

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

**RERA/CC/463/2019
RERA/AO/115/2019**

Sri Arvind Kumar, s/o Bihari Prasad, r/o
Village & P.O. Itasang, P.S.-Rahui,
District-Nalanda, PIN-803119.

... Complainant

Versus

1. M/s Star India Construction Pvt. Ltd.,
2. Sri Shashi Bhushan Prasad, C.M.D.
3. Ms. Usha Devi, Director,
4. Sri Basant Kumar, Director,
- M/s Star India Construction Pvt. Ltd.
Room No.206, 210 & 510, Adarshila
Complex, Near Reserve Bank of
India, South Gandhi Maidan, Patna-
800001.

... Respondents

Present:

**Sri Ved Prakash
Adjudicating Officer**

Appearance:

For Complainant : Me, Gaurav Kumar, Advocate.

For Respondents : Mr. Md. Imteyaz, Advocate

ORDER

06-02-2020

This complaint petition is filed by the complainant, Arvind Kumar against the Respondents No.1, M/s Star India Construction Pvt. Ltd. through its C.M.D., Respondent No.2, Sri Shashi Bhushan Prasad, Respondent No.3, Ms. Usha Devi and Respondent No.4, Sri Basant 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 Booking amount Rs.2.00 lacs of Duplex/Villa along with accrued interest thereon and compensation, consequent to non-delivery of Villa.

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2. In nutshell, the case of the complainant is that the Respondent No.1, M/s Star India Construction Pvt. Ltd. is a registered company bearing CIN U45201 BR 1995PTC0066401, is engaged in development of land and erecting buildings/flats and thereafter used to sell the same to the consumers/allottees. The Respondents No. 2 to 4 are C.M.D. and Directors of Respondent No.1. The Respondent Company started the project in the name and style of “TECH TOWNE” at Bihta. The complainant came to know about the project, then he approached to the Respondent Company through its C.M.D. and Directors and after finalising talk, he has booked a Duplex/Villa No.B-51 in Block-B having area 841 sq.ft. on 05-06-2018 on total consideration of Rs.16,25,000/- along with other charges Rs.1,25,000/-. It is further case that after booking his Duplex, the complainant has paid Rs.2.00 lacs to the Respondents on 05-06-2018, which was accepted and receipt was issued to him by them. Thereafter, on 09-06-2018 the Respondents have handed over a welcome letter to the complainant with details of Duplex. Ms. Ekta Jindal, employee of the Respondents categorically

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stated the complainant that the above project "TECH TOWNE" is approved from RERA, Bihar and they will start construction of the Duplex allotted to him within a month and hand over the same to him within the stipulated period. After one month when no construction was started on the allotted Duplex, the complainant verified from RERA, Bihar office and he came to know that the above project has not been registered with RERA, Bihar and even the Respondents have not applied for registration. Then, the complainant cancelled the booking of Duplex allotted to him on 25-12-2018 and requested the Respondents for refund of his booking amount, whereon Ms. Preety Suman, one of the employees of the Respondents has stated that as per agreement 25% of booking amount along with G.S.T. will be deducted from the booking amount and rest amount will be refunded to him within 6 months. It is not out of place to mention that the Respondents offered for booking of Duplex without project registration with the appropriate authority and still they have not applied for registration before the competent authority. Hence, they are not entitled to deduct the amount stated by Ms. Preety Suman, employee of the Respondent. But, the Respondents did not agree with the submission of the complainant. The complainant has stated that he has suffered mental and physical harassment due to attitude of Respondents. The complainant is living outside the jurisdiction of this Court and that is why, he is being harassed

and being fed up with the behaviour of the Respondents, has filed this case with the above reliefs against the Respondents.

3. The Respondents after appearance, have filed reply pleading *inter-alia* that the complainant has filed the complaint petition on the basis of wrong, false, frivolous and concocted facts. Hence, on the basis of this fact alone, the complaint petition is liable to be dismissed with cost. It is further case that the complainant had come in the office of the Respondents through some reference and expressed his willingness for booking a Duplex in the ongoing project and at the time of booking the complainant has paid the initial payment Rs.2.00 lacs to the Respondents. The complainant has visited in the office of the Respondents in the month of December, 2018 and requested for cancellation of his booking on the ground of illness of his grandmother and not on the ground of delay in construction of the Duplex. It is pertinent to mention that the complainant has cancelled the booking within period of 6 months, then how he can presume that the project will not be completed within the stipulated time. The complainant was well aware of the fact that in case of cancellation from his side, 25% of the paid amount shall be forfeited. The complainant has issued a Legal Notice to the Respondents, which was replied and assured to the complainant that his deposited/booking amount shall be returned as per terms and conditions of the allotment.

