

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

**RERA/CC/183/2019  
RERA/AO/39/2019**

Sri Bishwanath Chaudhary, S/o Late  
Mein Chaudhary, r/o Village-Sarari,  
Post-Khagaul, P.S-Sahpur, Danapur ... Complainant  
District-Patna, PIM-801105

Versus

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

**Present:**

**Sri Ved Prakash  
Adjudicating Officer**

Appearance:

For Complainant : Mr. Rakesh Roshan Singh

For Respondents : Mr. Ankit Kumar, Advocate

**ORDER**

23-12-2019

This complaint petition is filed by the complainant Bishwanath Chaudhary 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 to as the "Act, 2016") for payment of interest at Bank rate on valuation of his land, consequent to non-delivery of his

share of flats in the project completed in all respect. He has further sought relief against the Respondents for compensation of his mental and physical harassment and also for delivery of possession of his share of flats in the completed project "I.O.B. Nagar".

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2. In nutshell, the case of the complainant, Bishwanath Chaudhary is that Respondent No.2, Alok Kumar, C.M.D. of Respondent No.1, M/s Agrani Homes Pvt. Ltd. approached to the complainant-cum-landlord for construction of a multi storied Apartment on his land and after final talk, the matter was finalised between both the parties and thereafter a registered Development Agreement dated 31-07-2012 was executed between them for construction of a multi storied Apartment having area 13.20 decimal over Thana No.44, Touzi No.5473, Katha No.158, Survey Plot No.1429, situated in Mauza-Sarari, Survey Thana-Danapur, present Thana Shahpur, District-Patna It was also agreed in the Development Agreement that after approval of Map from competent authority, the Developer shall build the project "I.O.B. Nagar" within 3½ years with grace period of 6 months and on failure to complete the project within stipulated period, the Developer shall pay interest at Bank rate on the market value of land, to the complainant. It was also agreed that after completion of the building/Project, 40% share shall go to landlord and 60% shall

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go in the share of Developer. It is further case that both the parties have agreed that all essential pre-requisites like appointment of Architect, obtaining approval of the Map from the competent authority etc. would be done by the Developer and all expenses will also be borne by the Developer. It is further case that almost 7 years have passed, but till today the project is incomplete and all the development works are stopped on the site since the year 2016. Further case is that the Development Agreement was signed on 31-07-2012 and total market value of the land of the complainant was assessed as Rs.26,40,000/-, hence, the Respondents should have to pay Rs.2,45,520/- per month as interest to the complainant. The Respondents have got possession of land since 31-07-2012 and more than 7 years have passed and if period of construction including grace period is deducted, then also the Developer has to pay about Rs.88,38,720/- as arrear of interest to the complainant. In spite of several reminders regarding quick completion of the project, the Developer has not moved forward to start the construction and complete the project. The Respondents have not paid any attention towards the request of the complainant, hence this case is filed against them with the prayer of the above reliefs.

3. On appearance, the Respondents have filed reply pleading *inter-alia* that since the complainant is also a Promoter

as per Section 2(zk) of the Act, 2016, so this case is not maintainable and hence, fit to be dismissed. Further, the work on site is in progress and the project will be completed soon by the Respondents. It is further case that the complaint petition is without any substance and the complainant is not entitled for any relief. Hence, the complaint petition may be dismissed.

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4. On basis of the pleadings of the parties and submissions of learned lawyers, the following points may be formulated to adjudicate the case:-

- (1) Whether the complaint case is maintainable in eye of law against the Respondents?
- (2) Whether the complainant is entitled for interest at Bank rate on valuation of his land as per Development Agreement against the Respondents?
- (3) Whether the complainant is entitled for compensation against this Respondents for his mental and physical harassment?
- (4) Whether the complainant is entitled for delivery of possession of his share in the project completed in all respect against the Respondents?
- (5) Whether the complainant is entitled for litigation cost against the Respondents?

Point No.(1):

5. The learned lawyer for the Respondents submitted that admittedly the complainant is one of the landlords of the project "I.O.B. Nagar" and as per provision of Section-2(zk) of the Act, 2016, the complainant is also a Promoter, so being Promoter of the Project, he cannot file complaint case against the Co-Promoters/Respondents in this Court, as such, this case is not maintainable. But on other hand, the learned lawyer for the complainant submitted that the complainant is entitled to file this case for rent as well as compensation against the Respondents, as they are not building the project as per Development Agreement and in eye of law the complainant is allottee. As such, this Court has jurisdiction to entertain the complaint of the complainant.

