

**IN THE COURT OF ADJUDICATING OFFICER,  
REAL ESTATE REGULATORY AUTHORITY (RERA)  
6<sup>TH</sup> FLOOR, BIHAR STATE BUILDING CONSTRUCTION CORPORATION BUILDING  
HOSPITAL ROAD, SHASTRI NAGAR  
PATNA-800023**

**RERA/CC/359/2019**  
**RERA/AO/73/2019**

Sri Manish Kumar, S/o Sri Indrajit Prasad,  
R/o Village-Parbalpur, P.O+P.S.-Parbalpur,  
District-Nalanda (Bihar), PIN-803114.

... Complainant

Versus

1. M/s Agrani Homes Pvt. Ltd.

Through its Director:

2. Sri Alok Kumar, Director, S/o Sri P.  
Singh, R/o Yogipur, Chitra Gupta Nagar,  
P.S.- Patrakar Nagar, P.O.-Lohia Nagar,  
Kankarbagh, Patna800020.

... Respondents

**Present:**

**Sri Ved Prakash  
Adjudicating Officer**

**Appearance:**

For Complainant : In Person

For Respondents : Sri Ankit Kumar, Advocate

**ORDER**

26-11-2020 This complaint case is filed by the complainant, Sri Manish Kumar against Respondent No.1, M/s Agrani Homes Pvt. Ltd. through it's Director, Respondent No.2, 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 his principal amount Rs.3,21,000/- along with interest and compensation for his economical, mental and

physical harassment, consequent to non-delivery of commercial shops allotted to him by the Respondents.

2. In nutshell, case of the complainant is that the complainant, Sri Manish Kumar approached to the Respondents to purchase shops in the project “Power Grid Nagar” of the Respondents and after finalisation of the talk, he booked two shops each having area 231 sq.ft. in Block C-2 of the building on consideration of Rs.20,48,000/- plus applicable Service Tax. Thereafter, the complainant, Sri Manish Kumar on one side and Respondent No.1, M/s Agrani Homes Pvt. Ltd. through it’s Director, Sri Alok Kumar on other side executed Memorandum of Understanding (M.O.U.) on 07-10-2016 for both the shops in project “Power Grid Nagar” at Sarari, Near Danapur Railway Station, P.O.-Khagaul, District-Patna on consideration of Rs,20,48,000/- plus, applicable Service Tax. The complainant has paid Rs.3,21,000/- at the time of booking out of total consideration. Further case of the complainant is that he has cancelled the booking of the shops due to delay in the project and for which he has sent a letter to the Respondents on 09-05-2018 and requested to refund his paid principal amount.

26-11-2020  
CONTINUED

Later on, repeatedly requested the Respondents to refund his paid principal amount, but there being no positive response and he being fed-up with the behaviour of the Respondents filed this case against the Respondents with above reliefs.

26-11-2020  
CONTINUED

3. On appearance, the Respondents have filed reply pleading *inter-alia* that they are ready to refund the actual amount to the complainant, which he has deposited with them. Further case is that they have requested for two months time to refund the principal amount to the complainant and also allow them to pay back the amount in instalments. In light of their assurance, they have requested that the case of the complainants may be disposed of.
4. On the basis of the pleadings of the parties and submissions of the complainant and learned lawyer for the Respondents, following points are formulated to adjudicate the case:-
  - (i) Whether the complainant is entitled for refund of his principal amount Rs.3,21,000/- along with accrued interest?

- (ii) Whether the complainant is entitled for compensation against the Respondents for his economical, mental and physical harassment?
- (iii) Whether the complainant is entitled for litigation cost against the Respondents.

26-11-2020  
CONTINUED

Point No.(i):

5. Admittedly, the complainant approached to the Respondents for purchase of shops in the project of the Respondents and after talk, both parties have agreed to sell/purchase 2 shops in project “Power Grid Nagar” of the Respondents. Thereafter, the complainant, Sri Manish Kumar on one side and the Respondent No.1, M/s Agrani Homes Pvt. Ltd. through it’s Director, Sri Alok Kumar on other side executed Memorandum of Understanding on 07-10-2016 for sale/purchase of 2 shops each having area 231 sq.ft. in Block C-2 of the project “Power Grid Nagar” situated at Sarari, Near Danapur Railway Station, P.O.- Khagaul, District-Patna on total consideration of Rs.20,48,000/- plus applicable Service Tax. The complainant has paid Rs.3,21,000/- at the time of booking of the shops, which find place even in M.O.U. executed between both the parties. The complainant has also filed

photocopies of the receipt no.5179 dated 07-10-2016 of Rs.3,21,000/- issued by the Respondents and M.O.U. executed between the parties, which proves the claim of the complainant about the payment of principal amount Rs,3,21,000/- to the Respondents. The complainant has also filed photocopy of cancellation letter dated 09-05-2018 sent to the Respondents by the complainant, wherein he has cancelled the booking of both the shops, due to delay in completion of the project wherein he has demanded his paid principal amount Rs.3,21,000/- from the Respondents. The complainant has submitted that he has orally requested several times to the Respondents and their staffs to refund his principal amount, but there was no positive response, so being fed-up with the behaviour of the Respondents, he has filed present complaint case against the Respondents.

