



**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**

RERA/CC/1146/2020

RERA/AO/332/2020

Smt. Pushpa Sahay, W/o Sri Mukesh Prasad,
R/o Ward No.32, Prafullah Path, Mungariganj,
P.S.-Town Begusarai, District-Begusarai-851101. ... Complainant

Versus

1. M/s Agrani Homes Pvt. Ltd., House No.15,
Ward No.1FA, Patliputra Colony, District-Patna.

Through it's Director:

2. Sri Alok Kumar, Director, S/o Sri Padum
Singh, R/o Yogipur, Chitragupt Nagar, P.S.-
Patrakar Nagar, P.O.-Lohia Nagar,
Kankarbagh, Patna-800020. ... Respondents

Present:

**Sri Ved Prakash
Adjudicating Officer**

Appearance:

For Complainant

- Sri Kishore Kunal, Advocate

For Respondents

- Sri Alok Kumar, Director

ORDER

26-02-2021 This complaint petition is filed by the complainant, Smt. Pushpa Sahay against the Respondent No.1, M/s Agrani Homes Pvt. Ltd. through it's Authorised Signatory-cum-Director, 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 her advanced principal amount Rs.24,57,850/- along with accrued interest, @ 18% per annum thereon and compensation of Rs.10.00 lacs for her economical, physical and mental harassment with litigation cost of Rs.1.00 lacs, consequent to non-delivery of flat allotted to her.

2. In nutshell, the case of the complainant is that the complainant, Smt. Pushpa Sahay was allured by fancifulness of the sale brochures, specification details, lay out plan and verbal assurances of the Respondent No.2, Sri Alok Kumar about their project “Agrani IOB Nagar”. Both the parties agreed to sell/purchase a flat in the said project. Thereafter, the complainant Smt. Pushpa Sahay on one side and Respondent No.1, M/s Agrani Homes Pvt. Ltd. through it’s Director, Respondent No.2, Sri Alok Kumar on other side executed an Agreement for Sale on 02-03-2015 for sale/purchase of flat no.304 having super built up area 1300 sq.ft. with one reserve car parking space on basement in Block-G of the project “Agrani IOB Nagar”, situated at opposite to Sarari Gumti, Near Satya Narayan Singh Gate, Danapur-800027 of the Respondents on consideration of Rs.27,94,745/- inclusive of Service Tax Rs.83,769/-. After demand by the Respondents, the complainant has paid Rs.24,57,850/- on different occasions since 02-03-2015 to 11-06-2019, for which the Respondents have issued receipts in favour of the complainant. After receipt of the advance principal amount Rs.24,57,850/- the Respondents started changing their versions and

demanded entire consideration amount Rs.27,94,745/- before delivery of possession of the flat, which was denied by the complainant. Thereafter, the complainant has stopped making payment to the Respondents, as there was no progress on site of the project. On other hand, the Respondents were continuously pressurising the complainant to pay the entire consideration amount and have been delaying the matter without any significant progress towards construction of the project.

The Respondents have promised that construction of the building shall be completed up to December, 2015 with grace period of six months, provided that the time for completion shall be deemed to have been extended in the event of non-availability of building materials or delay in receipt of installments of the consideration from the vendees of other flats or due to Force Majeure. Further case of the complainant is that period of more than 5 years have passed, but the Respondents have not been able to hand over possession of the flat, as construction of the building/flat has not been completed as yet. Previously, the complainant had heard about good reputation of the Respondents in the market and believing the same, she has booked the flat in the project of the Respondents. But, thereafter, the reputation of the Respondents downgraded drastically, due to non-completion of various projects and the Respondents are sitting over the money of the allottees/purchasers without making any progress in construction of the project. Now, there is no hope left in the mind of the complainant regarding delivery of possession of the flat to her by the Respondents. She has repeatedly requested to the Respondents either to complete the flat and deliver

possession of the same to her or refund her principal amount, but the Respondents have not given any heed to her request. Rather, used her paid consideration amount in their other projects. The complainant being fed up with the behaviour of the Respondents, has filed the present complaint case against the Respondents with above reliefs.

3. On appearance, the Respondents have filed reply pleading *inter-alia* that they are ready to refund the principal amount of the complainant. Further case is that they are also ready to adjust the principal amount of the complainant, if purchase of the land is done by her in the land of the Respondents situated in the project “Agrani Prakriti Vihar”, Parmanandpur and in light of their assurances, the case may be disposed of.

