

referred as the "Act, 2016") for refund of his principal amount Rs.4,01,000/- along with accrued compound interest @ 20% per annum and compensation of Rs.2.00 lacs for his economical, mental and physical harassment with litigation cost of Rs.25,000/-, consequent upon non-delivery of flat allotted to him by the Respondents.

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- 2 In nutshell, case of the complainant is that the complainant, Sri Dinesh Chandra Sah indented to buy a flat, for which he made an Agreement with the Respondent No.1. M/s Ghar Lakshmi Buildcon Pvt. Ltd. through its Director, Sri Rahul Kumar on 04 September, 2020 for sale/purchase of a 3 BHK Flat No.402 having area 1280 sq.ft. with covered car parking space in Block-B of the project "Income Tax Residency" situated near Danapur, district-Patna on consideration of Rs.26,00,960/=, out of which the complainant has paid Rs.51,000/- on 22-01-2019 by cash, Rs.3.00 lacs on 11-02-2019 through cheque no.022512 and Rs.50,000/- on 22-04-2019 through cheque no.022513 and got receipts thereof. It is further case that the complainant did not receive offer letter of the possession from the side of the Respondents, despite making payment of more than 25% of the

consideration amount. Thereafter, the complainant himself approached to the Respondents and asked the reason for delay of the project. The Respondents could not reply properly and delivery of possession was not made till filing of this complaint petition. The complainant is residing in a Government quarter for years along with his family members. When the complainant has seen no fruitful result, then he requested for refund of his principal amount, after cancellation of the allotment of flat made by the Respondents. The complainant has suffered irreparable loss, as he has withdrawn various Fixed Deposits to purchase the flat. The present rate of flat in the area is about Rs.5,000/- per sq.ft., so total cost of a flat of 1280 sq.ft. goes to the tune of Rs.64.00 lacs. Hence, the present market rate may be allowed as compensation against the Respondents. The complainant finding no other alternative, has filed this complaint case with above reliefs against the Respondents.

3. On appearance, the Respondents have filed reply pleading *inter-alia* that as per K.Y.C./M.O.U., the complainant has booked a flat in Block-B of the project

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“Income Tax Residency” having area 1280 sq.ft. along with reserved car parking space and undivided share in land of the project on consideration of Rs.20.00 lacs. It is further case that the contents of the complaint petition are not fully correct, which will be evident from the facts of the reply. The project “Income Tax Residency” has two Blocks “A” and “B”, out of which Block-A is under construction after approval of the Map from the competent authority. But, so far as Block-B, in which the complainant has booked Flat No.402, is concerned, the Respondents have come to know that the land of the said Block is litigated, as there was/is land dispute between the land owner and his *gotias*. As there is land dispute, the construction work could not be started and till date the dispute is persisting. So the other formalities regarding construction of the project could not be completed and hence, the Respondents have dropped the plan to construct the flats of Block-B of the project. From these facts, it will be clear that there is no wilful fault on the part of the Respondents. It is further case that due to above land dispute, the Respondents have also suffered loss from the said project. It shows that the complainant has concealed the material

facts from the Court for reasons to take benefit from the delay in construction of the project. The Respondents have tried several times to contact the complainant to give information, but they did not get any response from his side. It is further case that the complainant has paid only Rs.4,01,000/- out of total consideration of Rs.20.00 lacs and they are ready to consider the case of the complainant with regard to refund of the principal amount along with simple interest. They have requested to dispose of the complaint case in light of the assurance made in their reply.

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4. On basis of the pleadings of the parties and submissions of learned lawyer for the complainant and Respondent No.2, Sri Rahul Kumar, the following questions are formulated to adjudicate the case:-

- (i) Whether the complainant is entitled for refund of principal amount Rs.4,01,000/- along with accrued compound interest @ 20% thereon against the Respondents?
- (ii) Whether the complainant is entitled for Rs.2.00 lacs as compensation against the Respondents

for his economical, mental and physical harassment?

