

**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/699/2019
RERA/AO/174/2019**

Sri Ashish Kumar, S/o Sri Hari Shankar
Pandey, R/o House No.2, Lane No.10, Ekta
Nagar, Road No.1, Old Motihari Road,
Bairiya, P.O. Kolhua, Pigambarpur,
P.S. Ahiyapur, Distt.-Muzaffarpur (Bihar), ... Complainant
PIN-843108

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

13-01-2021

This complaint petition is filed by the complainant,
Sri Ashish Kumar 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 his advanced principal amount Rs.5,00,000/- along with accrued interest thereon with compensation for his economical, mental and physical harassment, consequent to non-delivery of flat allotted to him.

2. In nutshell, the case of the complainant is that the complainant, Sri Ashish Kumar has booked a Flat No.207 in Block-C of the project “Agrani Krishna Kunj” at Muzaffarpur of the Respondents. Thereafter, a K.Y.C. was executed between the complainant, Sri Ashish Kumar and Respondent No.1, M/s Agrani Homes Pvt. Ltd. through it’s Authorised Signatory for sale/purchase of Flat No.207 in Block-C of their project “Agrani Krishna Kunj”, Muzaffarpur having area 587 sq.ft. on consideration of Rs.13.00 lacs. The Respondents have promised to the complainant to complete and deliver possession of the flat within 3 years and 6 months with grace period of 6 months after approval of the Map from competent authority. The complainant has paid Rs.5,00,000/- 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, he has sent a letter on 02-06-2018 to the Respondents to cancel his booking and to refund his principal amount along with compound interest. Thereupon, the Respondent No.2, Sri Alok Kumar has issued 5 cheques each of

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Rs.1,00 lac in the name of the complainant, which were dishonoured on presentation at the Bank, due to insufficient fund in Account of the Respondents. Thereafter, the complainant has filed complaint case No.2485/2019 in the Court Learned C.J.M., Muzaffarpur u/s 420 I.P.C. and 138 Negotiable Instrument Act against the Respondent No.2, Sri Alok Kumar, which is still pending. When the Respondents have not properly responded, the complainant has issued Legal Notices to the Respondents, but every efforts become futile. It is further case that till date not a single brick has been laid on the site of the project. Hence, he has been thrown in much economical, mental and physical harassment. Therefore, he 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. The Respondents are ready to refund the total principal 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 his principal amount Rs.5,00,000/- along with accrued compound interest thereon against the Respondents?
- (ii) Whether the complainant is entitled for compensation against the Respondents for his economical, mental and physical harassments?
- (iii) Whether the complainant is entitled for litigation cost against the Respondents?

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Point No.(i):

5. Admittedly, the complainant has booked a Flat No.207 in Block-C of the project “Agrani Krishna Kunj” at Muzaffarpur of the Respondents. Thereafter, K.Y.C. was executed between the complainant, Sri Ashish Kumar on one side and authorised signatory of the Respondents on other side for sale/purchase of a flat No.207 on 2nd floor having area of 587 sq.ft. in the project “Agrani Krishna Kunj” in Block-C of the Respondents on consideration of Rs.13,00,000/-. The complainant has filed photocopy of K.Y.C. executed between the parties, which support the submission of the complainant that he has booked Flat No..207 in project “Agrani Krishna Kunj” at Muzaffarpur in Block-C on consideration of Rs.13,00,000/-. The complainant has also filed receipts no.238 dated 14-12-2014 worth Rs.51,000/-, receipt

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no. Nil dated 26-12-2014 worth Rs.2,20,000/-, receipt no.244 dated 30-12-2014 worth Rs.87250, receipt no.248 dated 03-01-2015 worth Rs.32,000/-, receipt no.249 dated 20-01-2015 worth Rs.22,500/-, receipt no.254 dated 23-01-2015 worth Rs.87,250/- issued by the Respondents, which support the payment of total advance consideration Rs.5,00,000/- 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 him within 3 years and 6 months with grace period of 6 months, after approval of Map from competent authority. The complainant has stated that after execution of K.Y.C., there was no progress in work on the site of the project. Thereafter, on 02-06-2018, due to unavoidable circumstances, he has sent a letter to the Respondents for refund his principal amount after cancellation of the flat allotted to him. Whereon, the Respondents have assured that the principal amount of the complainant will be refunded shortly. Later on 5 cheques each Rs.1.00 lac, were handed over to the complainant by the Respondent No.2, Sri Alok Kumar, which dishonoured on presentation at the Bank, due to insufficient fund in the Account of the Respondents. Thereafter, the complainant has filed complaint case and issued Legal Notices to the Respondents, who did not properly responded. 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, he has cancelled the booking, as there was no hope for completion of the project as per his requirement. It also appears that the Respondents have not applied for registration of the project “Agrani Krishna Kunj” with RERA, Bihar. It is clear from the discussion 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.5,00,000/- of the complainant without delay and deduction.

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The complainant has claimed accrued compound interest on the paid principal amount to the Respondents. It is clear that the complainant has paid Rs.5,00,000/- since 14-12-2014 to 23-01-2015 to the Respondents. But, they have not refunded this amount as yet to the complainant. The Respondents have retained the principal amount of the complainant since 2014 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.

Now, it is question as to how much interest may be levied on the Respondents on the principal amount Rs.5,00,000/- 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 is 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 he is repudiating himself 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.5.00,000/- 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

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decided in positive in favour of the complainant and against the Respondents.

Point No.(ii):

6. The complainant has also claimed compensation against the Respondents for his 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.5,00,000/- 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 him in the year 2014. 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. Hence, I think, Rs.55,000/- may be appropriate amount for compensation to the complainant for his economical, mental and physical harassment, as the said amount is about 11.00% of the principal amount Rs.5,00,000/- paid by the complainant to the Respondents. Accordingly, Point No.(ii) is decided in positive in favour of the complainant and against the Respondents.

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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 his 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 him in these activities, but I think, in all these processes the complainant would have incurred not less than Rs.7,000/-, which must be paid by the Respondents. Accordingly, Pont No.(iii) is decided in positive in favour of the complainant and against the Respondents.

Therefore, the complaint case of the complainant, Sri Ashish Kumar is allowed on contest with litigation cost of Rs.7,000/- (Rupees seven thousand only) against the Respondents. The Respondents are directed to refund the principal amount Rs.5,00,000/- (Rupees five lacs only) 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.55,000/- (Rupees fifty five thousand only) as compensation to the complainant for his 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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