



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

**4<sup>TH</sup> & 6<sup>TH</sup> FLOOR, BIHAR STATE BUILDING CONSTRUCTION CORPORATION CAMPUS  
HOSPITAL ROAD, SHASTRI NAGAR  
PATNA-800023**

**RERA/CC/1043/2020**

**RERA/AO/303/2020**

Sri Gopal Kumar Parit, S/o Sri Banarsi Parit, R/o  
Vill-Padrauna, P.O.-Hardia, P.S.-Barhariya,  
District-Siwan, Bihar-841232.

Present Address:

Flat No.21, NABARD Officers Quarter, Exhibition  
Road, Patna-800001.

... Complainant

Versus

1. M/s Agrani Homes Real Services 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, Chitragupta 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**

04-06-2021 This complaint petition is filed by the complainant, Sri Gopal  
Kumar Parit against the Respondent No.1, M/s Agrani Homes Real  
Services Pvt. Ltd. through it's Director, Respondent No.2, Sri Alok

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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 advanced principal amount Rs.8,29,000/- along with accrued interest, @ 18% per annum thereon and compensation of Rs.10.00 lacs for his economical, physical and mental harassment with litigation cost of Rs.1.00 lac, consequent to non-delivery of flat allotted to him.

2. In nutshell, the case of the complainant is that the complainant, Sri Gopal Kumar Parit was allured by fancifulness of the sale brochures, specification details, shown lay out and plans garnished with verbal assurances of the Respondent No.2, Sri Alok Kumar, so on 13-03-2015 the Respondents through their authorised signatory, Miss. Shikha Singh offered the complainant to purchase a 3 BHK Flat in their project “Agrani Residency” on consideration of Rs.8,28,000/- including Service Tax and thereafter the complainant booked the flat as per One Time Payment Plan of the Respondents. Accordingly, on 15-04-2015 the allottee /complainant paid Rs.3.00 lacs through cheque no.005511 of AXIS Bank dated 25-04-2015 to the Respondents, for which the authorised signatory has issued money receipt no.1603 dated 15-04-2015 to the complainant. Thereafter, on 22-02-2016 the allottee/complainant has further paid Rs.5,29,000/- through R.T.G.S. of AXIS Bank to the Respondents, for which money receipt no.260 dated 22-02-2016 was issued by the authorised signatory of the Respondents to the complainant. The complainant/allottee has paid total sum of Rs.8,29,000/- in consonance

with the demands raised by the Respondents. Later, on 22-02-2016 the complainant Sri Gopal Kumar Parit on one side and Respondent No.1, M/s Agrani Homes Real Services Pvt. Ltd. through it's authorised signatory, Miss Shikha Singh on other side executed a Memorandum of Understanding (M.O.U.) for sale/purchase of a 3 BHK flat having super built up area 1105 sq.ft. on the first floor along with one free reserved car parking space on ground floor/basement and also undivided share in Block-B of the project "Agrani Residency" situated at *mauza*-Jaipur, Hathiyakhandh, *thana* No.31, present P.S.-Danapur, District-Patna of the Respondents on consideration of Rs.8,28,000/- inclusive of Service Tax. After receipt of the advance principal amount Rs.8,29,000/- the Respondents with malafide intention started changing their versions.

The Respondents have promised in the M.O.U. 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 period of more than 4 years have passed since execution of M.O.U. dated 22-02-2016 and even after expiry of said period, the Respondents have not been able to hand over delivery of possession of the flat to him, as construction of the building/flat has not started till date. Previously, the complainant had heard about good reputation of the Respondents in the market and believing the same, he 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. The Respondents are sitting over the money of the complainant 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 him by the Respondents. He has repeatedly requested to the Respondents either to complete the flat and deliver possession of the same to him or refund his principal amount, but the Respondents have not given any heed to his request. Rather, used his paid consideration amount in their other projects. The complainant being fed up with the behaviour of the Respondents has filed the present complaint case against the Respondents 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. Further they are also ready to adjust the principal amount of the complainant, if purchase of the land is done by him in their project "Agrani Prakriti Vihar" situated at Parmanandpur, district-Saran 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 is entitled for refund of his principal amount Rs.8,29,000/-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 his 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, after negotiation, Miss Shikha Singh, the authorised signatory of the Respondents on 13-03-2015 offered through a letter for purchase of a 3 BHK flat having area 1222 sq.ft. in the project “Agrani Residency” of the Respondents situated at Usri More, Anand Bazar, Vill-Jaipur Hathiyakhandh, P.S.-Danapur, District-Patna on consideration of Rs.8,28,000/- including Service Tax plus 10% registration charge of the circle rate prevailing at the time of payment. Later on, as per booking the complainant has paid Rs.3,00,000/- on 15-04-2015 through cheque no.005511 of AXIS Bank dated 25-04-2015 to the Respondents, for which the authorised signatory of the Respondents has issued money receipt no.1603 dated 15-04-2015 to the complainant. Again, on 22-02-2016 the complainant/allottee has paid Rs.5,29,000/- through R.T.G.S of AXIS Bank dated 22-02-2016, for which the authorised signatory of the Respondents has issued money receipt no.260 dated 22-02-2016 in favour of the complainant. Thereafter on 22-02-2016 a M.O.U. for sale/purchase of a 3 BHK flat on first floor having super built-up area 1105 sq.ft. with one reserve car parking space on ground floor/basement in Block-B of the project “Agrani Residency” situated at *mauza*-Jaipur

