

the “Act, 2016”) for refund of his principal amount Rs.4,51,000/- along with accrued compound interest @ 20% per annum and compensation of Rs.5.00 lacs for his economical, mental and physical harassment with litigation cost of Rs.50,000/-, consequent to non-delivery of flat allotted to him by the Respondents.

28-12-2020
CONTINUED

- 2 In nutshell, the case of the complainant is that the complainant, Sri Binod Chaudhary intended to buy a flat, for which he made an Agreement with the Respondents No.1. M/s Ghar Lakshmi Buildcon Pvt. Ltd. through its Director, Sri Rahul Kumar on 12th September, 2018 for sale/purchase of a 3 BHK Flat No.301 in Block-B having area 1280 sq.ft. with reserved car parking space in the project “Income Tax Residency” situated near Danapur, district-Patna on consideration of Rs.25,60,000/=, out of which the complainant has paid Rs.4,51,000/-. It is further case that the complainant did not receive offer letter of the possession from the side of the Respondents, despite making payment of more than 25% of the consideration amount. Thereafter, the complainant himself approached to the Respondents and asked the reason for delay of the project. The Respondents could not

28-12-2020
CONTINUED

reply properly and delivery of possession was not made till filing of the present complaint petition. The complainant is residing in a Government quarter for years along with his family members. When the complainant has not seen fruitful result, then he requested for refund of his principal amount, after cancellation of the allotment of flat made by the Respondents. The complainant has suffered irreparable loss, as various Fixed Deposits have been withdrawn to purchase the flat. The present rate of flat in the area is about Rs.5,000/- per sq.ft., so total cost of a flat of 1280 sq.ft. goes to the tune of Rs.64.00 lacs. Hence, the present market rate may be allowed as compensation against the Respondents. The complainant finding no other alternative, has filed this complaint case with above reliefs against the Respondents.

3. On appearance, the Respondents have filed reply pleading *inter-alia* that as per K.Y.C./M.O.U., the complainant has booked a flat in Block-B of the project "Income Tax Residency" having area 1280 sq.ft. along with reserve car parking space and undivided share in land of the project on consideration of Rs25,60,000/-. It is further case that the contents of the complaint petition are

not fully correct, which will be evident from the facts of the reply. The project “Income Tax Residency” has two Blocks “A” and “B”, out of which Block-A is under construction after approval of the Map from the competent authority. But, so far as Block-B, in which the complainant has booked Flat No.301, is concerned, the Respondents have come to know that the land of the said Block is litigated, as there was/is land dispute between the land owner and his *gotias*. As there is land dispute, the construction work could not be started and till date the dispute is persisting. So the other formalities regarding construction of the project could not be completed and hence, the Respondents have dropped the plan to construct the flats of Block-B of the project. From these facts, it will be clear that there is no wilful fault on the part of the Respondents. It is further case that due to above land dispute, the Respondents have also suffered loss from the said project. It shows that the complainant has concealed the material facts from the Court for reasons to take benefit from the delay in construction of the project. The Respondents have tried several times to contact the complainant to give information, but they did not get any response from his

28-12-2020
CONTINUED

side. It is further case that the complainant has paid only Rs.4,51,000/- out of total consideration of Rs.25,60,000/- and they are ready to consider the case of the complainant with regard to refund of the principal amount along with simple interest. They have requested to dispose of the complaint case in light of the assurance made in their reply.

28-12-2020
CONTINUED

4. On basis of the pleadings and submissions of the parties, the following points are formulated to adjudicate the case:-

- (i) Whether the complainant is entitled for refund of principal amount Rs.4,51,000/- along with accrued compound interest @ 20% thereon against the Respondents?
- (ii) Whether the complainant is entitled for Rs.5.00 lacs as compensation against the Respondents for his economical, mental and physical harassment?
- (iii) Whether the complainant is entitled for litigation cost of Rs.50,000/- against the Respondents?

Point No.(i):

5. Admittedly, there was a talk for sale/purchase of one 3 BHK flat between both the parties and after it's finalisation both the parties executed 1st K.Y.C. on 04-11-2015 for sale/purchase of a 3 BHK Flat on 2nd Floor OF Block-A having area of 1349 sq.ft. along with a reserved car parking space on the ground floor of the project "Income Tax Residency" of the Respondent No.1, Ghar Lakshmi Buildcon Pvt. Ltd. on consideration of Rs.26,98,000/- near Danapur, district-Patna.

