

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

**RERA/CC/285/2019  
RERA/AO/130/2019**

Sri Ramanand Jha, s/o Sri Rup  
Narayan Jha, r/o Flat No.221, Sangam  
Apartment, Ashiana Nagar Phase-02,  
Patna-800025 ... Complainant

Versus

1. M/s Agrani Homes Pvt. Ltd., House  
No.15, Ward No.1FA, Patliputra  
Colony, District-Patna
2. Sri Alok Kumar, s/o Sri Padum  
Singh, Authorised Signatory and  
Director, Agrani Homes Pvt. Ltd.,  
Yogipur, Chitragupta Nagar, P.S.-  
Patrakar Nagar, P.O.-Lohia Nagar,  
Kankarbagh, Patna-800020 ... Respondents

**Present:**

**Sri Ved Prakash  
Adjudicating Officer**

Appearance:

- For Complainant - Mr. Lakmesh Marvind, Advocate  
For Respondents - Mr. Ankit Kumar, Advocate

**ORDER**

12-02-2020

This complaint petition is filed by the complainant, Sri Ramanand Jha against the Respondent No.1, M/s Agrani Homes Pvt. Ltd. through its Authorised Signatory and 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 payment

of accrued interest @ 18% per annum on paid principal amount Rs.15.00 lacs till date of refund and compensation of Rs.5.00 lacs for his mental and physical harassment, consequent to non-delivery of flat allotted to him by the Respondents.

2. In nutshell, the case of the complainant is that the complainant, Sri Ramanand Jha has entered into a Memorandum of Understanding (M.O.U.) on 23-03-2015 with the Respondent No.1, M/s Agarani Homes Pvt. Ltd. through its Authorised Signatory and Director, Respondent No.2, Alok Kumar for sale/purchase of a flat comprising of 1300 sq.ft. preferably in east facing corner on 2<sup>nd</sup> floor in Block-S of the building "I.O.B. Nagar" at Sarari near Danapur Railway Station, Post-Khagaul with one reserve car parking space in ground floor/basement as also an undivided share in the land of the aforesaid project. The total consideration amount was fixed Rs.17,52,530/- including Service Tax Rs.52,530/- and as per Agreement, the complainant has paid Rs.15.00 lacs by means of 7 cheques to the Promoter. Rest amount has to be paid at the time of delivery of possession of the flat. The Respondents have assured to the complainant that construction of the building shall be completed within 36 months with grace period of 6 months after approval of Map from competent authority. It was shown by the Promoter that the proposed Map was already presented before the P.M.C. for its approval and soon after he will receive approval order and

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construction of Block-S shall start in April, 2015. The complainant believed on words of the Promoter, since construction of other Blocks of the aforesaid project was going on. When the construction work did not start for a long period, the complainant enquired from the Promoter, then he assured that the construction work will commence shortly. *But when the complainant has found that repeatedly false* assurances were given by the Respondents, then he cancelled his booking and demanded refund of his principal amount. By that time the complainant has got information that the Promoter has not even submitted Map for construction of Block-S on Survey Plot No.1430. The complainant met several times with the Director, Sri Alok Kumar for refund of his principal amount, but he on one or other reasons tried to linger the refund of paid amount. However, the Respondents have issued 3 cheques bearing No.660357 dated 01-06-2017, 660358 dated 09-06-2017 and 660359 dated 18-06-2017 each for amount of Rs.2.00 lacs in favour of the complainant with intention to refund the principal amount, but all of them bounced due to insufficient fund in the account of the Respondents. Later on, the Respondents have refunded principal amount Rs.15.00 lacs till 20-12-2017. The complainant has received his invested amount on the undertaking that he will not claim whatsoever in respect of the flat in question in future. The amount of the complainant was

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refunded on the pre-condition and on compelling circumstances that unless undertaking is given, the amount shall not be returned. Under the compelling circumstances, the complainant has no other option, but to surrender before the condition laid-down by the Respondents. By that time RERA, Bihar was not functional, hence, now the complainant has filed this case against the Respondents with the above reliefs.

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3. On appearance, the Respondents have pleaded *inter-alia* that the Respondents have already paid total principal amount in the year 2017 before filing of the present case, so there is no question of payment of interest amount to the complainant. The allegation made against the Respondents by the complainant is totally baseless, so the complainant is not entitled for any relief sought by him and hence, the complaint petition is fit to be dismissed.
4. Now, on basis of the pleadings and submissions of the learned lawyers of the complainant and the Respondents, the following points are formulated to adjudicate this case:-
  - (1) Whether the complainant has cause of action to file the complaint case against the Respondents?
  - (2) Whether the complainant is entitled for accrued interest @ 18% per annum or whatsoever on the refunded principal amount Rs.15.00 lacs and compensation of Rs.5.00 lacs for his alleged mental

and physical harassment against the Respondents, consequent to non-delivery of possession of the flat allotted to him?

