



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

**RERA/CC/588/2019
RERA/AO/152/2019**

Sri Mohan Kumar, S/o Sri Shyam Babu Rajak,
R/o Deep Nagar, Road No.5, Gulzarbagh Station,
Patna City, Patna, Bihar. ... Complainant

Versus

1. M/s Agrani Homes Pvt. Ltd., House No.15,
Ward No.1FA, Patliputra Colony, District-
Patna.
2. Sri Alok Kumar, 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 Atul Kumar Mehta, Advocate
For Respondents : Sri Ankit Kumar, Advocate

ORDER

16-12-2020 This complaint petition is filed by the complainant, Sri Mohan Kumar against the Respondent No.1, M/s Agrani Homes Pvt. Ltd through its 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 his paid principal amount Rs.8,45,000/- along with interest @ 18% per

annum thereon and compensation of Rs.2.00 lacs for his economical, physical and mental harassment with litigation cost of Rs.40,000/-, consequent to non-delivery of flat allotted to him.

2. In nutshell, the case of the complainant is that he has booked one 3 BHK flat and one commercial shop in the project “I.O.B. Nagar” of the Respondents. Later on 05-12-2017 a Memorandum of Understanding (M.O.U) was executed between the complainant and Respondent No.1, M/s Agrani Homes Pvt. Ltd. through its Director, Respondent No.2, Sri Alok Kumar for sale/purchase of a 3 BHK flat having area 1300 sq.ft. in Block-N of the project “I.O.B. Nagar” situated at Sarai, Near Danapur Railway Station, P.O.-Khagaul, District-Patna on consideration of Rs.26,0500/- . The complainant has paid Rs.5,45,000/- including taxes Rs.29,877/- out of the above total consideration at the time of booking. The complainant has also booked Shop No.9 having area 254 sq.ft. in Block C-3 on consideration of Rs.10,16,000/- in the said project of the Respondents. The complainant has paid total principal amount Rs.8,45,000/- towards the flat and shop, to the Respondents. The complainant requested several times to the Respondents to complete the construction and deliver possession of the flat and shop to him, but the Respondents failed to construct the said project within the stipulated time, rather they have not even started the construction, hence being compelled, the complainant requested with the Respondents through letter to cancel the booking of his flat and shop

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and refund his paid principal amount Rs.8,45,000/-, which was accepted by the Respondents and they have cancelled the booking, but till filing of this complaint petition, they have failed to refund the principal amount to the complainant. Hence, being fed up with the behaviour of the Respondents, the complainant has filed this complaint case with the above reliefs against the Respondents.

3. The learned lawyer on behalf of the Respondents appeared along with *Vakalatnama*, but in spite of repeated directions of the Court, he failed to file reply on behalf of the Respondents. Hence, the Respondents were de-barred from filing reply. However, the learned lawyer for the Respondents repeatedly assured to the Court that the principal amount of the complainant will be refunded within a fortnight, but till date it is not refunded.

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4. Now, on the basis of the submissions of learned lawyers for both the parties, the following points are formulated to adjudicate the case:-

- (i) Whether the complainant is entitled for refund of his paid principal amount Rs.8,45,000/- against the Respondents?
- (ii) Whether the complainant is entitled for interest, @ 18% per annum on the paid principal amount Rs.8,45,000/- against the Respondents?
- (iii) Whether the complainant is entitled for compensation of Rs.2.00 lacs against the Respondents?

- (iv) Whether the complainant is entitled for litigation cost Rs.40,000/- against the Respondents?

Points No.(i) and (ii) :

5. The complainant, Mohan Kumar and Respondent No.1, M/s Agrani Homes Pvt. Ltd through it's Director, Sri Alok Kumar have executed a Memorandum of Understanding (M.O.U.) for sale/purchase of a 3 BHK Flat No.203 having area 1300 sq.ft. in the project "I.O.B. Nagar" situated at Sarari, Near Danapur Railway Station, P.O.-Khagaul, District-Patna on consideration of Rs.26,05,000/-. Both the parties have also agreed for sale/purchase of a commercial Shop No.9 having area 254 sq.ft. in Block C-3 of the said project on consideration of Rs.10,16,000/-, for which K.Y.C. was also executed on 11-12-2016. But, no M.O.U./Agreement for Sale could be executed. The complainant has further stated that he has paid Rs.5,45,000/- at the time of booking of the flat, which find mentioned in the M.O.U. executed between both the parties. The complainant has further stated that he has paid Rs.7,45,000/- towards consideration of the Flat No.203 and Rs.1.00 lac towards consideration of Shop in the said project and as such, he has paid total Rs.8,45,000/- to the Respondents. The complainant has filed photocopies of receipts