- (iii) Whether the complainant is entitled for litigation cost of Rs.25,000/- against the Respondents?

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Point No.(i):

5. Admittedly, there was a talk for sale/purchase of one 3 BHK flat between both the parties and after it's finalisation both the parties executed K.Y.C. on 22-01-2019 for sale/purchase of a 3 BHK Flat No.402 having area of 1280 sq.ft. along with a reserved car parking space on the ground floor of the project "Income Tax Residency" of the Respondent No.1, Ghar Lakshmi Buildcon Pvt. Ltd. near Danapur, district-Patna. on consideration of Rs.26.00 lacs. It is not out of place to mention that the Respondents in their reply, due to clerical error, have mentioned the consideration amount as Rs.20.00 lacs in place of Rs.26.00 lacs, which is against the agreed contents of M.O.U. and K.Y.C. It is also admitted case that the complainant, Sri Dinesh Chandra Sah on one side and Respondent No.1, M/s Ghar Lakshmi

Buildcon Pvt. Ltd. through its Director, Sri Rahul Kumar on other side have executed a Memorandum of Understanding (M.O.U.) on 04-11-2019 with respect to the above Flat No.402 in Block-B along with a reserved car parking space on the ground floor and undivided proportionate share in the land of the said project, "Income Tax Residency" situated near Danapur, district-Patna on consideration of Rs.26.00 lacs. It is also admitted case that the complainant has paid 51,000/- in cash on 22-01-2019, Rs.3.00 lacs through cheque no.022512 on 11-02-2019 and Rs.50,000/- through cheque no.022513 on 22-04-2019 and got receipts thereof. The complainant has filed photocopies of K.Y.C., M.O.U. and receipts, which support the submissions of the learned lawyer for the complainant. The Respondents have also admitted the payment of Rs.4,01,000/- by the complainant in their M.O.U. and reply filed in the Court. Hence, it is well proved by the complainant that he has paid Rs.4.01.000/- as advance principal amount to the Respondents, out of above total consideration Rs.26.00 lacs.

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Both the parties have agreed in M.O.U. that the builder/developer shall develop and construct the proposed building with all amenities and deliver possession within 30 months with grace period of 6 months. It is also agreed that if the builder/developer shall not hand over the possession of the unit within the stipulated period and the buyer/vendee wanted to get his/her money back, then the builder/developer shall return the payments made by the buyer/vendee or if the buyer/vendee wanted to get the scheduled flat, the developer/vendor shall pay simple interest on the total payments made to the developer/vendor over the delayed period to the buyer/vendee. It shows that in spite of M.O.U., the Respondents failed to deliver the flat to the complainant within the stipulated period, so the complainant is entitled to receive back the paid principal amount Rs.4,01,000/- without any deduction, for which the Respondents are also ready in their reply filed on the record.

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6. The complainant has claimed compound interest @ 20% per annum on paid principal amount Rs.4,01,000/-. whereon the Respondents have stated that

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they were developing/constructing two Blocks, “A” and “B”. The complainant has booked his flat in Block “B”. The Respondents have come to know that there was dispute/litigation between the land owner and his *gotias* , due to which construction could not be proceeded and still the dispute could not be sorted out and that is why the other formalities also could not be completed and hence, they have dropped the plan to construct Block-B. They have further submitted that there are no wilful latches on their part and they are also suffering losses due to drop of the plan for construction of Block-B. Though they have stated that they have tried their best to contact the complainant, but it could not be possible, because complainant could not be contacted and no response could be gathered from him. On this issue, since there is no proof brought on the record by the Respondents, so it cannot be believed that they have tried to contact the complainant. However, the Respondents are ready to refund the principal amount of the complaint.

