



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

**RERA/CC/351/2019
RERA/AO/71/2019**

Smt. Shashi Devi, w/o Sri Kishore Kumar, Kanak Enclave, 402, Adarsh Colony, Khagaul Road, Saguna More, Danapur, Patna-801503.

... Complainant

Versus

1. M/s Ashwani Enterprises Pvt. Ltd.,

Address-1:

Krishna Building (2nd Floor), S.P. Verma Road, Patna.

Address-2:

B-126, Harinagar, Ghantaghar, New Delhi-110064.

Address-3:

Ashwani Residency, NH-98, Bagha Tola, Yakubpur, Nagwan, P.S.-Janipur, Phulwarisharif, District-Patna, PIN-801505

2. Sri Ashwani Kumar Singh, Managing Director, s/o Late Hari Dayal Singh, Ashwani Enclave-II, Phulwarisharif, Patna, District-Patna.

Respondents

Present:

**Sri Ved Prakash
Adjudicating Officer**

Appearance:

For Complainant : In Person

For Respondents : Sri Ashwani Kumar Singh in Person

ORDER

27-11-2020 This complaint petition is filed by the complainant, Smt. Shashi Devi, against the Respondent No.1, M/s Ashwani

Enterprises Pvt. Ltd through its Director, Respondent No.2, Sri Ashwani Kumar Singh 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.2,50,000/- along with accrued interest and compensation for her economical, physical and mental harassment, consequent to non-delivery of flat allotted to her.

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2. In nutshell, the case of the complainant is that the complainant, Smt. Shashi Devi approached to the Respondents for purchase of a flat in their project, “Ashwani Residency” and after talk both the parties agreed to sell/purchase flat no.101 in Block-Rose in aforesaid project “Ashwani Residency” having area 1456 sq.ft. @ Rs.1,100/- per sq.ft. However, both the parties could not execute Agreement for Sale with respect to the said flat. Later on, the complainant Smt. Shashi Devi, has paid Rs.1.00 lac on 23-04-2015 and got money receipt no.0116 dated 23-04-2015 from the Respondents for the said payment. On 19-02-2016 the complainant has paid Rs.1.00 lac and got money receipt no.710 dated 19-02-2016 from the Respondents for the said payment. Later on 05-06-2016, the complainant has paid Rs.50,000/-, for which she got money receipt no.807 dated 05-06-2016 from the Respondents. She has further stated that the project could not be constructed by the Respondents, hence, after cancellation of the booking, she demanded refund of her principal amount from the Respondents, for which on

one or other pretext the Respondents have avoided to refund. Hence, on being fed-up with the behaviour of the Respondents, she has filed this complaint petition with prayer for the above reliefs.

3. Notice was issued to the Respondents, whereon the learned lawyer, Sri Deepak Kumar appeared through *Vakalatnama* in the Court on 16-07-2019 and submitted that the reply on behalf of the Respondents will be filed in the Court on next date 23-07-2019, but neither he has filed reply nor appeared in the present case since 06-11-2019. On repeated request of the complainant, direction was given to the Respondents to file reply, However, the Respondent No.1 appeared through Respondent No.2, Sri Ashwani Kumar Singh, Managing Director on 28-09-2020, but has not filed reply on the record. However, the Respondent No.2 submitted that he has refunded total principal amount Rs.2,50,000/- to the complainant.

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4. Now, after appearance of the Respondents, the following points are formulated to adjudicate the case:-
- (i) Whether the complainant is entitled for accrued interest on principal amount Rs.2,50,000/- paid to the Respondents?
 - (ii) Whether the complainant is entitled for compensation against the Respondents for her economical, mental and physical harassment?

