



**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/488/2019
RERA/AO/312/2019**

Smt. Punam Kumari, W/o Sri Mukesh Kumar
Singh, R/o New Professor Colony, P.S.-Mufassil
Begusarai, District-Begusarai-851117. ... Complainant

Versus

1. M/s DPM Infrastructure & Housing Pvt. Ltd.,
Indu Shree Apartment, Sur Sudha Lane,
Boring Canal Road (E), Opp: Singh Bajaj,
Patna-800001.
Through it's Director:
2. Sri Pankaj Kumar Singh,
S/o Sri Ram Bilas Mahto, Director, M/s DPM
Infrastructure & Housing Pvt. Ltd., Indu
Shree Apartment, Sur Sudha Lane, Boring
Canal Road (E), Opp: Singh Bajaj, Patna-
800001. ... Respondents

Present:

**Sri Ved Prakash
Adjudicating Officer**

Appearance:

For Complainant ... Alok Kumar. Authorised Person

For Respondents ... Sri Pankaj Kumar Singh, Director

ORDER

26-02-2021

This complaint petition is filed by the complainant,
Smt. Punam Kumari against the Respondent No.1, M/s DPM
Infrastructure & Housing Pvt. Ltd. through it's Director

Respondent No.2, Mr. Pankaj Kumar Singh and Respondent No.3, Smt. Madhu Kumari 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 principal amount Rs.2,30,000/- along with accrued interest, compensation and litigation cost.

2. In nutshell, the case of the complainant is that the complainant, Smt. Punam Kumari had booked a 2 BHK flat no.306 on 25-04-2013 in project "Shivdhari Enclave" of the Respondents, through their authorised signatory @ Rs.2,400/- per sq.ft. including car parking space and other amenities and the complainant paid Rs.2.00 lacs on 06-05-2013 and Rs.30,000/- on 02-07-2013 through N.E.F.T. total Rs.2,30,000/- to the Respondents. The Respondents have assured to the complainant to hand over the flat within 4 years, but there was/is no progress at the site of the project. Hence, after cancellation of allotment of the flat, she demanded refund of her principal amount, whereon the Respondents have not given any positive response. Now the Respondents do not pick up the calls of the complainant to answer about the delivery of the flat/refund of the principal amount Rs.2,30,000/-. Hence, being compelled, she has filed this complaint petition with the above reliefs against the Respondents.

3. After appearance, in spite of repeated direction, the Respondents failed to file reply, hence, they were debarred from filing reply.

4. On basis of the pleadings of the complainant and submissions of the representative of the complainant and Respondent, Sri Pankaj Kumar Singh, the following points are formulated to adjudicate this case:-

(i) Whether the complainant is entitled for refund of her booking amount Rs.2,30,000/-along with accrued interest @ 18% thereon against the Respondents?

(ii) Whether the complainant is entitled for compensation against the Respondents?

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

Points No.(i):

5. Admittedly, the complainant has booked a 2 BHK flat no.306 along with one car parking space and other amenities @ Rs.2,400/- per sq.ft. in the project “Shivdhari Enclave” situated at Khotwa, Bailey Road, Patna of the Respondents and she has paid Rs.2,30,000/- through N.E.F.T. to the Respondents, in which she has paid Rs.200,000/- on 06-05-2013 and Rs.30,000/- on 02-07-2013 to the Respondents. The complainant has filed photocopy of the Pass Book of the Bank Account issued by UCO

Bank, which supports the case of the complainant about the payment of principal amount Rs.2,30,000/- to the Respondents.

6. There is no Agreement for Sale executed between the parties, which would have decided the terms and conditions of delivery of possession of the completed flat by the Respondents to the complainant. Prior to filing of the present case, the Respondents have not paid attention towards request of the complainant for delivery of flat and have also not refunded any advanced principal amount to the complainant. It is also pertinent to note that the Respondents should have provided sanctioned plan, lay-out plan and specifications approved by the competent authority at the time of booking of the flat in favour of the complainant, but they have not done so. As such, they have violated the provisions of Section 11(3)/19(1) of the Act, 2016. The Respondents should have also specified the date of delivery of possession of the flat as per Section 13(2) of the Act, 2016. They should have also disclosed the information to the complainant about the schedule of the completion of the project. But they did nothing, so also they have violated the provisions of Section 19 of the Act, 2016. Though the complainant has booked her flat in the year 2013, when the Act, 2016 was not effective, but the project could not be completed within reasonable time and on enforcement of the Act, 2016 on 01-05-2017, this project was continued by the Respondents, hence, the Respondents should