In Section 2(zk) of the Act, 2016 "promoter" means:-

- (i) *A person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or*

- (ii) *A person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or*
- (iii) .....

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*Explanation:-* *For the purpose of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the persons who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder;*

6. Any person, who constructs or causes to be constructed a building or a building consisting of apartments etc. with the purpose of selling shall be a “promoter” under the Act. Any person, who chooses to construct a building or a building consisting of apartments etc. without a purpose of selling will not fall within the definition of “promoter”. Furthermore, even if some of the apartments are not sold, such person who is constructing apartments shall fall within the definition of “promoter”. The text here is ‘intent to sell’ and not ‘actual sale’

The Hon’ble Supreme Court in *Faqir Chand Gulati vs. Uppal Agencies (P) Ltd.*, (2008) 10 SCC 345 has held that

“joint venture agreements” or “development agreements” or “collaboration agreements” between a landholder and a builder, the landholder provides the land. The builder puts up a building. Thereafter, the land owner and builder share the constructed the area. The builder delivers the “owner’s share” to the landholder and retains the “builder’s share”. The landholder sells/transfers undivided share(s) in the land corresponding to the builder’s share(s) of the building to the builder or his nominees. The usual feature of these agreements is that the landholder will have no say or control in the construction. Nor will he have any say as to whom and at what cost the builder’s share of apartments are to be dealt with or disposed of. His only right is to demand delivery of his share of constructed area in accordance with the specifications. Second type of agreements are neither contracts for construction nor contracts or sale of the apartments, but are contracts entered for mutual benefit and profit and in such contact they are not service providers to the landowners, but a co-venture with the landholder in a “joint venture”, in developing the land by putting up multiple-housing (apartments) and sharing the benefits of the project. In this regard, an illustration of joint venture may be of some assistance. An agreement between the owner of the land and a builder, for construction of apartments and sale of those apartments so as to share the profits in a

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particular ratio may be a joint venture, if the agreement discloses an intent that both parties shall exercise joint control over the construction/development and be accountable to each other for their respective acts with reference to the project. In the instant case, there are various terms in the agreement between the appellant and the first respondent which militate against the same being a "joint venture". Firstly, there is a categorical statement in the said agreement that the agreement shall not be deemed to constitute a partnership between the owner and the builder. The land owner is specifically excluded from management and is barred from interfering with the construction in any manner and the builder has the exclusive right to appoint the architects, contractors and sub-contractors for the construction. The builder is entitled to sell its share of the building as it deemed fit, without reference to the landowner. The builder undertakes to the landowner that it will construct the building within 12 months from the date of sanction of building plan and deliver the owner's share to the landowner. The builder alone is responsible to pay penalties in respect of deviations and for payment of compensation under the Workmen's Compensation Act in case of accident. Secondly, there is no community of interest or common/joint control in the management, nor sharing of profits and losses. The landowner has no control or participation in the

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management of the venture. The requirement of each joint venture being the principal as well as agent of the other party is also significantly absent. Such an agreement is not a joint venture, as understood in law.

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7. The basis underlining purpose of the Agreement is construction of a house or an apartment in accordance with the specifications by the Builder for the Owner, consideration for such construction being the transfer of undivided share in land to the builder to construct multi storied building. Such agreement whether called as “collaboration agreement” or a “joint venture agreement”, is not a ”joint venture”.

8. In the instant case, there is a contract for construction of an Apartment for the complainant in accordance with the specifications as per Development Agreement. There is a consideration for such construction flowing from land owner/complainant to the Builder in the form of sale of an undivided share in the land and permission to construct and own certain flats. To adjust the value to the extent of land to be transferred, there may be also payment of cash consideration by the Builder. The important aspect is availing of services of the Builder by the land owner for house construction (construction of landowner share of building for a consideration). To that extent the landowner is a consumer and the builder is a service provider and if there is deficiencies in

service in regard to the construction, dispute raised by the land owner will be a consumer dispute. It will make no difference for this purpose whether the collaboration agreement is for construction and delivery of one apartment or one floor to the owner or whether it is for the construction and delivery of multiple apartments or more than one floor to the owner. The principle would be the same and the contract will be considered as one for house construction for consideration. Hon'ble Apex Court has opined the same view in *Sujit Kumar Banerjee v. Rameshwaran* (2008) 10 SCC 366.

