

**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/1367/2020

RERA/AO/401/2020

Sri Naresh Kumar Srivastava, S/o Late Chakaradhar Prasad, R/o J/71 "Raj Prabha", P.C. Colony, Kankarbagh, Patna, Bihar.800020.

... Complainant

Versus

1. M/s Grih Vatika Homes Pvt. Ltd.,

Through: it's Director

2. Sri Ranjeet Kumar Jha, Director, S/o Sri Prem Kumar Jha

Address of Respondents No.1 and 2:

Address-1:

26, A.N. Path, North Shrikrishnapuri, Boring Road, P.S.-Shrikrishnapuri, Patna, Bihar-800001.

Address-2:

Ground Floor, Dipti Roy Complex, Opp: Shrikrishnapuri Post Office, Shrikrishnapuri, P.S.- Shrikrishnapuri, Boring Road, Patna, Bihar-800001.

... Respondents

Present:

**Sri Ved Prakash
Adjudicating Officer**

Appearance:

For Complainant ... Sri Praphull Kumar Sinha , Advocate

For Respondents ... Sri Ankit Kumar, Advocate.

ORDER

05-07-2021

This complaint petition is filed by the complainant,
Sri Naresh Kumar Srivastava against the Respondent No.1,

M/s Grih Vatika Homes Pvt. Ltd. through its Director, Respondent No.2, Sri Ranjeet Kumar Jha u/s 31 read with Section 71 of Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the "Act, 2016") for refund of his principal amount Rs.15,76,883/- along with interest thereon and compensation for his economical, physical and mental harassment with litigation cost, consequent to non-delivery of flat allotted to him.

2. In nutshell, the case of the complainant is that the complainant, Sri Naresh Kumar Srivastava intended to buy a 2.5 BHK Flat in the project, "Urmila Vatika" of the Respondents. After negotiations, a K.Y.C. was executed on 10-02-2013 between Smt. Anita Kumari, Authorised Signatory of the Respondent No.1, M/s Grih Vatika Home Pvt. Ltd. and the complainant Sri Naresh Kumar Srivastava for sale/purchase of one 2.5 BHK flat No.203 having super built up area 1175 sq.ft. along with one free car parking space on the ground floor in the project "Urmila Vatika" of the Respondents on consideration of Rs.29.00 lacs including Service Tax, out of which the complainant has paid Rs.15,76,883/- including bank loan to the Respondents since 10-02-2013 till 14-11-2016. Later on, a Deed of registered Agreement for Sale No.4826 dated 29-04-2016 was executed between the complainant, Sri Naresh Kumar Srivastava on one side and Respondent No.1, M/s Grih

Vatika Homes Pvt. Ltd. through it's Director, Sri Ranjeet Kumar Jha via Deed of Power of Attorney Holder (No.906 dated 19-12-2013) Sri Sanjeet Kumar Jha on other side for sale/purchase of a 2.5 BHK flat No.203 having super 1175 sq.ft. with one free reserve car parking space on the ground floor in the above project "Urmila Vatika", situated at Mouza-Vishunpur Pakri, Survey P.S.-Danapur, District-Patna of the Respondents on the said consideration Rs.29.00 lacs. The Respondents have assured in the Deed that the building will be completed and flat will be delivered till 31-01-2018 to the complainant, but till date only 3rd floor roof casting has been done by the Respondents and now construction of the building is completely stopped for the last two years. The complainant is retired from Government service and presently making payment of E.M.I. of bank loan and rent of the rented house Rs.18,000/- from his pension amount and in spite of repeated requests to the Respondents, there is no response from their side. When he has become tired from the activities of the Respondents, then sent a Legal Notice for cancellation of allotment of flat and refund of his principal amount, but no response received from the side of the Respondents. Later on, much efforts made by the complainant, then the Respondents executed another Agreement on 07-10-2018 wherein they agreed to deliver possession of

the flat in February, 2019 and assured that they will pay half of the rent of his rented house Rs.11,000/- i.e. Rs.5.500/- since June, 2018 till February, 2019, which will not be claimed to be adjusted in any of the amounts, but after some time they stopped the payment of rent. Now, the Respondents have left to receive even the phone calls of the complainant. The time for delivery of the flat till February, 2019 also ended and now he has no alternative, except to demand for refund of his principal amount with interest. Hence, the complainant being fed up with the behaviour of the Respondents, has filed the present complaint case with the above reliefs against the Respondents.

