

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

**RERA/CC/367/2019
RERA/AO/74/2019**

Dr. Sanjay Kumar, s/o Chandramouli Prasad
Singh, Near Mission Bajaj, House of Sri H.P.
Agarwal, Mission Compound, Mahadeva,
District-Siwan, PIN-841227. ... Complainant

Versus

(1) M/s Agrani Homes Pvt. Ltd.
(2) Sri Alok Kumar, C.M.D., Agrani Homes
Pvt, Ltd., House No.15, Ward No.1FA,
Patliputra Colony, Patna-800013. ... Respondents

Present:

**Sri Ved Prakash
Adjudicating Officer**

Appearance:

For Complainant : In Person

For Respondents : Mr. Ankit Kumar, Advocate

ORDER

27-11-2019

This complaint petition is filed by the complainant, Dr. Sanjay Kumar against the Respondent No.1, M/s Agrani Homes Pvt. Ltd. through its 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 advanced principal amount Rs.10,30,000/- along with accrued interest @ 18% per annum thereon and

compensation as House Rent @ Rs.7,500/- per month since January, 2016 for his mental and physical harassment.

2. In nutshell, the case of the complainant, Dr. Sanjay Kumar is that he has booked a flat No.307 on 3rd Floor of Block "H" of the apartment namely "I.O.B. Nagar, Main Phase" having super built up area 612 sq.ft. with one car parking space on ground floor and undivided proportionate share in the land of the said project of Respondents, M/s Agrani Homes Pvt. Ltd. at Sarari, Danapur on total consideration of Rs.14,68,002/- including Service Tax Rs.44,002/-, out of which he has already paid Rs.10,30,000/- to the Respondents. Accordingly, an Agreement dated 08-03-2013 was executed between both the parties and the Respondents have promised to deliver possession of the flat completed in all respect up to December, 2015, provided the time for completion shall be deemed to be extended in the event of non-availability of building materials or non-receipt of instalments of the consideration amount from the buyers/vendees of other flats. But, after 6½ years of signing the Agreement Deed, the Respondents have not handed over possession of the flat to him. The complainant repeatedly requested from the Respondents to hand over the flat, for which they have given false assurance that they are going to deliver the flat urgently. Up-till-now, they have not taken any step for delivery of possession of the flat. It is further case that the

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complainant is facing financial crisis, as he is living in a rented house paying House Rent @ Rs,7,500/- per month. However, the Developer/Respondents have not given any exact date of delivery of the flat. So, the complainant is not in position to wait indefinitely for completion of the project. So, he has requested to the Respondents to refund his advanced principal amount, but when he could not get positive answer, he has filed this complaint petition with above reliefs.

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3. The Respondents, after appearance, have filed reply pleading *inter-alia* that the project has been approved from RERA, Bihar and they are ready to give delivery of possession of the flat to the complainant. However, if the complainant is not willing to take delivery of the flat, the advanced principal amount will be refunded to him, but in instalments.
4. On the basis of the pleadings of the parties and submissions of learned lawyers of both the sides, the following points are being formulated to adjudicate the case:-

(1) Whether the complainant is entitled for refund of his advanced principal amount Rs.10,30,000/- along with accrued interest @ 18% per annum thereon against the Respondents?

(2) Whether the complainant is entitled for House Rent of Rs.7,500/- per month as compensation for his mental and physical harassment?

(3) Whether the complainant is entitled for litigation cost against the Respondent?

Points No.(1):

5. Admittedly, both the parties have executed an Agreement for Sale on 08-03-2013 for purchase/sale of a flat No.307 on 3rd floor of Block-H in the project "I.O.B. Nagar Main Phase" having super built-up area of 612 sq.ft. with one reserve car parking space and proportionate share in the land of the project on consideration of Rs.14,68,002/- including Service Tax Rs.44,002/-. It was also agreed that the Developer shall hand over the flat completed in all respect up to December, 2015, provided the time of completion of project shall be deemed to be extended in the event of non-availability of building materials or delay in receipt of instalments of the consideration amount from the buyers/vendees of other flats and/or delay due to Force Majeure. The complainant has paid Rs.3.00 lacs at the time of booking and Rs.7,30,000/- in instalments to the Respondents out of the total consideration Rs.14,68,002/-. The complainant has filed photocopies of demand letters dated 04-12-2014, 06-04-2015, 10-09-2015. 30-03-2016, 01-12-2016 and 26-07-2017 issued by the Respondents to the

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complainants, wherein they have demanded the remaining consideration from him. Lastly, on 23-05-2019, the Respondents again sent demand letter and demanded Rs.2,92,001/- till 14-06-2019 from the complainant.

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6. The complainant has filed photocopy of RERA. Bihar Registration Certificate No.BRERA P000-11-11/192/R-305/2018 for construction of the said project wherein the registration is valid for a period of one year commencing from 17-12-2018 and ending with 31-12-2019. The complainant has submitted that up-till-now only structure of the building has been constructed by the Respondents and they are not making any gesture to complete the project, whereon the learned lawyer for the Respondents submitted that the possession of the flat will be delivered to the complainant till 31-12-2019. On going through the record, it appears that the construction of the project, as submitted by the learned lawyer for the complainant, is stopped by the Respondents and presently there is no boundary wall and drainage system constructed by the Respondents. Lift and Generator Set have also not been installed. The work of stair is still incomplete. The finishing work in the flat of the complainant has not been

