



**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/1534/2020

RERA/AO/506/2020

Smt. Supriya Khemka, W/o Sri Gopal Kumar
Khemka, R/o Madan Lal Jain Gali, Near
Chiriyatand Pul, Kankarbagh, P.S.-Kankarbagh,
Patna-800020.

... Complainant

Versus

1. M/s Super City Builders Pvt. Ltd.

Through it's Director

2. Sri Anil Kumar, Director, M/s Super City
Builders Pvt. Ltd., S/o Sri Sadhu Sah

- Both Residents of 101, City Plaza, Plot
No.M/24, Road No.26, Shrikrishna Nagar,
Patna-800001.

... Respondents

Present:

**Sri Ved Prakash
Adjudicating Officer**

Appearance:

For Complainant Sri Punit Kumar, Advocate

For Respondents 1. Sri Anil Kumar, Director
2. Sri Shashi Bhushan Sinha, Advocate

ORDER

15-03-2021 This complaint petition is filed by the complainant,
Smt. Supriya Khemka against the Respondent No.1, M/s Super City
Builders Pvt. Ltd. through it's Director, Respondent No.2,

Sri Anil Kumar u/s 31 read with Section-71 of Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as the “Act, 2016”) for ‘title’ and delivery of possession of booked Plot No.G-67 of project “Mannat City” and interest @ 18% per annum on paid principal amount for delayed period of delivery of possession of the allotted Plot No.,G-67 and further for compensation of Rs.2.00 lacs for her physical and mental harassment with litigation cost, consequent to non-delivery of the Plot allotted to her.

2. In nutshell, the case of the complainant is that the complainant, Smt. Supriya Khemka has booked on 09-03-2017 a Plot No.G-67 having area 1200 sq.ft. in the project “Mannat City” situated at Mauza-Anandpur, Survey Thana No.36, P.S.-Bihta, Danapur, District-Patna of the Respondents on consideration of Rs.5,25,000/-.But, the Respondents have not executed Agreement for Sale in her favour. She has further stated that in spite of several reminders the Respondents were/are delaying execution of Agreement for Sale in her favour. She has further stated that she has paid total consideration Rs.5,25,000/- through cheque and R.T.G.S., but the Respondents did not issue money receipts for all the payments. She has further submitted that due to huge financial constraints, she has borrowed loan from Manappuram Financial Services for payment of the consideration amount to the Respondents. It is further stated that while she was going to the office of the Respondents to request to the Respondent No.2, Sri Anil Kumar for delivery of her Plot No.G-67, she has met with an accident out of the office of the Respondents and her

right hand got fractured. In spite of repeated requests/reminders to execute Agreement for Sale and deliver of possession of the Plot No.G-67, the Respondents used to misbehave and threaten to her. Consequently, she has been physically and mentally harassed by the Respondents. Hence, being fed up with the activities of the Respondents, she has filed this complaint case against the respondents with the above reliefs.

3. On appearances, the Respondents have filed reply pleading *inter-alia* that the complainant, Smt. Supriya Khemka has filled-up the Booking Form on 09-03-2017 for purchase of Plot No.G-67 having area 1200 sq.ft. in their project “Mannat City” situated at Anandpur, Bihta, P.S.-Bihta, District-Patna on consideration of Rs.5,25,000/-. As per terms and conditions, the purchaser had to make down payment within three months of the booking. It is also in the terms and conditions that the complainant will get 10% discount over the cost of the land, but she could not contact with the Respondent company for one year after booking of the Plot. The complainant has failed to comply the terms and conditions, in spite of sufficient time given to her by the Respondents. As such, the complainant has paid only Rs.3,75,000/- out of total cost of Rs.5,25,000/- to the Respondents. When the complainant failed to comply the terms and conditions of the Respondents, the allotment of the complainant was cancelled and she was informed accordingly on 05-07-2018. The complainant has been given sufficient time to deposit the remaining consideration amount, but she failed to comply the terms of payment. It is further case that on 05-07-2018, 30-07-2018 and on

various other dates chances to deposit the remaining cost of the land/plot was provided to the complainant, so that process of registration may be completed. But, she did not take care to deposit the remaining cost of the land/plot, rather filed F.I.R. against the Respondents u/s 406, 420 IPC and after investigation the Police found the allegations of the complainant are untrue and submitted Final Form with the remark that the complaint is of civil nature.