26-11-2020  
CONTINUED

On going through the M.O.U. executed between the parties, it appears that the Respondents have agreed that construction of the building shall be completed within 36 months with grace period of 6 months after approval of the Map from P.M.C., provided the time for completion shall be deemed to have extended in event of non-availability of building materials or delay due to Government Policies

26-11-2020  
CONTINUED

affecting the industry or Force Majeure. If the developer/vendor is not able to give possession of the said shops to the buyer/vendee on above account or any other reasonable cause, buyer/vendee may not be entitled to any damage whatsoever, but shall be entitled to receive the entire money paid by the vendee to the vendor/developer along with simple interest. The Respondents have also stated in their reply that they are ready to refund the principal amount of the complainant, but in instalments. It appears that there is no fault on the part of the complainant, as he has paid the required amount within time to the Respondents, but on other hand it is the Respondents, who did not obtain approval of the Map from P.M.C. and have also not refunded timely the principal amount of the complainant. So, from all the aspects, the complainant is entitled for refund of his principal amount Rs.3.21,000/- from the Respondents without any deduction.

The complainant has claimed interest on the paid principal amount Rs.3.21,000/- from the Respondents. Naturally, the Respondents have retained the principal amount of the complainant since 07-10-2016 till date. So,

the Respondents have to pay the interest for this retention period. Hon'ble Supreme Court 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’.”*

26-11-2020  
CONTINUED

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

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 M.C.L.R. of S.B.I. is 7.3% for a loan of 3 years or more. If 2% is added, it will become 9.3% per annum. It is not out of place to mention that on one hand the complainant is repudiating himself from the project and on the other hand the Respondents are developing the present project and other projects in Patna and other parts of Bihar, so there will not be much effect on the complaint, if instead of compound interest, simple interest is levied on the Respondents. It is clear that levying of compound interest will not only hamper the development of business of the Respondents, but also affect the interest of other buyers of projects. Hence, imposing of simple interest on the Respondents will justify the end. Moreover, both the parties have agreed in M.O.U. to pay simple interest on the principal amount in case of refund of the same to the buyer/vendee/complainant. In such view of the matter, I find and hold that the complainant is entitled for simple interest @ 9.30% on the principal amount Rs.3,21,000/- since the date of payment of the respective amount by the

26-11-2020  
CONTINUED



complainant to the Respondents till refund by the Respondents to the complainant. Accordingly Point No.(i) is decided in positive in favour of the complainant and against the Respondents.

26-11-2020  
CONTINUED

Point No.(ii):

6. The complainant has also claimed compensation against the Respondents for his economical, mental and physical harassment. The complainant has cancelled the booking of the shops due to delay in construction of the project. As per Section-72 of the Act, 2016, the Respondents are benefitted by using the principal amount Rs.3,21,000/- paid by the complainant in their business, without giving delivery of possession of the shops to the complainant. Now, the complainant will not get shops of same area in the same locality at the same rate, which was available to him in the year 2016. So, I think, from considering the above materials Rs.50,000/-, which is about 15.60% of the advance principal amount Rs.3,21,000/- paid by the complainant to the Respondents, may be appropriate amount for compensation to the complainant for his economical, mental and physical harassment. Accordingly, Point No.(ii) is

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

Point No.(iii):

- 26-11-2020  
CONTINUED
7. 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 the present case. The complainant would have naturally incurred expenses in travelling to the office of the Respondents to meet with them and their staffs and also engagement of lawyer, preparation of documents payment of Court Fee etc for filing the present case in RERA, Bihar. Though the complainant has not brought any document on the record for showing the actual expenditure incurred by him for this purpose, but I think, in all these processes the complainant would not have incurred more than Rs.10,000/-, which must be paid by the Respondents to the complainant. Accordingly, Point No.(iii) is decided in positive in favour of the complainant and against the Respondents.

Therefore, the complaint case of the complainant, Sri Manish Kumar 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 principal amount Rs.3,21,000/- (Rupees three lacs twenty one thousand only) 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 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.

Sd/-

(Ved Prakash)  
Adjudicating Officer  
RERA, Bihar, Patna  
26-11-2020

26-11-2020  
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