



**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/1282/2020

RERA/AO/364/2020

Sri Jitendra Kumar Singh, S/o Sri Pradyuman Singh, R/o Vill+Post-Bhalar, District-Munger, Bihar-811212.

Present Address:

D-59, Reserve Bank Staff Quarter, Kurji More, Patna-800010.

... Complainant

Versus

1. M/s Simhastha Construction Pvt. Ltd.

Through it's Directors;

2. Sri Rajesh Ranjan, Director, S/o Late Hari Narayan Sinha

3. Sri Avinash Singh, Director, S/o Sri Suresh Prasad Sinha

Address 1 to 3 :

Khajpura (In front of Pillar No.31), Kumar Complex, Bailey Road, Patna-800014.

... Respondents

Present:

**Sri Ved Prakash
Adjudicating Officer**

Appearance:

For Complainant

- In person

For Respondents

- Sri Rajesh Ranjan, Director

ORDER

08-06-2021 This complaint case is filed by the complainant, Sri Jitendra Kumar Singh against the Respondent No.1, M/s Simhastha Construction Pvt. Ltd. through it's Directors, Respondent No.2, Sri Rajesh Ranjan and

Respondent No.3, Sri Avinash 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 his advanced principal amount Rs.2,51,000/- along with accrued interest, @ 18% per annum thereon and compensation Rs.2.00 lacs for his economical, physical and mental harassment with litigation cost Rs.50,000/-, due to non-delivery of plot allotted to him.

2. In nutshell, the case of the complainant is that the complainant, Sri Jitendra Kumar Singh has booked in August, 2018 Plot No.A/05 in project “Narayan Apana Basera” situated at Mouza-Faridpur Pasahi, Phulwarisharif, P.S.-Janipur, District-Patna of the Respondent No.1, M/s Simhastha Construction Pvt. Ltd. through it’s Directors Respondent No.2, Sri Rajesh Ranjan and Respondent No.3 Sri Avinash Singh. The Respondents have promised that they will soon get RERA, Bihar Registration with respect to their above project and thereafter, they will register the Plot No.A/05 in his favour within 15 days of the booking. It is further case that the complainant has paid Rs.51,000/- on 27-08-2018 and Rs.2.00 lacs on 31-08-2018 against the said Plot towards the total consideration Rs.13,20,000/-. The complainant has asked several times from the Respondents about the progress of work in the project, but the Respondents always sought time and informed that they are in process of getting RERA, Bihar registration with respect to the said project and assured that they will get registration soon. However, till date the Respondents could not get Registration of RERA, Bihar, but the Respondents demanded further payment of consideration and on

01-12-2019, the Respondent No.3, Sri Avinash Singh has sent an E-mail to him stating therein that up till now only Rs.2,51,000/- has been paid to them, so he should pay remaining consideration. Thereafter, he replied them on 02 December, 2019 and expressed his deep concerned over the delay in getting of RERA, Bihar Registration and asked them to speed up getting of RERA, Bihar registration, so that the registration of the Plot may be done in his favour by them. He further stated to the Respondents that he will not pay any further amount till registration of the project in RERA, Bihar. Later on 12-12-2019, the complainant demanded present status of registration of the Project in RERA, Bihar, but they did not respond. After several attempts over the telephone, he could contact them on 26-02-2020, when they finally accepted that RERA, Bihar registration is not possible and insisted on payment of balance consideration and get registration of the land directly from the land owner, which was denied by him. Then the Respondents asked him that they will cancel his booking. When he demanded refund of his principal amount, they asked him to e-mail Cancellation Letter of the Plot. Thereafter, on 27-02-2020, he e-mailed a letter for cancellation of allotment of the Plot No.A/05 and demanded refund of his paid principal amount Rs.2,51,000/-, but till date he did not receive the refund from the Respondents. Hence, he being fed-up with the behaviour of the Respondents, has filed this complaint petition with the above reliefs against the Respondents.