4. Further case of the Respondents is that the complainant herself has given in writing to cancel the booking, as she was not in position to abide the payment terms and requested to refund her paid money as per policy of the company. It is further case that the Respondents have come to know through F.I.R. No.246/2020 that on 24-07-2020 Rs.1,50,000/- has been deposited through R.T.G.S. in the account of the Respondent No.1. Thereafter, the Respondent No.2, Sri Anil Kumar at once contacted the Bank on 30-07-2020 and filed an application in the Bank as to who has deposited the money in the account of the company. Thereafter, from perusal of the Bank statement, it has come to the knowledge of the Respondents that the amount Rs.1,50,000/- has been deposited in the account of the company by M/s S.K. Enterprises and not by the complainant, Smt. Supriya Khemka. In spite of clear instruction given by the Respondents to the complainant, Smt. Supriya Khemka through letter not to deposit a single paise in the account of the company after cancellation of the booking, she has got deposited the said money in the account of the company. Now, the complainant is putting pressure on

the Respondents using legal/illegal means to get the land/plot registered in her favour. The Respondents are ready to refund the amount of the complainant as per terms and conditions of the booking application. The Respondents are still ready to refund the amount Rs.1,50,000/-, which has been deposited in the account without consent of the Respondents, by taking account number from her own relatives, who were purchaser of land from the Respondents.

5. Further case is that on 10-06-2018, the Respondents informed to the complainant through E-mail to deposit due money along with late fee, otherwise her booking will be cancelled. Thereafter, the complainant deposited some money, but not full remaining amount, in spite of promise to pay the balance amount within two days. She failed to comply her promise to the Respondents. So, on 05-07-2018, the Respondents informed to the complainant that her booking for Plot No.G-67 has been cancelled due to non-payment of balance amount and the Respondents have requested not to deposit any amount after cancellation of allotment. But, she kept mum over the matter and after obtaining the company's account number from her relatives, she got deposited Rs,1,50,000/- in the account of the Respondents only to make pressure on them to get the land/plot registered. Now, the Respondents, after cancellation of the booking of the complainant, have booked the Plot No.G-67 to other purchaser and hence, the complaint petition may be disposed of.

6. On basis of the pleadings of the parties and submissions of the learned lawyers of the parties and Respondent No.2, Sri Anil Kumar, the following points are formulated to adjudicate this case:-

- (i) Whether the complainant is entitled for execution of registered Agreement for Sale and delivery of possession of Plot No.G-67 in the project “Mannat City” of the Respondents?
- (ii) Whether the complainant is entitled for refund of her principal amount Rs.5,25,000/- along with interest @ 18% per annum against the Respondents?
- (iii) Whether the complainant is entitled for compensation of Rs.2.00 lacs against the Respondents for her physical and mental harassment?
- (iv) Whether the complainant is entitled for litigation cost against the Respondents?

Point No.(i) and (ii):

7. At the very outset of the discussion, it is made clear that this is a Special Court under the Real Estate (Regulation and Development) Act, 2016. So, it has no jurisdiction to decide ‘title’ of any person on any land/plot/flat/building, which vests only with Civil Court of competent jurisdiction.

