



**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/348/2019

RERA/AO/69/2019

1. Sri Rajesh Kumar Jha, S/o Sri Raj Narayan Jha
2. Smt. Ranju Kumari Jha, W/o Sri Rajesh Kumar Jha

Address of Complainant No.1 and 2:

- Old Colony, C-2/3, Chitra Deoghar, District-
Deoghar, Jharkhand-815351.

... Complainants

Versus

1. M/s Agrani Homes Real Marketing Pvt. Ltd.,
"Khan Villa", South-West of B.D. Public School,
Budha Colony, P.S.-Budha Colony, 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 Complainants - In person

For Respondents - Sri Alok Kumar, Director

ORDER

25-06-2021 This complaint case is filed by the complainant no.1, Sri Rajesh
Kumar Jha and his wife, complainant no.2, Smt. Ranju Kumari Jha

Jha against the Respondent No.1, M/s Agrani Homes Real Marketing 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 their remaining principal amount Rs.10.00 lacs along with accrued interest, @ 12% per annum on total principal amount Rs.16.00 lacs and compensation for their economical, physical and mental harassment with litigation cost Rs.10,000/- per day, consequent to non-delivery of flat allotted to them.

2. In nutshell, the case of the complainants is that Sri Sanjeev Shekhar, Executive of the Respondents misled the complainants Sri Rajesh Kumar Jha and Smt. Ranju Kumari Jha by hiding the vital information that the project "Agrani P.G. Town" of the Respondents is not registered with RERA, Bihar and without proper information booked the flat No.505 in Block-B of the above project situated at Sarari, Danapur, District-Patna on consideration of Rs.16.00 lacs plus Rs.2.00 lacs as Utility Charges. The Authorised Signatory of the Respondents, Sri Sanjeev Shekhar told them that Agreement will be done after 45 days of the booking. Further case is that the complainant no.1, Sri Rajesh Kumar Jha paid Rs.16.00 lacs to the Respondents as One Time Payment and got money receipt thereof. When the complainant no.1, Sri Rajesh Kumar Jha contacted to the authorised signatory, Sri Sanjeev Shekhar and requested for execution of Agreement for Sale, then he again misled and refused to

execute and register the Agreement for Sale. Thereafter, the complainants have given Notice on 01-11-2018 through e-mail for cancellation of their allotment of flat and refund of their principal amount, but the Respondents have not responded. Again the complainant no.1, Sri Rajesh Kumar Jha issued reminder on 15-11-2018, but the Respondents did not give any satisfactory response. Hence, being fed-up with the behaviour of the Respondents, the complainants have filed the case against the Respondents with the above reliefs.

3. On appearance, the Respondents have filed reply pleading that they are ready to refund the actual principal amount Rs.16.00 lacs of the complainants within 4 months.

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

- (i) Whether the complainants are entitled for refund of their remaining principal amount Rs.10.00 lacs along with accrued interest @ 12% per annum on total principal amount Rs.16.00 lacs against the Respondents ?
- (ii) Whether the complainants are entitled for compensation for their economical, physical and mental harassment against the Respondents?
- (iii) Whether the complainant is entitled for litigation cost @ Rs.10,000/- per day against the Respondents?

Point No.(i):

5. Admittedly, after negotiations, the authorised signatory, Sri Sanjeev Shekhar on behalf of the Respondents, has offered the complainants to purchase a flat in project “Agrani P.G. Town” of the Respondents on consideration of Rs.16.00 lacs plus Rs.2.00 lacs as Utility Charges, total Rs.18.00 lacs. Later on 22-08-2018 the complainant no.1, Sri Rajesh Kumar Jha and his wife, complainant no.2, Smt. Ranju Kumari Jha had booked flat No.505 having super built-up area 1300 sq.ft. in Block-B of the project “Agrani P.G. Town” situated at Sarari, Danapur, District-Patna of the Respondents on consideration of Rs.16.00 lacs plus Rs.2.00 lacs as Utility Charges, total Rs.18.00 lacs including G.S.T., out of which the complainant no.1, Sri Rajesh Kumar Jha has paid Rs.16.00 lacs on 23-08-2018 through SBI cheque no.820676 dated 23-08-2018 worth Rs.10.00 lacs and SBI cheque no.820677 dated 23-08-2018 worth Rs.6.00 lacs, for which the authorised signatory of the Respondents has issued money receipt no.3298 and 3299 dated 23-08-2018. The complainants have filed photocopies of money receipts issued by the authorised signatory of the Respondents and cheques issued by Sri Rajeshj Kumar Jha, which support the case of the complainants. The Respondents have also admitted in their reply filed in the Court about payment of Rs.16.00 lacs by the complainants.
6. The complainants have stated that the authorised signatory, Sri Sanjeev Shekhar of the Respondents has promised that after 45 days of booking of the flat the Agreement will be done, but the same

was not executed by the Respondents. If there would have been Agreement for Sale executed between the parties, naturally it would have helped to both the parties as to within how much time the project would be completed and delivery of the flat may be handed over to the complainants and how the utility charges amount Rs.2.00 lacs has to be paid to the Respondents and other rights and duties of the parties would have been decided. However, as per Section 13(1) of the Act, 2016, it is mandatory for the Respondents that they should not have received more than 10% of the total consideration without entering into registered Agreement for Sale with the complainants. So, the Respondents have violated the provisions of the Section 13(1) of the Act, 2016.