On the basis of above discussions, it appears that there is no wilful fault on the part of the Respondents, as there is land dispute between the land owner and his

gotias, which might have created the problems to the complainant after execution of M.O.U. for sale/purchase of Flat No.402 in Block-B of the project “Income Tax Residency” of the Respondents. The Respondents are developing the present project (except Block-B) and other projects in Patna, so levying of compound interest will hamper the business of the Respondents and it will also adversely affect the interest of other buyers. But, there will be no much effect on the complainant, as he is repudiating from the project. Hence, instead of compound interest, levying of simple interest on paid principal amount of the complainant will justify the end.

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Hon’ble Supreme Court in Alok Shankar Pandey Vs. Union of India and Others on 15-02-2007 in Appeal (Civil) No.1598/2005 has held that *“the interest is not a penalty/punishment at all, but it is normal accretion on capital”* and Hon’ble Court has allowed interest @ 12% per annum on principal amount.

On same issue, rule 17 and 18 of Bihar (Regulation and Development) Rules, 2017 says *“the interest payable by the promoter to the allottee or by allottee to the promoter, as the case may be, shall be 2% above the prevalent Prime*

Lending Rate/M.C.L.R. of S.B.I. on the date on which the amount becomes due and the same has to be paid within 60 days”.

Presently, the M.C.L.R. of S.B.I. for a home loan of 3 years is 7.30% per annum and if 2% is added, it will become 9.30% per annum. Hence, the Respondents have to pay simple interest @ 9.30% on paid principal amount Rs.4,01,000/- to the complainant. Accordingly, Point No.(i) is decided in positive in favour of the complainant and against the Respondents in the manner stated above.

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Point No.(ii):

7. The complainant has also claimed compensation of Rs.2.00 lacs against the Respondents for his economical, mental and physical harassment. The complainant has cancelled the booking due to delay in construction of the project. As per Section-72 of the Act, 2016, the Respondents are benefited by using the principal amount Rs.4,01,000/- paid by the complainant, in their business, without giving delivery of possession of the flat to the complainant. Now, the complainant will not get a flat of same area in the same locality at the same rate, which was

available in the year 2019. So, I think, rate of the flat might have become 1.50 times of the rate available in the year 2019. The claim of compensation of Rs.2.00 lacs appears higher, which has to be reasonable, keeping in mind advance principal amount paid by the complainant to the Respondents, duration of amount retained by the Respondents as well as proportion of loss to the complainant and benefit to the Respondents. In such view of the matter, I find that Rs.50,000/-, which is about 12% of principal amount Rs.4,01,000/- paid by the complainant to the Respondents, may be appropriate amount for compensation for his economical, mental and physical harassment. Accordingly, Point No.(ii) is decided in positive in favour of the complainant and against the Respondents.

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Point No.(iii):

8. The complainant has visited several times to the office of the Respondents, 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, which compelled the complainant to file this

case. The complainant would have naturally incurred expenses in travelling to the office of the Respondents to meet with them and their staffs, engagement of lawyer, filing of the present complaint case in RERA, Bihar, A.O. Court, preparation of documents, payment of Court Fee etc. Though the complainant has not brought any document on the record for showing the actual expenditure incurred by him for this purpose, but has claimed amount Rs.25,000/-, without any document. Hence, I think, in all these processes, the complainant would not have incurred more than Rs.12,000/-, which must be paid by the Respondents. Accordingly, Point No.(iii) is decided in positive in favour of the complainant and against the Respondents.

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Therefore, the complaint case of the complainant, Sri Dinesh Chandra Sah is allowed on contest with litigation cost of Rs.12,000/- (Rupees twelve thousand only) against the Respondents. The Respondents are directed to refund the principal amount Rs.4,01,000/- (Rupees four lacs one thousand only) along with accrued simple interest thereon @ 9.30% per annum since the

date of payment of respective amount by the complainant to the Respondents till refund by the Respondents to the complainant. They are further directed to pay Rs.50,000/- (Rupees fifty thousand only) to the complainant as compensation for his economical, mental and physical 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.

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