

**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**

- | Sl. | Complaint Case No. | Complainants |
|---|--|---|
| 1. | RERA/CC/1524/2020
RERA/AO/467/2020 | Sri Sheel Rajneesh, S/o Sri Birendra Thakur, House No.25, Abhinandan, Ram Nagari, Sector No.3, Near Ashiana Nagar, Patna, Bihar-800025. |
| 2. | RERA/CC/1525/2020
RERA/AO/468/2020 | Dr. Sheil Avneesh, S/o Sri Birendra Thakur, House No.25, Abhinandan, Ram Nagari, Sector No.3, Near Ashiana Nagar, Patna, Bihar-800025. |
| 3. | RERA/CC/1526/2020
RERA/AO/469/2020 | Sri Birendra Thakur, S/o Late Suraj Thakur, House No.25, Abhinandan, Ram Nagari, Sector No.3, Near Ashiana Nagar, Patna, Bihar-800025. |
| Versus | | |
| 1. | M/s Realize Realcon Pvt. Ltd., Flat No.601, Ganga-06, Jalalpur City, Ram Jaypal Nagar, Bailey Road, Patna-801503, Bihar. | |
| Through it's Managing Director and Executive Director: | | |
| 2. | Sri Shailendra Kumar Giri, S/o Sri Shiv Kumar Giri, Managing Director. | |
| 3. | Sri Rohitesh Kumar Giri, S/o Sri Shiv Kumar Giri, Executive Director | |
| <u>Address-1:</u> | | |
| - Both residents of 2 nd Floor, J.M. Complex, Rupaspur, Bailey Road, Patna-801503. | | |
| <u>Address-2:</u> | | |
| S/o Sri Shiv Kumar Giri, West Mathiya, Vill-Ranibari, Block-Daronda, District-Siwan, Bihar. | | ... Respondents |

Present:
Sri Ved Prakash
Adjudicating Officer

Appearance:

For Complainants ... In Person

For Respondents ... Sri Satya Prakash Parashar, Advocate

ORDER

22-02-2021 In view of the fact that these three complaint cases are related to same project "Realize Green Exotica", Ganga Tower, AIIMS, Patna of the Promoter/Respondents and allegations are also of

similar nature, so a composite order is being passed in all these cases.

2. These complaint cases are filed by complainants named above against the Respondent No.1, M/s Realize Realcon Pvt. Ltd. through it's Managing Director, Respondent No.2, Sri Shailendra Kumar Giri and Respondent No.3, Executive Director, Sri Rohitesh Kumar Giri u/s 31 read with Section 71 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the "Act, 2016) for delivery of possession of their flats in the project "Realize Green Exotica", Ganga Tower of Respondents and interest/compensation for delayed period of delivery of possession of their flats with litigation cost.
3. In nutshell, the common case of the complainants is that the Respondents through their representative approached to them to purchase flats on some discount offer. whereon they had agreed and booked one flat for each complainant in the project "Realize Green Exotica" of the Respondents situated Near AIIMS, Patna. Thereafter, both the parties executed three separate Agreements for Sale on 28-10-2016 with respect to each flat having area 1618 sq.ft., 1820 sq.ft. and 1618 sq.ft. respectively, wherein the delivery of possession of the flats was promised in December, 2018 with grace period of six months. Later on, each of the complainants on one side and the

Executive Director, Sri Rohitesh Kumar Giri on behalf of the Respondents on other side executed three separate registered Agreements for Sale on 29-06-2018 for sale/purchase of the flats along with one car parking space at ground floor for each of the complainants.

Details of the Agreement for Sale and consideration money etc. may be seen through the Chart as under:-

C H A R T

Project Name : “Realize Green Exotica”, Ganga Block

Name of Executant : Sri Rohitesh Kumar Giri

Sl. No.	Complaint Case No.	Name of Complainant/ Allottee/ Purchaser	Sale Deed No. & Date	Carped Area (Sq.ft.)	Type of Flat	Allotted Flat No.	Total Consideration Rs. in lacs	Paid Amount Rs. in lacs
1.	RERA/CC/1524/2020 RERA/AO/467/2020	Sri Sheel Rajneesh	8907 dated 29-06-2018	925	3 BHK	105	13.00	11.00
2.	RERA/CC/1525/2020 RERA/AO/468/2020	Dr. Sheil Avneesh	8922 dated 29-06-2018	1073	3 BHK	107	15.00	13.00
3.	RERA/CC/1526/2020 RERA/AO/469/2020	Sri Birendra Thakur	8906 dated 29-06-2018	925	3 BHK	106	13.00	11.00

