



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

**RERA/CC/410/2019
RERA/AO/89/2019**

Smt. Gayatri Devi, W/o Dr. Ashok Kumar, R/o Shanti Vihar, Ambedkar Path, Rukanpura, Patna, Bihar, PIN-800014. ... Complainant

Versus

1. M/s Sona Akhilesh Construction and Developer Pvt. Ltd.
2. Smt. Malti Singh,
3. Sri Kamlesh Prasad Singh,
4. Sri Someshwar Singh,
all Directors of M/s Sona Akhilesh Construction and Developer Pvt. Ltd. R/o New Area, Rukanpura, Near Jakkanpur P.S., G.P.O.-Patna, PIN-800001.
5. Sri Shashikant Singh, S/o Sri Jagat Narain Singh, Director of M/s Sona Akhilesh Construction and Developers Pvt. Ltd., R/o Veer Basavan Nagar, Rukanpura, Patna-800014. ... Respondents

Present:

**Sri Ved Prakash
Adjudicating Officer**

Appearance:

For Complainant : In Person

For Respondents : In Person, Sri Someshwar Singh

ORDER

15-12-2020 This complaint petition is filed by the complainant, Smt. Gayatri Devi, against the Respondent No.1, M/s Sona Akhilesh Construction and Developer Pvt. Ltd. through it's

Directors, Smt. Malti Singh, Sri Kamlesh Prasad Singh, Sri Someshwar Singh and Sri Sri Shashikant Singh, Respondents No.2, 3, 4 and 5 respectively 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 principal amount Rs.9.00 lacs along with accrued interest @ 18% per annum thereon and compensation for her economical, physical and mental harassment with litigation cost of Rs.25,000/-, consequent to non-delivery of flat allotted to her.

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2. In nutshell, the case of the complainant is that Smt. Gayatri Devi has booked on 11-12-2012 one 3 BHK Flat No.301 in the project “Maa Sona Complex” situated at Gandhi Nagar, near Patliputra Railway Station, Patna, of the Respondents on consideration of Rs.38.00 lacs and she has paid Rs.5.00 lacs as booking amount to the Respondents. Thereafter, both the parties have executed Agreement for sale with respect to the said flat. After execution of Agreement for Sale, the complainant has paid Rs.1.00 lac through cheque no.265009 dated 29-04-2013, Rs.2.00 lacs through cheque no.265013 dated 13-06-2013 and Rs.1.00 lac through cheque no.551013 dated 16-09-2013. It was agreed in the Agreement for Sale executed between the parties that the delivery of possession of the flat shall be given to the complainant till May, 2015, but instead of providing possession of flat within the stipulated time, construction of the project was delayed and instalments of the

remaining consideration was demanded from the complainant by the Respondents. It is pertinent to mention that till May, 2015 not a single stone was laid on the project site. Therefore, due to delay in construction work of the said project and frustration of object of the contract, the complainant has stopped further payment of instalments and requested for cancellation of booking of her flat and refund of her paid amount, but the Respondents on one or other pretext refused to pay money back. It is further case that the said project is on-going, but it is not registered with the RERA, Bihar. The very purpose of purchasing of the flat got defeated due to inordinate delay in construction work of the project and now after retirement of the husband of the complainant, both of them are moving out of Bihar. Hence, she may be granted above reliefs against the Respondents.

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3. On appearance, the Respondents have filed reply pleading *inter-alia* that it is correct that flat no.301 was allotted to the complainant and thereafter Agreement for Sale was executed on consideration of Rs.38.00 lacs. It is further case that the complainant has paid Rs.9.00 lacs as advance principal amount against the said flat no.301 of the project “Maa Sona Complex” out of total consideration Rs.38.00 lacs. Further case is that the Respondens have made construction, but due to illegal and unnecessary disputes with regard to the land of the project raised by some illegal persons, the construction of the building has not become final. Further, the Respondents are ready to

pay to the complainant Rs.2.00 lacs through cheque of Canara Bank, Ram Nagari Branch, Patna and undertake to refund the rest amount Rs.7.00 lacs within six months. It is further case that rest statements of the complainant are incorrect. The Respondents have not breached any of the terms of the Agreement for Sale. Therefore, in light of their above submissions, proceedings of this case may be dropped against the Respondents.

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

- (i) Whether the complainant is entitled for accrued interest @ 18% per annum on paid principal amount Rs.9.00 lacs against the Respondents?
- (ii) Whether the complainant is entitled for compensation against the Respondents for her economical, mental and physical harassment?
- (iii) Whether the complainant is entitled for litigation cost of Rs.25,000/- against the Respondents?

Point No.(i) :

5. Admittedly, the complainant Smt. Gayatri Devi has booked one 3 BHK Flat No.301 in the project “Maa Sona Complex” of the Respondents on consideration of Rs.38.00 lacs. It is also admitted case that the Agreement for Sale between both the parties was executed on 11-12-2012 for the said and

Rs.5.00 lacs was paid by the complainant to the Respondents at the time of booking of the flat. The complainant has filed photocopies of the Agreement for Sale executed between the parties, wherein the payment of Rs.5.00 lacs by the complainant to the Respondents find mentioned, which support her case. The Respondents have also admitted that the expected delivery of the flat to the purchaser/complainant shall be December, 2013 with grace period of 6 months, provided that the time of completion shall be deemed to have been extended automatically in event of non-availability of building materials or delay in receipt of instalments of the consideration amount from purchaser or purchasers of other units and/or delay due to any reason beyond control of the Builder.