3. The Respondents have filed reply pleading *inter-alia* that the entire events have occurred before enforcement of RERA Act, 2016 on 1st May, 2017. So this case being not maintainable in this Court, may be dismissed. The complainant was allotted 2.5 BHK Flat No.203 having super built up area 1175 sq.ft. in the project "Urmila Vatika" of the Respondents in the year 2013 on total consideration of Rs.29.00 lacs, out of which the complainant has paid only Rs.15,76,000/-. The Respondents are always abiding the order of RERA, Bihar and they are still ready to deliver possession of the flat to the complainant in the said project, which is under construction and up to 5th floor

roof casting has been completed and brick work is also done up to 3rd floor. RERA, Bihar has also granted registration to the project "Urmila Vatika" on 24-01-2019, but the complainant is withdrawing from the project. So as per terms and conditions reached between the parties in the year 2013, the Respondents will refund the principal amount only after deduction of the Service Charges as well as other applicable charges etc., as the complainant has also to follow the terms and conditions agreed between the parties. It is further case that since loss has also occurred to the Respondents due to default in the payment of principal amount by the complainant and in future the complainant will try to provoke the other co-allottees against the Respondents. Hence, deduction of Service Charges etc. is necessary to safeguard the interest of the Respondents. The complainant is misleading/confusing and stating contrary to the Court about the true facts agreed between the parties and now he has intention to harass the Respondents, so also, this case has to be dismissed.

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

- (i) Whether the complaint case of the complainant, Sri Naresh Kumar Srivastava

is maintainable in this Court against the Respondents?

- (ii) Whether the complainant is entitled for refund of his principal amount Rs.15,76,883/- along with interest thereon against the Respondents?
- (iii) Whether the complainant is entitled for compensation against the Respondents for his economical, physical and mental harassment?
- (iv) Whether the complainant is entitled for litigation cost against the Respondents?

Point No.(i):

5. The learned lawyer for the Respondents submitted that the complainant has booked a flat in the year 2013 in the project "Urmila Vatika" of the Respondents on consideration of Rs.29.00 lacs and he has paid Rs.15,76,883/- as an advance, out of the above consideration. Now, the complainant is demanding refund of his principal amount, but since these events have occurred much before enforcement of RERA Act, 2016 on 1st May, 2017, so this Court has no jurisdiction to entertain the complaint case of the complainant and hence, this case of the complainant may be dismissed. On other hand, the learned lawyer for the complainant submitted that the project

“Urmila Vatika” of the Respondents is still incomplete and the Respondents have got registration of the project in RERA, Bihar as per Section-3 of the Act, 2016 and as such, this Court has jurisdiction to decide the disputes between the parties with respect to the said project, which was ‘ongoing’ on the date of enforcement of the Act, 2016 on 1st May, 2017.

Admittedly, the Act, 2016 was enforced on 1st May, 2017. Section 3 (2) (b) of the Act, 2016 says:-

“3. (2) Notwithstanding anything contained in sub-section(1), no registration of the real estate project shall be required-

(a) xxx xxx xxx xxx
xxx xxx xxx xxx

(b) *where the promoter has received completion certificate for a real estate project prior to commencement of this Act.*

(c) xxx xxx xxx xxx xxx”

Now, if the project “Urmila Vatika” was completed prior to 1st May, 2017, there is no need for RERA, Bihar registration, but for scrutiny/enquiry of the project whether it is new /ongoing / completed as on 1st May, 2017, the production of Occupancy/Completion Certificate is necessary. The Respondents have not filed Occupancy/Completion Certificate

on the record. Hence, it will be presumed that the project “Urmila Vatika” of the Respondents was ongoing as on 1st May, 2017 and hence, this project should have been registered with RERA, Bihar for rights/duties/liabilities of the Respondents towards the allottees.

First proviso of Section-3 of the Act, 2016 says:-

“3. (1) xxx xxx xxx xxx
xxx xxx xxx xxx.

