

**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/335/2019**  
**RERA/AO/64/2019**

Sri Sanjay Chaudhary, S/o Sri B. Chaudhary,  
Address-1:

R/o Village+P.O.Jagdev Nagar, Lane No.14, Behind Bazar  
Samiti, District Ara, Bihar.

Address-2:

Flat No.302, Bharti Manglagaor Apartment, Road No.11,  
Patel Nagar, Patna, Bihar-800023

Address-3:

Flat No.B/401, Dharti Silver Apartment, Near Deo  
Paradise, IOC Road, Chandkheda, Ahmedabad-382424. ... Complainant

Versus

1. M/s Realize Realcon Pvt. Ltd.

Through its Managing Director:

2. Sri Shailendra Kumar Giri, S/o Sri Shiv Kumar Giri,  
Managing Director, M/s Realize Realcon Pvt. Ltd.

- Both Residents of J.M. Complex, Rupaspur, Bailey  
Road, District-Patna, Bihar-801503. ... Respondents

**Present:**

**Sri Ved Prakash**

**Adjudicating Officer**

Appearance:

For Complainants ... In Person

For Respondents ... Sri Satya Prakash Parashar, Advocate

**ORDER**

22-02-2021

This complaint petition is filed by the complainant,  
Sri Sanjay Chaudhary against the Respondent No.1, M/s Realize  
Realcon Pvt. Ltd. through it's Managing Director, Respondent No.2,  
Sri Shailendra 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 refund of his paid principal amount Rs.5.00 lacs along with accrued interest thereon and compensation with litigation cost, consequent to non-delivery of possession of flat allotted to him in the project “Realize Green Exotica”, of the Respondents.

2. In nutshell, the case of the complainant is that the complainant, Sri Sanjay Chaudhary approached to the Respondent No.1, M/s Realize Realcon Pvt. Ltd. through Respondent No.2 Sri Shailendra Kumar Giri for purchase of a 3 BHK flat for himself for his residential purposes in the project “Realize Green Exotica” of the Respondents and after negotiations, the Respondents agreed to sell the flat to him. Thereafter, an Agreement for Sale dated 16-12-2015 was executed between the complainant, Sri Sanjay Chaudhary on one side and Respondent No.1. M/s Realize Realcon Pvt. Ltd. through Respondent No.2, Sri Shailendra Kumar Giri on other side for sale/purchase of a 3 BHK Flat No.105 in Ganga Block of the project “Realize Green Exotica”, of the Respondents on consideration of Rs.22.00 lacs, out of which the complainant has paid Rs.5.00 lacs at the time of execution of the Deed. It was agreed between the parties that the remaining consideration shall be paid by the complainant after first roof casting. But, the

construction could not be completed up to the said level, so he did not pay further amount to the Respondents. It is further case that as per Agreement for Sale, the Respondents have to hand over the possession of the flat within 30 months since execution of the Agreement and on their failure, they have to pay @ Rs.5/- per sq.ft. per month for delayed period to the complainant. Thereafter, the complainant has come to know that the flat no.105 allotted to him, has been sold to one Sri Sheel Rajneesh, S/o Sri Birendra Thakur, resident of “Abhinandan”, Ram Nagari Sector-3, Near Ashiana Nagar, Patna-800025 through registered Agreement for Sale dated 29-06-2018, without notice/intimation to him. Hence, he requested to the Respondents either to deliver possession of the flat allotted to him or refund his paid principal amount, but they have not given any attention towards his request. Therefore, being fed up with the behaviour of the Respondents, he has filed this complaint case against the respondents with above reliefs.

3. On appearance, the Respondents have filed reply pleading *inter-alia* that the complainant has booked the flat with terms and conditions of One Time Payment, but he has paid only part payment and has never paid further instalment of consideration, so allotment of the said flat of the complainant was cancelled and thereafter, the said flat was allotted to other person. However, the Respondents are still ready to allot other flat to the complainant in place of the flat allotted to him The

Respondents have also submitted that they are still ready to settle the dispute with the complainant and in light of their assurance, this case may be disposed of.