6. According to the complainant, he has repeatedly requested with the Respondents to execute M.O.U., but the matter was dragged by the Respondents since there was no flat remained in Block-A. When it came to the light that in spite of non-availability of flat, the Respondents have booked the flat to the complainant in Block-A of the project, then the Respondents have given proposal to the complainant that they are going to construct other Block-B and they would provide him flat in the said Block-B. The complainant agreed with the proposal of the Respondents and thereafter on 16-04-2017 2nd K.Y.C. was executed between both the parties with respect to the Flat No.301

28-12-2020
CONTINUED

having area 1380 sq.ft. in Block-B on consideration of Rs.25,60,000/- of the said project “Income Tax Residency”. Later on 12-09-2018 a M.O.U. was executed between both the parties with respect to the said flat. The Respondents have full knowledge at the time of execution of 2nd K.Y.C. and M.O.U. that there was no land with them for Block-B of the project, but in fraudulent manner, the Respondents have cheated the complainant and got money from him on 16-04-2017 and 03-11-2018. Now the Respondents are taking lame excuse on ground of drop of the plan to construct Block-B, due to land dispute of the land owner with his *gotias*.

28-12-2020
CONTINUED

The complainant has filed photocopies of 1st K.Y.C. dated 04-11-2015, 2nd K.Y.C. dated 16-04-2017, M.O.U. dated 12-09-2018 and payment receipts dated 04-11-2015, 02-08-2016, 16-04-2017 and 03-11-2018, which support the submissions of the complainant. The Respondents have not disclosed these facts in their reply, which is a serious matter and leads to show the concealment of facts from the Court. I think, when there was no flat available, the Respondents should have not booked the flat for the complainant in Block-A of the

project. It also appears that there may be land dispute of the land owner with his *gotias*, but it is also not reliable submission, as no proof has been brought by the Respondents on the record.

The Respondents have stated that they have tried to inform the complainant about delay of the construction due to land dispute and dropping of the Block-B, but there was no response from the complainant's side. I think, if the Respondents have tried to inform/informed through any process to the complainant, they should have brought the said proof in support of their submissions, which is missing and not brought on the record. So, here also the claim/contention of the Respondents appears baseless.

28-12-2020
CONTINUED

7. From record it is categorically proved that the complainant has paid Rs.51,000/- on 04-11-2015 through cheque no.005313 dated 21-10-2015, Rs.2,00,000/- on 02-08-2016 through cheque no.011746 dated 02-07-2017, Rs.1,00,000/- on 16-04-2017 through cheque no.011752 dated 17-01-2017 and Rs.1,00,000/- on 03-11-2018 through cheque no.019038. Hence, it is clear that the complainant has paid Rs.4,51,000/- out of total consideration Rs.25,60,000/- to the Respondents.

8. Both the parties have agreed in M.O.U. that the builder/developer shall develop and construct the proposed building with all amenities and deliver possession within 30 months from the date of sanction of building plan with grace period of 6 months. It is also agreed that if the builder/developer shall not hand over the possession of the unit within the stipulated period and the buyer/vendee wanted to get his/her money back, then the builder/developer 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 payments made to the developer/vendor, over the delayed period to the buyer/vendee. It shows that in spite of M.O.U., the Respondents failed to deliver the flat to the complainant within the stipulated period, so the complainant is entitled to receive back the paid principal amount Rs.4,51,000/- without any deduction, for which the Respondents are also ready in their reply filed on the record.