Provided that projects that are ongoing 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.”

The Respondents have already applied for registration of the project “Urmila Vatika” with RERA, Bihar and now this project has been registered with RERA, Bihar on 24-01-2019 vide Registration No.BRERA P 00/165-10/536/R-365/2019, with validity period for 2 years and 5 months commencing from 24-01-2019 and ending with 30-06-2021. It shows that the Respondents themselves know that the project “Urmila Vatika” was ongoing as on 1st May, 2017 and that is why they have got RERA, Bihar registration and hence, they are bound with the duties towards the allottees with respect the

project “Urmila Vatika”. The liabilities of the Respondents towards the complainant for refund of Rs.15,76,883/- is continuing since the year 2013, so either the Respondents after receiving remaining consideration, should have handed over flat no.203 of the project “Urmila Vatika” or they should have refunded the principal amount of the complainant, in which they have completely failed and that is why the complainant has approached this Court against the Respondents. Hence, there is no substance in the argument of the learned lawyer for the Respondents regarding maintainability of this case. Accordingly, the present complaint case of the complainant, Sri Naresh Kumar Srivastava is maintainable in this Court against the Respondents under section 12, 14, 18 and 19 of the Act, 2016. Accordingly, Point No.(i) is decided in positive in favour of the complainant and against the Respondents.

Point No.(ii):

6. Admittedly, the complainant, Sri Naresh Kumar Srivastava has booked on 10-02-2013 a 2.5 BHK Flat No.203 having super built up area 1175 sq.ft. along with one free reserve car parking space in the ground floor in the project “Urmila Vatika” of the Respondents on consideration of Rs.29.00 lacs, out of which the complainant has paid Rs.2,51,000/- through cheque no.016327 of IDBI Bank dated 10-02-2013 to the Respondents at the time of booking, for which authorised signatory, Smt. Anita Kumari has issued money receipt no.1235 dated 10-02-2013 with her signature in favour of the

complainant. The complainant has also filed photocopy of K.Y.C./Booking Form executed between him and the authorised signatory Smt. Anita Kumari, which supports the case of the complainant. The complainant has paid Rs.2,50,000/- on 03-03-2013 through IDBI cheque no.016329 dated 04-03-2013, for which the authorised signatory, Smt. Anita Kumari has issued money receipt no.,1236 dated 03-03-2013 in favour of the complainant. Thereafter, the complainant has paid Rs.2,40,000/- cash, for which Smt. Anita Kumari, authorised signatory of the Respondents has issued money receipt no.1233 dated 29-10-2013 in favour of the complainant. Later on 23-12-2013 the complainant has paid Rs.3.00 lacs through IDBI cheque no.016334 dated 23-12-2013, for which the authorised signatory, Smt. Anita Kumari has issued money receipt no.,1237 dated 22-12-2013 in favour of the complainant. Thereafter, on 25-12-2013 the complainant has paid Rs.33,720/- including Service Tax Rs.1,010/- to the Respondents through IDBI cheque no.016335 dated 26-12-2013, for which the authorised signatory, Smt. Anita Kumari has issued money receipt no.1238 dated 25-12-2013 in favour of the complainant. On 31-05-2014 the complainant has paid 62,163/- through IDBI cheque no.08930 dated 31-05-2014 to the Respondents, for which the authorised signatory, Smt. Anita Kumari has issued money receipt no.1239 dated 31-05-2014 in favour of the complainant. Later on 09-05-2016 the complainant has paid

