

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

**RERA/CC/447/2019
RERA/AO/103/2019**

Smt. Nirmala Pandey, w/o Sri Shivaji
Pandey, r/o B-140, P.C. Colony,
Lohiya Nagar Kankarbagh Colony,
District-Patna, PIN-800020. ... Complainant

Versus

1. M/s Agrani Homes Pvt. Ltd.
2. Sri Alok Kumar, s/o Sri Padum
Singh, C.M.D., Agrani Homes Pvt,
Ltd., House No.15, Ward No.1FA,
Patliputra Colony, Near Ruban
Hospital, District-Patna, Bihar,
PIN-800013. ... Respondents

Present:

**Sri Ved Prakash
Adjudicating Officer**

Appearance:

For Complainant - In Person
For Respondents - Mr. Ankit Kumar, Advocate

ORDER

31-01-2020

This complaint petition is filed by the complainant, Smt. Nirmala Pandey against the Respondent No.1, M/s Agrani Homes Pvt. Ltd. through its C.M.D., 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 principal amount/consideration Rs.10,15,000/- along with accrued interest @ 18% thereon and to pay compensation for her mental and physical harassment, consequent to non-delivery of flat allotted in her favour by the Respondents.

31-01-2020
CONTINUED

2. In nutshell, the case of the complainant is that the complainant, Smt. Nirmala Pandey approached to the Respondent No.1, M/s Agrani Homes Pvt. Ltd. through its C.M.D., Respondent No.2, Sri Alok Kumar for purchase/sale of a flat in their project and after talk both the parties have settled and one K.Y.C. was signed between both the parties for sale/purchase of flat no.708 in Block-M of the project “I.O.B. Nagar” having super built-up area 1300 sq.ft. on consideration of Rs.16,00,000/-. The complainant has paid Rs.4,00,000/- through two cheques. The Respondents have assured to the complainant that construction of the building shall start within one month, but when she visited on the site of the project she found that the foundation for pillar has been laid and that is why, she has paid the above money to the Respondents and she has got money receipt for the said payment. It is further case that in July, 2018 she has repeatedly requested the Respondents to return her money, if the construction work is not started by them, then, Sri Anil

31-01-2020
CONTINUED

Kumar Sinha, one of the Directors of the Respondents' company suggested her that by the side of Block-M, construction of another flat No.705 of Block-C was about to complete and only sanitary fittings and electrical works are remained, hence if she desires, may book the said flat in Block-C. The Director, Sri Anil Kumar Sinha has shown her the flat No.705 of Block-C of the project "I.O.B. Nagar" and when she was satisfied with the construction, she has again paid Rs.2,00,000/- on 12-07-2018 to the Respondents, who assured her that the remaining works will be completed as soon as possible. Later on 30-07-2018 one Booking Form was filled-up by her and again she has paid Rs.2,15,000/- on the condition that the remaining construction work of flat no.705 of Block-C should be completed within a week. Thereafter, when she requested the Director, Sri Anil Kumar Sinha to execute Agreement for Sale, he stated her that there is no need for execution of Agreement for Sale, as the Sale Deed itself will be executed and registered by them. Since the flat was completed, so she has no doubt on intention the Respondents that they will not execute Sale Deed and deliver possession of flat no.705 of Block-C. Thereafter on her repeated requests and pressure, the Respondents intentionally did not complete the remaining works of the said flat, whereon when she demanded refund of her principal amount, the C.M.D.,

Sri Alok Kumar ordered to one of his staffs to complete the works of the flat no.705 and hand over the same to her within a week, so that registration work of the flat may be completed. But, on repeated visits by the complainant to the office of the Respondents neither the Respondents were ready to register and hand over the flat nor they refunded the principal amount Rs,10,15,000/- to her and on being fed up with the behaviour of the Respondents and their staffs, she has filed this complaint case with the above reliefs.

