

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

**RERA/CC/533/2019
RERA/AO/126/2019**

Sri Sanjeev Singh Chauhan, s/o Sri Rajendra Singh Chauhan, r/o Qr. No.B-03/1, Power Grid Township, Karbigahiya, District-Patna, PIN-800001

... Complainant

Versus

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

... Respondents

Present:

**Sri Ved Prakash
Adjudicating Officer**

Appearance:

For Complainant

Mr. Punit Kumar, Advocate

For Respondents

Mr. Ankit Kumar, Advocate

ORDER

09-01-2020

This complaint petition is filed by the complainant, Sri Sanjeev Singh Chauhan 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 advanced principal

amount Rs.25,25,705/- along with accrued interest, consequent to non-delivery of the flat allotted to him. He has further sought relief for compensation of Rs.10.00 lac for his mental and physical harassment and litigation cost of Rs.5.00 lacs against the Respondents.

09-01-2020
CONTINUED

2. In nutshell, the case of the complainant is that, Sri Sanjeev Singh Chauhan has approached to the Respondent No.1, M/s Agrani Homes Pvt. Ltd. through its C.M.D., Sri Alok Kumar to purchase two flats – one at “Agrani IDEA” Project and the other “Sampatchak” project and on finalisation of the talk, he has booked two flats on 24-04-2013 in one-time payment scheme in the above projects. Both the parties have executed two Memorandum of Understandings (M.O.U.s) on 27-04-2013. In one M.O.U. both the parties have agreed to sell/purchase of a flat in the Complex namely “Agrani IDEA” having super built-up area measuring 1300 sq.ft., with one reserve car parking space on ground floor and Community Hall as also undivided share in the land of the said project on consideration of Rs.15,97,895/- including Service Tax Rs.47,895/-. It is further case that the complainant has already paid Rs.15,46,350/- through Demand Draft No.296430 dated 25-04-2013 of S.B.I., which is scribed in the M.O.U. It is also scribed that the rest amount Rs.50,000/- plus applicable charges has to be paid by

the complainant to the Vendor/Developer at the time of delivery of possession of the said flat.

- 09-01-2020
CONTINUED
3. Further case of the complainant is that both the parties have executed other Memorandum of Understanding (M.O.U.) on the same date 27-04-2013, wherein both the parties have executed Agreement for Sale/Purchase of flat in the building namely "Agrani AT SAMPATCHAK" having super built-up area measuring 1222 sq.ft., with one reserve car parking space on ground floor and Community Hall as also undivided share in the land of said project on consideration of Rs.9,27,810/- including Service Tax Rs.27,810/-. The complainant has paid Rs.3,09,270/- through Demand No.296431 dated 25-04-2013 of S.B.I. The vendee/buyer has to pay rest amount Rs.5.00 lacs plus applicable Service Tax against the said flat within three months from the date of execution of M.O.U. and further he has to pay Rs.1.00 lac against other amenities plus applicable Service Tax at the time of delivery of possession of the said flat to the Vendor/Developer.

4. The complainant's further case is that the flats of both these projects have to be completed within 36 months with grace period of six months after approval of Map from P.M.C. After expiry of stipulated period when no work started, the complainant repeatedly requested to the Respondents to complete and deliver possession of the both these flats to him,

so that he may use it for his residential purposes, but instead of delivery of possession, the Respondents threatened the complainant and his family members for dire consequences. When the Respondents could not deliver flats, then the complainant has filed the present complaint petition with the above reliefs against the Respondents.

09-01-2020
CONTINUED

5. The Respondents after appearing have filed reply pleading inter-alia that the Respondents are ready to refund the total principal amount of cancelled flats in 2 or 3 instalments. It is further case that the Respondents are coming with clean hands before this Court and they will definitely refund the advanced consideration to the complainant. The Respondents needed 3 months time to refund whatever amount is due against them and in such view of the matter, this complaint case may be disposed of.

