

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

**RERA/CC/413/2019
RERA/AO/90/2019**

Sri Arun Kumar, North Lakhibagh,
Near Old Falgu Bridge, House of Saket
Bihari, Near Sahara Bank, Manpur,
District-Gaya, PIN-823003. ... Complainant

Versus

M/s Sai Shrinkhala Developers Pvt.
Ltd., through its Directors,
(1) Sri Nitin Kumar, S/o Late
Tarkeshwar Prasad Sinha, 3rd Floor,
Subh Nand Apartment, South Bisar
Tank, District-Gaya, PIN-823001.
(2) Kunal Kumar, S/o Sri Binay
Kumar. Resident of 19th Ramna Road,
District-Gaya, PIN-823 001.
Office Address:
Shubh's Madhulika Palace, 375, AP
Colony, District-Gaya, PIN-823301. ... Respondents

Present:

**Sri Ved Prakash
Adjudicating Officer**

Appearance:

For Complainant : In Person

For Respondents Mr. Shambhu Nath, Advocate

ORDER

25-09-2019

This complaint petition is filed by the complainant, Arun
Kumar against the Respondents No.1 M/s Sai Shrinkhala
Developers Pvt. Ltd., through its Directors, Respondent No.2,

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Sri Nitin Kumar and Respondent No.3, Kunal 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 advanced principal amount Rs.47,50,000/- with accrued interest thereon and compensation for mental and physical harassment.

2. In nutshell, the case of the complainant is that an Agreement for Sale was executed on 17-08-2016 between the complainant, Arun Kumar and his wife Asha Sinha and the Respondent company, M/s Sai Shrinkhala Developers Pvt. through its Directors, (1) Sri Nitin Kumar and (2) Kunal Kumar for sale/purchase of Bungalow No.A-17 along with land having super built-up area 2268 sq.ft. land area 1616 sq.ft. in its project “Subh’s Sai Sidheshwar Dham” situated in Village-Dhubal, Thana No.328, P.S.-Magadh Medical College, District-Gaya on consideration of Rs.50.00 lacs. The complainant had paid Rs.18.00 lacs as booking amount through cheque and has further to pay the remaining consideration amount Rs,32.00 lacs as per Payment Schedule-D of the Agreement for Sale. It was further agreed between the parties that the Developer shall construct and erect the Bungalow as per specifications described in Schedule-E. Later on, the complainant has

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further paid Rs.18.00 lacs through cheque no.686246 dated 20-09-2016 of H.D.F.C. Bank. The Respondents issued demand letters on 06-04-2017 and 18-04-2017 to the complainant mentioning therein that the plaster and exterior wall-putty of the Bungalow have been completed and demanded Rs.6,50,000/- and again issued demand letter on 23-10-2017 with last intimation and forced the complainant to pay all dues. As such, the complainant has paid Rs,6,50,000/- on 26-04-2017 through cheque no.956187, Rs.2.00 lacs on 30-10-2017 through R.T.G.S. (cheque no.051124), Rs.2.00 lacs on 27-03-2018 through R.T.G.S. (cheque no.0007003), Rs.1.00 lac through direct disbursement from H.D.F.C. Bank and as such, the complainant has paid total Rs.47,50,000/- to the Respondents. Later on 21-01-2018, the Respondents have sent message that they are going to deliver possession of the building to the complainant in April, 2018. It is further case that the Respondents have shown that the project has started in 2015, but on their application for RERA, Bihar registration it is shown that the project has started on 28-02-2019 and it will be completed in March, 2021. So the Respondents have misled the complainant

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and by creating pressure have received the advance amount Rs.47,50,000/- from the complainant. Hence, the complainant finding that the Bungalow is not expected to be delivered to him urgently as per his need, he cancelled the booking and requested for refund of his advanced principal amount from the Respondents. But, the Respondents on one or other reasons have avoided to refund the paid principal amount to the complainant, so he has filed this case with the above reliefs.