Hathiyakhandh, *Thana* no.31, present P.S.-Danapur, District-Patna of the Respondents was executed between the complainant, Sri Gopal Kumar Parit on one side and Respondent No.1, M/s Agrani Homes Real Services Pvt. Ltd. through it's authorised signatory, Miss Shikha Singh on other side on consideration of Rs.8,29,000/- including Service Tax, out of which the complainant has paid total consideration Rs.8,29,000/- inclusive of Service Tax, which is mentioned in the M.O.U. itself. It is not out of place to mention that previously the authorised signatory, Miss Shikha Singh has issued offer letter on 13-03-2015 to the complainant to sell a flat having super built up area 1222 sq.ft on consideration of Rs.8,28,000/-, but later on both the parties agreed in the above M.O.U. dated 22-02-2016 that the said flat having super built up area 1105 sq.ft. on consideration of Rs.8,29,000/- will be sold to the complainant by the Respondents. The complainant has filed photocopies of the Offer Letter dated 13-03-2015 issued by authorised signatory, Miss. Shikha Singh to the complainant, M.O.U. dated 22-02-2016, money receipt no.1603 dated 15-04-2015 and money receipt no.260 dated 22-02-2016 issued by the authorised signatory on behalf of the Respondents to the complainant, which support the case of the complainant.

6. The Respondents in M.O.U. dated 22-02-2016 have promised that construction of the building shall be completed within 36 months with grace period of six months, after approval of the 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 or 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 the 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 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 his/her said flat with the other flat of the vendor/developers constructed/under construction/proposed housing project.

7. The Respondents have filed application No.RERA P 2911201700058-4 in RERA, Bihar for registration of the project “Agrani Residency”, but after scrutiny by officials of RERA, Bihar altogether 4 defects were found and vide letter No.RERA/PRO.REG-415/2018/657 dated 09-11-2020, the Respondents were directed to remove these defects within 15 days, but up till now the Respondents have not removed/cured these defects. The Respondents have not got proper approval of Map from P.M.C. and they have also not got the project registered in RERA, Bihar. It shows that the Respondents are reluctant in their responsibilities towards allottees. The complainant has continuously enquired from the

Respondents about the construction of the Apartment, but they have only made excuses over the course of 5 years and always assured him that the construction would be completed within the stipulated time. He 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. He has further stated that seeing no hope for completion of the project as per his requirement, he has requested the Respondents to cancel his allotment and refund his principal amount along interest. But, the Respondents on one or other grounds have always given false assurances to him for refund of the principal amount along with interest.

From all the above facts and circumstances, it is clear that though the Respondents have assured in their reply that they are ready to refund the principal amount of the complainant till September, 2021 and further if the complainant is ready to purchase land in their project "Agrani Prakriti Vihar", then they will adjust the principal amount in the consideration of purchased land. It shows that the Respondents are still unable to complete the project within the required time of the complainant and in the circumstances it is uncertain for the Respondents to refund the principal amount/adjust the same in the consideration of the purchased land within the required period of the complainant and that is why it is reasonable for the complainant to make request with the Respondents to cancel the allotment of his flat and demand his principal amount along with interest from the Respondents, as he 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 his principal amount Rs.8,29,000/- from the Respondents without delay and deduction.

8. The complainant has also claimed interest @ 18% per annum on the paid principal amount Rs.8,29,000/- from the Respondents. Naturally, the Respondents have retained the respective principal amount of the complainant since 25-04-2015 till date. So the Respondents have to pay the interest on respective principal amount for the retention period. Hon'ble Supreme Court of India 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'.*"

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

In present case, the Respondents have agreed in the Agreement for Sale that they shall pay simple interest for delayed period. 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.8,29,000/- 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.(i) is decided in positive in favour of the complainant and against the Respondents.

Point No.(ii):

9. The complainant has also claimed compensation of Rs.10.00 lacs 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 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 to him in the year 2015. 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 knowledge that the mother of the complainant is suffering from cancer and repeated assurances given by the Respondent No.2, Sri Alok Kumar to the complainant in the Court about immediate refund of his principal amount, but he miserably failed in his assurances. 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.8,29,000/- out of the total consideration Rs.8,28,000/-, which is 100% of the total consideration. In such facts and circumstances, I think, Rs.1,35,000/-, which is about 16.00% of the advance principal amount Rs.8,29,000/- 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.(ii) is decided in positive in favour of the complainant and against the Respondents.

Point No.(iii):

10. 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 in this Court. 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.15,000/- 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.15,000/- 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, Sri Gopal Kumar Parit is allowed on contest with litigation cost of Rs.15,000/- (Rupees fifteen thousand only) against the Respondents. The Respondents are

directed to refund the principal amount Rs.8,29,000/- (Rupees eight lacs twenty nine thousand 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 said amount by the Respondents to the complainant. The Respondents are further directed to pay Rs.1,35,000/- (Rupees one lac thirty five thousand only) to the complainant as compensation for his economical, physical and mental harassment. The Respondents are directed to comply the order within 60 (sixty) days, failing which the complainant is entitled to get enforced the same through process of the Court.

Sd/-  
(Ved Prakash)  
Adjudicating Officer  
RERA, Bihar, Patna  
04-06-2021