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But, he with an intention to harass the Respondents has filed the present complaint petition against the Respondents. It is further case that the Respondents have refunded Rs.1,00,000/- lac to the complainant on 27-08-2019 and Rs.80,000/- on 16-12-2019 and the rest amount Rs.20,000/- has been deducted as per clause-9 of the allotment, to which the complainant has agreed while booking the Duplex with the Respondents. Hence, in view of the above facts and circumstances, the complaint case has to be dismissed.

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4. On basis of the pleadings and submission of the parties, the following points are formulated to adjudicate the case:-

- (1) Whether the complainant is entitled for refund of remaining principal amount Rs.20,000/- against the Respondents?
- (2) Whether the complainant has cancelled the booking of the Duplex on ground of delay of completion of the construction of the project "TECH TOWNE" by the Respondents?
- (3) Whether the complainant has cancelled the booking on ground of illness of his grandmother?
- (4) Whether the complainant is entitled for interest on paid principal amount retained by the Respondents after booking till refund to the complainant?

(5) Whether the complainant is entitled for reasonable compensation for his mental and physical harassment against the Respondents?

(6) Whether the complainant is entitled for litigation cost against the Respondents?

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Points No.1 to 4:

5. These points No.1 to 4 being inter-related are taken together for discussion. Admittedly, the complainant has booked Duplex No.B-51 having area 841 sq.ft. in Block-B on 05-06-2018 in project "TECH TOWNE" of the Respondents on consideration of Rs,16,25,000/-. It is also admitted case that the complainant has paid Rs.2.00 lacs on 05-06-2018 to the Respondents against the allotted Duplex No.B-51 and got receipt from authorised signatory of the Respondents. Thereafter, the Respondents have issued a welcome letter in favour of the complainant. The complainant has filed photo copies of receipt dated 05-06-2018 of Rs.2.00 lacs (Annexure-1) and welcome letter (Annexure-2) issued by the Respondents, which support the claim of the complainant about allotment of the Duplex No.B-51 as well as receipt of Rs.2.00 lacs by the Respondents. However, there is difference between both the parties on the point of ground of cancellation of booking of the Duplex by the complainant. According to the complainant, Ms. Ekta Jindal, employee of the Respondents

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has categorically stated to him that the project "TECH TOWNE" is approved by RERA, Bihar and work of the Duplex will be started within one month and it will be handed over to him within the stipulated time. But, when he visited after one month, construction of the allotted Duplex has not started and then he verified from RERA, Bihar office and came to know that the project has not been approved from RERA, Bihar and even the Respondents have not applied for registration in the office of RERA, Bihar and thereafter, he has cancelled booking of the Duplex on 25-12-2018 and requested the Respondents to refund the booking amount, whereon Ms. Preeti Suman had stated him that as per agreement, 25% of booking amount along with G.S.T. will be deducted and the rest amount will be refunded to him within 6 months. On other hand, the Respondents have claimed that cancellation of booking of the allotted Duplex was done by the complainant on the ground of illness of his grandmother and not on the ground of delay in construction of the allotted Duplex. It is further added by the Respondents that the complainant has cancelled the booking within a period of 6 months of the booking, then how he has presumed that the project will not be completed within stipulated time and further that at the time of booking, the complainant was well aware of the fact that in case of cancellation by the complainant, 25% of the booking amount will be forfeited and on Legal Notice of the

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complainant it was assured to him that the deposited amount will be returned as per terms and conditions of the allotment, after deduction of 25%, but the complainant with intention to harass the Respondents has filed the present case. The Respondents have filed photocopy of cancellation letter dated 29-12-2018 submitted by the complainant, Sri Arvind Kumar before the Respondents, wherein the complainant has stated his inability to purchase the Duplex as his grandmother was suffering from serious disease and he has requested to refund his booking amount at once without any deduction. The Respondents have also filed photocopy of Customer Information Form, duly filled-up and signed by the complainant on 03-06-2018 where on backside of the Form at para-9 of printed terms and conditions, it has been mentioned that in case of cancellation request from clients, within stipulated time, cancellation charges would be applicable and paid amount would be refunded after deducting 25% of the amount paid till dates as per company Policy. The Respondents have also filed photocopies of Pass Book and letter dated 18-12-2019 mentioning details of payment proof to complainant, Sri Arvind Kumar. On going through these documents, it is clear that the Respondents have refunded Rs.1,00,000/- on 27-08-2019 and Rs.80,000/- on 16-12-2019 in the account of the complainant, after deduction of Rs,20,000/- as cancellation charge.

