



**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/1802/2020

RERA/AO/628/2020

Smt. Anju Tiwari, W/o Sri Sunil Kumar Tiwari,
D/o Sri Jai Kishore Thakur, R/o Vill-Kanha,
Chhapra, P.O.-Parshurampur, District-Bhojpur,
Bihar-802316.

Present Address:

Housing Colony Chandwa More, Ara, Bhojpur-
802301.

... Complainant

Versus

1. M/s Agrani Homes Pvt. Ltd., House No.15,
Ward No.1FA, Patliputra Colony, District-Patna-
800013.

Corporate Office:

“Khan Villa”, South-West of B.D. Public School,
Budha Colony, P.S.- Budha Colony, District-
Patna-800001.

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

06-07-2021 This complaint petition is filed by the complainant, Smt. Anju
Tiwari 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 her advanced principal amount Rs.11,95,000/- along with accrued interest, @ 18% per annum thereon and compensation of Rs.10.00 lacs for her economical, physical and mental harassment with litigation cost of Rs.1.00 lac, consequent to non-delivery of flat allotted to her.

2. In nutshell, the case of the complainant is that the complainant, Smt. Anju Tiwari was allured by fancifulness of the sale brochures, specification details, lay out plan and verbal assurances of the Respondent No.2, Sri Alok Kumar. So, she booked on 01-07-2017 a flat No.507 having area 1080 sq.ft. in Block-L of the project "Agrani IOB Nagar" situated at Mouza- Sarari, Near Danapur Railway Station, P.O. Khagaul, District-Patna, for which the Respondents through their Authorised Signatory issued Allotment Letter on 01-08-2017, wherein they specifically mentioned the price of the flat Rs.13.00 lacs plus Rs.2.00 lacs as amenities charges. After demand by the Respondents, the complainant has paid Rs.11,95,000/- on different occasions since 08-08-2017 to 05-12-2017, for which the Respondents have issued receipts in favour of the complainant. After receipt of the advance principal amount Rs.11,95,000/-, the Respondents started changing their versions and demanded entire consideration amount Rs.15.00 lacs before delivery of possession of the flat, which was denied by the complainant. Thereafter, the complainant has 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 complainant to pay the entire consideration amount and has been delaying the matter without any significant progress towards construction of the project. Both the parties agreed to execute Sale/Purchase Deed of the flat in the said project. Thereafter, on 05-12-2017 the complainant Smt. Anju Tiwari 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.) with respect to a 2 BHK flat No.507 having area 1080 sq.ft. in Block-L of the project "Agrani IOB Nagar", situated at Mouza-Sarari Near Danapur Railway Station, Danapur, P.O.-Khagaul, District-Patna of the Respondents on consideration of Rs.13.00 lacs plus Rs.2.00 lacs as amenities charges, total Rs.15.00 lacs.

The Respondents have promised in M.O.U. that construction of the building shall be completed within 36 months with grace period of 6 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 Polices affecting the industry or due to Force Majeure (F.M.). Further case of the complainant is that grace period of 6 months has also 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 had heard about the good reputation of the Respondents in the Real Estate market and believing the same, she has 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 project. Now, there is no hope left in the mind of the complainant regarding delivery of possession of the flat to her by the Respondents, as still construction of the project “Agrani I.O.B. Nagar”, Block-L, after lapse of 4 years, has not started. She has repeatedly requested to the Respondents either to complete the flat and deliver possession of the same to her or refund her principal amount, but the Respondents have not given any heed to her request. Rather, used her paid consideration amount in other projects. The complainant being fed up with the behaviour of the Respondents, has filed the present complaint case against the them with above reliefs.

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

4. 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, Smt. Anju Tiwari is entitled for refund of her principal amount

Rs.11,95,000/-along with accrued interest @ 18% per annum thereon against the Respondents ?

(ii) Whether the complainant is entitled for compensation of Rs.10.00 lacs for her economical, physical and mental harassment against the Respondents?

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

Point No.(i):

5. Admittedly, both the parties have negotiated for sale/purchase of a 2 BHK flat in Block-L of the project "Agrani IOB Nagar" of the Respondents. Thereafter, on 01-07-2017 the complainant booked flat no.507 in Block-L of the said project of the Respondents. Later on 01-08-2017 the Respondents issued an allotment letter with respect to the above flat to the complainant mentioning the price of the flat Rs.13.00 lacs plus amenities charges Rs.2.00 lacs total Rs.15.00 lacs. Thereafter from 30-06-2017 to 05-12-2017 the complainant/allottee has paid Rs.11,95,000/- to the Respondents, wherein she has paid Rs.1,75,000/- to the Respondents through NEFT on 30-06-2017, for which the authorised signatory of the Respondents has issued money receipt no.5965 dated 08-08-2017. On 12-09-2017, the complainant has paid Rs.5.00 lacs through NEFT to the Respondents, for which the authorised signatory of the Respondents has issued money receipt no.6039 dated 14-09-2017. Later on 05-10-2017, the complainant has paid Rs.3.00 lacs through NEFT to the Respondents, for which the authorised signatory of the Respondents