4. Further case of the complainants is that the Respondents have assured in the Deed that the project shall be completed and delivery of possession of the flats shall be handed over in December, 2018. But, the said project is still incomplete and reasons for delay was never informed to them by the Respondents. On being approached by them to the Builder/Respondents to know about the progress of the project, they insisted them to pay full amount of consideration, then the complainants have no other alternative, but to safeguard their investment, paid Rs.2.00 lacs each to the Respondents towards consideration and in this way, they

building has been completed up to first floor and due to heavy increase in the price of iron rod, stone chips, cost of the project increased up to 200%. Further case is that due to Policy of the Government, construction material i.e. sand was not available or less available during long period in the year 2017-19. So, the project could not be done so fast as it requires. Due to rescission in the market, booking of the flats affected and only 48 flats have been booked till now out of 96 flats in the project and due to low booking and less collection of fund, the construction work could not be completed. Now, due to delay and other reasons, 26 customers/allottees have sought cancellation of their flats and they are willing to get refunded their money / principal amounts. The Respondents have refunded money of some customers and some other customers have filed cases at different Forums to get their money back. In such facts and circumstances, the Respondents are unable to get the project completed within the assured/fixed period. These complainants have filed complaint cases to get delivery of possession of their flats and without completion of the project the possession of under constructed flat cannot be handed over/transferred to the complainants. The Respondents are approaching Banks and financial institutions to get finance to complete construction of their project. The Respondents are unable to pay interest to the complainants, as price of the flats are very low than market value. Further case of the Respondents is that the money of the Respondents are deposited in Bank Account and said account is freezed by the order of RERA, Bihar. So, construction work is affected. Further case is that the

complaint cases are not maintainable, as these cases have been filed in Form-M addressing to the RERA, Bihar, so this Court has no jurisdiction to entertain these cases. The Court may order to the complainants to continue their booking and wait for some time until construction is completed and in light of their assurances, these complaint cases may be disposed of.

6. Now on basis of the pleadings of the parties and submissions of the complainants and learned lawyer for the Respondents, following points are formulated to adjudicate these cases:-

- (i) Whether these complaint cases of the complainants are maintainable in this Court against the Respondents?
- (ii) Whether the complainants are entitled for delivery of possession of their respective flat no.105, 107 and 106 along with car parking space and amenities in the project “Realize Green Exotica” against the Respondents?
- (iii) Whether the complainants are entitled for interest /rent and compensation for delayed period of delivery of possession of the flats against the Respondents?
- (iv) Whether the complainants are entitled for litigation cost against the Respondents?

Point No.(i):

7. Though the complainants have filed these complaint cases u/s 31 of the Act, 2016 read with rule 36(1) of Bihar Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as the “Rules, 2017”), but it is incorrect that they have filed these cases in Form-M, as submitted by the learned lawyer for the Respondents. I think, there might have been confusion in the minds of the complainants about the exact sections of the Act and Rules about the filing of complaint cases in this Court. But, on going through the record, it appears that the complainants have filled-up the Form with Pen in Form-N and have also sought relief for interest / compensation u/s 18(1) of the Act, 2016, which is within jurisdiction of this Court. So, it appears that the submission of the learned lawyer for the Respondents being incorrect is not tenable in eye of law and hence, these complaint cases are maintainable in this Court against the Respondents. Accordingly, Point No.(i) is decided in favour of the complainants and against the Respondents.

Point No.(ii) and (iii):

8. Admittedly, each of the complainants has booked flat on 25-10-2016 with authorised signatory of the Respondents. It is also admitted case that on 28-10-2016, the complainant Sri Sheel Rajneesh has executed Agreement for Sale with Respondent No.1,

natural calamities. However, if the Respondents will not hand over the flats within the said period, they will pay Rs.5/- per square feet per month for the delayed period of delivery. The penalty will be paid every last date of the month.

10. Later on, with mutual consent of both the parties, they executed three separate registered Agreements for Sale on different terms and conditions with respect to these flats. It is admitted case that the Respondents have assured in the registered Agreement for Sale that the delivery of possession of the flats shall be handed over to the complainants in December, 2018 and full project with amenities and facilities in December, 2022, unless there is delay or failure due to war, flood, drought, fire, cyclone, earthquake or any other calamities due to Force Majeure. The Respondents have agreed in the said Deeds about compliance in accordance with the terms of Agreement, duly completed and committed specifically in column 7.1 or if the allottee does not intend to withdraw from the project, the Promoter shall pay the allottee interest at the rate as specified in the rules for every month of delay, till handing over of the possession of the apartment, which shall be paid by the Promoter to the allottee within 45 days of it becoming due.