4. 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 this case:-

- (i) Whether the complainant is entitled for refund of paid principal amount Rs.5.00 lacs against the Respondents?
- (ii) Whether the complainant is entitled for interest on the advance consideration amount Rs.5.00 lacs paid to the Respondents?
- (iii) Whether the complainant is entitled for compensation for his economical, physical and mental harassment against the Respondents?
- (iv) Whether the complainant is entitled for litigation cost against the Respondents?

Point No.(i) and (ii):

5. Admittedly, both the parties have negotiated for sale/purchase of a 3 BHK flat in the project “Realize Green Exotica” of the Respondents. Thereafter, on 16-12-2015 an Agreement for Sale of a 3 BHK Flat No.105 having super built-

up area 1618 sq.ft. along with car parking space on the ground floor in the project “Realize Green Exotica” of the Respondents was executed between the complainant, Sri Sanjay Chaudhary on one side and Respondent No.1, Realize Realcon Pvt. Ltd. through its Managing Director, Respondent No.2, Sri Shailendra Kumar Giri on other side on consideration of Rs.22.00 lacs, out of which the complainant has paid Rs.5.00 lacs, which is already mentioned in the Agreement for Sale. The complainant has filed photocopy of the Agreement for Sale dated 16-10-2015, which supports the case of the complainant.

6. The Respondents have assured in the Agreement for Sale that construction of the building/project shall be completed and delivery of possession of the flat shall be given to the complainant within 24 to 30 months from the date of Agreement, subject to the availability of raw materials like cement, steel, bricks, stone chips etc. It was further assured in the Deed that the Respondents shall not be liable for delay due to any unavoidable circumstances including the act of God or natural calamities. It was further promised that if they will fail to hand over the flat within 30 months, they will pay Rs.5/- per sq.ft. per month as rent to the complainant for delayed period. The complainant has alleged that construction of the project was delayed and nothing about stage of

the construction was informed to him. In this way, as per Agreement for Sale, the construction should have been completed till 15-06-2018, but still the project and concerned flat of the complainant is admittedly incomplete.

7. The complainant has stated that he has learnt that the Flat No.105 allotted to him in the project “Realize Green Exotica” of the Respondents has been sold to other person namely; Sri Sheel Rajneesh, S/o Sri Birendra Thakur, resident of “Abhinandan”, Ram Nagari, Sector-3, Near Ashiana Nagar, Patna-800025 through registered Agreement of Sale No.8907 dated 29-06-2018. The complainant has filed photocopy of the said Agreement executed between Respondents and Sri Sheel Rajneesh, which support the submission of the complainant that without notice/knowledge to him, the Respondents have sold the said Flat No.105 of the project “Realize Green Exotica” to a third person. It is also not out of place to mention here that the said Sri Sheel Rajneesh has also filed a Complaint Case No.RERA/CC/1524/AO/467/2020 in this Court against the Respondents for delivery of possession of the concerned flat. In this way, it is well established that during existence of the Agreement for Sale between the Respondents and the complainant, the Respondents have sold the said flat to other

person, which is a serious matter, as the said Agreement for Sale of the complainant was neither cancelled through Civil Court nor through the parties. It is also very surprising that the principal amount Rs.5.00 lacs is also not refunded by the Respondents to the complainant as yet. In such facts and circumstances, it is quite reasonable for the complainant to request for cancellation of the flat allotted to him and demand for refund of his paid principal amount on both grounds, delay in delivery of possession of the flat as well as allotment of said Flat No.105 to some other person, Sri Sheel Rajneesh during existence of his Agreement for Sale. Accordingly I find and hold that the complainant is entitled for refund of his advanced consideration amount Rs.5.00 lacs against the Respondents without delay and deduction.

8. Though the complainant has claimed interest accrued on advanced principal amount Rs.5.00 lacs, but he has not unfolded the rate of interest. I think, since the Respondents have neither completed the project/flat allotted to the complainant nor the complainant was informed about the stage of construction and demanded further payment from the complainant for continuing the construction work at the site. On the contrary, they have sold the Flat No.105 allotted to the complainant in the project "Realize Green Exotica" of the Respondents to a third person namely,

