



**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/1042/2020

RERA/AO/302/2020

Sri Umesh Chandra Jha, S/o Adhik Lal Jha,
R/o Near APSM College, Rajwara, Barauni,
Begusarai-851112.

... Complainant

Versus

1. M/s Agrani Homes Pvt. Ltd., House No.15,
Ward No.1FA, Patliputra Colony, District-Patna.

Through it's Director:

2. Sri Alok Kumar, Director, S/o Sri Padum
Singh, R/o Yogipur, Chitragupt Nagar, P.S.-
Patrakar Nagar, P.O.-Lohia Nagar,
Kankarbagh, Patna-800020.

... Respondents

Present:

**Sri Ved Prakash
Adjudicating Officer**

Appearance:

For Complainant

- Sri Kishore Kunal, Advocate

For Respondents

- Sri Alok Kumar, Director

ORDER

02-07-2021 The original allottees of this complaint case are Smt. Shalu Agrawal, W/o Sri Santosh Kumar and Sri Santosh Kumar, son of the present complainant, Sri Umesh Chandra Jha, who are residing abroad and allottee, Sri Santosh Kumar has written an authority letter dated

06-02-2020 authorising the complainant, Sri Umesh Chandra Jha to contest this case and do all necessary actions on their behalf and that is why presently this complaint case is filed by the complainant, Sri Umesh Chandra Jha on basis of authorisation as per section 56 of the RERA Act, 2016.

2. This complaint petition is filed by the complainant, Sri Umesh Chandra Jha 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 advanced principal amount Rs.17.00 lacs along with accrued interest, @ 18% per annum thereon of the allottees Smt. Shalu Agrawal and Sri Santosh Kumar and further compensation of Rs.10.00 lacs for their economical, physical and mental harassment with litigation cost of Rs.1.00 lac, consequent to non-delivery of flat allotted to them.

3. In nutshell, the case of the complainant is that the original allottees/purchasers, Smt. Shalu Agrawal and Sri Santosh Kumar along with the present complainant, Sri Umesh Chandra Jha were allured by fancifulness of the sale brochures, specification details, lay out plan and verbal assurances of the Respondent No.2, Sri Alok Kumar about Block-O of their project "Agrani IOB Nagar". After negotiations, both the parties agreed to sell/purchase a flat in the said project. Later on 28-11-2013 the allottees booked a flat in Block-O of the said project "Agrani IOB Nagar" of the Respondents on consideration of Rs.19,58,710/- and as

first instalment an amount of Rs.10.00 lacs through RTGS of ICICI Bank was paid to the Respondents, for which money receipt no.307 dated 28-11-2011 was issued in favour of the allottee, Sri Santosh Kumar. Thereafter, on 09-09-2014 the allottees have paid Rs.7.00 lacs through RTGS of SBI on 21-08-2014, against which money receipt no.367 dated 09-09-2014 was issued in favour of the allottee, Sri Santosh Kumar. So, after demand by the Respondents, the allottees have paid Rs.17.00 lacs on different occasions since 28-11-2013 to 09-09-2014, for which the Respondents have issued receipts in favour of the allottee, Sri Santosh Kumar. Thereafter, the complainant Sri Umesh Chandra Jha on behalf of the original allottees, Smt. Shalu Agrawal and Sri Santosh Kumar on one side and Respondent No.1, M/s Agrani Homes Pvt. Ltd. through it's Director, Respondent No.2, Sri Alok Kumar on other side executed a Memorandum of Understanding (M.O.U.) on 29-03-2015 for sale/purchase of a flat on 3rd floor having super built up area 1300 sq.ft. with one reserve car parking space on ground floor/basement in Block-O of the project "Agrani IOB Nagar", situated at opposite to Sarari Gumti, Near Danapur Railway Station, P.O.-Khagaul, Danapur, District-Patna of the Respondents on consideration of Rs.19,58,710/- inclusive of Service Tax Rs.58,710/-. After receipt of the advance principal amount Rs.17.00 lacs and execution of MOU, the Respondents started changing their versions and demanded payment of entire consideration amount Rs.19,58,710/- before delivery of possession of the flat, which was denied by the allottees/complainant. Thereafter, the allottees have stopped making payment to the Respondents, as there was no progress on site of

the project. On other hand, the Respondents were continuously pressurising the allottees/complainant to pay the entire consideration amount and have been delaying the matter without any significant progress towards construction of the project.

4. The Respondents have promised in MOU that construction of the building shall be completed within 36 months with grace period of six months, after approval of Map from P.M.C., provided that the time for completion shall be deemed to have been extended in the event of non-availability of building materials or delay due to Government Policies affecting the industry or due to Force Majeure. Further case of the complainant is that the period of more than 6 years have passed, but the Respondents have not been able to hand over possession of the flat, as construction of the building/flat has not started as yet. Previously, the complainant/allottees had heard about the good reputation of the Respondents in the Real Estate market and believing the same, they have booked the flat in the project of the Respondents. But, thereafter, the reputation of the Respondents downgraded drastically due to non-completion of various projects and the Respondents are sitting over the money of the allottees/purchasers without making any progress in construction of the present project. Now, there is no hope left in the minds of the complainant/allottees regarding delivery of possession of the flat to them by the Respondents. The complainant/allottees have repeatedly requested to the Respondents either to complete the flat and deliver possession of the same to them or refund their principal amount,

but the Respondents have not given any heed to their request. Rather, used their paid consideration amount in their other projects. Now, the complainant and allottees have become fed up with the behaviour of the Respondents, so the complainant on authorisation of allottee, Sri Santosh Kumar has filed the present complaint case against the Respondents with above reliefs.

