

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

**RERA/CC/398/2019
RERA/AO/87/2019**

Sri Akhilesh Kumar, Directorate of
Engineering Support, Air Force HQ
(AB), B-4 Wing, 13th Floor, CGO
Complex, Lodhi Road, New Delhi- ... Complainant
110003

Versus

1. M/s Agrani Homes Pvt. Ltd.,
C/o Alok Kumar, House No.15,
Patliputra Colony, Patna-Ward
No.1FA, Patliputra Colony, Near
Ruban Hospital, Patna-800013.
2. Sri Alok Kumar, s/o SriPadum
Singh, C.M.D., House No.15,
Patliputra Colony, Patna-Ward
No.1FA, Patliputra Colony, Near
Ruban Hospital, Patna-800013. ... Respondents

Present:

**Sri Ved Prakash
Adjudicating Officer**

Appearance:

For Complainant

- In Person

For Respondents

- Mr.Ankit Kumar, Advocate

ORDER

27-02-2020

This complaint petition is filed by the complainant, Sri
Akhilesh Kumar against the Respondent No.1,M/s Agrani

Homes Pvt. Ltd. through its C.M.D., 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 remaining principal amount Rs.6,50,000/- along with accrued interest @ 15% per annum on principal amount Rs.9,50,000/- and compensation Rs.5.00 lacs, consequent to non-delivery of plot allotted to him in project "Agrani Idea".

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2. In nutshell, the case of the complainant is that the complainant, Akhilesh Kumar had booked Plot No.5 measuring area 863 sq.ft. in the project "Agrani Idea", Siwala Mor on 03-06-2018 on consideration of Rs.13,50,000/- including Service Tax, which has yet not been registered with RERA, Bihar. The complainant has paid Rs.9,50,000/- to the Respondents and got money receipt thereof. The Respondents have called the complainant for registration of the Plot in between 28-31 August, 2018, but the same could not be registered, as the Respondents have told him that as per new rules, new Plot cannot be sold/transferred without RERA registration. When the complainant became hopeless, he has sent a booking cancellation letter on 22-10-2018 for cancellation of his Plot booking and demanded refund of his

booking amount. However, up till now, the Respondents have refunded only Rs.3.00 lacs. When the complainant failed to get refunded his total principal amount from the Respondents, he has filed the present complaint case against the Respondents with the above reliefs.

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3. On appearance, the Respondents have pleaded *inter-alia* that they are ready to refund the total principal amount to the complainant in 2 or 3 instalments. It is further stated that the Respondents are presently ready to refund the principal amount, but they may be allowed 4 months time to refund the remaining principal amount. Hence, in light of their assurances the case may be disposed of.
4. On basis of the pleadings and submissions of the complainant and learned lawyer for the Respondents, the following points are formulated to adjudicate this case:-
 - (1) Whether the complainant is entitled for refund of his remaining principal amount Rs.6,50,000/- along with accrued interest @ 15% per annum on principal amount Rs.9,50,000/- against the Respondents?
 - (2) Whether the complainant is entitled for compensation Rs.5.00 lacs for his physical and mental harassment against the Respondents?

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

Point No.1:

5. Admittedly, the complainant, Sri Akhilesh Kumar has booked on 03-06-2018 a Plot No.5 in project "Agrani Idea" near Shiwala More, Danapur of Respondents. The complainant has filed photocopies of booking paper, allotment letter dated 09-06-2018, booking status of project, receipt no.072 dated 04-06-2018 of Rs.4.00 lacs, receipt no.145 dated 07-07-2018 for Rs.4.00 lacs and receipt no.163 dated 14-07-2018 of Rs.1,50,000/-, which show that the complainant has paid total Rs.9,50,000/- to the Respondents out of total consideration of Rs.13,50,000/- and he has got allotment letter with respect to the Plot No.5 of project "Agrani Idea" near Siwala Mor, Danapur, issued by the Respondents. The complainant has further filed photocopy of cancellation letter dated 22-10-2018 and photocopies of several letters through which he has requested the Respondents to refund his advanced principal amount. The complainant has not filed Map of the project, which may show that whether at the time of booking, the project was approved from competent authority or not? Further, the Respondents have issued allotment letter