8. Now, coming to the facts of this case, it is admitted that the complainant, Smt. Supriya Khemka has booked on 09-03-2017 Plot No.G-67 having area 1200 sq.ft. in project "Mannat City" of the Respondents situated at Mauza-Anandpur, Survey Thana No.36, P.S.-Bihta, Danapur, District-Patna on consideration of Rs.5,25,000/-, but none of the parties has filed Booking Form/KYC/Allotment Letter, which might have unfolded about the terms and conditions of schedule of payment of consideration, by which the complainant would have paid the consideration to the Respondents, who would have complied the promise of delivery of possession of the Plot G-67. Hence, presently only oral the statements of the parties are the basis to decide schedule of payment of consideration and the time of delivery of possession of the Plot/refund of principal amount to the complainant by the Respondents.
9. Admittedly, the complainant, Smt. Supriya Khemka has paid Rs.3,75,000/- to the Respondents through their authorised signatory, for which the complainant has filed photocopies of money receipts No.2519 dated 09-03-2017 worth Rs.1,00,000/-, No.2544 dated 23-05-2017 worth Rs.1,25,000/-, No.3338 dated 20-06-2018 worth Rs.1,50,000/- paid to the Respondents. However, there is difference between both the parties on payment of remaining Rs.1,50,000/- by the complainant to the Respondents within the stipulated time.
10. The Act, 2016 was enforced on 01-05-2017 and the project "Mannat City" of the Respondents is registered with RERA, Bihar on 29-08-2018 with Registration No.BRERAP000 92-2/94/R-147/2018 for validity period

of 3 years 11 months from 29-08-2018 till 10-08-2022. Now, Section 13(1) says :-

“the promoter shall not accept a sum more than 10% of the cost of the apartment/plot or building, as the case may be, as advance payment or as application fee from a person without entering into a written Agreement for Sale for such person and register the said Agreement for Sale under any law for the time being in force”.

But, admittedly this project “Mannat City” is ongoing and whatever the principle between the parties was executed/adopted at the time of enforcement of the Act, 2016 on 01-05-2017, cannot be brushed aside as per sub-rule 2 of rule-8 of Bihar Real Estate (Regulation and Development) Rules, 2017. Accordingly, the terms and conditions between the parties decided in the Booking Form has very important role to decide this case, but the same is not brought on record by either of the parties. In the present case, both the parties in their own way are claiming that she/he is correct. Whereas, the complainant is claiming that she has requested to execute Agreement for Sale in her favour like in other cases, but the Respondents did not execute registered Agreement for Sale in her favour, but on other hand, the Respondents are claiming that it was condition that the complainant should pay full consideration within three months from the date of booking, then they will execute registered Sale Deed in her favour with respect to the booked Plot, in which she has paid only Rs.3,75,000/- till 20-06-2018 and in spite of

repeated chances, she failed to deposit the remaining consideration. Hence, her allotment was cancelled and she was communicated through E-mail address “gopalkhemka@gmail.com” and she was requested not to deposit any amount in Bank account of the company after cancellation of the booking of the Plot. The Respondents have further stated that the complainant did not take care to deposit the remaining consideration amount, rather she lodged F.I.R. No.246/2020 against the Respondents u/s 406, 420 IPC, which after enquiry was found untrue and the Police submitted Final Form on 14-10-2020 with remark that the complaint is of civil nature. It is further stated that it is through the F.I.R. that the Respondents have come to know that Rs.1,50,000/- was deposited on 24-07-2020 by M/s S.K. Enterprises and not by the complainant, Smt. Supriya Khemka. It is further stated that the complainant by using legal/illegal means is now making pressure over the Respondents to get the land/plot registered.

11. The Respondents have filed photocopy of letter dated 05-07-2018 sent through E-mail address: “gopalkhemka@gmail.com” of Sri Gopal Kumar Khemka, husband of the complainant, wherein the Respondents have informed about the cancellation of the allotment of Plot No.G-67, whereon the complainant has stated that wrong E-mail has been used by the Respondents, as E-mail address of her husband is “gopalkhamka@gmail.com”. The Respondents have filed Supervision Note dated 14-10-2020 of A.S.P., Patna, wherein he has detailed that the complainant would have filled-up the Booking Form after due reading the

