

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

**RERA/CC/320/2019  
RERA/AO/60/2019**

Sri Aamir Rashid Khan, S/o Late  
Md. Kamil Khan 104-C, Ali Enclave,  
Ashiana Road, Near Passport Office, ... Complainant  
Patna-800014

Versus

M/s Agrani Homes Real Services Pvt. Ltd.  
through its C.M.D., Sri Alok Kumar,  
House No.15, Ward No.1FA, Patliputra  
Colony, Patna-800001

... Respondents

**Present:**

**Sri Ved Prakash  
Adjudicating Officer**

Appearance:

For Complainant            Mr. Jawed Jaffar Khan, Advocate

For Respondents        1. Mr. Ankit Kumar, Advocate

**ORDER**

09-09-2019

This complaint petition is filed by the complainant, Sri Aamir Rashid Khan against the Respondent, M/s Agrani Homes Real Services Pvt, Ltd., through its C.M.D., Sri Alok Kumar u/s 31 read with 71 of The Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as the "Act, 2016") for refund of paid principal amount Rs.16,35,970/- along with accrued interest and compensation for his mental and physical harassment.

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2. In nutshell, the case of the complainant is that he had booked a flat No.101 having area of 1213 sq.ft. on the 1<sup>st</sup> floor of Block-A in “Maurya Palace” Apartment, Patna of the Respondent company, M/s Agrani Homes Real Services Pvt. Ltd. on consideration of Rs.18,55,620/- on 20-09-2014. Out of total consideration of Rs.18,55,620/- the complainant has paid Rs.16,35,970/- to the Respondent between September, 2014 and September, 2016 through three cheques and Money Receipts were also obtained from the Respondent. The allotment of the booked flat was issued to the complainant on 20-09-2014 by the Respondent. Later, on site visit the complainant found that the flat was not ready and even the construction was not started. After multiple painful visits and rigorous follow up with the builder, when the complainant found that the construction is not going to start, then the complainant decided to cancel the booking and withdraw the money paid to the Respondent and then he demanded from the Respondent for refund of his paid principal amount with suitable rate of interest. Later on, a booking cancellation and withdrawal letter was also submitted by the complainant in the office of the Respondent on 20-07-2018. The office of the Respondent categorically stated that the money of the complainant will be refunded and credited in the account of the complainant within 90 days since the cancellation date 20-07-2018, but on repeated requests by the complainant to the Respondent and his staffs, there was no refund and on hopeless

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result, he has filed the present complaint case with the above reliefs against the Respondent.

3. On appearance, the reply filed by Sri Padum Singh, Director of the Respondent company is reproduced below:-

*“Sir,*

*This is to inform you that we are ready to pay the actual amount which he has deposited in the company.*

*For the repayment we need 4 months time and equal instalment.*

*This is for your information and do needful.”*

The Court express its displeasure over the manner in which the reply is filed by the Respondent company, which is not in conformity with the judicial system and decorum. In future, the Respondent company is warned not to submit reply in such manner before the Court.

4. On the basis of the pleadings of the parties and submissions of learned lawyers, the following points are formulated for adjudication of the case:-

- (i) Whether the complainant is entitled for refund of paid principal amount Rs.16,35,970/- along with accrued interest against the Respondent?

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(ii) Whether the complainant is entitled for compensation against the Respondent for his mental and physical harassment?

5. Points No.(i) and (ii):

Admittedly, the complainant has booked a flat No.101 in Block-A having area of 1213 sq.ft. on 1<sup>st</sup> floor of “Maurya Palace” Apartment of the Respondent company on consideration of Rs.18,55,620/- on 20-09-2014. The complainant has paid Rs.8,24,720/- through cheque no.668687 dated 25-09-2014, Rs.5.00 lacs through cheque no.668692 dated 08-08-2015 and Rs.3,11,250/- through cheque no.668695 dated 03-09-2016 of United Bank of India and he has got Money Receipts of the above payments from the Respondent. The complainant has filed photocopies of these Money Receipts in support his claim. The complainant has also filed photocopies of booking as well as allotment letter issued by the Respondent, which support the claim of the complainant. However, the Respondent has also admitted the above payment by the complainant and has accepted in his reply that he is ready to refund the actual amount to the complainant. The complainant has stated that at the time of site visit he has found that the construction of the project was not started by the Respondent and that is why he has sought cancellation of the allotted flat on 20-07-2018. The photocopy of cancellation letter is also filed by the complainant, wherein he has requested to cancel

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allotment of his flat, as construction work of the project has not started. The Registration Certificate of the project issued by RERA, Bihar on 14-03-2019 shows the commencement of project on 14-03-2019 and ending date on 30-11-2022, so the cancellation letter filed on 20-07-2018 by the complainant appears genuine as the Registration in RERA, Bihar supports the claim of the complainant for non-starting of the project on date of cancellation. Hence, the complainant is entitled for refund of his paid principle amount without any deduction along with accrued interest on the said amount against the Respondent. There is no Agreement for Sale between the parties, so only non-starting of project by Respondent may be basis for interest between the parties. The Respondent is running other projects along with this project in hand. Accordingly, simple interest on refundable amount may be genuine to be levied against the Respondent.

