

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

**RERA/CC/346/2019
RERA/AO/68/2019**

Sri Nagendra Singh, S.I.B. Office,
6, Serpentine Road, Patna-800001. ... Complainant

Versus

M/s Agrani Homes Real Construction
Pvt. Ltd.
Through:-Managing Director, Sri Alok
Kumar, Agrani Homes, House No.15,
Ward No.1FA, Patliputra Colony,
Patna-800013. ... Respondent

Present:

**Sri Ved Prakash
Adjudicating Officer**

Appearance:

For Complainant - In Person
For Respondent - None

ORDER

04-09-2019

This complaint petition is filed by the complainant, Nagendra Singh against M/s Agrani Homes Real Construction Pvt. Ltd. through its Managing Director, Alok Kumar u/s 31 read with 71 of Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as the "Act, 2016") for refund of his remaining principal amount Rs.10.00 lacs along with accrued interest and compensation for mental and physical harassment.

04-09-2019
CONTINUED

2. In nutshell, the case of the complainant is that the complainant, Nagendra Singh has executed M.O.U. on 15-12-2015 with the Respondent, Alok Kumar, Managing Director of Agrani Homes Real Construction Pvt. Ltd. for purchasing a flat No.201 in Block-A having area of 1300 sq.ft. along with one car parking space in the project named "Agrani Emerald" on consideration of Rs.26,42,375/- plus applicable Service Tax. The complainant has paid Rs.22,50,000/- along with 'one time tax' Rs.81,500/- through cheques to the Respondent. The Respondent has assured in M.O.U. that the flat will be handed over to the complainant within 36 months with grace period of six months after approval of the Map from Patna Municipal Corporation (P.M.C). But, when the complainant has seen no progress in the project for one and half years, then he cancelled the booking on 19-06-2017 and requested for refund of his paid amount. Later on, on repeated requests the Respondent refunded Rs.13.00 lacs in instalments in 22 months. Thereafter, in spite of repeated requests by the complainant, the Respondent has not refunded Rs.10.00 lacs to the complainant, hence, he has filed this case with the above reliefs against the Respondent.
3. Though the Respondent has appeared through learned lawyers, Mr. Durga Narayan and - Mr. Ankit Kumar etc., but in spite of repeated directions, neither the Respondent refunded

04-09-2019
CONTINUED

the principal amount nor filed *Vakalatnama* nor filed reply on record. So, after hearing complainant and learned lawyers for the Respondent, the record was reserved for ex-parte order, as per rule 37(2)(j) of Bihar Real Estate (Regulation and Development Rules), 2017 (hereinafter referred as the "Rules, 2017") against the Respondent, as the lawyers have no *Vakalatnama* on behalf of the Respondent.

4. Now I have to see as to whether the complainant is entitled for refund of remaining capital amount along with accrued interest and compensation for his mental and physical harassment?
5. The complainant has filed photocopy of M.O.U. executed on 15-12-2015 between both the sides for purchase/sale of Flat No.201 having area of 1300 sq.ft. on 2nd floor of Block-A of "Agrani Emerald" project of the Respondent on the consideration of Rs.26,42,375/- and out of said amount, the complainant has paid Rs.22,50,000/- along with 'one time tax' Rs.81,500/-. Thus, the complainant has total paid Rs.23,31,500/- to the Respondent, Alok Kumar through cheques and it was agreed in M.O.U. that the flat will be delivered within 36 months with grace period of 6 months after approval of Map. But, since there was no progress in construction for about one and half years, the complainant has

cancelled the booking and demanded refund of his advance money on 19-06-2017.

04-09-2019
CONTINUED

On repeated requests by the complainant, the Respondent has refunded principal amount Rs.13.00 lacs to the complainant, but thereafter the Respondent stopped the refund and still the complainant has claimed refund of Rs.10.00 lacs. The complainant has filed photocopy of the money receipts, which shows that the complainant has paid the above principal amount Rs.23,31,500/- and the Respondent after cancellation of booking of flat, has refunded Rs.13.00 lacs, which justifies that the Respondent has not done any progress of work in the project towards construction. Now, during proceedings of this case in the Court, the Respondent for one or other reasons has avoided to refund the remaining amount Rs.10.00 lacs to the complainant along with interest. Hence, it is clear from the claims of the complainant as well as documents produced by him that the complainant is entitled for refund of remaining principal amount Rs.10.00 lacs along with accrued interest thereon. Since the complainant has not claimed remaining principal amount Rs.31,500/- and interest on the refunded amount prior to filing of complaint case, this Court is not inclined to pass any order on the said amount.