7. The Respondents have filed Application No.RERA P 2811201700051-5 in RERA, Bihar for registration of the project “Agrani P.G. Town”, but after scrutiny by the officials of RERA, Bihar altogether 13 defects were found and vide letter No.RERA/PRO.REG-403/533 dated 27-09-2018, the Respondents were directed to remove these defects within 15 days, but up till now the Respondents have not removed these defects, which shows that neither the Respondents have got proper approval of the Map from competent authority nor registration of the project from RERA, Bihar. It also appears that the Respondents are so reluctant in their responsibilities towards the allottees, that they are not taking any proper action for start of the project. The complainants have seen that the Respondents have misled them and booked the flat in their project “Agrani P.G. Town”,

which has no RERA, Bihar registration. So, they have demanded cancellation of the allotment of their flat and refund the principal amount Rs.16.00 lacs from the Respondents, which was ultimately accepted by the Respondents on 04-12-2018. The Respondents have also admitted the payment of Rs.16.00 lacs by the complainants and they have assured that the said amount will be refunded to the complainants within 4 months. The complainants have sent cancellation letter dated 01-11-2018 and reminder on 15-11-2018 and the Respondents have sent acceptance of the cancellation on 04-12-2018. The complainants have filed photocopies of cancellation letter dated 01-11-2018, reminder letter dated 15-11-2018 sent to the Respondents and acceptance letter dated 04-12-2018 issued by the Respondents to the complainants, which support the case of the complainants. The above discussion of the facts shows that the Respondents are unable to complete the project "Agrani P.G. Town" within a reasonable time, so it is justified for the complainants to cancel their allotment of flat and demand 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 Hon'ble Supreme Court of India passed 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.16.00 lacs from the Respondents without delay and deduction. The Respondents, after acceptance of cancellation of allotment of flat, have already refunded Rs.6.00 lacs to the complainants, prior to filing of the present

complaint case. It is also not out of place to mention that the Respondents have up till now refunded Rs.14.50 lacs to the complainants during hearing of this case. Now, the principal amount Rs.1,50,000/- remains to be refunded to the complainants by the Respondents.

8. The complainants have claimed interest @ 12% per annum on the paid principal amount Rs.16.00 lacs. Naturally, the Respondents have retained respective principal amounts of the complainants since 23-08-2018 till date, so they have to pay interest on respective principal amount for the retention period to the complainants, which also find support from the ruling of Hon'ble Supreme Court of India passed on 15-02-2007 in Appeal (Civil) 1598/2005 - Alok Shankar Pandey Vs. Union of India and Others, 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 the 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 complainants 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 7.20% per annum for a home loan of 2 years and if 2% is added, it will come 9.20% per annum. Hence, the Respondents have to refund the remaining principal amount Rs.1.50 lacs or whatever the amount due, to the complainants along with accrued simple interest @ 9.20% per annum on total principal amount Rs.16.00 lacs since the date of payment of respective amount by the complainants to the Respondents till 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):

9. The complainants have also claimed compensation 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 advanced principal amount Rs.16.00 lacs paid by the complainants. Presently, the Respondents are not able to deliver possession of the flat allotted to the complainants. At present, a flat of same area will not be available to the complainant in the same locality at the same price, which was available to them in the year 2018. Rather, the price of the flat 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 complainants to the Respondents, duration of amount retained by the Respondents as well as proportion of loss to the complainants and benefit to the Respondents. The complainants have paid the total consideration Rs.16.00 lacs as One Time Payment, out of which Rs.14.50 lacs has been refunded by the Respondents to the complainants during hearing of this case and now Rs.1.50 lacs remains to be refunded. In such facts and circumstances, I think, Rs.50,000/-, which is about 33% of the remaining principal amount Rs.1.50 lacs 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 complainant and against the Respondents.

Point No.(iii):

10. The complainants have claimed that they have repeatedly visited to the office of Respondents for refund of their advanced principal amount, but neither the Respondents nor their staffs have given any response towards their request. Though the complainants have not filed any document as a proof of actual expenditure incurred by them in travelling to the office of the Respondents, A.O. Court in RERA, Bihar, remittance of Court Fee, paper work etc., but I think the complainants would not have incurred expenditure more than Rs.15,000/- on all these activities . Accordingly, I find and hold that the complainants are entitled for Rs.17,000/- as litigation cost including cost of Rs.2,000/- imposed by the Court on 16-03-2021 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 Rajesh Kumar Jha and Smt. Ranju Kumari Jha is allowed on contest with litigation cost of Rs.17,000/- (Rupees seventeen thousand only) against the Respondents. The Respondents are directed to refund the remaining principal amount Rs.1.50 lacs (Rupees one lac fifty thousand only) or whatever the amount is due to the complainants along with accrued simple interest @ 9.20% per annum on the total paid principal amount Rs.16.00 lacs since the date of payment of

respective amounts by the complainants to the Respondents till the date of refund of said amount by the Respondents to the complainants. The Respondents are further directed to pay Rs.50,000/- (Rupees fifty 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
25-06-2021