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9. On going through the provisions of Section 31 (1) of the Act, 2016, it appears that this section has started with the wording any aggrieved person may file a complaint with the Authority or the Adjudicating Officer, as the case may be, for any violation or contravention of provisions of this Act or the Rules and Regulations made thereunder against any promoter, allottee or real estate agent, as the case may be.
10. Hence, in this Section landlord is not forbidden to file complainant case against the Builder. In this way, if the landlord/allottee/builder is aggrieved person, then he/she may file case against each other. Since in the instant case there is deficiency in services of the Respondents and they have not handed over possession of the allotted share of the landlord/complainant within the stipulated time, so the

complainant has right to file complaint case against the Respondents under the provisions of the Act, 2016. Hence, there is no force in the submission of the learned lawyer for the Respondents. Accordingly, Point No.1 is decided in positive in favour of the complainant and against the Respondents.

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Point No.(2):

11. Learned lawyer for the complainant submitted that though the Respondents have got the Map of the project approved on 08-09-2012 through Plan Case No.43276/22/R-B+G+7-02/18-09-2012/NKP and Empanelment No.22/2012-13 by the competent authority, but they have not got their project registered with RERA, Bihar. He further submitted that on repeated request and legal notices by the complainant, the Respondents have not taken positive steps towards completion and hand-over of the share of the complainant in the project. On the other hand, the learned lawyer for the Respondents submitted that though the project has not been registered in RERA, Bihar, but after approval of the Map from the competent authority, the project has been constructed and only finishing work is due, which will be completed as soon as possible and delivery of possession of the share of the complainant will be done soon thereafter.
12. The complainant has filed 6 photographs of the site, which show that the structure of the Complex/Building has

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been completed, but finishing and other ancillary works are due, which have to be completed by the Respondents. The photographs also show that there is no boundary wall etc. The learned lawyer for the complainant submitted that up-till-now installation of Lift, Generator Set has not been done and Drainage System is also lacking. He further submitted that the Respondents have ulterior motive, otherwise they would have completed the project at the earliest. The complainant has also sent several legal notices to the Respondents for completing the project and demanding payment of interest of his land on its valuation, but Respondents have not acceded to his request. On going through the record, it appears that the Respondents have stopped the finishing work after construction of the structure of the Complex and they have also not paid the interest of the land on its valuation detailed in the Development Agreement. Both the parties have executed Development Agreement long back on 31-07-2012 and the project has to be completed within 3½ years with grace period of 6 months from the approval of Map from competent authority. However, none of the parties has filed approved Map of the project, but as discussed above, the Respondents have got approval of the Map of the project on 18-09-2012, but they have not applied for Bihar RERA Registration. It shows that the Respondents are almost reluctant in the progress of the project and they are also

rigid in payment of interest to the complainant as per Development Agreement on valuation of his land. It is clear that the Map of the project has been approved on 18-09-2012 and the project has to be completed within 4 years, except in case of Force Majeure and hence, the project should have been completed till 18-09-2016. If the project has not been completed till the date 18-09-2016, it was legal duty on the part of the Respondents to pay interest to the complainant on bank rate on valuation of the land of the complainant as per para-12 of the Development Agreement, in which they have completely failed. As such, I find and hold that the complainant is entitled for interest at bank rate on valuation of the land of the complainant against the Respondents.

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13. As discussed, the complainant-cum-landlord has accepted Deed of Development Agreement with the Respondents on 31-07-2012 for his land measuring 13.20 decimal existing in Thana No.44, Touzi No.5473, Khata No.158, Survey Plot No.1429 in Mauza-Sarari, P.S.-Danapur, Present P.S.-Sahpur, District-Patna. The market valuation of the site is scribed as Rs.24,60,000/- on the date of execution of the Development Agreement. Valuation of the above land on different dates is not available on the record. It is also not scribed in the Development Agreement that the claim of interest may be demanded on different dates at different rates. In this way, it is

clear that the claim of interest by the complainant is to be calculated from the valuation of the land scribed in the Development Agreement between both the parties. As on today, 3 years, 3 months and 5 days have passed from the scheduled date 18-09-2016 of completion of the project.

