

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

**RERA/CC/698/2019
RERA/AO/173/2019**

Lina Ghosh, W/o Somdeep Mitra, East
Ghirnee Pokhar, Jawahar Lal Road,
Muzaffarpur, Bihar-842001

... Complainant

Versus

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

Through it's Director,

2. Sri Alok Kumar, S/o Sri Padum Singh,
Director, M/s Agrani Homes Pvt. Ltd.,
Yogipur, Chitra Gupta Nagar, P.S.-
Patrakar Nagar, P.O. Lohia Nagar,
Kankarbagh, Patna-800020

... Respondents

Present:

**Sri Ved Prakash
Adjudicating Officer**

Appearance:

For Complainant : In Person

For Respondents : 1. Sri Alok Kumar, Director.
2. Sri Rakesh Kumar, Advocate

ORDER

12-01-2021

This complaint petition is filed by the complainant,
Lina Ghosh 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 her advanced principal amount Rs.5,90,000/- along with accrued interest thereon with compensation for her economical, mental and physical harassment, consequent to non-delivery of flat allotted to her.

2. In nutshell, the case of the complainant is that the complainant, Lina Ghosh has booked a FlatNo.407 in Block-C of the project “Agrani Krishna Kunj” at Muzaffarpur of the Respondents Thereafter, a K.Y.C. was executed between the complainant, Lina Ghosh and Respondent No.1, M/s Agrani Homes Pvt. Ltd. through it’s Director, Respondent No.2, Sri Alok Kumar for sale/purchase of Flat 407 in their project “Agrani Krishna Kunj”, Muzaffarpur having area 587 sq.ft. in Block-C on consideration of Rs.14.00 lacs. The Respondents have promised to the complainant to complete and deliver possession of the flat within 3 years after approval of the Map from P.M.C. with grace period of 6 months. The complainant has paid Rs.5,90,000/- and got receipts from the Respondents for such payment. There was no progress in the project, even no piling of the building was done by the Respondents. Hence, due to unavoidable circumstances, she has sent a letter on 02-06-2018 to the Respondents to cancel her booking and refund of her principal amount along with compound interest, but there was no positive response from the side of the Respondents. It is further case that till date not a single brick has been laid on the site of the project. Hence, she

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has been thrown in much economical, mental and physical harassment. Therefore, she being fed up with the behaviour of the Respondents has filed the present complaint case with the above reliefs against the Respondents.

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3. On appearance, the Respondents have pleaded *inter-alia* that they are always abiding the order of the Court and ready to refund the advanced principal amount to the complainant. The Respondents are ready to refund the total amount to the complainant, but they require some time and will refund in instalments. They have further pleaded that in light of their promise, the case may be disposed of.

4. On the basis of the pleadings and submissions of both the parties, following points are formulated to adjudicate the case:-

- (i) Whether the complainant is entitled for refund of her principal amount Rs.5,90,000/- along with accrued compound interest thereon against the Respondents?
- (ii) Whether the complainant is entitled for compensation against the Respondents for her economical, mental and physical harassments?
- (iii) Whether the complainant is entitled for litigation cost against the Respondents?

Point No.(i):

5. Admittedly, the complainant has booked a Flat in Block-C of the project “Agrani Krishna Kunj” at Muzaffarpur of the Respondents. Thereafter, K.Y.C. was executed between the complainant, Lina Ghosh on one side and authorised signatory of the Respondents on other side for sale/purchase of a flat No.407 on 4th floor having area of 587 sq.ft. in the project “Agrani Krishna Kunj” in Block-C of the Respondents on consideration of Rs.14,00,000/-. The complainant has filed K.Y.C. and photocopies of cheque no. no.162491 dated 15-02-2015 of S.B.I. worth Rs.2,90,000/- and cheque no.099298 15-02-2015 worth Rs.3,00,000/- showing total payment of principal amount Rs.5,90,000/-. The complainant has also filed receipts no.1559 dated 24-02-2015 and No.1560 dated 24-02-2015 issued by the Respondents for receipt of amount Rs.5,90,000/-,which support the payment of total advance consideration Rs.5,90,000/- by the complainant to the Respondents. It is further case of the complainant that it was promised by the Respondents orally that after approval of the Map from competent authority, the project shall be completed and flat will be delivered to the complainant within 3 years with grace period of 6 months, after approval of Map from P.M.C. The complainant has stated that after execution of K.Y.C., there was no progress in work on the site of the project.