Points No.(1) and (2):

5. Both the points being inter-related are taken together for discussion. The complainant has claimed interest @ 18% per annum on refunded principal amount Rs.15.00 lacs on the ground that construction work of the project has not started for long period and the Respondents have falsely assured that the construction work will commence shortly and that is why he has desired to get cancelled booking of the flat allotted to him in project "I.O.B. Nagar" and thereafter demanded refund of his principal amount Rs.15.00 lacs. The learned lawyer for the complainant submitted that the complainant has met several times with the Director, Sri Alok Kumar for refund of paid amount, who tried his best to linger refund for one or other reasons and lastly he with ill intention issued 3 cheques, which bounced due to insufficient amount in the account of the Respondents. At last, the complainant has received his total principal amount till 20-12-2017. The learned lawyer further submitted that the complainant has received his total investment on undertaking that he will not claim whatsoever in respect of the flat in quest in future. The principal amount was paid on the pre-condition on the compelling circumstance that unless the undertaking is given, the amount shall not be

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returned. In such circumstances, since the complainant had no other way but to accept such a pre-condition, as by that time RERA, Bihar was not functional. On other hand, the learned lawyer for the Respondents submitted that since the Respondents have already refunded the total principal amount along with settlement amount in the year 2017 before filing of the present case, so now there is no question of payment of interest on principal amount to the complainant. He further submitted that there was no compulsion on the part of the complainant to give undertaking and come on the dialogue table for final settlement. The complainant himself finally talked with the Respondent and negotiated and got settlement amount Rs.1,02,000/- from the Respondents, so now there is no liability of the Respondents towards the complainant for principal amount as well as interest. Accordingly, the complaint petition is liable to be dismissed.

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6. Admittedly, the complainant due to delay in construction of the project "I.O.B. Nagar" has sought cancellation of booking of the flat allotted to him from the respondent and keeping in mind the request from the side of the complainant, the Respondents have not only cancelled booking of the flat of the complainant, but also refunded the total principal amount Rs.15.00 lacs to the complainant till 20-12-2017, prior to establishment of RERA, Bihar on 02-04-2018. However, it is pertinent to note that prior to establishment of RERA, Bihar,

the Principal Secretary, Urban Development and Housing Department was acting as in-charge of RERA, Bihar and during that period present Bihar Real Estate (Regulation and Development) Rules, 2017 has come into force and Real Estate (Regulation and Development) Act, 2016 has also come on the effect since 01-05-2017. Hence, it is incorrect to say that RERA, Bihar was not in functional in the year 2017. It is also to be added that similar power/jurisdictional Court of District Consumer Forum, Patna was available to the complainant to file his complaint petition against the Respondents. It was also available to the complainant to file complaint petition/civil case before the competent Court at Patna, but the complainant has failed to avail the available opportunity in the year 2017 and now when this Court is established, he jumped to claim interest on principal amount already paid in the year 2017, which is not at all reasonable in the eye of law.

7. The project I.O.B. Nagar of Respondents has not been registered in RERA, Bihar, but they have applied for registration without submitting approval of Map of the project. So a letter No.RERA/PRO-REG-468/2018/1633 dated 26-12-2019 has been issued by the Authorised Signatory of RERA, Bihar to remove the defects till 20-01-2020, which the Respondents have not yet removed. It shows that through the Respondents are slow in preparation of construction of the project, but they are still ready to build the project and have

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not abandoned the same. It is the complainant, who has requested to the Respondents for cancellation of booking of flat allotted to him.

8. Admittedly, after receipt of principal amount Rs.15.00 lacs from the Respondents, the complainant has given an undertaking/declaration on 16-12-2012 (though wrong date 16-12-2012 has been printed on top of the Declaration, but it finds corrected from the contents of the Declaration) that in due course he has preferred cancellation of the said booking and his account in respect of said flat had been settled down and as full and final settlement/payment, he has received a cheque no.477794 dated 12-12-2017 of Rs.1,02,000/-. Further he undertakes to return back M/s Agrani Homes Pvt. Ltd., Patna original M.O.U. executed between them in respect of said flat and now there will be no claim whatsoever in respect of the aforesaid flat in future. It shows that the complainant has received Rs.1,02,000/- as full and final settlement amount from the Respondents in lieu of interest etc. It also appears that during the declaration, the complainant has agreed that he will return the original M.O.U. executed between them to the Respondents and thereafter it is expected that he has done so. Hence, now even the original M.O.U. is not available with the complainant for claiming interest on the principal amount. It also appears that the complainant has not stated in the declaration as well as

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thereafter that the Respondents have used any force, undue influence, threat, fraud etc. at the time of making of declaration by the complainant. I think, if there was any compulsion as stated above, the complainant would have challenged the said declaration/settlement in any manner in any Civil/Criminal Court of Law/Consumer Forum, which he has not done for the last 2 years. Now, after final settlement in the year 2017 with the Respondents, the complainant is claiming interest @ 18% per annum on principal amount and also compensation after long gap, which was also available to him at the time of settlement and after settlement also. But, in my view, he knowingly and intentionally kept it in his ulterior motive, which at this stage in the present Court cannot/should not be entertained. Otherwise, no party will believe on the version of other side and will not try to settle the dispute with any complainant with respect to the said real estate project prior to filing of any case in any Court. Hence, on basis of above discussed reasons both these points are decided in negative against the complainant and in favour of the Respondents.

Therefore, this complaint petition of the complainant, Sri Ramanand Jha is dismissed on contest but without cost.

Sd/-  
(Ved Prakash)  
Adjudicating Officer  
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