31-01-2020
CONTINUED

3. On appearance, the Respondents have filed reply pleading *inter-alia* that they are ready to refund the principal amount of the complainant, but the same may be paid in instalments. It is further case that during hearing the learned Full Bench of RERA, Bihar has directed the Respondents to refund the due amount of the buyers by 21-01-2020, whereon the Respondents have assured to the learned Bench that they will comply the order positively. It is further case that the Respondents, as per assurance to the learned RERA Bench, will also refund the principal amount of the complainant in instalments within a short span of time and in light of above assurances, the complaint case may be disposed of.
4. On basis of pleadings of the parties and submissions of the complainant and learned lawyer on behalf of the

Respondents, the following points are formulated to adjudicate the case:-

31-01-2020
CONTINUED

- (1) Whether the complainant is entitled for refund of her principal amount Rs.10,15,000/- along with accrued interest @ 18% per annum thereon against the Respondents?
- (2) Whether the complainant is entitled for compensation Rs.2,00,000/- for her mental and physical harassment against the Respondents?
- (3) Whether the complainant is entitled for litigation cost against the Respondents?

Point No.(1):

5. Admittedly, the complainant, Smt. Nirmala Pandey has approached the Respondent No.1, M/s Agrani Homes Pvt. Ltd. through its C.M.D., Respondent No.2, Sri Alok Kumar for purchase of a flat in the project "I.O.B. Nagar" of the company and as per settlement flat no.708 having super built-up area 1300 sq.ft. in Block-M of "I.O.B. Nagar" was agreed to be sold to the complainant on consideration of Rs.16,00,000/-. The complainant has filed, fill-up K.Y.C., which bears signature of authorised signatory of the Respondents. She has also filed copy of a letter dated 20-07-2018 submitted to the Sales Director of the Respondents, wherein she has requested to change her flat from flat no.708 of "I.O.B. Nagar", Block-M to

31-01-2020
CONTINUED

flat no.705 of Block-C of the same project "I.O.B. Nagar" and as per her request, the Respondents have changed the flat and allotted flat no.705 of Block-C, instead of previous flat no.708 in Block-M. Later on, the complainant has filed application form with details wherein the total consideration of flat no.705 was fixed Rs.40,65,000/- with cost of other amenities Rs.3,00,000/-. The complainant has stated that again she has paid Rs.4,15,000/- through cheques and got money receipt no.191 dated 06-08-2018 from Sri Anil Kumar Sinha, the authorised signatory of the Respondents. She has further filed photocopy of receipt dated 26-11-2018, wherein she has paid Rs.2.00 lacs to the Respondents and got receipt from authorised signatory. She has further filed photocopies of two other receipts dated 21-03-2018 and 22-03-2018 wherein she has paid Rs.2.00 lacs each with respect to flat No.708 of Block-M which later on transferred to Block-C flat no.705. Hence, it appears that the complainant has paid the principal amount Rs.10,15,000/- out of total consideration Rs.43,65,000/- to the Respondents. The complainant has further stated that in spite of repeated requests when the Respondents intentionally did not complete the remaining works of the flat no.705 of Block-C, she has requested to refund her principal amount, whereon the Respondent No.2, Sri Alok Kumar directed his staff to complete the flat within a

week and deliver possession, but it remained an assurance and it was never completed, so she demanded refund of her money, but the Respondents for one or other reasons avoided to refund her principal amount. The complainant has stated that in spite of repeated requests, the Respondents have not executed Agreement for Sale with respect to flat no.705 of Block-C in her favour and that is why the terms and conditions for delivery of flat could not be brought on record.

31-01-2020
CONTINUED

6. On going through the record, it appears that the Respondents have applied for RERA, Bihar Registration with respect to Block-M, Map of which was not approved by P.M.C., so a defect removal letter was issued to them on 26-12-2019 by authorised officer of RERA, Bihar. However, Respondents have got registration of the project "I.O.B. Nagar", Block-C on 24-01-2019 vide Registration No.BRERA/P00011-10/191/R-364/2019, which has commenced on 24-01-2019 and ended on 31-08-2019, but still the project has not been completed, so the Respondents should have filed application for extension of validity period of the project in RERA, Bihar. However, they have failed to file any extension letter before the Authority. In such facts and circumstances the claim of the complainant for refund appears genuine, as she cannot wait indefinite period for delivery of possession of the flat. There may be requirement of complainant for her residence as she is