14. Now, as per Rule 17, 18 of the Bihar Real Estate (Regulation and Development) Rules, 2017, the complainant is entitled 2% above the M.C.L.R. of S.B.I. Presently, the M.C.L.R. of S.B.I. for more than 3 years is 8.25% and if 2% is added, it will come to 10.25% per annum. So, the complainant is entitled for simple interest @ 10.25% on market valuation Rs.26,40,000/- of the land of the complainant. On calculation, the simple interest @ 10.25% on Rs.26,40,000/- for 3 Years, 3 months and 5 days comes to Rs.8,83,156.85. Hence, the complainant is entitled for simple interest of Rs.8,83,156.85 till today for his land against the Respondents. Complainant is further entitled to interest on same rate on same valuation since tomorrow till delivery of possession of his share of flats and other amenities. As such, Point No.(2) is decided in positive in favour of the complainant and against the Respondents.

Point No.(3):

15. The complainant has met several times with the Respondents and have also visited their office, but they have not paid any attention towards his requests. The

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Respondents have also done nothing positive towards construction of the project. Though the present rate of flat has not been brought on record from either side, but price of the flats would have gone very high since the year 2012, so naturally the Respondents have caused much loss to the complainant, which has to be compensated in terms of money to the complainant by the Respondents. The interest of land of the complainant is being paid by the Respondents, but in addition, he may be compensated for the loss caused to him due to delay in handing over the possession of the share of flats, for which he has suffered loss as mental and physical harassment. I think, taking into consideration of all circumstances, the complainant may be paid a lump sum amount of Rs,50,000/- by the Respondents, which will justify the end. Accordingly, Point No.(3) is decided in positive in favour of the complainant and against the Respondents.

Point No.(4):

16. The Respondents in their reply have admitted that the work of the Complex is in progress and it will be completed soon. Photographs filed by the complainant also show that the structure of the building is completed,

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but finishing work is still due. The Respondents have not brought on the record any evidence to show that the Drainage System, Boundary Wall, Plastering and other finishing works have been started by them and these amenities will be finished as soon as possible. They have also failed to file approved Map and RERA, Bihar Registration Certificate to show that they have positive attitude towards completion of the Complex and presently it is very difficult to complete the works at-once and the same will be completed within a short span of time. The Respondents must be careful towards the interest of the landlord as well as purchasers/consumers of the flats. The Respondents have also not submitted details about the duration of the completion of the project. Hence, the Respondents may be directed to complete the project and deliver possession of the share of the complainant within stipulated period. Accordingly, Point No.(4) is decided in positive in favour of the complainant and against the Respondent.

Point No.(5):

17. In spite of several visits by the complainant in the office of the Respondents and issue of legal notices, the



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Respondents and their staffs have not heard his grievances and has up till now not delivered possession of his share of flats. The complainant has engaged learned lawyer to prepare the complaint petition and pursue the case in the Court. He has prepared documents, photocopies etc. and has filed case in the Court and visited several times in the Court on fixed dates and for all of his efforts and expenses, he must be paid by the Respondents. I think, the complainant would have incurred not less than Rs.10,000/- in all the above process, which must be paid by the Respondents. On 09-05-2019 a cost of Rs.1,000/- was levied on the Respondents, which has to be added in litigation cost of Rs.10,000/-. As such, the Respondents have to pay Rs.11,000/- as litigation cost to the complainant. Accordingly, Point No.(5) is decided in positive in favour of the complainant and against the Respondents.

Therefore, the complaint case is allowed on contest with litigation cost of Rs11,000/- (Rupees eleven thousand only) against the Respondents. The Respondents are directed to pay Rs.8,83,156.85 (Rupees eight lakhs, eighty three thousand, one hundred fifty six and eighty five paise

only) as interest of the land of the complainant till today and they shall further pay the interest at same @ 10.25% per annum since tomorrow till delivery of share of flats and other amenities to the complainant in the instant project. The Respondents are further directed to pay compensation of Rs.50,000/- (Rupees fifty thousand only) to the complainant for his 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 same through process of the Court.

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Sd/-  
(Ved Prakash)  
Adjudicating Officer  
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