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of payment of the above principal amount. The complainant has filed Receipt No.5222 dated 28-10-2016 for Rs.4,22,500/-, Receipt No.5237 dated 03-11-2016 for Rs.22,500/-, Receipt No.6034 dated 01-11-2017 for Rs.50,000/-, Receipt No.6133 dated 11-11-2017 for Rs.50,000/-, Receipt No.6714 dated 04-02-2018 for Rs.1.00 lac, Receipt No.624 dated 19-03-2019 for Rs.1.00 lac issued by the Respondents for payment towards consideration of the Flat No.203. He has further filed photocopy of Receipt No.5311 dated 18-12-2016 for Rs.1.00 lac issued by the Respondents for payment of consideration towards the Shop. These receipts support submission of the complainant for payment of the principal amount Rs.8,45,000/- by him to the Respondents towards consideration of the Flat and Shop. Except submission of refund of paid principal amount, learned lawyer for the Respondents has failed to file reply on the record. Hence, it is categorically proved by the complainant that he has paid total principal amount Rs.8,45,000/- to the Respondents towards consideration for purchase of said Flat and Shop in the above project of the Respondents.

Both the parties have agreed in M.O.U. that construction of the building shall be completed within 36 months with relaxation period of 6 months, after approval of Map from

P.M.C., provided that the time of completion shall be deemed to have been extended in event of non-availability of building materials or delay due to Government Policies affecting the industry or due to Force Majeure. If the vendor/developer is not able to give possession of said Flat to the buyer/vendee within the stipulated time on the above account or any other 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, the builder in the same M.O.U. has also agreed 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/vendor shall return the payment made by the buyer/vendee along with simple interest (Nationalised Bank Rate) to the buyer/vendee.

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The complainant has demanded refund of his paid principal amount from the Respondents, for which he has written a request letter on 21st April, 2019 to the Respondents to cancel his allotment of Flat and Shop and refund his paid principal amount Rs.8.45,000/-, which was accepted by the Respondents, but they failed to refund the said amount. The complainant has filed photocopy of letter dated 21st April, 2019

issued to the Respondents, which support his submission. The Respondents have applied for registration of the project in RERA, Bihar, but there were certain defects found by the officers of RERA, Bihar and thereafter a letter No.RERA/PRO.REG-523/2018/630 dated 05-11-2020 was issued to the Respondents to remove these defects within 15 days, but till date the Respondents have not removed these defects. It also appears that even the Map of the project is properly not approved from the P.M.C. and no bricks has been put on the site for construction of the building. So, the complainant has to wait for indefinite period for delivery of possession of the flat and Shop. I think, any purchaser cannot be compelled to wait for indefinite period for delivery of possession of the flat/shop, as there may be need for purchase of such a Flat or Shop, which has frustrated the complainant in the present case. It appears that the request for cancellation of booking of the Flat and Shop and claim for refund of the paid principal amount by the complainant is genuine. Hence, the Respondents have to refund the paid principal amount Rs.8,45,000/- of the complainant without any delay and deduction.

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The complainant has claimed interest @ 18% per annum on the paid principal amount Rs.8,45,000/- against the Respondents.

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:

“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’.”

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The Hon'ble Apex Court in the above ruling has allowed interest @ 12% per annum.

Considering the 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% on total principal amount Rs.8,45,000/- 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 Nos.(i) and (ii) are decided in positive in favour of the complainant and against the Respondents.

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Point No. (iii):

6. The complainant has also claimed compensation of Rs.2.00 lacs against the Respondents for his economical, mental and physical harassment, which appears much higher. The complainant has cancelled booking of the flat and shop, 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.8,45,000/- paid by the complainant in their business without giving delivery of possession of the flat and shop to the complainant. Now the complainant will not get a flat and shop of same area in the same locality at the same rate, which were available to him in the year 2016, rather the price would have been multiplied. In such view of the matter I find and hold that

Rs.85,000/-, which is about 10% of principal amount Rs.8,45,000/- paid by the complainant to the Respondents may be appropriate amount for compensation for his economical, mental and physical harassment. Accordingly, Point Nos.(iii) is decided in positive in favour of the complainant and against the Respondents.

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Point No.(iv) :

7. The complainant has visited several times to the Respondents office, met with them and their staffs and requested for refund of his 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. The complainant has claimed litigation cost of Rs.40,000/- without filing any document on record. 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.(iv) is decided in positive in favour of the complainant and against the Respondents.

Therefore, the complaint case of the complainant, Mohan Kumar is allowed on contest with litigation cost of Rs.15,000/- (Rupees fifteen thousand only) against the Respondents. The Respondents are directed to refund principal amount Rs.8,45,000/-



(Rupees eight lacs forty five thousand only) along with simple interest @ 9.30% per annum thereon 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.85,000/- (Rupees eighty five thousand only) as compensation to the complainant for his 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
16-12-2020