



**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/623/2019

RERA/AO/164/2019

Smt. Mamta Kumari, W/o Sri Jackey Singh,
R/o 302, "Raj Nath Singh Regency", Tilak Nagar,
Rukunpura, P.O.-Rukunpura, P.S.-Rupaspur,
District-Patna-800014.

... Complainant

Versus

1. M/s Jascon Enterbuild Ltd.

Through it's Director, Shashikant.

2. Sri Shashikant, Director, S/o Sri Nikhilesh
Kumar Singh

Address of Respondents No.1 and 2:

Address-1:

Office No.315 (3rd Floor), "Maharaja
Kameshwar Complex", Frazer Road, P.S.-
Kotwali, District-Patna-800001.

Address-2:

44/C, "Jascon Plaza", Circular Road,
Ranchi-834001.

... Respondents

Present:

**Sri Ved Prakash
Adjudicating Officer**

Appearance:

For Complainant

- Sri Navin Kishore Sharan, Advocate

For Respondents

- Sri Punit Kumar, Advocate.

ORDER

30-06-2021

This complaint petition is filed by the complainant, Smt. Mamta Kumari against the Respondent No.1, M/s Jascon Enterbuild Ltd. through it's Director, Respondent No.2, Sri Shashikant 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 paid principal amount Rs.33,78,000/- along with interest thereon and further for refund of Rs.1,26,105/- paid by her towards charges for registration of Agreement for Sale and Home Loan Processing charges to the bank along with interest including cost of grill Rs.17,680/- and further for compensation of Rs.3.00 lacs for her economical, physical and mental harassment with litigation cost against the Respondents, consequent to non-delivery of flat allotted to her by them.

2. In nutshell, the case of the complainant is that the Respondent No.2, Sri Shashikant, Director of Respondent No.1, M/s Jascon Enterbuild Ltd. along with his two employees namely; Sri Rajan Kumar and Sri Sushil Kumar convinced the complainant and her husband, Sri Jackey Singh that they are going to construct a multi storied residential Apartment namely; “Naresh Chandra Jascon Galaxy” at mauza-Shahjadpur (Bank Colony, Gola Road), P.S.-Danapur, District-Patna on area of 26 *katha* land. They offered flat no.506 of Block-B having area 1440 sq.ft. along with car parking space on the ground floor of the said project and after some negotiations, the Respondents agreed to sell the said flat along with car parking space and all amenities on total consideration of Rs.41,04,000/-. Thereafter, the complainant, Smt. Mamta Kumari on one side and Respondent No.1, M/s Jascon Enterbuild Ltd. through it’s Director, Sri Shashikant on other side executed Agreement for Sale No.4388 dated 13-05-2017 for sale/purchase of a flat no.506 having super built up area 1440 sq.ft. along

with car parking space in the ground floor in Block-B of the Apartment namely; “Naresh Chandra Jascon Galaxy” on consideration of Rs.41,04,000/- and after receiving cheque no.000015 dated 19-03-2017 of HDFC Bank, issued money receipt no.1667 dated 19-03-2017 in her favour. Thereafter, she has paid Rs.3.00 lacs cash, for which the authorised signatory of the Respondent No.1 has issued money receipt on 22-04-2017. Later on 27-04-2017, she has paid Rs.3,59,400/- through cheque no.000016 of HDFC Bank, for which she has got money receipt no.1690 dated 27-04-2017 from the authorised signatory of the Respondents. Thereafter, home loan Rs.26,67,600/- was sanctioned by the Bank of India in her favour and the Bank disbursed the said loan amount on 17-07-2017 in favour of the Respondents and credited the said amount in the Bank Account of the Builders/Respondents. It is further case that she has paid an amount of Rs.1,26,105/- including registration fee, bank processing fee and cost of grill Rs.17,680/-. Further case is that she is paying Bank E.M.I. @ Rs.16,414/- in each and every month against the home loan sanctioned to her and disbursed to the Builders/Respondents by the Bank, but the Respondents have not handed over the flat in question to her even after expiry of 10 months of the due date. Further case is that she has received a Legal Notice on behalf of one Sri Sanjay Kumar, S/o Late Girish Singh claiming that the title of the project land vests with him. Thereafter, she has sent the Legal Notice to the Respondents and it's employees namely; Sri Rajan Kumar, and Sri Sushil Kumar, but no reply of the said Notice was received from their side. Then, she has filed a complaint case No.2367(C) of 2019 in the Court of learned C.J.M., Patna, which is still pending. Further