31-01-2020
CONTINUED

residing in a rented house and when her requirement is not being fulfilled by the Respondents, she has her choice to cancel the booking of the flat and demand for refund of her principal amount. Since there is fault on the part of the Respondents, they have to refund the principal amount Rs.10,15,000/- paid to the complainant without any deduction. It is also to be added that since the Respondents have retained the principal amount of the complainant and has been using the same in their business for their developments. So naturally, the complainant is entitled for interest on the paid principal amount against the Respondents. The complainant has claimed interest @ 18% per annum on her principal amount. The Respondents are running the project "I.O.B. Nagar" in different phases and they are also constructing other projects in Patna, out of Patna, hence, interest of other beneficiaries from the project is also involved, so interest @ 18% per annum appears very high. In such circumstances, as per Rule 17 and 18 of the Bihar Real Estate (Regulation and Development) Rules, 2017, 2% above the M.C.L.R. of S.B.I. has to be paid to the buyers by the builder. At present, the M.C.L.R. of S.B.I. is 8.20% per annum for 3 years or more pending amount and if 2% is added, it will come to 10.20% per annum. Hence, the Respondents have to pay simple interest @ 10.20% per annum on the principal

amount Rs.10,15,000/- paid by the complainant to the Respondents.

7. The date and amount of payment of principal amount by the complainant, date and amount of refund by the Respondents and interest payable by the Respondents to the complainant may be seen through the chart as under:-

31-01-2020
CONTINUED

Date of payment by the complainant	Amount paid by the complainant Rs	Date of refund by the Respondent	Amount of Refund by the Respondent Rs.	Amount of Interest Rs.
21-03-2018	2,00,000.00	31-01-2020	2,00,000.00	37,958.90
22-03-2018	2,00,000.00	31-01-2020	2,00,000.00	37,903.01
06-08-2018	4,15,000.00	31-01-2020	4,15,000.00	62,866.82
26-11-2018	2,00,000.00	31-01-2020	2,00,000.00	24,079.45
		TOTAL		1,62,808.18

On calculation of simple interest @ 10.20% per annum on principal amount Rs.10,15,000/- paid by the complainant to the Respondents on different occasions till date comes to Rs.1,62,808.18. Hence, the Respondents have to pay simple interest Rs.1,62,808/- till date along with principal amount Rs.10,15,000/- to the complainant. Accordingly, Point No.(1) is decided in positive in favour of the complainant and against the Respondents.

Point No.(2):

8. The complainant has claimed compensation of Rs.2,00,000/- for her mental and physical harassment against

the Respondents. As per Section 72 of the Act, 2016, the Respondents are benefitted by using the amount of Rs.10,15,000/- 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 the same area in the same locality at the same rate, which was available to her in the year 2018. The present rate of flat in the same locality has not come on record from either side, but naturally, the rate of the flat would have gone high in comparison to the rate available in the year 2018. Out of total consideration Rs.16,00,000/-, the complainant has paid Rs.10,15,000/-, which is about 63.44% of the total consideration and the Respondents are still running the business of building construction. So, taking all situations in mind and the amount paid by the complainant, Smt. Nirmala Pandey, Rs.75,000/-, which is about 7.38% of the principal amount paid by the complainant, will be appropriate amount to be paid by the Respondents to the complainant as compensation for her mental and physical harassment. Accordingly, Point No.(2) is decided in positive in favour of the complainant and against the Respondents.

Point No.(3):

9. The complainant has repeatedly visited the office of the Respondents and consulted them as well as their staffs several

31-01-2020
CONTINUED

31-01-2020
CONTINUED

times for refund of her principal amount, but neither the Respondents nor their staffs have given any attention towards her request till filing of the present complaint petition. The complainant would have incurred not less than Rs.15,000/- for conveyance to the office of the Respondents, conveyance to RERA Court, Court Fee, paper documentation, which must be paid by the Respondents to the complainant. Accordingly, I find and hold that the complainant is entitled for litigation cost of Rs.15,000/- against the Respondents. Hence, Point No.(3) is decided in positive in favour of the complainant and against the Respondents.

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 principal amount Rs.10,15,000/- (Rupees ten lacs fifteen thousand only) along with till date simple interest @ 10.20% per annum Rs.1,62,808/-(Rupees one lac sixty two thousand eight hundred and eight only). The Respondents are further directed to pay simple interest at the same rate 10.20% per Annum since tomorrow till refund of remaining principal amount to the complainant. The Respondents are further directed to pay Rs.75,000/- (Rupees seventy five thousand only) as compensation to the complainant for her mental and

physical harassment. The Respondents are directed to comply the order within 60 (sixty) days, failing which the complainant may get enforced the same through process of the Court.

31-01-2020
CONTINUED

Sd/-
(Ved Prakash)
Adjudicating Officer
31-01-2020