3. On appearance, the Respondents have filed reply stating *inter-alia* that the complaint petition has no merit. It is further case that the complainant has not come before this Court with clean hands, as a number of suppression of facts, misleading statements have been made by the complainant in the complaint petition. As such, on this score alone the complaint case is fit to be dismissed with cost. It is relevant to mention that 90% of the Bungalow in question has already been completed, except flooring and some ancillary works. Flooring could not be completed on account of the fact that the complainant has obstructed in door fitting works. It is relevant to mention here that until the door fitting work is not finalised, flooring is not possible. Hence, on account of obstruction made by the complainant, the work of Safety Tank (Pit) has not been completed. The approach road, except final coat, and drainage

up to the Bungalow in question has already been completed. So, in view of the above facts, possession of Bungalow in question may be handed over to the complainant in next six months. In the above facts and circumstances paragraph-wise reply of the complaint petition is not being submitted at present and it may be filed, if required, at later stage. Hence, this case may be dismissed with cost. However, the learned lawyer for the Respondents has not moved such thing at the time of hearing of arguments of both the sides and the record was reserved for order.

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

- (1) Whether the complainant has obstructed in door fitting works of the Bungalow to be done by the Respondents?
- (2) Whether the Respondents were/are ready to make delivery of possession of the Bungalow as per terms and conditions of the Agreement for Sale?
- (3) Whether the complainant is entitled for refund of advanced principal amount Rs.47,50,000/- from the Respondents along with accrued interest?

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

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

5. Points No,(1) to (4):

Admittedly, an Agreement for Sale was executed between both the parties on 17-08-2016 for sale/purchase of Bungalow No.A-17 along with land having built-up area 2268 sq.ft. with land area 1616 sq.ft. in project "Subh's Sai Sidheshwar Dham" of the Respondent company situated in Village-Dhubal, Thana No.328, P.S.-Magadh Medical College, District-Gaya for a consideration of Rs.50.00 lacs and the purchaser /complainant has paid Rs.18.00 lacs through cheques as booking amount to the Respondents. It was also agreed that the complainant has to pay the remaining consideration amount Rs.32.00 lacs as per Schedule-D of the Agreement for Sale and the Builder/Respondents have to construct/erect the building as per specifications described in Schedule-E of the Agreement for Sale. The Respondents in para-6 of the Agreement for Sale have agreed that possession of the Bungalow shall be given within one year from the date of execution of this

Agreement. The plan by the competent authority or execution of these presents whichever is later, subject to availability of cement, steel or other building materials, or power connection from the competent authorities, drainage connection provided further in the event of happening of any labour problem or any act of god such as earth quake, flood or any other natural calamity and/or enemy war, restriction by the Government public authorities or any cause beyond the control of the builder, the builder will not be liable for any consequential delay and/or damages thereof.

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6. The complainant has submitted that construction of the building is incomplete and as per assurance delivery of possession by Respondents is not expected as per his requirement and urgency. He as well as his wife are old aged and suffering from B.P. and other diseases. Hence, he has cancelled the booking and demanded refund of advanced principal amount along with interest, whereon learned lawyers for the Respondents opposed and submitted that the complainant has obstructed the fitting of doors, so flooring and other works could not be done. Learned lawyer for the Respondents further submitted that

90% of the works in the Bungalow are completed, so there is no reasonability in filing of the complaint petition by the complainant. Hence, the complaint may be dismissed.

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7. As per Section 101 of Evidence Act, the Respondents have to prove that the complainant has obstructed in door fitting works, as the same is denied by the complainant. The Respondents should have filed any petition/request of the complaint presented before the Respondents, which may support obstruction of door fittings etc. The Respondents should have also produced any oral evidence on the obstruction, as per allegation levelled against the complainant. But, the Respondents have completely failed to produce any oral/documentary evidence in support of their allegations levelled against the complainant and in absence of any proof, it will be presumed that such allegations have been levelled by the Respondents only to save their neck for proving their case and they have also failed to hand over possession of the Bungalow, which has no substance in the eye of law. I find from other facts also that the Respondents have submitted Online application on 28-02-2019 for registration of their project "Subh's Sai Sidheshwar Dham" with RERA, Bihar, but till date they have not submitted hard copy in RERA, Bihar and unless and until hard copy is not filed, the registration of the project cannot be considered in RERA, Bihar. The Respondents have claimed

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that the project has been started earlier, but no evidence is produced by them in the Court to support that the project has already started and may be completed and delivered as per Agreement for Sale. The complainant has submitted in the Court that grass has grown up on the site of the said project and the work has not been done up to satisfactory level by the Respondents. In this way, it is clear that the project was not started on the proposed date and time mentioned in the Agreement for Sale. The project was to be completed within one year of execution of Agreement for Sale i.e. by 17-08-2017. Hence, it appears that the claim of the complainant is perfectly correct and the Respondents have repeatedly given false assurances to the complainant that they are going to deliver possession of the Bungalow on 17-08-2017 or in April, 2018, as claimed in Respondents letter dated 21-01-2018.