case is that in present situation, when the title of the land is being questioned, she wished to get back her entire paid principal amount along with interest thereon. Probably, the project “Naresh Chandra Jascon Galaxy” of the Respondents is not registered with RERA, Bihar. In such circumstances, the complainant having no hope to get her flat, has filed this complaint case with the above reliefs against the Respondents.

3. On appearances, the Respondents by filing reply, have pleaded *inter-alia* that the complaint petition of the complainant is vague, unjust, improper, incorrect and malicious and hence in such circumstances, it has to be dismissed. It is further case that the Respondents are renowned builders having their identity in the field of erecting and developing multi-storied buildings as well as running it's business in the name of M/s Jascon Enterbuild Ltd., in Bihar. Further case is that the complainant has entered into an Agreement for Sale with the Respondent No.1, M/s Jascon Enterbuild Ltd. on 13-05-2017 through it's Director, Respondent No.2, Sri Shashikant for sale/purchase of flat no.506 in Block-B in their project “Naresh Chandra Jascon Galaxy” having area of 1108 sq.ft. along with one car parking space. Further case is that the claim of the complainant that she has paid more than 80% amount i.e. Rs.33,78,000/- is false, fabricated and concocted statement and she is trying to mislead the Court as till 18-07-2017 the Respondents have received only Rs.30,78,000/- from the complainant. Further case is that the complainant is continuously a defaulter in payment as per schedule mentioned in the Agreement for Sale. Whereas, the Respondents have requested to the complainant for further payment, but she said that after

getting possession she will pay the remaining amount. The Respondents have taken RERA, Bihar registration on 15-07-2019 and accordingly, the construction work started. But, due to global Covid-19 pandemic, unfortunately the flat in question could not be handed over in time to the complainant, but if the complainant gives the remaining consideration, then the flat will be handed over to her within next six months. It is also not out of place to mention here that there was/is no latches on the part of the Respondents, as the above project has been developed in time as well as there is not a single complaint, except the complaint petition of the complainant, against the Respondents. Whereas, the complainant's doubt about the land dispute with Sri Sanjay Kumar is totally incorrect and false, as till today there is not a single title suit pending against the said land and so far as Notice to the complainant on behalf of Sri Sanjay Kumar is concerned, he is an anti-social element and appropriate action against him has been taken by the Respondents. It is further case that as per terms and conditions of payment schedule mentioned in para-6-7 of the Agreement for Sale, the Respondents may charge 18% from the complainant, as she has not followed the payment schedule and after payment of only Rs.30,78,000/- till 18-07-2017, out of the total consideration of Rs.41,04,000/- she stopped the payment. So far as the allegations of the complainant to hand over the flat in question within 10 months from the date of Agreement for Sale executed between the parties is concerned, para-13 of the said Deed says that the building will be completed within 10 months from the date of Agreement, but the time of completion shall be deemed to have been extended in the event of non-availability of building