9. The complainant has claimed compound interest @ 20% per annum on paid principal amount Rs.4,51,000/-. From the above discussed materials, it is

28-12-2020
CONTINUED

28-12-2020
CONTINUED

established that firstly the Respondents have booked flat to the complainant in Block-A and when they realised that there is no flat remaining in Block-A, they have shifted him in Block-B for allotment of flat. Section-13(1) of the Act, 2016 prescribes that *“promoter shall not accept a sum of more than 10% of the cost of the apartment, plot or building, as the case may be, as an advance payment or an application fee, from a person without first entering into a written Agreement for Sale with such person and register the said Agreement for Sale, under any law for the time being in force”*. Section-14(1) of the Act, 2016 says *“the proposed project shall be developed and completed by the promoter in accordance with the sanctioned plan, lay-out plan and its specification approved by the competent authority”*. It shows that the Respondents in violation of Section-13(1) and 14(1) received more than 10% of the amount from the complainant before execution of M.O.U. without approval of the Map from the competent authority. I think, if the Respondents would have received the amount, keeping in mind the provisions of law, there would not have been loss to the complainant. The Respondents without proper information to the

complainant about non-availability of flat in Block-A and land in Block-B have received advance money from the complainant, which is neither morally nor legally proper. There may be loss to the Respondents due to drop of the plan to construct the Block-B, but why should the complainant suffer for the misdeed of the Respondents? It also appears that the Respondents have answered the submissions of the complainant unsatisfactorily. In such view of the matter, in my opinion, instead of simple interest, the Respondents should pay compound interest to the complainant on principal amount Rs.4,51,000/- paid by him.

28-12-2020
CONTINUED

10. 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 *"the interest is not a penalty/punishment at all, but it is normal accretion on capital"* and Hon'ble Court has allowed interest @ 12% per annum on the principal amount.

On same issue, rule 17 and 18 of Bihar (Regulation and Development) Rules, 2017 says *"the interest payable by the promoter to the allottee or by allottee to the promoter, as the case may be, shall be 2% above the prevalent Prime*

Lending Rate/M.C.L.R. of S.B.I. on the date on which the amount becomes due and the same has to be paid within 60 days”.

Presently, the M.C.L.R. of S.B.I. for a home loan of 2 years is 7.20% per annum and for 3 years is 7.30% and if 2% is added, it will become 9.20% and 9.30% per annum respectively. But, in the above circumstances, the Respondents have to pay compound interest @ 9.30% compounded half yearly on paid principal amount Rs.4,51,000/- to the complainant. Accordingly, Point No.(i) is decided in positive in favour of the complainant and against the Respondents in the manner stated above.

28-12-2020
CONTINUED

Point No.(ii):

11. The complainant has also claimed compensation of Rs.5.00 lacs against the Respondents for his economical, mental and physical harassment. The complainant has cancelled the booking due to delay in construction of the project of Block-B. As per Section-72 of the Act, 2016, the Respondents are benefited by using the principal amount Rs.4,51,000/- 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

28-12-2020
CONTINUED

same area in the same locality at the same rate, which was available to him in the year 2015. So, I think, rate of the flat might have multiplied from the rate available in the year 2015. The claim of compensation Rs.5.00 lacs appears much higher, which has to be reasonable, keeping in mind advance principal amount paid by the complainant to the Respondents, duration of amount retained by the Respondents as well as proportion of loss to the complainant and benefit to the Respondents. In such view of the matter, I find that Rs.70,000/-, which is about 15.6% of principal amount Rs.4,51,000/- paid by the complainant to the Respondents, may be appropriate amount for compensation 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):

12. 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 this case. The complainant would have naturally incurred expenses in travelling to the office of the Respondents to meet with them and their staffs, engagement of lawyer, filing of the present complaint case in RERA, Bihar, A.O. Court, preparation of documents, payment of Court Fee etc. Though the complainant has not brought any document on the record for showing the actual expenditure incurred by him for this purpose, but has claimed amount Rs.50,000/-. Hence, I think, in all these processes, the complainant would not have incurred expenses more than Rs.15,000/-, which must be paid by the Respondents. Accordingly, Point No.(iii) is decided in positive in favour of the complainant and against the Respondents.

28-12-2020
CONTINUED

Therefore, the complaint case of the complainant, Sri Binod Chaudhary 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 principal amount Rs.4,51,000/- (Rupees four lacs fifty one thousand only) along with accrued compound interest half yearly compounded @ 9.30% 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. They are further directed to pay Rs.70,000/- (Rupees seventy 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.

28-12-2020
CONTINUED

Sd/-
(Ved Prakash)
Adjudicating Officer
RERA, Bihar, Patna
28-12-2020