Sri Sheel Rajneesh in existence of the Agreement for Sale between the Respondents and the complainant. So, it is quite natural for the complainant to claim for refund of the paid principal amount Rs.5.00 lacs along with interest accrued thereon. Admittedly, the Respondents have retained the advanced consideration Rs.5.00 lacs paid by the complainant since October, 2015 and have not paid any interest. Therefore, the complainant is entitled for refund of the advanced principal amount along with interest accrued thereon. The claim of such interest also finds support from ruling of Hon'ble Supreme Court in Alok Shankar Pandey Vs. Union of India and Others passed on 15-02-2007 in Appeal (Civil) 1598/2005. However, I think, levying of compound interest will adversely affect the business development of the Respondents as well as the interest of other buyers remaining in the project will also be adversely affected, but there will not be more effect on the complainant, as he is repudiating himself from this project. So, instead of compound interest, levying of simple interest will justify the end. Rules 17, 18 of the Bihar Real Estate (Regulation and Development) Rules, 2017 says *"the rate of interest payable by promoter to the allottee or allottee to the promoter, as the case may be, shall be 2% above the M.C.L.R. of SBI prevailed on due date of the amount and the same has to be paid within 60 days of due*



date”. 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 become 9.30% per annum. So, the Respondents have to pay simple interest @ 9.30% per annum on advanced consideration amount Rs.5.00 lacs since the date of payment of respective amount by the complainant to the Respondents till refund by the Respondents to the complainant. Accordingly Point No.,(i) and (ii) are decided in positive in favour of the complainant and against the Respondents.

Point No.(iii):

9. The complainant has also claimed compensation against the Respondents for his economical, physical and mental harassment. The complainant has cancelled the booking of his flat for two reasons; firstly due to delay in construction of the project and non-delivery of the flat allotted to him within the stipulated period and secondly, sale of the Flat No.105 allotted to him in the project “Realize Green Exotica” of the Respondents to a third person namely; Sri Sheel Rajneesh, without cancellation of the booking through Civil Court or through the parties and also without intimating to the complainant about the stage of construction and demanding further payment for continuance of the construction work. In this way, the Respondents have given double jolt to the

complainant. As per Section-72 of the Act, 2016, the Respondents are benefitted by using the advance consideration Rs.5.00 lacs paid by the complainant in their business development, without giving delivery of the concerned flat to the complainant. Moreover, the complainant cannot wait indefinite period for the flat. Now, the complainant will not get a flat of same area on the same locality, at same rate, which was available to him in the year 2015. I think, the compensation has to be decided keeping in mind the benefit to the Respondents, loss to the complainant, carpet area of flat allotted to the complainant, locality as well as the duration of retaining of the advance principal amount Rs.5.00 lacs paid by the complainant to the Respondents. In such view of the matter, I think, Rs.75,000/-, which is about 15% of the advance principal amount Rs.5.00 lacs paid by the complainant to the Respondents may be appropriate amount for compensation to the complainant for his economical, physical and mental harassment. Accordingly, Point No.(iii) is decided in positive in favour of the complainant and against the Respondents.

Point No.(iv):

10. The complainant has repeatedly visited to the office of the Respondents and met with them as well as their staffs and previously requested for delivery of possession of the flat allotted to

him and when he learnt that the flat allotted to him has been sold through registered Agreement for Sale to a third person, Sri Sheel Rajneesh, he requested for refund of his advanced principal amount along with interest, but neither the Respondents have delivered the completed flat to him nor refunded his advanced principal amount Rs.5.00 lacs along with interest. Rather the Respondents without cancellation of the Agreement through Civil Court or through the parties, sold the Flat No.105 allotted to the complainant to a third person; Sri Sheel Rajneesh in existence of the Agreement for Sale executed between the Respondents and the complainant and without informing him about the stage of construction of work, demanded further consideration amount for continuance of the project work, which is a serious matter. In such circumstances, the complainant has become compelled to file the present complaint case against the Respondents, for which he would have made preparation of documents and also made expenses in Court Fee for filing the present complaint case as also expensed in conveyance. Though the complainant has not brought any document on the record for showing the actual expenditure incurred by him in these activities, but I think, in all these processes he would have incurred not less than Rs.10,000/-, which must be paid by the Respondents to the complainant.

Therefore, the complaint case of the complainant, Sri Sanjay Chaudhary 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 paid principal amount Rs.5.00 lacs 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 the said amount by the Respondents to the complainant. The Respondents are also directed to pay Rs.75,000/- (Rupees seventy five thousand only) to the complainant as compensation for his 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  
22-02-2021