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started as yet. It shows that in spite of assurances of learned lawyers for the Respondents, the project is not expected to be completed till December, 2019, as nothing has been done towards the finishing of the works. The complainant has submitted that he is paying rent of Rs.7,500/- per month and he has to purchase a flat for his residential purpose, which is not being fulfilled due to inordinate delay in completion of the flat by the Respondents since December, 2015. Now, more than 4 years is going to be completed since December, 2015, but the complainant has got no certainty in getting possession of the flat, in spite of repeated assurances by the Respondents. It is also correct that the complainant cannot wait for indefinite period for delivery of possession of his flat and he is entitled to get refund of his advanced principal amount from the Respondents and this view find support from the ruling of Hon'ble Supreme Court passed in Fortune Infrastructure Vs Trevor D' Lima (2018)5SCC 442 and Kolkata West International City Pvt. Ltd. Vs Devashish Rudra (Civil Appeal No.3182/2019). In such circumstances, the complainant is entitled for refund of his entire advanced principal amount Rs.10,30,000/-

without any deduction along with accrued interest against the Respondents.

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7. Now, I have to see as to whether interest to be levied on the Respondents may be 'simple interest' or 'compound interest' on the advanced principal amount of the complainant. Though the complainant has claimed 18% compound interest per annum on the advanced principal amount, but the Respondents are running other projects and also the project in hand, so levying compound interest will naturally hamper their business, which will also go against the interest of the other consumers of the Respondents. However, there will not be much effect on the complainant, as he is already repudiating himself from this project. As such, I think, simple interest on total advanced principal amount Rs.10,30,000/- will justify the end.

8. As per rule 17, 18 of Bihar Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as the "Rules, 2017"), the Respondents have to pay 2% above the M.C.L.R. of S.B.I. Presently, the MCLR of S.B.I. is 8.25% per annum and if 2% is added, it will come to 10.25% per annum. Hence, the Respondents have to pay simple

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interest @ 10.25% per annum on the advanced principal amount Rs.10,30,000/- paid by the complainant to the Respondents. Accordingly, Point No.(1) is decided in positive in favour of the complainant and against the Respondents.

Point No.(2):

9. The complainant has also claimed compensation Rs.7,500/- per month as house rent against the Respondents since January, 2016. As per Section 72 of the Act, 2016, the Respondents are being benefitted by using advance principal amount Rs.10,30,000/- paid by the complainant, in their business without giving delivery of possession of the flat, till the amount is refunded to the complainant. It is true that now the complainant will not get a flat of same area in the same locality at the same rate, which was available to him in the year 2013. The present rate of flat in the same locality has not come on the record from either side, but naturally the rate would have gone high in comparison to the rate available in the year 2013. The complainant has paid Rs.10,30,000/- as advance to the Respondents. The Respondents are still running other projects in Patna and also the project in hand. It is also fact that the Respondents have got RERA, Bihar Registration and their project is valid till 31-12-2019, but the complainant cannot wait till indefinite period for delivery of possession of flat by the

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Respondents. It is also correct that the Respondents had to deliver the flat completed in all respect till December, 2015 and for one or other reasons, the Respondents have not completed the project during the stipulated period. The complainant being bound is residing in a rented house. Since the complainant is not getting his flat within stipulated period, so he is paying rent for a rented house, which must be paid by the Respondents as a compensation to the complainant. The complainant has submitted that he is paying house rent of Rs.7,500/- per month. I think, the claim of the complainant Rs.7,500/- per month as house rent for Single Bed Room is very high and Rs.5,000/- per month as house rent may be appropriate to be fixed for payment by the Respondents to the complainant as a compensation since January, 2016. Further, the Respondents have to enhance the rate of house rent @ 10% in each and every subsequent years till actual refund of advanced principal amount by the Respondents to the complainant. Accordingly, Point No.(2) is decided in positive in favour of the complainant and against the Respondents.

Point No.(3):

10. The complainant has also claimed litigation cost. The complainant has visited several times to the office of the Respondents and their staffs for delivery of his flat. But, when he enquired and came to know that the Respondents

are not continuing the construction work, after construction of the structure of the project, the complainant has cancelled his booking/allotment from the Respondents and tried to get refund of his advanced principal amount from the Respondents. But, in spite of several visits, he could not get back his money. Neither the Respondents nor their staffs have given any attention towards the request of the complainant. The Respondents, in spite of false assurances to the complainant in the Court through their learned lawyer, have not completed the project, in spite of the fact that they have stated that they are going to deliver the flat completed in all respect to the complaint. As stated above, installation of Generator Set, Lift etc. have still not done by the Respondents. In such circumstances, I think, the complainant would have incurred some amount in repeated visits to the office of the Respondents, A.O. Court in RERA, Bihar, filing of documents, Court Fee, engagement of lawyers etc. and naturally he would have incurred not less than Rs.15,000/-, which must be paid by the Respondents as litigation cost. Hence, Point No.(3) is decided in positive in favour of the complainant and against the Respondents.

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Therefore, the complaint case of the complainant 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.10,30,000/- (Rupees ten lac thirty thousand only) to the complainant with accrued simple interest @ 10.25% per annum since the respective date of payment of amount by the complainant to the Respondents till actual date of refund. The Respondents are further directed to pay compensation for the mental and physical harassment of the complainant, in the form of house rent @ Rs.5,000/- (Rupees five thousand only) per month to the complainant till refund of advanced principal amount Rs.10,30,000/- (Rupees ten lacs thirty thousand only) and the Respondents are also directed to pay enhanced house rent @ 10% per annum on revised amount of Rent in each and every subsequent years since January, 2016. The Respondents are directed to comply the order within 60 (sixty) days, failing which the complainant may enforce the same through process of the Court.

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Sd/-
(Ved Prakash)
Adjudicating Officer
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