6. As per rule 17, 18 of the Rules, 2017, the Respondent has to pay simple interest 2% above the MCLR of SBI.

04-09-2019
CONTINUED

Presently, the MCLR of SBI is 8.45% and if 2% is added, it will come 10.45%. Hence, the Respondent has to pay simple interest @ 10.45% on respective remaining principle amount paid by the complainant to the Respondent. On calculation the simple interest @ 10.45% on Rs.10.00 lacs comes to Rs. Rs.3,93,020.21. Hence, the Respondent has to pay accrued interest till date Rs.3,93,020.21 to the complainant.

7. The complainant has also claimed compensation applicable under the Act, 2016. As per Section 72 of the Act, 2016 the Respondent has been benefitted with the amount Rs.23,31,500/- paid by the complainant till it is refunded by the Respondent to the complainant. The Respondent used the above amount in his business without giving the flat to the complainant as per M.O.U. executed between the parties. Now, the complainant will not get another flat in the same locality at the same rate, which was available to him at the time of booking of the flat on 15-12-2015. The present rate of flats in the locality has not come on record, but naturally the rate of flats would have gone very high in comparison to the rate available in the year 2015. The complainant has paid Rs.23,31,500/- out of total consideration Rs.26,42,375/- which is 88.24% of the total cost of the flat. The Respondent is running the present project as well as other projects, but in very slow manner that is why the complainant and other

29-08-2019
CONTINUED

customers being dissatisfied have cancelled their flats. The Respondent has refunded Rs.13.00 lacs prior to filing of this case, out of total principal amount Rs,23,31,500/- paid by the complainant. So, taking all the situations into mind and the amount paid by the complainant, I think Rs.2.00 lacs will be appropriate compensation to be paid by the Respondent to the complainant.

8. The complainant has visited repeatedly to the office of the Respondent and has consulted him as well as with his staffs several times for refund of his advance capital amount, but neither the Respondent nor his staffs have paid any heed to the request of the complainant till filing of this complaint petition. The complainant would have incurred not less than Rs.10,000/- for conveyance to the office of the Respondent, attending the Court Proceedings in A.O. Court in RERA, Bihar, documentation etc., which must be paid by the Respondent. There is no evidence brought by the Respondent to rebut the claim of the complainant, as he has no interest in the claim of the complainant. Accordingly, I find and hold that the complainant is entitled for Rs.10,000/- as litigation cost against the Respondent.

9. From the above discussion of facts and documentary materials on record, it is apparently clear that the complainant has well established this case against the Respondent. In my

04-09-2019
CONTINUED

opinion, the complainant is entitled for remaining principal amount Rs.10.00 lacs. as well as accrued simple interest @ 10.45% Rs.3,93,020.21 on the above principal amount I further find and hold that the complainant is also entitled for compensation of Rs.2.00 lacs against the Respondent along litigation cost of Rs.10,000/-.

Therefore, the complaint case of the complainant is allowed ex-parte against the Respondent on cost of Rs.10,000/-. The Respondent is directed to refund the remaining capital amount Rs.10.00 lacs to the complainant. The Respondent is further directed to pay simple interest @ 10.45% per annum applicable till date Rs.3,93,020.21 accrued on principal amount Rs.10.00 lacs. The Respondent is further directed to pay simple interest @ 10.45% per annum on Rs.10.00 lacs till actual payment. The Respondent is further directed to pay Rs.2.00 lacs as compensation to the complainant for his physical and mental harassment. The Respondent is further directed to comply the order within 60 (sixty) days, failing which the complainant may enforce the order through process of the Court.

Sd/-
(Ved Prakash)
Adjudicating Officer
04-09-2019