6. Now in light of pleadings and submission of both the sides, the following points are formulated to adjudicate this case:-

(1) Whether the complainant is entitled for refund of advanced principal amount/consideration Rs.25,25,705/- along with accrued compound interest @ 18% against the Respondents?

(2) Whether the complainant is entitled for compensation of Rs.10.00 lacs against the Respondents for his mental and physical harassment?

(3) Whether the complainant is entitled for litigation cost of Rs.5.00 lacs against the Respondents?

09-01-2020
CONTINUED

Points No,(1):

7. Admittedly, the complainant has booked two flats on 24-04-2013 one at "Agrani IDEA" and the other at "Agrani SAMPATCHAK" projects of the Respondents and on 27-04-2013 two Memorandum of Understandings (M.O.U.s) were executed between the complainant Sri Sanjeev Singh Chauhan and Respondent No.1, M/s Agrani Homes Pvt. Ltd. through its C.M.D., Respondent No.2, Sri Alok Kumar with respect to the above flats. Admittedly, in one M.O.U. both the parties have agreed to sell/purchase a flat having super built-up area measuring 1300 sq.ft. with one reserve car parking space on the ground floor and Community Hall as also undivided share in the land of in a building namely "Agrani IDEA" on consideration of Rs.15,97,895/- including Service Tax Rs.47,895/-. It is further case that on 25-04-2013 the complainant has paid Rs.15.46.350/- through Demand Draft No.296430 of S.B.I. and he has to pay rest amount Rs.50,000/-

plus applicable Service Tax to the Vendor/Developer at the time of delivery of possession of the flat.

8. Both the parties have executed another M.O.U. for sale/purchase of a flat having super built-up area measuring 1222 sq.ft. with one reserve car parking space on the ground floor, Community Hall as also undivided share in the land of the project namely "Agrani AT SAMPATCHAK" on consideration of Rs.9.27,810/- including Service Tax Rs,27,810/-. In M.O.U. it is scribed that the complainant has paid Rs.3,09,270/- through Demand Draft No.296431 dated 25-04-2013 of S.B.I., for which Respondents have issued receipts and he has also paid Rs.5,15,450/- through cheque no.00158 dated 04-06-2013 to the Respondents. The complainant has also filed photocopy of receipt dated 04-06-2013 wherein the complainant has paid Rs.5,15,450/- to the Respondents, whereon the authorised signatory has signed and issued the receipts. It is further case that Rs.1.00 lac has to be paid at the time of delivery of possession of the flat by the Respondent/Vendor. The complainant has also filed receipt dated 26-04-2013 for receipt of Rs.3,09,270/- by the Respondent/Vendor. It shows that the complainant has already paid the total consideration amount to the Respondents, but the Respondents have not delivered possession of flats to him.

09-01-2020
CONTINUED

9. Both the parties have agreed in both the M.O.U.s that the project/building shall be completed within 36 months with grace period of 6 months after approval of Map from P.M.C. The complainant has claimed that he has paid Rs.25,25,705/- as consideration for both of these flats to the Respondents.

09-01-2020
CONTINUED

10. The Respondents have neither filed approved Maps of both the projects from P.M.C. nor brought any evidence on the record to show that they have applied, but Maps have not been approved as yet. The Respondents have also not filed application for registration of the projects with RERA, Bihar. In this way, it appears that the Respondents are reluctant about the progress of the project. However, during argument the learned lawyer for the Respondent admitted that the project "Agrani AT SAMPATCHAK" had come under Green Zone, therefore, it was not possible to construct the said project by the Respondents. The complainant has stated that he has repeatedly visited to the Respondents and their staffs with request to complete the project and deliver possession of the flats, but they have not paid any attention towards his requests, rather threatened for dire consequences to him as well as his family members. However, the complainant is unable to show any document to prove that the Respondents have threatened to the complainant and his family members. But, at the same time threatening may/may not be oral by the

09-01-2020
CONTINUED

Respondents and their staffs to the complainant. However, one thing is clear that if the projects are not in progress and completed within the stipulated time and delivery of possession of the flats were/are also not given to the complainant, then the amount paid by the complainant to the Respondents must have been refunded along with interest without delay and deduction, as the same has been used by the Respondents in their business and development. Hence, from all circumstances and facts it is established that the Respondents must refund the principal amount/advanced consideration money of the complainant. It is also to be added at the same time that since the Respondents have used the advanced consideration/principal amount taken from the complainant in their business, therefore, they have to pay accrued interest on the principal amount to the complainant since the respective date of payment of amount to the Respondents by the complainant.