3. On appearance, the Respondents have filed reply and stated that the complainant for purchase of the Plot No.A/05 in their project "Narayan Apana Basera" situated at Mouza-Faridpur Pasahi, Phulwarisharif,

Janipur, District-Patna has booked on 31-08-2018 with them on consideration of Rs.13,20,000/-, against which he has paid Rs.2,51,000/- to them through NEFT/RTGS on 27-08-2018 and 31-08-2018 respectively. On seeking of refund, they have asked the complainant that prior to receipt of refund of Rs.2,51,000/-, he must return the documents available with him and get a post dated cheque of the said amount, but he did not agree and replied that he will receive the amount through RERA Court. Thereafter, the complainant has filed this case and they got Notice from this Court. Further case is that on 09-10-2020 he (Sri Rajesh Ranjan, Director) had made commitment in the Court that due to Covid-19 lockdown there is financial hardships, so they will refund his total payment in 5 instalments each of Rs.50,000/- and the first instalment may be started from 09-10-2020 and during hearing Court had directed them to file such an undertaking in writing and thereafter they have filed the reply of the complaint petition of the complainant, wherein they have undertaken to refund the principal amount in the aforesaid manner.

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

- (i) Whether the complainant is entitled for refund of his principal amount Rs.2,51,000/- along with accrued interest @ 18% per annum thereon against the Respondents ?
- (ii) Whether the complainant is entitled for compensation of Rs.2.00 lacs for his economical,

physical and mental harassment against the Respondents?

(iii) Whether the complainant is entitled for litigation cost of Rs.50,000/- against the Respondents?

Points No.(i) and (ii):

5. Admittedly, the complainant, Sri Jitendra Kumar Singh has booked Plot No.A/05 having area 1200 sq. ft. @ Rs.1100/- per sq.ft. in the project “Narayan Apana Basera” situated at Mouza-Faridpur Pasahi, Phulwarisharif, P.S.-Janipur, District-Patna of the Respondents on consideration of Rs,13,20,000/-, out of which the complainant has paid Rs.51,000/- on 27-08-2018 and Rs.2,00,000/- on 31-08-2018 through NEFT/RTGS to the Respondents, for which the Respondents have issued money receipts no.145 dated 31-08-2018 in the name of the complainant. Later on 01-10-2018 an Agreement for Sale with respect to the Plot No.A/05 of the project “Narayan Apana Basera” of the Respondents was executed between both the parties, in which payment of principal amount Rs.2,51,000/- is also mentioned. It is also not out of place to mention that the complainant has paid more than 10% of the consideration. So there should have been a registered Agreement for Sale as per Section 13(1) of the Act, 2016.
6. On going through the record, it appears that on 31-08-2018 the complainant has got money receipt for payment of Rs.2,51,000/- from the Respondents and on the same date the Respondents have announced Schedule of Payment of consideration amount. As per Respondents, the complainant has not gone ahead for filling-up of Home Loan Form for

approval of the loan within 30 days as per schedule of the payment. The Respondents have further clarified that they have stated to the complainant that they will register the Plot to him within 15 days after receipt of remaining consideration Rs.10,69,000/-. It appears that both the parties are explaining the terms and conditions scribed in the Agreement for Sale in their own way. I think, whoever may be right in their explanation on Payment Schedule, but one thing is correct that though the Respondents have claimed that they have applied for Registration of the project in RERA, Bihar, but till date they have not got registration of the project, otherwise they would have produced the same in the Court. The complainant has sent Cancellation Letter dated 27-02-2020 through E-mail for cancellation of his allotment of Plot No.A/05 of the project "Narayan Apana Basera" of the Respondents. Hence, the Respondents should have refunded the principal amount of the complainant at the earliest, as the complainant cannot be expected to wait for delivery of possession of the Plot for 'indefinite period', as there may be his requirement of residence during particular time and this view also find support from the ruling of Hon'ble Supreme Court of India in Fortune Infrastructure and Others Vs. Trevor D, Lima and Others (2018)5 SCC 442. Therefore, I find and hold that the complainant is entitled for refund of his principal amount Rs.2,51,000/- without delay and deduction. It is also not out of place to mention here that the Respondents have refunded the principal amount Rs.2,51,000/- of the complainant along with Rs.50,000/- as interest etc. during the hearing of this case.