materials or delay in receipt of instalments of the consideration from buyer of the said flat and/or delay due to Force Majeure. If the Respondents are unable to give possession of the said flat to the buyer on above account or any other reasonable cause, the buyer will not be entitled to any damage whatsoever, but he/she shall be entitled to receive back the entire money paid by him/her to the company. The date of completion of the building shall start from the date of execution of Agreement for Sale. In this respect, it is a fact that in the year, 2017 there was a serious issue of non-availability of raw materials like sand, stone chips etc. in Bihar. Thereafter, RERA, Bihar was also established and without approval of RERA, Bihar, the work in the project cannot be started and each and every measures adopted by the Respondents in development of the project was communicated and made known to the complainant. Further case is that the Respondents having healthy relations with the complainant, are now ready to hand over the same flat to the complainant within six months, if the remaining amount of consideration is paid by her. But, if the complainant wants to get her money back, then as per terms and conditions of the Agreement for Sale, the Respondents can deduct 10% cancellation charge and they will refund the balance principal amount of the complainant. Further case is that the complainant has filed a criminal case against the Respondents before the Court of learned C.J.M., Patna in violation of section 79 of RERA, Act, 2016. In such facts and circumstances, the claim of the complainant is unjust, incorrect, improper and not sustainable in the eye of law and hence, the complaint case may be dismissed.

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

- (i) Whether the complainant is entitled for refund of her paid principal amount Rs.33,78,000/- along with interest thereon against the Respondents?
- (ii) Whether the complainant is entitled for refund of Rs.1,26,105/- expensed in registration fee for Agreement for Sale, bank processing fee including cost of grill Rs.17,680/- along with interest thereon against the Respondents?
- (iii) Whether the complainant is entitled for compensation of Rs.3,00,000/- against the Respondents for her economical, physical and mental harassment?
- (iv) Whether the complainant is entitled for litigation cost against the respondents?

Points No.(i) and (ii):

5. Admittedly, the registered Development Agreement No.20560 dated 04-08-2011 was executed between the land owner, Sri Gopal Prasad Singh, S/o Late Naresh Chandra Singh, R/o Gola Road, Gajadharchak, P.S.+P.O.-Danapur, District-Patna, Bihar and the Respondent No.1, M/s Jascon Enterbuild Ltd. through it's Director, Respondent No.2, Sri Shashikant on the land measuring area approximately 26 *katha* bearing *thouzi* no.806-C, *thana* no.21, *khata* no.835, Survey *Khata* no.1077 situated at *mauza*-Shahjadpur (Bank Colony, Gola Road), P.S.-Danapur, District-Patna for construction of a project namely; "Naresh Chandra Jascon Galaxy". It is

also admitted case that on 13-05-2017, the complainant, Smt. Mamta Kumari on one side and the Respondent No.1, M/s Jascon Enterbuilt Ltd. through it's Director, Sri Shashikant on the other side executed an Agreement for Sale for sale/purchase of flat no.506 of Block-B with one car parking space in their project namely; "Naresh Chandra Jascon Galaxy" having built up area 1108 sq.ft. (super built up area 1440 sq.ft.) on consideration of Rs.41,04,000/-.

6. The learned lawyer for the Respondents has submitted that the complainant has not paid Rs.33,78,000, as claimed by her, rather she has paid only Rs.30,78,000/- as principal amount to the Respondents and as such, the claim of said amount by the complainant is concocted, fabricated and incorrect and this in this way, she is trying to mislead the Court, whereon the learned lawyer for the complainant submitted that the complainant has paid advance principal amount Rs.33,78,000/- to the Respondents and the learned lawyer for the Respondents is misleading and incorrectly submitting that the complainant has paid only Rs.30,78,000/-. He further submitted that the photocopy of money receipts issued by the Respondents for payment of Rs.33,78,000/- has been filed on the record, for which the Respondents have not denied as yet.