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and booking status with respect to the Plot No.5 including other Plots of the project "Agrani Idea" near Siwala Mor, which show that Plot No.5 was allotted to complainant. It will appear from Section-3 of the Act, 2016 that no Promoter shall advertise, market, book, sell or offer for sale or invite persons to purchase in any manner any Plot, Apartment or Building, as the case may be in any Real Estate Project or part of it in any planning area without registering the Real Estate Project with RERA, Bihar established under the Act, 2016. Hence, the Respondents knowingly and intentionally, without registration of the project in RERA, Bihar, has not only started to advertise, but also received advance amount from the complainant as well as other consumers and there by they have violated the provisions of Section-3/59 of the Act, 2016. In like manner, the Respondents have taken more than 10% of the consideration in violation of Section-13 of the Act, 2016, without entering into Agreement for Sale with the complainant. The Respondents could not transfer/sale the Plot to the complainant within a assured time, so also they have violated the provisions of Section-18 (1)(3) of the Act, 2016. In like manner, they have given wrong information to the complainant and received advance from him and thereby

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the complainant has gone in loss and so also the Respondents have violated provisions of Section-12 of the Act, 2016. Hence, in the above facts and circumstances, the complainant is entitled for refund of his principal amount Rs.9,50,000/- without any delay and deduction. Up till now, admittedly the Respondents have refunded only Rs.3.00 lacs and avoiding to refund the remaining principal amount Rs.6,50,000/- to the complainant.

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6. The complainant has claimed compound interest @ 15% per annum on the principal amount, but the Respondents are running the present project as well as other projects in Bihar, so levying of compound interest @ 15% per annum will hamper the business of the Respondents and it will also adversely affect the interest of other consumers. So, instead of compound interest, simple interest will justify the end. According to Rules 17 and 18 of Bihar Real Estate (Regulation and Development) Rules, 2017, 2% above the M.C.L.R. of S.B.I. has to be levied for calculating the interest. The present M.C.L.R. of S.B.I. for more than 1 year and less than 2 years is 8.05% per annum and if 2% is added, it will come 10.05% per annum. Accordingly, the Respondents have to pay simple interest @ 10.05% per annum to the complainant since the

date of payment of respective amount by the complainant to the Respondent till refund of full principal amount to the complainant by the Respondents. Accordingly, Point No.(1) is decided in positive in favour of the complainant and against the Respondents

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Point No.(2):

7. The complainant has also claimed compensation Rs.5.00 lacs against the Respondents for his mental and physical harassment. As per Section 72 of the Act, 2016, Respondents are being benefited by using the amount Rs.9,50,000/-paid by the complainant in their business without giving delivery of possession of the plot to him. Now the complainant may not get a Plot of same area in the same locality at the same rate, which was available to him in the year 2018. The present rate of flat of same area in the same locality has not come on record from either side. However, naturally the price of the Plot would have gone high in comparison to the rate available in the year 2018. The complainant has paid the total consideration Rs.9,50,000/- to the Respondents. The Respondents are still running their business of building construction. In the above facts and circumstances, I think, a lump sum amount of Rs.75,000/-, which is about 7.89% of

the advanced principal amount Rs,9,50,000/- will be appropriate amount to be paid by the Respondents to the complainant for his mental and physical harassment. Accordingly, Point No.(2) is decided in positive in favour of the complainant and against the Respondents.

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Point No.(3):

8. 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.20,000/-, which must be paid by the Respondents. Accordingly, Point No.3 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.20,000/- (Rupees

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twenty thousand only) against the Respondents. The Respondents are directed to refund the remaining booking/advanced principal amount Rs.6,50,000/- (Rupees six lacs fifty thousand only) along with simple interest @ 10.05% per annum on the principal amount since the respective date of payment by the complainant to the Respondent till refund of full principal amount. The Respondents are further directed to pay Rs.75,000/- (Rupees seventy five thousand only) as compensation to the complainant for his 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 order through process of the Court.

Sd/-
(Ved Prakash)
Adjudicating Officer
RERA, Bihar, Patna
27-02-2020