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

Point No.(i) :

5. The complainant has stated that she has finalised the talk for sale/purchase of flat no.101 in Block-Rose of project “Ashwani Residency” of the Respondents’ company. She has further stated that the area of the flat has been stated as 1456 sq.ft. and the rate was fixed between the parties at Rs.1,100/- per sq.ft. She has further stated that she has paid Rs.1,00,000/- as advance consideration to the Respondents on 23-04-2015, for which she has got money receipt no.0116 dated 23-04-2015 from the Respondents. She has further stated that she has paid Rs.1.00 lac through S.B.I. cheque no.593477 dated 18-02-2016 to the Respondents, for which she has got money receipt no.710 dated 19-02-2016 from the Respondents. She has further stated that on 05-06-2016 she has paid Rs.50,000/- to the Respondents, for which she has got money receipt no.807 dated 05-06-2016 from the Respondents. The complainant has filed photocopies of three money receipts in respect of aforesaid payments, which support her claim for payment of Rs.2,50,000/- to the Respondents. However, there is no Agreement for Sale executed between the parties, which may

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decide the terms and conditions for claim for delivery of the flat as well as refund of the amount and claim for interest etc. The complainant has further stated that when the Respondents could not construct the flat of the project “Ashwani Residency” within the required time, she has cancelled the booking and demanded refund of her paid principal amount from the Respondents on 12-09-2017, which was received by the Respondents, but they have not given any attention towards her request. The complainant has filed photocopy of the petition dated 12-09-2017, which supports her contention of the refund. Previously, neither the Respondents have appeared in Court nor filed the reply, so it could not be brought on the record as to why the Respondents could not construct the project “Ashwani Residency” within time and why they have not refunded the total principal amount paid by the complainant to the Respondents. However, during hearing of the complaint petition, both the parties have admitted that principal amount Rs.2,50,000/- has been refunded to the complainant.

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6. The complainant has claimed interest on the paid principal amount Rs.2,50,000/- against the Respondents. Previously, the Respondents have neither appeared nor filed reply nor produced or adduced any evidence in support of their defence. But, it is

clear that they have refunded the total principal amount Rs.2,50,000/0 to the complainant, which shows the positive gesture on the part of the Respondents. Naturally, the Respondents have retained the principal amount of the complainant since 23-04-2015 till recent past, so the Respondents have to pay the interest for this retention period.

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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) 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.

Hence, I think, as per Rule 17 and 18 of Bihar Real Estate (Regulation & Development) Rules, 2017, 2% above the M.C.L.R. of S.B.I. has to be paid as interest to the complainant by the Respondents. Presently, the M.C.L.R. of S.B.I. for a Home Loan of more than 3 years is 7.30% and if 2% is added, the rate of simple interest will come 9.30% per annum. Hence, the Respondents have to pay simple interest @ 9.30% on total principal amount Rs.2,50,000/- from the respective date of payment by the complainant to the Respondents till refund of respective amount by the Respondents to the complainant. Accordingly, Point No.(i) is decided in positive in favour of the complainant and against the Respondents.

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Point No. (ii):

7. The complainant has also claimed compensation against the Respondents for her economical, mental and physical harassment. The complainant has cancelled booking of the flat due to delay in construction of the project. As per Section 72 of the Act, 2016 the Respondents are benefitted by using the amount of Rs.2,50,000/- 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 to her in the year 2015, rather the price would have been multiplied. So, I think, Rs.30,000/-, which is about 12% of the principal amount Rs.2,50,000/- paid by the complainant to the Respondents may be appropriate amount as 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.

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Point No,(iii) :

8. The complainant has visited several times to the Respondents office, met with them and their staffs and requested for refund of her paid principal amount, whereon, the Respondents and their staffs did not give any attention, hence, being compelled the complainant has filed this 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 for filing the present complaint case in RERA, Bihar, preparation of documents, payment of Court Fee etc. Though the complainant has not brought any document on the record to show the actual expenditure incurred by her for these purposes, 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. Accordingly, Point No,(iii) is decided in positive in favour of the complainant and against the Respondents.

Therefore, the complaint case of the complainant, Shashi Devi is allowed on contest with litigation cost of Rs.10,000/- (Rupees ten

thousand only) against the Respondents. The Respondents are directed to pay simple interest @ 9.30% per annum on principal amount Rs.2,50,000/- (Rupees two lac fifty thousand only) since the respective 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.30,000/- (Rupees thirty thousand only) as compensation to the complainant for her 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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