11. The Respondents have applied before RERA, Bihar for registration of the project "Realize Green Exotica", for which

Registration Certificate was granted through Registration No.BRERA-P00048-1/42/R-116/2018 and thereafter, on request of the Respondents on 23-01-2019, RERA, Bihar has allowed extension of validity period from 30-12-2018 to 30-12-2019. But, thereafter, neither the Respondents have applied for extension of the project nor produced any Application Form for showing filing of the same before RERA, Bihar for further extension of the project, so that the same may be completed within the promised period mentioned in the registered Agreement for Sale dated 29-06-2018.

12. According to the complainants, the project “Realize Green Exotica” is still incomplete and reasons for delay have never been informed to them. On other hand, the Respondents have stated that they have started construction and spent more than Rs.4.00 crores in plinth and base of the construction of the building. However, as per Respondents, the structure of the building has been completed up to only first floor and due to heavy increase in price of sand, iron rod, stone chips, cost of the project has increased up to 200%. Further due to Policy of the Government, construction material i.e. sand was not available or less available for a long period during the year 2017-19. So, the project work could not proceed so fast as it requires. It is further submitted by the learned lawyer for the Respondents that due to rescission in the market the booking of flats

that the construction work has been badly affected in Covid-19 lockdown period in the year 2020. It may also be correct that due to delay in completion of the project, some of the allottees might have cancelled their booking and demanded their principal amount back. In this way, on basis of above facts, it is correct that the construction work of the Respondents would have been affected. The Respondents have agreed in the respective registered Agreement for Sale that in case there is delay in delivery of the possession of the flats, they will pay interest at the rate specified in the rules, for every month of delay till handing over of the possession of the Apartment, which shall be paid by the Promoter to the allottees/complainants within 45 days of it becoming due. But, I think, in light of above difficulties, it is better to leave it on the honesty and labour of the Respondents to complete the project on the agreed price within the fixed time, as scribed in Agreement for Sale. It is also correct that since the complainants are not being handed over possession of their flats within the stipulated period, they should be paid some lump sum amount, instead of some rate of interest/compensation for delay in delivery of possession of their allotted flats, which should start after Covid-10 lockdown since February, 2021. In such facts and circumstances, I find and hold that the complainants are entitled for their allotted flats on it's completion from the Respondents. Further,

the Respondents have to pay Rs.5,000/- per month as interest/house rent including compensation to each of the complainant, since February, 2021 till delivery of possession of his flat by the Respondents. Accordingly, Point No. (ii) and (iii) are decided in positive in favour of the complainants and against the Respondents, in the manner discussed above.

Point No.(iv):

14. The complainants have visited repeatedly to the office of the Respondents and met with them as well as their staffs for delivery of possession of their allotted flats, but neither the Respondents nor their staffs have given any heed to their request till filing of the present complaint cases. I think, the complainants would have incurred expenses in visiting to the office of the Respondents, executing documents in the A.O. Court of RERA, Bihar, remittance of Court Fee, conveyance in visiting to the Court and in all these processes, each of them would have incurred not less than Rs.7,000/-, which must be paid by the Respondents. Accordingly, I find and hold that each and every complainant is entitled for litigation cost of Rs.7,000/- against the Respondents. Accordingly, Point No.(iv) is decided in positive in favour of the complainants and against the Respondents.

Therefore, all the 3 complainant cases of the complainants named above are allowed on contest with litigation cost of Rs.7,000/- (Rupees seven thousand only) to each and every complainant against the Respondents. The Respondents are directed to deliver possession of the Flat No.105 to the complainant, Sri Sheel Rajneesh, Flat No.106 to the complainant, Sri Birendra Thakur and Flat No.107 to the complainant, Dr. Sheil Avneesh in their project “Realize Green Exotica” within 60 (sixty) days on it’s completion. The Respondents are further directed to pay Rs.5,000/- per month as interest/house rent including compensation to each of the complainants since February, 2021 till delivery of possession of concerned flat to the respective complainant. The Respondents are further directed to comply the order within the stipulated period, failing which the complainants are entitled to get enforced the order through process of the Court.

Sd/-
(Ved Prakash)
Adjudicating Officer
RERA, Bihar, Patna
22-02-2021