Rs.40,000/- cash to the Respondents, for which authorised signatory has issued money receipt no.1350 dated 09-05-2016 in favour of the complainant. Thereafter, the complainant has paid cash Rs.30,000/- to the Respondents on 05-06-2016, for which the authorised signatory, Smt. Anita Kumari has issued money receipt no.1147 dated 05-06-2016 in favour of the complainant. The complainant has further paid cash Rs.30,000/- on 02-07-2016 to the Respondents, for which the authorised signatory, Smt. Anita Kumari has issued money receipt no.1149 dated 02-07-2016 in favour of the complainant. The complainant has further paid Rs.3.00 lacs through Demand Draft of IDBI No.003602 dated 01-11-2016, for which the authorised signatory, Smt. Anita Kumari has issued money receipt no.1150 dated 01-11-2016 in favour of the complainant. Thereafter, the complainant has paid cash Rs.40,000/- to the Respondents on 14-11-2016, for which the authorised signatory, Smt. Anita Kumari has issued money receipt no.1245 dated 14-11-2016 in favour of the complainant. The complainant has filed photocopies of all the money receipts, which support that the complainant has paid total principal amount Rs.15,76,883/- to the Respondents till 14-11-2016. Later on, a Deed of registered Agreement for Sale No.4826 dated 29-04-2016 was executed between the complainant Sri Naresh Kumar Srivastava on one side and Respondent No.1, M/s Grih Vatika Homes Pvt. Ltd. through it's Director, Respondent No.2, Sri Ranjeet Kumar Jha Via his Power of

Attorney (Holder No.906 dated 19-12-2013) Sri Sanjeet Kumar Jha on other side with respect to sale/purchase of a 2.5 BHK Flat No.203 having super built-up area 1175 sq. with one free reserve car parking space on ground floor of the project "Urmila Vatika" of the Respondents on consideration of Rs.29.00 lacs, out of which, as already mentioned, the complainant has paid Rs.15,76,883/- including bank loan to the Respondents.

7. The Respondents have assured to the complainant that the building will be completed and flat will be delivered to him till 31-01-2018, but as per complainant, till date only 3rd floor roof casting has been done by the Respondents and now the construction is completely stopped for the last 2 years. Further case is that the complainant is retired from service and presently making payment of Rs.18,000/- towards EMI of bank loan and house rent of the rented house, in which he is residing, from his pension amount. In spite of repeated requests to the Respondents, there is no response from their side. Hence he has become compelled from the activities of the Respondents to send a Legal Notice for cancellation of his allotment of flat and refund of his principal amount, but no response received from the side of the Respondents. Later on after much efforts by the complainant, the Respondents have executed 2nd Agreement for Sale on 07-10-2018, wherein they agreed to deliver the flat completed in all respect till February, 2019 and till then, it was assured by the Respondents that half of the house rent Rs.11,500/- per month i.e.

Rs.5,500/- will be paid to the complainant since June, 2018 till February, 2019, which will not be claimed to be adjusted in any of the amount by the Respondents. But, after some time the Respondents have stopped the payment of house rent to the complainant. Now, the Respondents have left to receive the phone calls of the complainant. The period/time of delivery of flat as promised by the Respondents in the said Agreement for Sale dated 07-10-2018 was February, 2019, which has also expired, so presently the complainant has no alternative, but to demand refund of his principal amount along with interest.

The Respondents in their reply and their learned lawyer during the hearing submitted that since the complainant is withdrawing from the project, so they will refund the principal amount only after deducting service charges and other applicable charges etc. He further submitted that loss has occurred to the Respondents due to default in payment as well as cancellation of the allotment by the complainant and in future he may provoke to other co-allottees against the Respondents. So, in such circumstances, if the payment of the complainant is allowed, then he may be directed to follow the norms of the Agreement set between the parties.

8. The Respondents have promised in the registered Agreement for Sale dated 29-04-2016 that the construction of the building shall be completed up to January, 2018, provided that 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 the buyers/vendees of other flats and /or delay due to Force Majeure. If the developer is not able to give possession of the said flat to the buyer/vendee 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 the entire money paid by him/her to the developer/vendor. However, in Clause-9 of the said Deed, the Respondents have assured that if the developer/vendor shall not hand over the possession of the unit within the stipulated period and the buyer/vendee wanted to get his/her money back, then the developer/builder shall return the payment 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 developer/vendor by the buyer/vendee over the delayed period to the buyer/vendee.