5. On appearance, the Respondents have filed reply pleading *inter-alia* that they are ready to refund the principal amount of the complainant/allottees till September, 2021 and they are also ready to adjust the principal amount of the allottees, if purchase of the land is done by them in their project “Agrani Prakriti Vihar” situated at Parmanandpur and in light of their assurances, the case may be disposed of.

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

- (i) Whether the complainant/allottees are entitled for refund of their principal amount Rs.17.00 lacs along with accrued interest @ 18% per annum thereon against the Respondents ?
- (ii) Whether the complainant/allottees are entitled for compensation of Rs.10.00 lacs for their economical, physical and mental harassment against the Respondents?

(iii) Whether the complainant/allottees are entitled for litigation cost of Rs.1.00 lac against the Respondents?

Point No.(i):

7. Admittedly, after negotiations, both the parties have agreed for sale /purchase of a 3 BHK flat in the project “Agrani IOB Nagar”, Block-O of the Respondents on consideration of Rs.19,58,710/-. According to the complainant, Sri Umesh Chandra Jha, the allottees have paid Rs.10.00 lacs through RTGS of ICICI Bank on 28-11-2013 at the time of booking, to the Respondents, for which they have issued money receipt no.307 on 28-11-2013. It is further stated that allottees have paid Rs.7.00 lacs on 21-08-2014, through RTGS of S.B.I., S.K. Puri Branch to the Respondents, for which money receipt no.867 dated 09-09-2014 has been issued by authorised signatory of the Respondents. The complainant has filed photocopies of receipts of both of these payments, which support that the allottees have paid Rs.17.00 lacs to the Respondents. Thereafter, a M.O.U dated 29-03-2015 for Sale/purchase of a 3 BHK flat on 3rd floor having super built-up area 1300 sq.ft. with one reserve car parking space on ground floor/basement in Block-O of the project “Agrani IOB Nagar”, situated at Sarari Gumti, Near Danapur Railway Station, P.S.-Danapur, P.O.-Khagaul, District-Patna of the Respondents was executed between the allottees, Smt. Shalu Agrawal and Sri Santosh Kumar through the complainant, Sri Umesh Chandra Jha on one side and Respondent No.1, M/s Agrani Homes Pvt. Ltd. through it’s Director, Respondent

No.2, Sri Alok Kumar on other side on consideration of Rs.19,58,710/- including Service Tax Rs.58,710/-, out of which the allottees have paid Rs.17.00 lacs inclusive of Service Tax Rs.50,955/-, which is mentioned in the M.O.U. itself. The complainant has filed photocopy of M.O.U. dated 29-03-2015, which supports the case of the complainant.

8. The Respondents in M.O.U. dated 29-03-2015 have promised that construction of the building shall be completed within 36 months with grace period of six months, after approval of Map from P.M.C., provided that time of completion shall be deemed to have been extended in the event of non-availability of building materials or delay due to Government Policies affecting the industry or delay due to Force Majeure, provided that if the developer/vendor is not able to give possession of the said flat to the buyer/vendee on the above account on any reasonable cause, the buyer/vendee may not be entitled to any damage whatsoever, but shall be entitled to receive back the entire money paid by him/her to the developer/vendor. However, in Clause-4 of the M.O.U., the Respondents have assured that if the developer/builder shall not hand over possession of the unit within the stipulated period and buyer/vendee wanted to get his/her money back, then the developer/builder shall return the payments made by the buyer/vendee along with simple interest to the buyer/vendee or if the buyer/vendee wanted to get the scheduled flat, the developer/vendor shall pay simple interest on the total payment made to the developers/vendor for the delayed period to the buyer/vendee or buyer/vendee shall be at liberty to transfer/adjustment his/her said

flat with other flat of vendor/developers constructed/under construction/proposed housing project.

The Respondents have applied through application No.RERA P 2311201700011-27 for registration of the project “Agrani IOB Nagar”, Block-O in RERA, Bihar, but on scrutiny by RERA officials, altogether 7 defects were found and vide letter No.RERA/PRO.REG-523/2018/630 dated 05-11-2020, they were directed to remove these defects within 15 days, but till date they have not removed the defects. The Respondents have not filed Map properly approved from the competent authority. It shows that the Respondents are reluctant in their responsibilities towards the allottees, otherwise they would have removed these defects within the stipulated time. There may be some activities of the Respondents towards above project of Block-O, but it is correctly alleged by the complainant that Block-O of the project “Agrani IOB Nagar” has not been started as yet and they have applied only half heartedly for registration of the project in RERA, Bihar, otherwise they would have removed the defects and filed the required documents for registration of the project within the stipulated time. It is further stated that the complainant has continuously enquired from the Respondents about the construction of the Apartment, but they have only made excuses over the course of 6 years and always assured them that the construction would be completed within the stipulated time. The complainant has further stated that *prima facie* it seems that the Respondents have diverted the fund collected from the allottees for purchase of more land and construction of other projects. The complainant has further stated that