On rival claims of the parties on payment of principal amount, it will be better to go through the documentary evidence produced by the respective parties in support of their claims. The learned lawyer for the Respondents has filed photocopy of a chart prepared by the Respondent No.1, M/s Jascon Enterbuild Ltd. through it's Director, Respondent No.2, Sri Shashikant or through it's employees. However, this chart does not bear

the signature of either the Respondent No.2 or any staff of the Respondent company, wherein it is scribed that the complainant has paid Rs.51,000/- on 19-03-2017 through cheque no.000015 of HDFC Bank, Rs.3,59,400/- on 27-04-2017 through cheque no.000016 of HDFC Bank and Rs.26,67,600/- through NEFT on 17-07-2017. On other hand, the learned lawyer for the complainant has filed photocopy of money receipt no.1667 dated 19-03-2017 issued by the Accountant of Respondent no.1 against Rs.51,000/- paid by the complainant through cheque no.000015 of HDFC Bank. The complainant has further filed photocopy of money receipt dated 22-04-2017 for Rs.3,00,000/- paid in cash by the complainant to the authorised signatory of the Respondent No.1. On going through the above money receipt dated 22-04-2017, it appears that it has been issued by the authorised signatory of the Respondents on the seal of the Respondent No.1, M/s Jascon Enterbuild Ltd. under his signature. The complainant has further filed money receipt no.1690 dated 27-04-2017, wherein she has paid Rs.3,59,400/- through cheque no.000016 of HDFC Bank to the Respondents. The complainant has further filed photocopy of bank statement issued in favour of the complainant, Smt. Mamta Kumari by Bank of India, Gulzarbagh Branch, Patna, wherein the bank has disbursed a loan of Rs.26,67,600/- to the Respondent No.1, M/s Jason Enterbuild Ltd. and credited the said amount in their bank account on 17-07-2017. It shows that there is admission of the Respondents for payment of Rs.30,78,000/- as per receipts filed by the complainant, but the Respondents do not accept the payment of Rs.3,00,000/- paid in cash by the complainant to the authorised signatory of the Respondents on 22-04-2017. The learned

lawyer/Respondents themselves have not denied the genuineness of money receipt for amount of Rs.3.00 lacs issued on 22-04-2017 by the authorised signatory of the Respondents in favour of the complainant. Hence, it is presumed that the complainant has paid total Rs.33,78,000/- including cash Rs.3,00,000/- to the Respondents. In this way, the claim of the complainant based on documentary evidence i.e. money receipts issued by the respondents appears reasonable, but on other hand, the Respondents have failed to file photocopy of any document, ledger dated 22-04-2017 for proving that the said amount Rs.3,00,000/- has not been paid by the complainant to them. Accordingly, the claim of the Respondents regarding payment of only advanced principal amount Rs.30,78,000/- by the complainant being not based on any documentary evidence, appears unreasonable and unacceptable. Hence, it is categorically established that the complainant has paid total advanced principal amount Rs.33,78,000/- to the Respondents.

7. The Respondents have promised in Agreement for Sale dated 13-05-2017 that construction of the building shall be completed within 10 months from the date of Agreement and the time for completion shall be deemed to have been extended in the event of non-availability of building materials or delay in receipt of consideration from the buyer of the same flat and/or delay due to Force Majeure as provided herein and if the builders/vendors/sellers are unable to give possession of the said flat to the buyer on account of any reasonable cause, the buyer may not be entitled for any damage whatsoever, but he/she shall be entitled to receive back the entire money paid by him/her to the builders/vendors/sellers. The date of

completion of the said building shall start from the date of execution of Agreement for Sale. Admittedly, the registered Agreement between the parties was executed on 13-05-2017. So, as per terms and conditions and promise of the Respondents, the building should have been completed till 12-03-2018 and the flat of the complainant should have been delivered to her within this period, but as yet the same has not been handed over to her.

8. The learned lawyer for the Respondents submitted that firstly, there was non-availability of building materials like sand, stone chips etc. in the State of Bihar, so the works in the project could not be started and all these developments were communicated to the complainant and having knowledge, she on the ground of Legal Notice of one anti-social person, Sri Sanjay Kumar, is seeking refund of her paid principal amount, which is unjust and the advanced principal amount will be refunded, only after deduction of 10% cancellation charge as per terms and conditions of Agreement for Sale, which is opposed by the learned lawyer for the complainant and submitted that after getting Legal Notice on behalf of Sri Sanjay Kumar, doubt cropped up in the mind of the complainant regarding title of the project land and there was also delay in delivery of possession of the flat allotted to the complainant. Whereon, she has tried to contact the Respondents to clear the position. But, the Respondents always avoided to meet with her and that is why she has filed complaint case no.2367(C)/2019 u/s 406, 420 I.P.C. against the Respondents in the Court of learned C.J.M., Patna, which is still pending. He further submitted that there is delay in delivery of possession of flat and due to dispute in title of the project land, there cannot be deduction in the advanced principal

amount of the complainant and the entire advanced principal amount Rs.33,78,000/- along with interest thereon has to be refunded by the Respondents to the complainant.