6. On discussion of above documents, it is apparently established that the Respondents have received booking amount Rs.2.00 lacs on 05-06-2018 against the Duplex allotted to the complainant. They have refunded Rs.1,00,000/- on 27-08-2019 and Rs.80,000/- on 16-12-2019 after deduction of Rs.20,000/- as cancellation charge. It is also clear that the complainant has wrongly stated in his complaint petition that he has cancelled booking of the allotted Duplex on ground of delay in construction of the project, as it appears from the photocopy of the request letter of the complainant submitted to the Respondents that he has cancelled booking of the Duplex on 29-12-2018 on ground of serious illness of his grandmother and demanded refund of his booking amount without any deduction. It is also correct to say that the complainant has not cancelled booking of the Duplex on 25-12-2018. Rather it appears from the photocopy of request letter dated 29-12-2018 of the complainant that he has cancelled booking of the Plot/Duplex on that day itself and not on 25-12-2018 as pleaded and submitted by him. The complainant has not filed any paper to show that he has cancelled booking of the Duplex on 25-12-2018, so photocopy of the request letter dated 29-12-2018 submitted by the Respondents on the record appears true version and it supports the claim of the Respondents that the complainant has cancelled the booking on the ground of serious illness of his grandmother and not on

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the ground of delay in construction of the project. Though it is correct that the Respondents have not got approval of RERA, Bihar with respect to the project, otherwise they would have submitted the same before the Court on the record. But, the benefit of such version cannot be given to the complainant, as the case brought by him before the Court, the ground of cancellation appears totally incorrect and unacceptable to the Court.

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7. The Respondents have claimed deduction of 25% on ground of cancellation of booking of allotted Duplex on booking amount within stipulated time. They have also claimed that the terms and conditions were also printed on the backside of Customer Information Form and after satisfaction, the complainant has not only filled-up the Form, but also signed on both the sides after agreement with the terms and conditions and that is why they are entitled to deduct 25% as cancellation charge. Apparently, the respondents have not included any provision in these terms and conditions about their liabilities towards the buyers and as per Section 3 of the Act, 2016, the Respondents should not have taken advance without RERA, Bihar registration. The Respondents should have also handed over prospectus, model of Villa, papers etc. with respect to the Duplex/Villa to the complainant, but they have not done so. The Respondents should have also handed over sanctioned Plan Layout and its specifications approved by the competent

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authority, as per Section 14, 19 (1) of the Act, 2016. They should have also got registered the Agreement for Sale scribed in Rule 8 of Bihar Real Estate Regulation and Development) Rules, 2017 in the manner of Annexure appended with the Rules, which they have not done. So it shows that the Respondents have obtained signature of the complainant on one-sided terms and conditions printed on backside of the Customer Information Form, which is not at all reasonable in eye of the law and on basis of such printed one-sided terms and conditions, they cannot be said to be entitled to deduct 25% amount from booking amount of any of the buyer including the complainant. It also finds support from the fact that they have not got written on the side of the Form that the complainant has read and understood and agreed with the terms and conditions mentioned in the Form. It is also very important to know that on basis of unregistered terms and conditions, on-sided terms and conditions, the Respondents are claiming that the complainant has agreed with the agreement. Hence, I have no hesitation to say that the Respondents should not have prepared such unwarranted and unacceptable paper only for protecting their interest and against the interest of the consumers/allottees. Accordingly, from any corner of the law, the Respondents are not entitled to deduct 25% or any amount from the booking/advance amount of the buyer/complainant against his wishes/interest and only on basis of their whims

and if it is allowed in the eye of law, the Respondents would be allowed to do any activities with their will against any allottee, which cannot be and should not be allowed. Accordingly, I come to the conclusion that the Respondents should/must refund the deducted amount Rs.20,000/- to the complainant within a stipulated period.

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8. The Respondents have admittedly retained and used in their business amount Rs.2.00 lacs paid by the complainant on 05-06-2018 to the Respondents. The complainant has got no benefit from the allotted Duplex, in spite of investing such amount with a dream to have a Duplex of his own by making further payments in due course. I think, if anyone will deposit the amount in any Bank or any Public Sector office, he will get interest on the deposited amount without any hesitation from any corner. As already mentioned above, the Respondents have naturally used the advanced amount Rs.2.00 lacs paid by the complainant in their business of house construction and they have been benefitted in enlargement and progress of their infrastructure, so they must naturally refund the advanced amount along with interest without any hesitation like public bodies. At this juncture, I have to add that the Respondents are running their business of constructing the present project as well as other projects in Patna as well as in other parts of the State, so levying of compound interest against the Respondents would cause financial burden on the Respondents, which would