8. The Respondents have sent demand letters dated 06-04-2017, 18-04-2017, 27-06-2017 and 23-10-2017 to the complainant demanding payment of remaining consideration amount on the ground that as per Agreement for Sale dated 17-08-2016 90% of the work has been completed, so he is required to pay Rs.47,50,000/-, otherwise he will be liable to pay interest @ 12%/24% on the entire amount, in addition to amount in instalments, whereby, the complainant was forced to deposit with the Respondents Rs.47,50,000/-, which he has

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collected from his savings, pension as well as home loan from H.D.F.C. Bank @ 9.40% per annum. The complainant has filed photocopies of the Agreement paper executed with H.D.F.C. Bank and cheques issued to the Respondents by the complainant as well as H.D.F.C. Bank. But, all of his effort have gone in vain, as the Respondents have not completed the Bungalow as assured to deliver at the appropriate time. Later on the complainant repeatedly requested to the Respondents for delivery of Bungalow after receipt of Rs.47,50,000/-, whereon the Respondents have issued WhatsApp message to the complainant on 21-01-2018 that the Bungalow in question will be delivered in April, 2018 with all fixtures and fittings as per Agreement for Sale and requested to be ready for registry. It shows that the Respondents were making the complainant fool without any substance in their claim, as neither they were carrying on the works in the building nor they have any intention to complete the Bungalow nor they have received occupancy certificate/completion certificate from the competent authority nor they have registration of the project from RERA, Bihar and without all these required formalities, the Respondents were repeatedly demanding remaining consideration amount and threatening the complainant to impose interest @ 12%/24% on the entire amount, in addition to dues of the instalments. The Respondents have not filed any

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evidence in the Court to support that 95% work of the building are completed, as communicated to the complainants in their demand letters. Hence, on the basis of above discussed materials, it is clear that the complainant has genuinely cancelled the booking, as he is an old man and suffering from high B.P. and other diseases, so he was required the Bungalow for his residence purpose. The complainant cannot be compelled to wait for indefinite period for delivery of the Bungalow allotted to him by the Respondents. Hon'ble Supreme Court in Shivalik Vihar Sites (P) Ltd. v. Darshan Singh, (2012) 13 SCC 694 has dismissed the appeal in case of delay in delivery of possession and directed the Developer to pay the entire amount due to the appellant within one month and also directed not to take lenient view in imposing cost. Hon'ble Appex Court has further taken similar view in Bangalore Development Authority v. Syndicate Bank (2007) 6 SCC 2198 Fortune Infrastructure v. Trevor D' Lines (2018) 5 SCC 422. Hence, from all corners, the complainant is entitled for refund of his advanced principal amount Rs,47,50,000/- along with interest without any deduction. Accordingly, point no.(1) is decided in negative against the Respondents and in favour of the complainant, point no.(2) is decided in negative against the Respondents and in favour of the complainant and

point no.(3) is decided in positive in favour of the complainant and against the Respondents.

9. Now, I have to see as to whether the interest to be levied on the Respondents may be simple or compound interest on the advanced principal amount. Though the Respondents have demanded 12%/24% compound interest from the complainant on entire dues amount, in addition to instalment dues as per Agreement for Sale in their demand letters issued to the complainant to pressurise the complainant to make further payments, whereas the Respondents have just Online applied for RERA registration and their remaining projects including the project in hand are in progress and hard copy of the application has not been submitted, without which RERA registration is not possible. As already mentioned above, the Respondents have also not obtained Occupancy Certificate/Completion Certificate from the concerned authorities. However, levying compound interest will hamper the business of the Respondents in completion of the project in hand as well as other projects, but there will be no effect on the complainant as he is already repudiating himself from this project. As such, simple interest on the advanced principle amount Rs.47,50,000/- will justify the end. As per Rule 17, 18 of Bihar Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as the 'Rules, 2017') the Respondents have

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to pay simple interest @ 2% above the M.C.L.R. rate of S.B.I. Presently, the M.C.L.R. rate of S.B.I. is 8.35% and if 2% is added, it will come to 10.35%. Hence, the Respondents have to pay simple interest @ 10.35% on the advanced principal amount Rs.47,50,000/- paid by the complainant to the Respondents.