9. Admittedly, the project “Naresh Chandra Jascon Galaxy” of the Respondents has been registered with RERA, Bihar on 15-07-2019 bearing Registration No.BRERA P 00917-1/625/R-697/2019. It is also admitted case that one Sri Sanjay Kumar has issued Legal Notice to the complainant claiming title on the project land. In such circumstances, it was duty of the Respondents to take action against the said Sri Sanjay Kumar on the record and they should have properly taken in to confidence to the complainant, but they did nothing. Secondly, it is correct that the Hon’ble High Court, Patna on 17-02-2017 in C.W.J.C. No.17809/2015 has suspended sand mining and supply of stone chips in the State of Bihar and after order dated 02-04-2018 of Hon’ble High Court, the mining of sand and supply of stone chips could be restored. But, it is incorrect submission of the learned lawyer for the Respondents that due to process of RERA, Bihar registration, the construction of the project was stopped. In this connection, Section 3(1) of the Act, 2016 says:-

“No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act.”

“Provided that projects that are on going on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:”

From the above provisions it is clear that it is incorrect to say that the construction work was stopped for want of RERA, Bihar registration.

10. For calculation of delay in delivery of possession of flat to the complainant, it appears that when the Respondents have executed the Agreement for Sale on 13-05-2017, they have in their knowledge about the shortage of sand and stone chips, due to order of Hon’ble High Court, Patna, as it was passed on 17-02-2017 itself. So, in spite of having knowledge of the order of Hon’ble High Court, they have promised the complainant that the building shall be completed and the flat will be handed over to her within 10 months from the date of execution of Agreement for Sale. Now, if the period from 17-02-2017 to 02-04-2018 is added to the duration of 10 months in delivery period promised by the Respondents, the building should have been completed till 01-02-2019. But surprisingly, the same could not be completed till 01-02-2019. It is also fact that there is no claim of Respondents in their reply about any natural calamity/Force Majeure since 01-02-2019.

It is very surprising that the Respondents unilaterally decided and got mentioned in Clause-6, 7 of Agreement for Sale dated 13-05-2017 that in case of default, the buyer/complainant shall be liable to pay interest

@ 18% per annum on all the amount, which becomes due to the company and in case of default if the dues is not paid along with interest @ 18% per annum within 60 days, the Respondents may cancel the allotment of the flat after giving registered Notice to her before one month and allot the said flat to any other purchaser and company shall refund the amount to the buyer after 90 days from the date of cancellation after deducting 10% cancellation charge on the said consideration amount. I think, when the builder is entitled to get interest/deduction charge on the due amount to them, then in case of default in delivery of possession of the flat, the Respondents should also be held responsible to pay interest/compensation etc. to the complainant, as non-mentioning of payment of compensation/interest etc. to the complainant against the default of the Respondents in delivery of possession of the flat within the stipulated period is not only against the morality, but also it is legally incorrect, which also find support from the ruling of Hon'ble Supreme Court of India passed on 11-01-2021 in Civil Appeal No.5785/2019 Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna and Others.