Though the Respondents have got approval of the Map from the competent authority and have also got RERA, Bihar registration, bearing No.BRERA P 00 165-10/536/R-365/2019 on 24-01-2019 for their project "Urmila Vatika" and construction of which was valid since 24-01-2019 till 30-06-2021, but admittedly up till now only 5th floor roof casting and up to 3rd floor brick work has been done by the Respondents. So, the building is still incomplete and in such a way, the Respondents have become unable to complete the project

and deliver possession of the flat No.203 to the complainant within the assured time of February, 2019. The Respondents had further promised in their 2nd Agreement dated 07-10-2018 that they will pay Rs.5,500/- per month as half of the house rent to the complainant since June, 2018 till February, 2019. But, the complainant has stated that after payment for some months, the Respondents have stopped payment of house rent. So, there is financial problem to him and that is why being bound he has requested to the Respondents to cancel the allotment of his flat and refund the principal amount along with interest etc. The complainant cannot be asked to wait indefinite for delivery of possession the flat No.203 allotted to him by the Respondents, 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". The Respondents have not refunded the principal amount of the complainant and presently making unnecessary pleadings that since the complainant is withdrawing from the project, so they will deduct Service Charges etc. from the paid principal amount, which is quite unnatural and adamant behaviour of the Respondents for not refunding the entire paid principal of the complainant. Such stand of the Respondents is also not justified in the eye of law, as the project has already been delayed by the Respondents and they are unable to deliver possession of the flat to the complainant within the stipulated period February, 2019 and that is why being compelled

the complainant has demanded cancellation of allotment of the flat and refund of paid principal amount. The Respondents have assured during the hearing that the principal amount will be refunded, but they did nothing. Accordingly, it is established that the Respondents on one or other grounds is avoiding to refund the principal amount of the complainant, which is not reasonable. Hence, the Respondents have to refund the principal amount of the complainant without delay and deduction.

9. The complainant has claimed interest on entire paid principal amount Rs.15,76,883/-, against the Respondents. Admittedly, the Respondents have retained the principal amount of the complainant since 10-02-2013 till date. So, they have to pay interest on respective retained principal amount for the said retention period. This view also finds 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'be 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, the question is as to how much interest will be levied on the Respondents on the paid principal amount of the complainant? The Respondents are running the present as well as other projects in Patna and other parts of Bihar, so if compound interest is levied, there will be much effect on the Respondents in development of their business. Moreover, it will also hamper the interest of other buyers, but there will be no much effect on the complainant, as he is repudiating himself from the project. So, I think, instead of compound interest, levying of simple interest on the respective principal amount will justify the end. The Respondent have also agreed in the Deed of Agreement for Sale to pay simple interest on the principal amount in case of refund to the complainant. On this issue, rule 17 and 18 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 Rs15,76,883/- to the complainant along the 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 the said amount by the Respondents to the complainant. Accordingly, Point No.(ii) is decided in positive in favour of the complainant and against the Respondents.

Point No.(iii):

10. The complainant has also claimed compensation for his 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 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 him 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 and have also not paid rent of the rented house of the complainant, as assured by them in 2nd Agreement dated 07-10-2018. 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.15,76,883/-out of total consideration Rs.29.00 lacs, which is about 54.00% of the total consideration. In such facts and circumstances, I think, Rs.2,05,000/-, which is about 13.00% of the principal amount Rs.15,76,883/-paid by the complainant to the Respondents, may be appropriate amount of compensation to the complainant for his 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):

11. The complainant has visited repeatedly to the office of Respondents and he has contacted to the Respondents as well as their staffs several times for refund of his advanced principal amount, but neither the Respondents nor their staffs have given any heed to his request till filing of the complaint case. Though the complainant has not brought any document on record as proof of actual expenditure incurred by him, but I think, the complainant would not have incurred more than Rs.20,000/- towards bank loan processing fee, conveyance to the office of the Respondents, A.O. Court in RERA, Bihar, remittance of Court Fee, engagement lawyer, paper work etc., which must be paid by the Respondents. Accordingly, I find and hold that the complainant is entitled to get 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, Naresh Kumar Srivastava 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.15,76,883/- (Rupees fifteen lacs seventy

six thousand eight hundred eighty three 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 the said amount by the Respondents to the complainant. The Respondents are further directed to pay Rs.2,05,000/- (Rupees two lacs five thousand only) to the complainant as compensation for his economical, physical and mental harassment. The Respondents are further 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
05-07-2021