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Thereafter, on 02-06-2018, due to unavoidable circumstances, she has sent a letter to the Respondents for refund her principal amount after cancellation of the flat allotted to her. Whereon, the Respondents have assured that the principal amount of the complainant will be refunded shortly, but there was no move to refund the said amount. The complainant has further stated that at present neither the Map of the project is properly approved from the competent authority nor single brick has been laid on the site of the project. Hence, she has cancelled the booking, as there was no hope for completion of the project as per her requirement. It also appears that the Respondents have not applied for registration of the project “Agrani Krishna Kunj” with RERA, Bihar. From the above discussion, it is clear that completion of the project is far away, so the complainant cannot wait indefinite period for delivery of possession of the flat. In such view of the matter, it is reasonable for the complainant to seek refund of the principal amount against the Respondents. Therefore, I find and hold that the Respondents must refund the principal amount Rs.5,90,000/- of the complainant without delay and deduction.

The complainant has claimed accrued interest on the paid principal amount to the Respondents. It is clear that the complainant has paid Rs.5,90,000/- on 24-02-2015 to the Respondents. But, they have not refunded this amount as yet to

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the complainant. The Respondents have retained the principal amount of the complainant since 2015 till date and used the same in betterment of their business. Hence, the Respondents have to pay accrued interest on the principal amount of the complainant paid to the Respondents. This view also finds support from the ruling of the Hon'ble Apex Court passed in (2007) 3 SCC-545 Alok Shankar Pandey Vs. Union of India and Others.

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Now, it is question as to how much interest may be levied on the Respondents on the principal amount Rs.5,90,000/- of the complainant?

The Respondents are running the present project as well as other projects in Patna and other Parts of Bihar, so if compound interest are levied there will be much effect on the Respondents in development of their projects. Moreover, it will also hamper the interest of the other buyers. But, there will be no much effect on the complainant, as she is repudiating herself from this project. Hence, I think, instead of compound interest, levying of simple interest on the principal amount will justify the end. On this issue, rule-17 and 18 of the Bihar Real Estate (Regulation and Development) Rules, 2017 says that “2% above the MCLR of the SBI has to be paid by the Promoter/Allottee to the other side within 60 days of due date”. Presently MCLR of SBI is 7.30% per annum for a loan of 3 years or more and if 2% is added it will

come 9.30% per annum. Hence, the Respondents have to pay accrued simple interest @ 9.30 per annum on the principal amount Rs.5.90,000/- since the respective date of payment by the complainant to the Respondents till refund of the same by the Respondents to the complainant. Accordingly, Point No.(i) is decided in positive in favour of the complainant and against the Respondents.

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Point No.(ii):

6. The complainant has also claimed compensation against the Respondents for her economical, mental and physical harassment. The complainant has cancelled booking of the flat due to unavoidable circumstances and delay in construction of the project. As per Section-72 of the Act, 2016, the Respondents are benefitted by using the principal amount Rs.5,90,000/- in their business, without giving delivery of possession of the flat to the complainant. Now, the complainant will not get a flat of same area in the same locality at the same rate, which was available to her in the year 2015. The claim of compensation has to be decided in reasonable manner, keeping in mind the advance principal amount paid by the complainant to the Respondents, duration of amount retained by the Respondents as well as proportion of loss to the complainant and benefit to the Respondents. It is also important to note that the complainant has cancelled the booking due to unavoidable circumstances too

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Hence, I think, Rs.59,000/- may be appropriate amount for compensation to the complainant for her economical, mental and physical harassment, as the said amount is about 10.00% of the principal amount Rs.5,90,000/- paid by the complainant to the Respondents. Accordingly, Point No.(ii) is decided in positive in favour of the complainant and against the Respondents.

Point No.(iii):

7. The complainant has visited several times to the Respondents office, met with them and their staffs and requested for refund of her paid principal amount, whereon the Respondents and their staffs did not give any attention, which compelled the complainant to file the case. The complainant would have naturally incurred expenses in travelling to the office of the Respondents to meet with them and their staffs, in preparation of documents for filing the present complaint case in RERA, Bihar, payment of Court Fee etc. Though the complainant has not brought any document on the record to show the actual expenses incurred by her in these activities, but I think, in all these processes the complainant would have incurred not less than Rs.8,000/-, which must be paid by the Respondents. Accordingly, Point No.(iii) is decided in positive in favour of the complainant and against the Respondents.

Therefore, the complaint case of the complainant, Lina Ghosh is allowed on contest with litigation cost of Rs.8,000/- (Rupees eight thousand only) against the Respondents. The Respondents are directed to refund the principal amount Rs.5,90,000/- along with accrued simple interest @ 9.30% per annum on the said amount since the respective date of payment by the complainant to the Respondents till refund by the Respondents to the complainant. The Respondents are further directed to pay Rs.59,000/- (Rupees fifty nine thousand only) as compensation to the complainant for her economical, mental and physical harassment. 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.

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