also adversely affect the interest of other consumers. So, instead of compound interest, simple interest will be appropriate to be levied against the Respondents on the advance principal amount paid by the complainant to the Respondents. Now, as per Rule 17 and 18 of Bihar Real Estate (Regulation and Development) Rules, 2017, the Promoter/Developer has to pay 2% above the M.C.L.R. of S.B.I. The present rate of interest of S.B.I. is about 8.15% for above one year and below two years loan. Hence, if 2% is added, it will come to 10.15%. Accordingly, simple interest @ 10.15% will be levied on advance principal amount paid/remained with the Respondents on different dates by the complainant to the Respondents.

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9. The details of payments made by the complainant to the Respondents and refund made by the Respondents to the complainant may be seen through the chart as under:-

Date of Payment by the Complainant	Amount paid by the complainant Rs.	Date of refund	Amount of Refund Rs.	Amount of Interest Rs.
05-06-2018	1,00,000.00	27-08-2019	1,00,000.00	12,453.48
05-06-2018	80,000.00	16-12-2019	80,000.00	12,424.77
05-06-2018	20,000.00	06-02-2020	20,000.00	3,388.92
TOTAL	2,00,000.00	-	2,00,000.00	28,267.17

On calculation the simple interest on principal amount Rs.2.00 lacs paid by the complainant/remained with the Respondents on different dates @ 10.15% per annum comes to **Rs.28,267.17**. Hence, the Respondents have to refund the

remaining principal amount Rs.20,000/- along with accrued interest **Rs.28,267/-** on the amount paid by the complainant on different dates to the Respondents/remained with the Respondents, to the complainant. Accordingly, Point No.1 is decided in positive in favour of the complainant and against the Respondents, Point No.2 is decided in negative against the complainant and in favour of the Respondents, Point No.3 is decided in positive in favour of the Respondents and against the complainant and Point No.4 is decided in positive in favour of the complainant and against the Respondents.

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Point No.(5):

10. From the discussions of para-5 to 9 above, it is clear that the complainant has failed to establish that he has cancelled booking of the allotted Duplex on ground of delay in approval of project by RERA, Bihar as well as construction of the Duplex. But, on other hand, the Respondents have successfully established that the complainant has cancelled booking of the allotted Duplex on 29-12-2018 on ground of serious illness of his grandmother. But, since the Respondents have retained the principal amount Rs.2.00 lacs of the complainant and used the same in development their business, so on reasonable legal grounds, the complainant has been allowed simple interest @ 10.15% on advanced principal amount along with refund of the same to the complainant. But, the complainant's statement has been found incorrect about the cancellation of booking of

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the allotted Duplex. It can be very safely said that he on one or other ground is demanding the principal amount without any deduction from the Respondents, which can be allowed, but on incorrect ground he cannot be said to be entitled for physical and mental harassment and he cannot be allowed compensation in addition to interest on principal amount deposited by him with the Respondents. In such view of the matter for ends of justice, I think, it is not proper to allow compensation to the complainant for his mental and physical harassment in addition to interest, as it will lead to wrong practice to claim compensation u/s 71 of the Act, 2016 by taking different pleadings at different times. Accordingly, Point No.(5) is decided in negative against the complainant and in favour of the Respondents.

Point No.(6):

11. 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 towards the repeated requests of the complainant, which compelled the complainant to file this case. The complainant would have naturally made expenses in travelling to the office of the Respondents to meet them and their staffs and have also incurred expenses for filing the present complaint case in RERA, Bihar, preparation of documents, Court Fee etc. I think,

in all the process the complainant would not have incurred more than Rs.10,000/-, which must be paid by the Respondents. Accordingly, Point No.6 is decided in positive in favour of the complainant and against the Respondents.

Therefore, the complaint case of the complainant is allowed on contest with litigation cost of Rs.10,000/- (Rupees ten thousand only) against the Respondents. The Respondents are directed to refund the remaining principal amount Rs.20,000/- (Rupees twenty thousand only) to the complainant within the stipulated period. The Respondents are further directed to pay simple interest @ 10.15% on paid principal amounts to the complainant till today **Rs.28,267/-**. (Rupees twenty eight thousand two hundred sixty seven only) within the stipulated period. They are further directed to pay same simple interest 10.15% on remaining principal amount Rs.20,000/- (Rupees twenty thousand) since tomorrow till refund. The Respondents are directed to comply the order within 60 (sixty) days, failing which the complainant is entitled to enforce the same through process of the Court.

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Sd/-
(Ved Prakash)
Adjudicating Officer
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