has issued money receipt no.6092 dated 04-11-2017. On 05-12-2017, the complainant has paid Rs.2,20,000/- through NEFT to the Respondents, for which the authorised signatory of the Respondents has issued money receipt no.6185 dated 05-12-2017 in favour of the complainant. The complainant has filed photocopies of these money receipts, which support the payment of Rs.11,95,000/- to the Respondents. Thereafter, on 05-12-2017 a M.O.U. for Sale of a 2 BHK flat No.507 having super built-up area 1080 sq.ft. with one reserve free car parking space in Block-L of the project “Agrani IOB Nagar”, situated at *Mouza-Sarari*, Near Danapur Railway Station, P.S.-Danapur, P.O.-Khagaul, District-Patna of the Respondents was executed between the complainant, Smt. Anju Tiwari on one side and Respondent No.1, M/s Agrani Home Pvt. Ltd., through it’s Director, Respondent No.2, Sri Alok Kumar on other side on consideration of Rs.15.00 lacs, out of which complainant has paid Rs.11,95,000/- inclusive of Service Tax Rs.84,781/- which is mentioned in the M.O.U. itself. The complainant has filed photocopy of the M.O.U. Dated 05-12-2017, which supports the case of the complainant.

6. The Respondents in M.O.U. dated 05-12-2017 have promised that construction of the building shall be completed within 36 months with grace period of 6 months, after approval of Map from P.M.C., provided that time of completion shall be deemed to be extended in the event of non-availability of building materials or delay due to Government Policies affecting the industry and/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 or 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 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 over the delayed period to the buyer/vendee or buyer/vendee shall be at liberty to transfer/adjustment of his/her said flat with the other flat of the vendor/developer's constructed/under construction/proposed housing project.

The Respondents have not got proper approval of the Map from P.M.C. and they have also not applied for registration of the project in RERA, Bihar. It shows that the Respondents are completely reluctant about their responsibilities towards the interest of the allottee/complainant. The Respondents in their reply have stated that they are ready to refund the principal amount of the complainant till September, 2021 and further they are ready to adjust the principal amount of the complainant, if she is ready to purchase the land in their project "Agrani Prakriti Vihar" situated at Parmanandpur. From all these facts, it is clear that the Respondents are unable to complete the project "Agrani IOB Nagar" within the required time of the complainant and that is why it is reasonable for the complainant to make request to

cancel the allotment of her flat and demand refund of her principal amount from the Respondents, as she cannot be asked to wait indefinite period for delivery of possession of the flat, 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 is entitled for refund of her principal amount Rs.11,95,000/- from the Respondents without delay and deduction.

7. The complainant has also claimed interest @ 18% per annum on the paid principal amount Rs.11,95,000/- from the Respondents. Naturally, the Respondents have retained the respective principal amount of the complainant since 30-06-2017 till date. So the Respondents have to pay the 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. 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 developments of their business. More over, it will also hamper the interest of other buyers, but there will be no much effect on the complainant as she is repudiating herself from the project, so I think instead of compound interest, levying of simple interest on the respective principal amount, will justify the end. The Respondents have also agreed in 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, 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.11,95,000/- to the complainant along the accrued simple interest @ 9.30% per annum thereon since the date of payment of respective amounts by the complainant to the Respondents till the refund of the said amount by the Respondents to the complainant. Accordingly, Point No.(i) is decided in positive in favour of the complainant and against the Respondents.

Point No.(ii):

8. The complainant has also claimed compensation of Rs.10.00 lacs for her 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 delivery of the flat/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 in the year 2017, rather at present the price of the flat would have been much higher. The complainant has paid Rs.11,95,000/-, out of total consideration Rs.15.00 lacs, which is about 80% of the total consideration. 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 advanced principal amount to the complainant. 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 such facts and circumstances, I think, Rs.1,80,000/-, which is about 15.00% of the advance principal amount Rs.11,95,000/- paid by the complainant to the Respondents, may be appropriate amount of 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.

Point No.(iii):

9. The complainant has visited repeatedly to the office of Respondents and she has contacted to the Respondents as well as their staffs several times for refund of her advanced principal amount, but neither the Respondents nor their staffs have given any heed to her request till filing of the complaint case in this Court. Though 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. Anju Tiwari 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.11,95,000/- (Rupees eleven lacs ninety five thousand only) to the complainant along with accrued simple interest @ 9.30% per annum thereon since the date of payment of respective amounts by the complainant to the Respondents till the refund of said amount by the Respondents to the complainant. The Respondents are further directed to pay Rs1,80,000/- (Rupees one lac eighty thousand only) to the complainant as compensation for her 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
06-07-2021