Hence, the submissions of the learned lawyer for the Respondents appears to have been made only to save the neck of the Respondents and nothing else. It also appears that there has been delay in completion of the project and delivery of possession of the flat to the complainant due to deliberate attitude of the Respondents. On the other hand, the complainant cannot be asked to wait indefinite period for delivery of possession of flat, which also find support from the ruling of the Hon'ble Supreme Court of India in Fortune Infrastructure Vs. Trevor D. Lima (2018) 5 SCC 442. I

think, when there is delay in delivery of possession of flat and also there is dispute between one Sri Sanjay Kumar and the Respondents on the title of project land, the Respondents have no right to deduct 10% service charges etc. as per terms and conditions of Agreement for Sale, from the advanced principal amount Rs.33,78,000/- of the complainant. Therefore, I find and hold that the complainant is entitled for refund of her entire advanced principal amount Rs.33,78,000/- from the Respondents without delay and deduction.

11. The complainant has claimed that she has paid Rs.1,26,105/- towards registration fee, bank processing fee and cost of grill Rs.17,680/- to the Respondents. Whereon, the learned lawyer for the respondents denied and submitted that the registration fee has been deposited in the registration/treasury office and challan etc. was deposited by the complainant and further the grill was not used in the flat of the complainant, so the Respondents are not liable for refund of above amount.

Registered Agreement for Sale deed No.4388 dated 13-05-2017 was presented for registration by Respondent No.2, Sri Shashikant, Director of the Respondent No.1, M/s Jascon Enterbuild Ltd. before the Registering officer, Patna. The complainant has filed photocopy of said deed, whereon Stamp Duty Rs.82,080 and other fees Rs.6,525/- were paid on it by the complainant, as it is not expected that the Respondent No.2 will spend it from his own pocket. It is correct that the said amount was deposited in the Treasury by the complainant, but the same cannot be taken back by her. It is for the Respondents that since the Respondents No.2, Sri Shashikant has purchased Stamp and paid challan etc. in his name, so he must take steps

to take back the said total amount Rs.88,605/- from the registry/treasury office and at present he must pay/refund the said amount Rs.88,605/- to the complainant. I think, the claim of the complainant for interest on the said amount Rs.88,605/- is baseless, as the said amount was deposited in the Treasury, which does not lead to benefit the Respondents. So, they are not liable to pay interest on the said amount Rs.88,605/- to the complainant.

Secondly, the complainant has demanded payment of Rs.20,000/-, which she has paid to the bank as processing charge for home loan. Naturally, if the loan would not have been borrowed by the complainant for payment of consideration to the Respondents there would not have been necessity of payment of processing charge and refund of the said amount. It is also correct that it is responsibility of complainant to pay the consideration amount of the flat to the Respondents either from her own resources or from any other source like bank loan etc. and there should not be responsibility of the Respondents to refund it. This theory would have been applicable, if the Respondents would have delivered the flat to the complainant within the stipulated period or would have refunded the loan amount Rs.26,67,600/- without delay. Now, when none of the above action was taken by the Respondents, it is their responsibility to pay back/refund the bank processing fee Rs.20,000/- to the complainant.

Thirdly, the complainant has demanded Rs.17,680/- from the Respondents as cost of the grill, which she got prepared for fitting in the balcony of the flat. I think, when the complainant has not got delivery of possession of the flat, how she got prepared grill for the balcony of the said

flat and got money receipt dated 05-10-2017 from some Creative Interior, Patna and filed copy of the said receipt? I further think that when she has not got delivery of possession of the flat and she has cancelled the allotment of the flat, she cannot use the same in the balcony of the flat. Now, she may use the said grill anywhere or may sell it, but there is no responsibility of the Respondents to pay the amount Rs.17,680/- to the complainant. In this way, I find that the complainant is not entitled for the cost of grill Rs.17,680/- from the Respondents.

12. The complainant has also claimed interest on the advanced principal amount Rs.33,78,000/-. Naturally the Respondents have retained the above amount of the complainant since 19-03-2017 till date, so the complainant is entitled to get interest on the said amount from the Respondents and this view 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 mis-conception 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 this 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 complainant 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 7.30% per annum for a home loan of 3 years or more and if 2% is added, it will come 9.30% per annum. Hence, the Respondents have to refund the paid principal amount Rs.33,78,000/- to the complainant along with simple interest @ 9.30% per annum thereon. The Respondents have also to refund bank processing fee Rs.20,000/-, Stamp Duty and Challan etc. amount Rs.88,605/- to the complainant. But, the complainant is not

entitled for interest on these amounts. Accordingly, Point No.(i) and (ii) are decided in positive in favour of the complainant and against the Respondent in the manner stated above.

