since interest was not granted to the appellant along with*

*principal amount, the Respondent should then, in addition to the interest at the rate of 12% per annum, also pay to the appellant interest at the same rate on aforesaid interest from the date of payment of installments by the appellant to the Respondent till the date of refund on this amount, and the entire amount mentioned above must be paid to the appellant within two months from the date of this judgment.”*

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20. Section-72 of the Act, 2016 says, “*while adjudging the quantum of compensation or interest, as the case may be, under Section-71, the A.O. shall have due regard to the following factors namely; (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, may as a result of the default, (b) the amount of loss caused as a result of default (c) the repetitive nature of the default, (d) such other factors, which the A.O. considers necessary to the case in furtherance of justice”.*

21. However, rule 17, 18 of Bihar Real Estate (Regulation and Development) Rules, 2017 has categorically ruled that *the rate of interest payable by the promoter to the allottee or allottee to the promoter, as the case may, 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 M.C.L.R. of S.B.I. is 7.3% for a loan of 3 years or more. If 2% is added, it will become 9.3% per annum. It shows, as per above rules, that the Respondent No.1 has to pay at least simple interest/compensation @ 9.3% per annum on settled principal amount Rs.6,78,500/- since the date of execution of the Agreement for Sale till payment of settled amount on 11-01-2019. However, it is not clear as to when this amount was paid by the complainant to the Respondent No.1. So the period of return of particular amount is not clear. Hence, it cannot be separately assessed year to year the amount of interest/compensation payable to the complainant by the Respondent No.1. It is also to be added that now the complainant will not get the flat of same size in same locality at same rate, which was available to her in the year 2012, rather the same would have been multiplied. In such view of the matter, the complainant has to be compensated in such a way that she would not be in greater loss. Hence, in light of above facts and circumstances, a lump sum amount of Rs.75,000/- (Rupees seventy five thousand only) may be

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imposed as interest/compensation on the Respondent No.1 to pay the complainant, which is about 11% of the settled principal amount Rs.6,78,500/-. Accordingly, Point No.(3) is decided in positive in favour of the complainant and against the Respondent No.1.

Point No.(4):

22. The complainant has visited several times at the office of the Respondent No.1 to meet with him and his staffs with request to pay her interest/compensation, but they did not pay any heed to her request. Lastly, being fed-up with the behaviour of the Respondent No.1 and his staffs, she has filed this case. So, naturally she has incurred expenses in travelling to the office of the Respondents, RERA A.O. Court, documentation charges, Court Fee, engagement of lawyer etc. The complainant has not filed any documentary evidence for these expenses, but naturally, in all these processes she would have incurred an expenditure of not less than Rs.7,000/- (Rupees seven thousand only), which must be paid to the complainant by the Respondent No.1. Accordingly, Point No.(4) is decided in positive in favour of the complainant and against the Respondents.

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CONTINUED

Therefore, the complaint case of the complainant, Smt. Anamika is partly allowed on contest with cost of Rs.7,000/- (Rupees seven thousand only) against the Respondents only with respect to the compensation/interest. The Respondent No.1 is directed to pay Rs.75,000/- (Rupees seventy five thousand only) to the complainant as compensation including interest for her economical, mental and physical harassment, but her prayer for relief of execution and registration of Sale Deed and delivery of possession of the Flat No.309 of “Vision Galaxy Apartment” is hereby rejected/dismissed. The Respondents are directed to comply the order within 60 (sixty) days, failing which the complainant may get enforced the order through process of the Court.

28-10-2020  
CONTINUED

Sd/-  
(Ved Prakash)  
Adjudicating Officer  
RERA, Bihar, Patna  
28-10-2020