7. The complainant has claimed interest @ 18% per annum on paid principal amount Rs.2,51,000/- from the Respondents. Naturally, the Respondents have retained the principal amount of the complainant since 27-08-2018 till date, so the Respondents have to pay interest on respective principal amount for the said retention period. It also find support from the ruling of Hon'ble Supreme Court of India in Alok Shankar Pandey Vs. Union of India and Others passed on 15-02-2007 in Appeal (Civil) 1598/2005 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. Now, I have to see as to how much rate of interest may be allowed to the complainant against the Respondents?

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 be, 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 MCLR of SBI is 7.20% per annum for a home loan of 2 years and if 2% is added, it will come 9.20% per annum. However, it is made clear that the talk of settlement was started in the Court during the hearing itself and it was agreed between the parties that the Respondents shall refund Rs.2,51,000/- along with Rs.50,000/- as an interest and compensation etc. and it was agreed between both the parties that compromise petition in this regard will be filed on next date. The detailed order in this regard is available in the Order Sheet dated 08-12-2020. Later on, as per agreement, the Respondents have paid the above amount, but the complainant jumped the oral agreement/compromise and submitted that interest as per law and compensation for his economical, physical and mental harassment with litigation cost etc. must be paid to him and then he will hand over the required documents to the Respondents.

In light of the above discussed facts and circumstances, it is required for the Respondents to pay simple interest @ 9.20% per annum to the complainant for the retention period of the principal amount Rs.2,51,000/-

of the complainant. Hence, the Respondents may be directed that on return of the required documents, pay the remaining accrued simple interest @ 9.20% per annum on the principal amount Rs.2,51,000/- 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.

Though the complainant has claimed compensation of Rs.2.00 lacs for his economical, physical and mental harassment, but on perusal of the record, it appears that the complainant has also not come with clean hand, as he has changed his version from time to time as per his suitability/sweet will. Now he has jumped the oral compromise/agreement reached between the parties during the hearing of the present case in the Court. So, I think, there is no any type of harassment to the complainant, rather he is equally responsible for contribution of all activities of cancellation of allotment of the plot. It is also to be added that the complainant has paid Rs.2,51,000/- out of total consideration Rs.13,20,000/-, so there is no much proportional benefit to the Respondents, as they have refunded the principal amount Rs.2,51,000/- along with Rs.50,000/- as interest, compensation etc. during the Covid-19 lockdown and financial hardships. In such facts and circumstances, I find and hold that the complainant is not entitled for any separate amount of compensation against the Respondents. Therefore, Point No.(i) is decided in positive in favour of the complainant and against the Respondents, but Point No.(ii) is decided in negative against the complainant and in favour of the Respondents.

Point No.(iii):

8. The complainant has claimed that he has sent e-mail and physically visited to the office of Respondents for refund of his advanced principal amount, but neither the Respondents nor their staffs have given any response towards his request. On the other hand, the Respondents have stated that they have proposed to take back the principal amount in instalments, but the complainant threatened to them and stated that he will receive all the amount through RERA Court and thereafter he has filed the complaint case in this Court, which was not at all necessary. The complainant has not filed any document, which may lead to show that he has incurred more than Rs.3,000/- in visiting to the office of the Respondents, A.O. Court in RERA, Bihar, remittance of Court Fee, paper work etc. and the above amount must be paid by the Respondents to the complainant. Accordingly, I find and hold that the complainant is entitled for Rs.3,000/- 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, Sri Jitendra Kumar Singh is allowed on contest with litigation cost of Rs.3,000/- (Rupees three thousand only) against the Respondents. The Respondents are directed that on receipt of required documents from the complainant with respect to the Agreement etc., pay the remaining accrued simple interest @ 9.20% per annum on the paid principal amount Rs.2,51,000/- (Rupees two lacs fifty one thousand only) after deduction of already paid Rs.50,000/- (Rupees fifty thousand only), as interest and compensation etc. to the complainant. The

above simple interest shall be paid on the respective principal amount 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. The claim of complainant for separate amount of compensation for his economical, physical and mental harassment against the Respondents is rejected. The Respondents are further 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
08-06-2021