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The Respondents have pleaded that illegal and unnecessary dispute in regard to the land of the project has been raised by some illegal persons. So, the construction of the building has not become final. However, the Respondents have not brought any document in regard to the above reasons for delay of the project. Hence, the reasoning for delay pleaded by the Respondents appears not reasonable, but one thing is correct that the building/project could not be completed within the stipulated time of December, 2013 plus grace period of

6 months i.e till June, 2014. In such circumstances, it appears that it is reasonable for the complainant to request for cancellation of the booking of the flat and refund of her paid principal amount Rs.9.00 lacs without any deduction from the side of the Respondents, as no one can wait for indefinite period for delivery of possession of the flat. It is also not out of place to mention that admittedly, the Respondents have refunded the total principal amount Rs.9.00 lacs to the complainant during the hearing of the present case.

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6. The complainant has claimed interest @ 18%, which is declined by the Respondents. It is to be mentioned that in Clause-8 of the Agreement for Sale, the Respondents have got scribed that in case of failure of payment of instalments the purchasers have to pay interest @ 18% on the due amount. It is also to be added that in said Agreement for Sale in Clause-15, it is mentioned that if the Builder is not able to give possession of the flat to the purchaser on account of any reasonable cause, the purchaser shall not be entitled for any damages whatsoever, but he/she shall be entitled to receive back the entire money paid by him/her to the Builder towards consideration of the said flat together with the interest thereon calculated @ 4% per annum from the date of such payment or payment until the date

of repayment by the Respondent to the purchaser. It shows that the Respondents have got scribed two different rules on payment of interest, which are completely unreasonable in the eye of law, as both should have been the same for both the parties. Hon'ble Supreme Court in Alok Shankar Pandey Vs. Union of India and Others on 15-02-2007 in Appeal (Civil) 1598/2005 has held that:

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“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.

Considering above materials, I think, as per Rule 17 and 18 of Bihar Real Estate (Regulation & Development) Rules, 2017, 2% above the M.C.L.R. of S.B.I. has to be paid as interest to the complainant by the Respondents. Presently, the M.C.L.R. of S.B.I. for a Home Loan of more than 3 years is 7.30% and if 2% is added, the rate of simple interest will come 9.30% per annum. Hence, the Respondents have to pay simple interest @ 9.30% per month on total principal amount Rs.9.00 lacs from the respective date of payment by the complainant to the Respondents till refund of respective amount by the Respondents to the complainant. Accordingly, Point No.(i) is decided in positive in favour of the complainant and against the Respondents.

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Point No. (ii):

7. The complainant has also claimed compensation against the Respondents for her economical, mental and physical harassment. The complainant has cancelled booking of the flat due to delay in construction of the project. As per Section 72 of the Act, 2016 the Respondents are benefitted by using the amount of Rs.9.00 lacs paid by the complainant 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 her in the year 2012, rather the price would have

been multiplied. So, the amount of compensation has to be reasonable, keeping in mind the advance principal amount paid by the complainant to the Respondents, the duration of amount retained by the Respondents as well as proportion of loss to the complainant and benefit to the Respondents. In such view of the matter, I find that Rs.90,000/-, which is about 10% of the principal amount Rs.9.00 lacs paid by the complainant to the Respondents, may be appropriate amount as compensation to the complainant for her economical, physical and mental harassment. Accordingly, Point No.(ii) is decided in positive in favour of the complainant and against the Respondents.

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Point No.(iii) :

8. The complainant has visited several times to the Respondents office, met with them and their staffs and requested for refund of her paid principal amount, whereon, the Respondents and their staffs did not give any attention, hence, being compelled the complainant has filed this case. The complainant would have naturally incurred expenses in travelling to the office of the Respondents to meet with them and their staffs and also for filing the present complaint case in RERA, Bihar, preparation of documents, payment of Court Fee etc. Though the complainant has not brought any document on the record to show the actual expenditure incurred by her for these purposes, but she has claimed an amount of Rs.25,000/- without filing any relevant document. Hence, I think, in all these processes the

complainant would not have incurred more than Rs.15,000/-, which must be paid by the Respondents. Accordingly, Point No,(iii) is decided in positive in favour of the complainant and against the Respondents.

Therefore, the complaint case of the complainant, Gayatri Devi is allowed on contest with litigation cost of Rs.15,000/- (Rupees fifteen thousand only) against the Respondents. The Respondents are directed to pay simple interest @ 9.30% per annum on the principal amount Rs.9.00 lacs (Rupees nine lacs only) since the respective 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.90,000/- (Rupees ninety thousand only) as compensation to the complainant for her economical, mental and physical 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
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