4. On basis of the pleadings of the parties and submissions of the learned lawyer for complainant and Respondent, Sri Alok Kumar, the following points are formulated to adjudicate this case:-

- (i) Whether the complainant is entitled for refund of her principal amount Rs.24,57,840/-along with accrued interest thereon @ 18% per annum against the Respondents ?
- (ii) Whether the complainant is entitled for compensation of Rs.10.00 lacs for her economical, physical and mental harassment against the Respondents?
- (iii) Whether the complainant is entitled for litigation cost of Rs.1.00 lac against the Respondents?

Point No.(i):

5. Admittedly, after negotiations, both the parties have agreed for sale /purchase of a 3 BHK flat in the project “Agrani IOB Nagar”, Block-G of the Respondents. Thereafter, a registered Agreement No.2035 dated 02-03-2015 for Sale of a 3 BHK flat No.304 having super built-up area 1300 sq.ft. with one reserve car parking space in Block-G of the project “Agrani IOB Nagar”, situated at Sarari, P.S.-Danapur, Post-Khagaul, District-Patna of the Respondents was executed between the complainant, Smt. Pushpa Sahay and her husband, Sri Mukesh Prasad on one side and Respondent No.1, M/s Agrani Homes Pvt. Ltd. through it’s Director, Respondent No.2, Sri Alok Kumar on other side on consideration of Rs.27,94,745/-, out of which the complainant has paid Rs.4,31,436 inclusive of Service Tax Rs.12,932/- at the time of booking, which is mentioned in the Agreement for Sale itself. The complainant has filed photocopy of the Agreement for Sale dated 02-03-2015, which supports the case of the complainant. According to the complainant, Smt. Pushpa Sahay, she has paid Rs.4,31,436/- at the time of booking to the Respondents, for which the Respondents have issued receipt on 26-03-2015. It is further stated that she has paid Rs.3,75,000/- on 10-07-2015, Rs.2,95,414/- on 24-09-2015, Rs.3.00 lacs on 01-07-2016, Rs.3.00 lacs on 09-02-2017, Rs.2,06,000/- on 06-07-2017, Rs.3.00 lacs on 09-04-2018, Rs.2,50,000/- on 25-04-2019 total Rs.24,57,850/- out of total consideration Rs.27,94,745/- due to persistent demand by the Respondents and their staffs. The complainant has filed photocopies of

receipts of all these payments, which support that the complainant has paid Rs.24,57,850/- to the Respondents.

The Respondents in Agreement for Sale dated 02-03-2015 have promised that construction of the building shall be completed up to December, 2015 with grace period of six months, provided that time of completion shall be deemed to be extended in the event of non-availability of building materials or delay in receipt of installments of the consideration amount from buyers/vendees of other flats and/or delay due to Force Majeure, provided that if the developer/vendor is not able to give possession of the said flat to the buyer/vendee on the above account or any reasonable cause, the buyer/vendee may not be entitled to any damage whatsoever, but shall be entitled to receive back the entire money paid by him/her to the developer/vendor. However, in Clause-8 of the Agreement for Sale, the Respondents have assured that if the developer/builder shall not hand over possession of the unit within the stipulated period and buyer/vendee wanted to get his/her money back, then the developer/builder 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 payment made to the developer/vendor for the delayed period to the buyer/vendee.

The Respondents have got registration of their project "Agrani IOB Nagar", Block-G from RERA, Bihar, vide BRERAP00011-11/192/R-305/2018 on 17-12-2018, wherein registration period was valid for a period of one year six months from 17-12-2018 to 31-12-2019, but thereafter, RERA, Bihar has not granted extension of the validity period of

registration of Block-G of the project. There may be some construction on site of the project of Block-G, but it is correctly alleged by the complainant that Block-G of the project “Agrani IOB Nagar” is still incomplete, as for completion they have applied for extension of validity period of registration before RERA, Bihar, but the same has not been granted as yet. It is further stated that the complainant has continuously enquired from the Respondents about the construction of the Apartment, but they have only made excuses over the course of 5 years and always assured her that the construction would be completed within the stipulated time. She has further stated that *prima facie* it seems that the Respondents have diverted the fund collected from the allottees for purchase of more land and construction of other projects. She has further stated that seeing no hope for completion of the project as per her requirement, she has requested the Respondents to cancel her allotment and refund her principal amount along interest. But, the Respondents on one or other grounds have always given false assurances to her for refund of the principal amount along with interest to her.

From all the above facts and circumstances, it is clear that the Respondents are unable to complete the project within the required time of the complainant and that is why it is reasonable for the complainant to make request to cancel the allotment of her flat and demand her principal amount along with interest from the Respondents, as she cannot wait indefinite period for delivery of possession of the flat, which also find support from the ruling of Hon’ble Supreme Court of India in Fortune Infrastructure and Others Vs. Trevor D, Lima and Others (2018)5 SCC

442. Accordingly, the complainant is entitled for refund of her principal amount Rs.24,57,850/- from the Respondents without delay and deduction.