have taken RERA, Bihar registration within 3 months from 01-05-2017, but they did nothing in this respect. Rather, they have applied for registration on 31-05-2018 before RERA, Bihar through application ID No.RERAP295201800434-1 and on verification altogether 4 defects were found in their application and they were informed on 27-09-2018 through letter No.RERA/PRO.REG-344/2018/531, but till now they have failed to remove these defects. As per complainant, there is no work done by the Respondents on the site of the project. In this way, neither there is RERA registration nor they have furnished sanctioned layout Plan, Specifications, Map etc. to the complainant nor there is any Agreement for Sale nor they have disclosed the stage of the flat to the complainant nor the time of delivery of the possession. In my mind, it is the adamant and selfish behaviour of the Respondents that they will not refund the principal amount whatever the complainant may do against them. In this way, I come to the conclusion that the complainant is entitled for refund of her advanced principal amount

7. The Respondents are constructing the project “Shivdhari Enclave” as well as other projects in Patna as also in other parts of Bihar, so levying of compound interest on advanced principal amount may cause financial burden on the Respondents and it will also adversely affect the interest of other buyers. So, instead of compound interest on the advanced principal amount, simple

interest may be appropriate to be levied for calculating interest on the above advanced principal amount.

Rules 17 and 18 of Bihar Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as the “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 MCLR of SBI prevailing on the due date of the amount and the same has to be paid within 60 days of due date”.

Presently, the MCLR of SBI is about 7.30% per annum for a home loan of three years or more and if 2% is added, it will come 9.30% per annum. So, the Respondents have to pay simple interest @ 9.30% per annum on advanced consideration amount Rs.2,30,000/- since the date of payment of respective amount by the complainant to the Respondents till refund of the same 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):

8. The complainant has also claimed compensation applicable under the Act, 2016. As per Section 72 of the Act, 2016, the Respondents have been benefitted with the amount of

Rs.2,30,000/- paid by the complainant. The Respondents have used the above amount in development of their business without giving delivery of possession of the flat to the complainant. Now, due to delay in delivery of possession, the complainant has cancelled booking of her flat and she will not get another flat in the same locality at the same rate, which was available to her at the time of booking in the year 2013. The present rate of flat in the said locality has not come on record from either side, but naturally the rate of flats would have been multiplied in comparison to the rate available in the year 2013. Though the Respondents are running the project in the name of “Shivdhari Enclave”, but there is very slow progress in construction. I think, the compensation has to be decided keeping in mind the benefit to the Respondents, loss to the complainant, locality as well as duration of retention of advanced principal amount paid by the complainant to the Respondents. So, taking all situations in mind, I think, Rs.35,000/-, which is about 15% of the advanced principal amount Rs.2,30,000/- paid by the complainant to the Respondents, may be appropriate amount to be paid by the Respondents to the complainant as compensation 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):

9. 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 Rs.2,30,000/-, but neither the Respondents nor their staffs have given any heed to her request till filing of the complaint case in this Court. In such circumstances, the complainant has been compelled to file the present complaint case against the Respondents, for which she would have made preparation of documents and also made expenses for conveyance to the office of the Respondents, A.O. Court in RERA, Bihar, remittance of Court Fee, paper work etc., which must be paid by the Respondents. I think, in all these processes she would have incurred not less than Rs.15,000/-, which must be paid by the Respondents to the complainant. Accordingly, I find and hold that the complainant is entitled for Rs.15,000/- 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. Punam Kumari is allowed on contest with litigation cost of Rs.15,000/- (Rupees fifteen thousand only) against the Respondents. The Respondents are directed to refund the advanced principal amount Rs.2,30,000/- (Rupees two lacs thirty

thousand only) 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 further directed to pay Rs.35,000/- (Rupees thirty five thousand only) as compensation to the complainant 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 order through process of the Court.

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