seeing no hope for completion of the project as per their requirement, he as well the allottees have requested the Respondents to cancel their allotment and refund their principal amount along with interest. But, the Respondents on one or other grounds have always given false assurances to them for refund of the principal amount along with interest. Now, they have stated in their reply that they are ready to refund the principal amount Rs.17.00 lacs to the complainant till September, 2021 and they may also adjust their principal amount, if land is purchased in their project "Agrani Prakriti Vihar" situated at Parmanandpur.

From all the above facts and circumstances, it is clear that the Respondents are unable to complete the project within the required time of the complainant. They are also unable to refund the principal amount of the complainant/allottees as per their request, hence, it is reasonable for the complainant/allottees to make request to cancel the allotment of their flat and demand their principal amount from the Respondents, as they cannot be asked to wait indefinite period for delivery of possession of the flat and adjustment of their principal amount, which also find support from the ruling of Hon'ble Supreme Court of India in Fortune Infrastructure and Others Vs. Trevor D, Lima and Others (2018)5 SCC 442. Accordingly, the complainant/allottees are entitled for refund of their principal amount Rs.17.00 lacs from the Respondents without delay and deduction.

9. The complainant has also claimed interest @ 18% per annum on the paid principal amount Rs.17.00 lacs of the allottees against the Respondents. Naturally, the Respondents have retained the respective

principal amounts of the complainant/allottees since 28-11-2013 till date. So, the Respondents have to pay interest on respective principal amount for the retention period. 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. In present case, the Respondents have agreed in the M.O.U. that they shall pay simple interest for the

delayed period to the allottees/buyers. 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 principal amount Rs.17.00 lacs to the complainant/allottees along with accrued simple interest @ 9.30% per annum thereon since the date of payment of respective amounts by the allottees to the Respondents till refund of the said amount by the Respondents to the complainant/allottees. Accordingly, Point No.(i) is decided in positive in favour of the complainant/allottees and against the Respondents.

Point No.(ii):

10. The complainant/allottees have also claimed compensation of Rs.10.00 lacs for their 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 Rs.17.00 lacs paid by the allottees, as 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/allottees. Presently, a flat of same area will not be available to the complainant/allottees in the same locality at the same price, which was available to them in the year 2013, rather at present the price of the flat would have been multiplied. The Respondents are running the present as well as other projects and improving their business. In addition, in spite of repeated assurances in the Court, the Respondents have not refunded the advance principal amount to the complainant/allottees. The claim of compensation has to be decided in a reasonable manner, keeping in mind the quantum of advance principal amount paid by the allottees to the Respondents, duration of the amount retained by the Respondents as well as proportion of loss to the allottees and benefit to the Respondents. The allottees have paid Rs.17.00 lacs out of total consideration Rs.19,58,710/-, which is about 87.00% of the total consideration. In such facts and circumstances, I think, Rs.2,80,000/-, which is about 16.00% of the advance principal amount Rs.17.00 lacs paid by the allottees to the Respondents, may be appropriate amount of compensation to the complainant/allottees for their economical, physical and mental harassment. Accordingly, Point No.(ii) is decided in positive in favour of the complainant/allottees and against the Respondents.

Point No.(iii):

11. The complainant/allottees have visited repeatedly to the office of Respondents and they have contacted to the Respondents as well as their staffs several times for refund of their advanced principal amount, but neither the Respondents nor their staffs have given any heed to their request till filing of the present complaint case. Though the complainant/allottees have not brought any document on record as proof of actual expenditure incurred by them, but I think, the complainant/allottees would not have incurred more than Rs.25,000/- for bank fee, 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/allottees are entitled for Rs.25,000/- as litigation cost against the Respondents. Hence, Point No.(iii) is decided in positive in favour of the complainant/allottees and against the Respondents.

Therefore, the complaint case of the complainant, Sri Umesh Chandra Jha is allowed on contest with litigation cost of Rs.25,000/- (Rupees twenty five thousand only) against the Respondents. The Respondents are directed to refund the principal amount Rs.17.00 lacs (Rupees seventeen lacs only) to the allottees/complainant along with accrued simple interest @ 9.30% per annum thereon since the date of payment of respective amounts by the allottees to the Respondents till refund of the said amount by the Respondents to the allottees/complainant. The Respondents are further directed to pay

Rs.2,80,000/- (Rupees two lacs eighty thousand only) to the allottees/complainant as compensation for their economical, physical and mental harassment. The Respondents are further directed to comply the order within 60 (sixty) days, failing which the complainant/allottees are entitled to get enforced the order through process of the Court.

Sd/-
(Ved Prakash)
Adjudicating Officer
RERA, Bihar, Patna
02-07-2021