same and thereafter she would have signed thereon and hence, her statement that wrong E-mail address has been used by the Respondents in sending mail appears incorrect. It is further stated therein that the complainant and her husband have admitted their fault during their statement before the A.S.P., Patna and stated that if the Plot is not delivered to them, then their money/advanced consideration may be refunded with interest @ 18%. The Respondents have further filed photocopy of letter dated 02-11-2021 signed by the complainant, Smt. Supriya Khemka addressed to the Managing Director of M/s Super City Builders Pvt. Ltd., wherein she has requested them to cancel her booking of Plot No.G-67 in the project "Mannat City" and refund her money as per policy of the company. They have further filed photocopy of booking cancellation letter dated 02-11-2020 issued by authorised signatory of the Respondents regarding cancellation of booking of Plot No.G-67 in project "Mannat City" and refund of Rs.3,75,000/-. The learned lawyer for the complainant by filing Supplementary Affidavit submitted that there is no such land with the Respondents, for which they have got RERA, Bihar registration and after knowledge, the Respondents used to cancel the allotment of Plots of the parties. On this issue, I think, the complainant should by filing petition bring this fact to the knowledge of Hon'ble RERA, Bihar, but so far as this case is concerned, the complainant should have brought documentary evidence on the record that she has fulfilled all the terms and conditions of the Respondents and she has paid full consideration Rs.5,25,000/- within

the time schedule for the payment and she is entitled for registered Sale Deed of Plot No.G-67 of the project “Mannat City” of the Respondents.

Admittedly, the complainant should have paid Rs.5,25,000/- within three months of booking of the Plot No. G-67 on 09-03-2017, whereas she was provided time till 20-06-2018, when she visited the office of the Respondents and has come to know that in case she will fail to deposit full consideration, her allotment of the Plot No.G-67 will be cancelled, she should have deposited the remaining full consideration, but, she failed to do so. Hence, her allotment was cancelled by the Respondents on 05-07-2018 and the said Plot No.G-67 of “Mannat City” was sold to other buyer. She has further stated that wrong E-mail address has been used by the Respondents. But, when it was brought to her knowledge on 20-06-2018 that if she will fail to deposit the rest amount of consideration within two days, her allotment will be cancelled, why she has not deposited the amount, is not satisfactorily answered by her. Later on she herself has requested for cancellation of her allotment on 02-11-2020 and as per her request, once again the Respondents have handed over cancellation letter and got her signature on 02-11-2020.

12. The learned lawyer for the complainant submitted that after taking the last instalment of Rs.1,50,000/- on 24-07-2020, the Respondents tried to trap the complainant by making pressure and took her signature on self created paper. On this issue, it is very surprising argument on behalf of the learned lawyer for the complainant as to when she has filed F.I.R. No.246/2020 dated 01-10-2020 u/s 406, 420 IPC against the

Respondents with respect to non-execution of registered Agreement for Sale against the Respondents, then why she has failed to file F.I.,R. on the issue of taking of her signature under coercion/trap by the Respondents and why she has not made complaint before the senior Police Officers, if no action was taken by the junior Police Officers on her complaint on the subject matter and non-filing of F.I.R. against the Respondents on this issue shows that the complainant is making her case changed from time to time as per her choice/sweet will, which not at all appears correct.

13. The learned lawyer for the complainant once again submitted that due to moving of the complainant repeatedly to the office of the Respondents for making request to execute Agreement for Sale with respect to the concerned Plot, one day she met with an accident and her right hand got fractured and the Respondent No.2, Sri Anil Kumar used to abuse/misbehave with her. On this issue once again, I think, is it a Forum to try/enquire all these allegations? In such case, she should have approached a Forum like Police/Criminal Court, where she could have raised her allegations, but she has failed to do so. The learned lawyer for the complainant further submitted that the complainant has borrowed loan from Manappuram Finance Services for making payment of consideration to the Respondents. On this issue, I think that it is the responsibility / obligation of the complainant to fulfil the terms and conditions of the Booking Form and no other person like the Respondents

will be responsible for the same. So, this submission is also not tenable in the eye of law.

14. One thing more is also not out of place to mention here that as to why and how she has got deposited the amount Rs.1,50,000/- through M/s S.K. Enterprises, which is also a matter of enquiry. Whether this firm has interest in the activities of the complainant and documents of M/s S.K. Enterprises from where she has borrowed loan, has not been brought on record. Further, the complainant should have brought photocopy of her Bank Pass Book for showing payment of this amount Rs.1,50,000/-, but she has failed to do so. Further, the Respondents have also admitted that M/s S.K. Enterprises have deposited Rs.1,50,000/- and the complainant has also filed photocopy of Pay-in-Slip dated 24-07-2020, but she has failed to file photocopy of her Bank Pass Book from where she has transferred the amount Rs.1,50,000/- in the account of the Respondents.