Point No.(iii):

13. The complainant has also claimed compensation of Rs.3.00 lacs for her economical, physical and mental harassment against the Respondents. As per Section 72 of the Act, 2016, the Respondents have been benefitted with the advance principal amount paid by the complainant and still the said amount is lying with the Respondents and they are using the same in their business development. The Respondents are avoiding delivery of the flat/refund of the advanced principal amount to the complainant. Presently, a flat of same area will not be available to the complainant in same locality at the same price, which was available to her in the year 2017. Rather, at present the price of the flat would have been much higher. The Respondents are running the present as well as other projects and improving their business. The claim of compensation has to be decided in a reasonable manner, keeping in mind the quantum of advance principal amount paid by the complainant to the Respondents, duration of the amount retained by the Respondents as well as proportion of loss to the complainant and benefit to the Respondents. The complainant has paid Rs.33,78,000/- to the Respondents out of the total consideration Rs.41,04,000/-, which is about 82.00% of the total consideration. In such facts and circumstances, I think, Rs.3,00,000/-, which is about 9.00 % of the advanced principal amount Rs.33,78,000/- paid by the complainant to

the Respondents, may be appropriate amount of compensation to the complainant for her economical, physical and mental harassment. Accordingly, Point No.(iii) is decided in positive in favour of the complainant and against the Respondents.

Point No.(iv):

14. The complainant has visited repeatedly to the office of Respondents and she has contacted to the Respondents as well as their staffs several times for refund of her advanced principal amount, but neither the Respondents nor their staffs have given any heed to her request till filing of the complaint case in this Court. Though the complainant has not brought any document on record as proof of actual expenditure incurred by her, but I think, the complainant would not have incurred more than Rs.20,000/- for conveyance to the office of the Respondents, A.O. Court in RERA, Bihar, engagement of lawyer, remittance of Court Fee, paper work etc., which must be paid by the Respondents to the complainant. Accordingly, I find and hold that the complainant is entitled for Rs.20,000/- as litigation cost against the Respondents. Hence, Point No.(iv) is decided in positive in favour of the complainant and against the Respondents.

Therefore, the complaint case of the complainant, Smt. Mamta Kumari is allowed on contest with litigation cost of Rs.20,000/- (Rupees twenty thousand only) against the Respondents. The Respondents are directed to refund the principal amount Rs.33,78,000/- (Rupees thirty three lacs seventy eight thousand only) to the complainant along with accrued simple interest @ 9.30% per annum thereon since the date of payment of respective amounts by the complainant to the Respondents till refund of said amount

by the Respondents to the complainant. The Respondents are further directed to refund registration fee, challan etc. amount Rs.88,605/- (Rupees eighty eight thousand six hundred five only) along with bank home loan processing charge Rs.20,000/- (Rupees twenty thousand only) to the complainant. But, the claim of the complainant for refund of cost of grill Rs.17,680/- (Rupees seventeen thousand six hundred eighty only) and interest on Registration Fee etc. Rs.88,605/- (Rupees eighty eight thousand six hundred five only) as well as on Bank Home Loan Processing Charge Rs.20,000/- (Rupees twenty thousand only) from the Respondents are hereby rejected. The Respondents are further directed to pay Rs.3.00 lacs (Rupees three lacs only) as compensation to the complainant for her economical, physical and mental harassment. The Respondents are directed to comply the order within 60 (sixty) days, failing which the complainant is entitled to get enforced the order through process of the Court.

Sd/-
(Ved Prakash)
Adjudicating Officer
RERA, Bihar, Patna
30-06-2021