10. The date and amount paid by the complainant and the presumptive date of refund and amount refund by the Respondent and interest payable by the Respondent on the said amount may be seen through a chart as under:-

Date of payment by the complainant	Amount paid by the complainant Rs.	Presumptive date of refund by the Respondents	Presumptive Amount refunded by the Respondents Rs.	Accrued Simple Interest payable by the Respondent Rs.
21-10-2015	8,50,000.00	25-09-2019	8,50,000.00	3,45,532.86
07-12-2015	3,50,000.00	25-09-2019	3,50,000.00	1,37,630.19
17-03-2016	6,00,000.00	25-09-2019	6,00,000.00	2,18,711.10
20-09-2016	18,00,000.00	25-09-2019	18,00,000.00	5,61,452.05
26-04-2017	6,50,000.00	25-09-2019	6,50,000.00	1,62,320.14
30-10-2017	2,00,000.00	25-09-2019	2,00,000.00	39,367.81
02-11-2017	1,00,000.00	25-09-2019	1,00,000.00	19,627.19
27-03-2018	2,00,000.00	25-09-2019	2,00,000.00	30,912.94
TOTAL	47,50,000.00		47,50,000.00	15,15,554.28

Thus, simple interest @ Rs.10.35% per annum on advanced principal amount comes to Rs.15,15,554.28 and this amount has to be paid by the Respondents to the complainants.

11. The complainant has also claimed maximum compensation against the Respondents for his mental and

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physical harassment. As per Section 72 of the Act, 2016, the Respondents are being benefitted by using the amount Rs.47,50,000.00 paid by the complainant in their business without giving delivery of possession of the Bungalow till the aforesaid amount is refunded to the complainant. Now the complainant will not get a Bungalow of the same area in the same locality at the same rate, which was available to him in the year 2016. The present rate of Bungalow in the same locality has not come on the record from either side. But, naturally the rate would have gone very high in comparison to the rate available in the year 2016. Out of total consideration Rs.50,00,000/-, the complainant has paid Rs.47,50,000, which is 95% of the total cost and the Respondents are still running business of building construction. So, taking all situations in mind and the amount paid by the complainant, I think, Rs.6.00 lacs, which is about 12% will be appropriate amount to be paid by the Respondents to the complainant as compensation for his mental and physical harassment. Accordingly, point no.(4) is decided in positive in favour of the complainant and against the Respondents.

12. Point No.(5):

The complainant has repeatedly visited the office of the Respondents and consulted them as well as their staffs several times for refund of his advanced principal amount, but neither

the Respondents nor their staffs have given any attention towards his request till filing of the present complaint petition. I think, the complainant would not have incurred more than Rs.25,000/- for conveyance to the office of the Respondents, A.O. Court in RERA, Bihar, Court fee, paper works etc., which must be paid by the Respondents to the complainant. Accordingly, I find and hold that the complainant is entitled for Rs.25,000/- as litigation cost against the Respondents. Hence, point no.(5) 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.25,000/- (Rupees twenty five thousand only) against the Respondents. The Respondents are directed to refund the advanced principal amount Rs.47,50,000/- to the complainant with accrued simple interest till today Rs.15,15,554.28 (Rupees fifteen lacs fifteen thousand five hundred fifty four and paise twenty eight only) @ 10.35% per annum. The Respondents are further directed to pay simple interest on above advanced principal amount Rs.47,50,000/- @ 10.35% per annum since tomorrow (26-09-2019) till actual payment to the complainant. The Respondents are further directed to pay Rs.6,00,000/- (Rupees six lacs only) to the complainant as compensation for his mental and physical harassment. The Respondents are directed to

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comply the order within 60 (sixty) days, failing which the complainant may enforce the same through process of the Court.

Sd/-
(Ved Prakash)
Adjudicating Officer
25-09-2019