

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

**RERA/CC/184/2019
RERA/AO/40/2019**

Sri Bahadur Chaudhary, s/o Late Mein Chaudhary, r/o Vill-Sarari, Sahjanand Saraswati Path, Near West P.T.C., Board Colony, West Patel Nagar, Patna-800023. ... Complainant

Versus

(1) M/s Agrani Homes Pvt. Ltd.
(2) Alok Kumar, s/o 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, Advocate
For Respondents : Mr. Krishna Sinha, Advocate

ORDER

23-12-2019

This complaint petition is filed by the complainant, Bahadur Chaudhary against the Respondents 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 rent @ Rs.5/- per sq.ft. per month for his land, consequent to non-delivery of his share in completed

project. He has further sought relief against the respondents for compensation for his mental and physical harassment.

2. In nutshell, the case of the complainant, Bahadur Chaudhary is that Respondent No.2, Alok Kumar approached to the complainant-cum-landlord for construction of a multi storied Apartment on his land and after talk, the matter was finalised between both the parties and thereafter a registered Development Agreement was executed on 13-02-2013 between the complainant, Bahadur Chaudhary, his brothers (co-sharer) namely; Jungbahadur Chaudhary, Most. Usha Devi, W/o Late Jitu Chaudhary and Rajbabadur Chaudhary on one side and Respondent No.2, Alok Kumar on behalf of Respondent No.1 M/s Agrani Homes Pvt. Ltd. on other side for construction of a multi storied Apartment having area 26.30 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 @ Rs.5/- per sq.ft. per month as a rent to the landlord from the date of approval of Map from competent authority. It is further case that after completion of

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the Apartment/Project, 40% share shall go to landlord and 60% shall go in the share of Developer. The Respondents have not informed to the complainant about the approval of Map, but on inquiry from competent authorities, the Municipal Corporation, Khagaul as well as RERA, Bihar, the complainant came to know that the Respondents have not submitted the Map for approval, which is violation of law and fraudulent act with the complainant. It is very surprising and shocking for the complainant that nothing has been done by the Respondents on the proposed land of I.O.B. Nagar in the years 2013-14, 2014-15 and 2015-16 and many times the complainant tried to approach the Respondents, but no action was taken by them. When the complainant has felt that the Respondents are not interested in construction of the Complex, then he has sent several Legal Notices, but no fruitful results could be achieved. So he thought to file a case before this Court. On consultation, the other land owners have not taken interest, so he himself has filed this case with the above reliefs against the Respondents.

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. So, this complaint case may be dismissed.

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

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- (1) Whether this complaint case is maintainable in eye of law against the Respondents?
- (2) Whether the complainant is entitled for rent @ Rs.5/- per sq.ft. per month 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 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 an allottee. As such, this Court has jurisdiction to entertain the complaint petition of the complainant.

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6. 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)

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;

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7. 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’
8. The Hon’ble Supreme Court in *Faqir Chand Gulati vs. Uppal Agencies (P) Ltd.*, (2008) 10 SCC 345 has held that in “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 for 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-adventurer 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 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

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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 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.

9. 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 two floors. Such agreement whether

called as “collaboration agreement” or a “joint venture agreement”, is not a “joint venture”.

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10. 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.

11. 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.

12. Hence, in this Section landlord is not forbidden to file complaint case against the Builder. In this way, the landlord/allottee/builder may be the aggrieved person and they can 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):23-12-2019
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13. Admittedly, complainant, Bahadur Chaudhary and other 3 landlords, Jang Bahadur Chaudhary, Raj Bahadur Chaudhary and Most. Usha Devi, widow of Late Jitu Chaudhary have executed Development Agreement on 13-02-2013 with the Respondent No.1, M/s Agrani Homes Pvt. Ltd. through its Director, Respondent No.2, Alok Kumar for construction of a multi-storied complex on their land in the name and style of "I.O.B. Nagar". It was agreed between both the parties that land owners will get 40% and the Builder/Developer/Respondents will get 60% share in the Complex completed in all respect. It was also agreed that the Builder shall get prepared Map and present the same before the competent authority for approval and he shall also appoint Surveyor, Architect, Contractor, Labourers etc. for completing construction of the project. The Developers were also authorised in the Development Agreement that they as well as the land owners may sell their shares including car parking spaces to any purchaser for consideration. It was also agreed that the Developer shall make expenses of development of the Complex. It was further agreed in para-15 and 24 of the Development Agreement that the Developer shall complete the project within 3 years and 6 months with grace period of 6 months after approval of the Map by the competent authority

and if the Developer will fail to complete the project within the stipulated period, then, except period of Force Majeure, the Developer shall have to pay Rs.5/- per sq.ft. per month to the land owners as rent of the land.