15. In light of the above facts and circumstances of this case, it is not fit to allow the complaint case of the complainant against the Respondents with respect to execution of registered Agreement for Sale and delivery of possession of Plot No.G-67 in the project "Mannat City" of the Respondents. But, since the complainant has paid Rs.5,25,000/- through different modes on different occasions beyond the payment schedule/terms and conditions of Booking Form, so she is entitled for refund of said principal amount from the Respondents without deduction of process fee etc.

16. Now, I have to see as to whether and how much interest may be allowed to the complainant against the Respondents? On discussion of previous paragraphs it is clear that the complainant has failed to pay the total consideration Rs.5,25,000/- within the stipulated time, rather on one or other grounds, she is trying to get delivery of possession of the Plot No.G-67 of the project "Mannat City" of the Respondents, but it is a fact that she has paid Rs.5,25,000/- to the Respondents in different instalments beyond time schedule, so the detention of money in the account of the Respondents make her eligible for interest on the paid principal amount Rs.5,25,000/-. The Hon'ble Supreme Court of India in Alok Shankar Pandey Vs. Union of India and Others on 05-02-2007 in Appeal (Civil) 1598/2005 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.

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, 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 principal amount Rs.5,25,000/- to the complainant along the accrued simple interest @ 9.30% per annum thereon since the date of payment of respective amount to the Respondents by the complainant till refund of the said amount by the Respondents to the complainant. Accordingly, Point No.(i) is decided in negative against the complainant and in favour of Respondents and Point No.(ii) is

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

Point No.(iii):

17. The complainant has also claimed compensation of Rs.2.00 lacs for her 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 Rs.5,25,000/- 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 Plot to the complainant and presently, a Plot of same area will not be available to the complainant in same locality at the same price, which was available in the year 2017, rather at present the price of the Plot would have been much higher. The Respondents are running the present as well as other projects and improving their business. However, I think 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. In course of the repeated visits to the office of the Respondents to request them for execution of Agreement for Sale, one day the complainant met with an accident and got her right hand fractured. Hence, this fact also has to be kept in mind while deciding the quantum of compensation. Hence, considering all the facts and circumstances, I think, the Respondents have to pay Rs.80,000/-, which

is about 15% of the advance consideration Rs.5,25,000/- paid by the complainant to the Respondents, as appropriate amount of compensation to the complainant for her physical and mental harassment. Accordingly, Point No.(iii) is decided in positive in favour of the complainant and against the Respondents.

Point No.(iv):

18. The complainant has visited repeatedly to the office of Respondents and she has contacted to the Respondents as well as their staffs several times regarding execution of Agreement for Sale in respect of the Plot No.G-67 allotted to her by the Respondents, but neither the Respondents nor their staffs have given any heed to her request till filing of the complaint case in this Court. Though it is made clear that the complainant has deposited total principal amount Rs.5,25,000/- beyond the scheduled period, but it is fact that she made her all efforts to get the Plot registered in her name. 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. Accordingly, I find and hold that the complainant is entitled for Rs.20,000/- as litigation cost against the Respondents. Hence, Point No.(iii) is decided in positive in favour of the complainant and against the Respondents.

Therefore, the complaint case of the complainant, Smt. Supriya Khemka is partly allowed on contest with litigation cost of Rs.20,000/- (Rupees twenty thousand only) against the Respondents. The relief of the complainant with respect to execution of registered Agreement for Sale and delivery of possession of Plot No.G-67 of the project “Mannat City” of the Respondents is hereby rejected/dismissed, but the Respondents are directed to refund the principal amount Rs.5,25,000/- (Rupees five lacs twenty five thousand only) to the complainant along with accrued simple interest @ 9.30% per annum thereon since the date of payment of respective amount by the complainant to the Respondents till refund of said amount by the Respondents to the complainant. The Respondents are further directed to pay Rs.80,000/- (Rupees eighty thousand only) to the complainant as compensation for her 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 same through process of the Court.

Sd/-
(Ved Prakash)
Adjudicating Officer
RERA, Bihar, Patna
15-03-2021