6. As per rule 17, 18 of the Bihar Real Estate (Regulation and Development) Rules, 2017, the Respondent has to pay simple interest 2% above the MCLR of SBI. Presently, the MCLR of SBI is 8.45% per annum and if 2% is added, the interest rate will come 10.45% per annum. Hence, the Respondent has to pay simple interest @ 10.45% on respective remaining principle amount Rs.16,35,970/- paid by the complainant to the Respondent.

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The principal amount paid by the complainant and refund made by the Respondent to the complainant till date may be seen through a chart as under:-

Date of Payment by the complainant	Amount Rs.	Date of Refund by the Respondent	Interest Rs.
25-09-2014	8,24,720.00	09-09-2019	4,27,039.98
08-08-2015	5,00,000.00	09-09-2019	2,13,497.32
14-09-2016	3,11,250.00	09-09-2019	97,094.18
<b>Total</b>	<b>16,35,970.00</b>		<b>7,37,631.48</b>

Accordingly, the Respondent has to pay accrued simple interest Rs.7,37,631.48 @ 10.45% per annum along with principal amount Rs.16,35,970/- to the complainant.

7. The complainant has also claimed compensation for his mental and physical harassment. As per Section 72 of the Real Estate (Regulation and Development) Act, 2016, the Respondent has been benefitted with the amount of Rs.16,35,970/- paid by the complainant and still the said amount is lying with the Respondent, which he has been using in his business. The complainant has booked the flat in the year 2014 and the flat was to be delivered within 3 years, but the Respondent has not started the work of the project till the time of visit of the complainant on 20-07-2018. Now, the price of the flat in the said locality has much increased in comparison to the year 2014. Though the present price of the flats in the same locality has not come on record from either side, but naturally the price would have been about multiplied. Out of total

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consideration Rs.18,55,620/-, the complainant has paid Rs.16,35,970/- which is 88% of the total consideration. The Respondent is running his business of other projects and improving his business. In spite of assurance to the complainant in the Court, the Respondent has failed to refund the principal amount paid by the complainant. So, being bound, the Court after hearing the parties, kept the record for passing of the final order. Hence, taking all situations into consideration and amount paid by the complainant to the Respondent, I think, Rs.4.00 lacs, which is about 25% of the total consideration, will be appropriate to be paid by the Respondent to the complainant as compensation for his mental and physical harassment.

8. The complainant has visited repeatedly to the office of the Respondent and consulted him as well as his staffs several times for refund of his principal amount, but neither the Respondent nor his staffs have given any heed to his request till filing of this case. It is also not out of place to mention that on repeated request of learned lawyer of complainant and assurance by the learned lawyer for the Respondent, a cheque of Rs.2.00 lacs was handed over to the complainant, but the same was dishonoured, due to intentional wrong in mentioning of the name of the complainant on face of the issued cheque dated 12-06-2019. It is also very important to note that delay in disposal of the case has occurred due to false promise given by the Respondent through his learned lawyer to the

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complainant in the Court for refund of the principal amount, but the same were never fulfilled by the Respondent. In my opinion, the complainant would not have incurred more than Rs.15,000/- for conveyance to the office of the Respondent, A.O. Court in RERA, Bihar, paper documentation, Court fee etc., which has to be paid by the Respondent to the complainant. Accordingly, I find and hold that the complainant is entitled for litigation cost of Rs.15,000/- against the Respondent.

9. From the above discussions of the facts, documentary evidence and other materials on record, it is apparently clear that the complainant has well established his complaint case against the Respondent and both these points are decided in positive in favour of the complainant and against the Respondent. Accordingly, I find and hold that the complainant is entitled for refund of paid principal amount Rs.16,35,970/- and accrued simple interest @ 10.45% per annum on the said principal amount, which comes to Rs.7,37,631.48/-. The complainant is also entitled for an amount of Rs.4.00 lacs as compensation for his mental and physical harassment against the Respondent.

Therefore, the complaint case of the complainant is allowed on contest with cost of Rs.15,000/- (Rupees fifteen thousand only) against the Respondent. The Respondent is directed to refund the paid principal amount Rs.16,35,970/- (Rupees sixteen lacs thirty five thousand nine hundred and seventy only) to the complainant.



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The Respondent is further directed to pay accrued simple interest till today Rs.7,37,631.48 (Rupees seven lacs thirty seven thousand six hundred thirty one and paise forty eight only) @ 10.45% per annum on the principal amount Rs.16,35,970/- to the complainant. The Respondent is further directed to pay simple interest @ 10.45% per annum on the above principal amount from tomorrow till actual payment. The Respondent is further directed to pay Rs.4.00 lacs (Rupees four lacs only) as compensation to the complainant for his mental and physical harassment. The Respondent is directed to comply the order within 60 (sixty) days, failing which the complainant is entitled to enforce the order through process of the Court.

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