14. The learned lawyer for the complainant submitted that even today neither the Respondents have got their Map approved by the competent authority nor got their project registered with RERA, Bihar and on repeated requests and legal notices, the Respondents have not taken positive steps towards start of the project. On the other hand, the learned lawyer for the Respondents submitted that though the project has not been started, but the Respondents are ready to construct the building, as they have borrowed huge amount on loan against the land of the complainant and other land lords.

15. The complainant has filed 4 photographs of the site, which show that no construction work has started as yet by the Respondents. The complainant has also issued several legal notices to the Respondents for starting the work of the project and demand of payment of rent by them (Respondents) to the complainant, but neither the Respondents have sent replies to the legal notices of the complainant nor paid rent to the complainant as per Development Agreement. The photographs filed by the complainant show that bare plain land is existing on the site of the project and no structure including foundation

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has yet been started. Both the parties have executed the Development Agreement long back on 13-02-2013 and the project has to be completed within 3 years and 6 months with grace period of 6 months from the date of approval of Map by the competent authority. None of the parties has filed Map of the project, which may show that on particular date the Map has been approved by the competent authority. The Respondents have also not filed any proof on the record to show that they have applied for approval of the Map before the competent authority and up till now the same has not been approved. They have also not filed RERA, Bihar Registration Certificate of the project. It shows that up till now the Respondents are almost reluctant about the progress of the project and they are also rigid in payment of rent to the complainant. Since the Respondents have not filed approved Map from the competent authority, it will be presumed that they have not applied for approval of the Map as yet. In such circumstances, date of commencement of the project will be presumed from the date of execution of Development Agreement dated 13-02-2013 between both the parties. On presumption of commencement of project from the approval of Map/execution of Development Agreement 13-02-2013, the project should have been completed till 13-02-2017. If the project is not completed till 13-02-2017, it was legal duty on the part of the

Respondents to pay rent to the complainant as per para-24 of the Development Agreement @ Rs.5/- per sq.ft. per month, in which they have completely failed, in spite of repeated legal notices and requests by the complainant. As such, I find and hold that the complainant is entitled for rent of share of his land @ Rs.5/- per sq.ft. per month since 13-02-2017 till delivery of share of complainant in the completed project.

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16. As discussed above, 4 landlords in equal share have executed deed of Development Agreement with the Respondents on 13-02-2013 for their land measuring 26.30 decimal existing in Thana No.44, Tauzi No.5473, Khata No.158, Survey Plot No.1429 in Mouza-Sarari, P.S. Danapur, present P.S.-Sahpur, District-Patna. This area of land 26.30 decimal has to be divided among 4 equal share of the landlords. On division of 26.30 decimals, the share of the complainant, Bahadur Chaudhary comes 6.575 decimals. One decimal is equal to 435.6 sq.ft. In this way, area of land of the complainant comes to 2864.07 sq.ft. As on today, 2 years 10 months and 10 days have passed from the scheduled date of completion i.e. 13-02-2017. So, the complainant is entitled for rent @ Rs.5/- per sq.ft. per month during this period and on calculation this amount comes to Rs.4,91,600.00. Hence, till today the complainant is entitled for rent of Rs.4,91,600.00 against the Respondents. The complainant shall be further

entitled to rent of his land @ Rs.5/- per sq.ft. per month since tomorrow till delivery of his share and other amenities in the project completed in all respect as per Development Agreement against the Respondents. As such, Point No.(2) is decided in positive in favour of the complainant and against the Respondents.

Point No.(3):

17. 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 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 2013, 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 rent of land of the complainant is being paid by the Respondents, but in addition, as per section 72 of the Act, 2016, he may be compensated for the loss caused to him due to delay in handing over the possession of the share of his flats, for which he has suffered loss as mental and physical harassment. I think, taking into consideration of

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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.

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Point No.(4):

18. In spite of several visits by the complainant in the office of the Respondents and issue of legal notices, the 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 also prepared documents, photocopies etc. and has filed case in the Court and visited several times in the Court on dates and all of his efforts and expenses, must be paid by the Respondent. 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.(4) 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 Rs.11,000/- (Rupees eleven thousand only) against the Respondents. The Respondents are directed to pay Rs.4,91,600.00/- (Rupees four lacs, ninety one thousand and six hundred only) as rent of land of the complainant till today to complainant and they are further directed to pay the rent of the land of the complainant at the same rate of Rs.5/- per sq.ft. per month since tomorrow till delivery of share of complainant in the instant project completed in all respect as per Development Agreement Deed. 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.

Sd/-
(Ved Prakash)
Adjudicating Officer
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