11. The complainant has claimed accrued compound interest @ 18% p.a. on the advanced principal amount Rs.25,25,705/- against the Respondents. The Respondents have not completed these projects, but they are running other projects and the amount paid by the complainant has been used in the interest of other consumers also. So, I think, instead of compound interest, simple interest is payable by the Respondents to the

09-01-2020
CONTINUED

complainant. It is also to be made clear that interest @ 18% in present situation appears much higher than the reasonable. So, as per rules 17, 18 of Bihar Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as the "Rules 2017"), the Respondents have to pay simple interest @ 2% above the M.C.L.R. of S.B.I. Presently, the M.C.L.R. of S.B.I. is about 8.20% and if 2% is added, it will come to 10.20%. Hence, the Respondents have to pay simple interest @ 10.20% on the advanced principal amount paid by the complainant from respective date of payment to the Respondents. Accordingly, Point No.(1) is decided in positive in favour of the complainant and against the Respondents.

Point No.(2):

12. The complainant has also claimed compensation of Rs.10.00 lacs against the Respondents for his mental and physical harassment. As per Section 72 of the Act, 2016, the Respondents are being benefitted by using the amount Rs.25,25,705/- paid by the complainant in their business without giving delivery of possession of flats to the complainant. Now, the complainant may not get flats of same area in same locality at the same rate, which was available to him in the year 2013. The learned lawyer for complainant has submitted the present rate of flats in the same locality is at present Rs.5,500/- per sq.ft., but the same is without proof, hence, it

09-01-2020
CONTINUED

cannot be accepted. However, naturally the rate would have gone high in comparison to the rate of flats available in the year 2013. The complainant has already paid total consideration of both the flats to the Respondents and the Respondents are still running business of building construction. So taking all situation in mind and the amount paid by the complainant, I think, a lump sum amount of Rs.5.00 lacs, which is about 20% of the advanced principal amount, will be appropriate amount to be paid by the Respondent to the complainant for his mental and physical harassment. Accordingly, Point No.(2) is decided in positive in favour of the complainant and against the Respondents.

Point No.(3):

13. The complainant has visited several times in the office of the Respondents as well as their staffs with request to delivery of possession of the flats, but on non-fulfilment of his demand, he has filed the present complaint petition. It shows that the naturally the complainant would have incurred expenditure on conveyance to the office of the Respondents, A.O. Court, RERA, Bihar, documentation of papers, Court Fee, engagement of lawyer etc., and he has also visited several times from Hyderabad, so all the expenses must be paid by the Respondents. However, the complainant has not filed any receipts/documents for expenditures incurred in above process,

but he has claimed litigation cost of Rs.5.00 lacs against the Respondents, which is much high and without any document. Therefore, in the above facts and circumstances as well as evidence available on record, it appears that the complainant is entitled for Rs.25,000/- as litigation cost against the Respondents. Hence, Point No.(3) is decided in positive in favour of the complainant and against the Respondents.

09-01-2020
CONTINUED

Therefore, the complaint case of complainant is allowed on contest with litigation cost of Rs.25,000/- (Rupees twenty five thousand only) against the Respondents. The Respondents are directed to refund the advanced principal amount/consideration to the complainant with accrued simple interest @ 10.20% from respective date of payment by the complainant to the Respondents till the date total refund. The Respondents are further directed to pay compensation of Rs.5.00 lacs (Rupees five lacs 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 are entitled to enforce the same through process of the Court.

Sd/-
(Ved Prakash)
Adjudicating Officer
09-01-2020