6. The complainant has also claimed interest @ 18% per annum on the paid principal amount Rs.24,57,850/- from the Respondents. Naturally, the Respondents have retained the respective principal amount of the complainant since 07-11-2012 till date. So the Respondents have to pay the interest on respective principal amount for the retention period. Hon'ble Supreme Court of India in Alok Shankar Pandey Vs. Union of India and Others on 15-02-2007 in Appeal (Civil) 1598/2005 has held that:

“it may be mentioned that there is mis-conception about the interest. Interest is not a penalty or punishment at all, but it is normal accretion on capital. For example; if ‘A’ had to pay ‘B’ certain amount, say 10 years ago, but he offers that amount to him today, then he has pocketed the interest on the principal amount. Had ‘A’ paid that amount to ‘B’ 10 years ago, ‘B’ would have invested that amount somewhere and earned interest thereon, but instead of that ‘A’. has kept that amount with himself and earned interest on it for this period. Hence, equity demands that ‘A’

*should not only pay back the principal amount,
but also the interest thereon to 'B'.*

The Hon'ble Apex Court in the above ruling has allowed interest @ 12% per annum.

In present case, the Respondents have agreed in the Agreement for Sale that they shall pay simple interest for delayed period. Now, I have to see as to how much rate of interest may be allowed to the complainant against the Respondents.

The rule 17, 18 of the Bihar Real Estate (Regulation and Development) Rules, 2017 says:

“the rate of interest payable by the promoter to the allottee or allottee to the promoter, as the case may, shall be 2% above the P.L.R./M.C.L.R. of State Bank of India (S.B.I.) prevailing on due date of amount and the same has to be paid within 60 days.”

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 come 9.30% per annum. Hence, the Respondents have to refund the principal amount Rs.24,57,850/- to the complainant along the accrued simple interest @ 9.30% per annum since the date of payment of respective amount to the Respondents till refund of the said amount by the Respondents to the complainant. Accordingly, Point No.(i) is decided

in positive in favour of the complainant and against the Respondents.

Point No.(ii):

7. The complainant has also claimed compensation of Rs.10.00 lacs for her economical, physical and mental harassment against the Respondents. As per Section 72 of the Act, 2016, the Respondents have been benefitted with the advance principal amount paid by the complainant and still the said amount is lying with the Respondents and they are using the same in their business development. The Respondents are avoiding delivery of the flat/refund of the advanced principal amount to the complainant. Presently, a flat of same area will not be available to the complainant in same locality at the same price, which was available in the year 2015. rather at present the price of the flat would have been multiplied. The Respondents are running the present as well as other projects and improving their business. In addition, in spite of repeated assurances in the Court, the Respondents have not refunded the advance principal amount to the complainant. The claim of compensation has to be decided in a reasonable manner, keeping in mind the quantum of advance principal amount paid by the complainant to the Respondents, duration of the amount retained by the Respondents as well as proportion of loss to the complainant and benefit to the Respondents. The complainant has paid Rs.24,57,850/- out of total consideration Rs.27,94,745/-, which is about 87.95% of the total consideration. In such facts and circumstances, I think, Rs.4,00,000/-, which is about

16.00% of the advance principal amount Rs.24,57,850/- paid by the complainant to the Respondents, may be appropriate amount of compensation to the complainant for her economical, physical and mental harassment. Accordingly, Point No.(ii) is decided in positive in favour of the complainant and against the Respondents.

Point No.(iii):

8. The complainant has visited repeatedly to the office of Respondents and she has contacted to the Respondents as well as their staffs several times for refund of her advanced principal amount, but neither the Respondents nor their staffs have given any heed to her request till filing of the complaint case in this Court. Though the complainant has not brought any document on record as proof of actual expenditure incurred by her, but 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, engagement of lawyer, remittance of Court Fee, paper work etc., which must be paid by the Respondents. Accordingly, I find and hold that the complainant is entitled for Rs.25,000/- as litigation cost against the Respondents. Hence, Point No.(iii) is decided in positive in favour of the complainant and against the Respondents.

Therefore, the complaint case of the complainant, Smt. Pushpa Sahay 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 principal amount Rs.24,57,850/- (Rupees twenty four lacs fifty seven thousand eight hundred fifty only) to the complainant along with accrued simple interest @ 9.30% per annum since the date of

payment of respective amount by the complainant to the Respondents till refund of said amount by the Respondents to the complainant. The Respondents are further directed to pay Rs.4,00,000/- (Rupees four lacs only) to the complainant as compensation for her economical, 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 same through process of the Court.

Sd/-
(Ved Prakash)
Adjudicating Officer
RERA, Bihar, Patna
26-02-2021