

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

**RERA/CC/486/2019
RERA/AO/116/2019**

Sri Bikash Chandra Roy,
s/o Sri Nagendra Nath Roy,
C/o Sri Ajay Kumar, r/o Road
No.7A, S.K. Bihar Colony, Beur,
Anishabad, District-Patna, PIN-
800002. ... 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 Dr. Ratan Kumar, Advocate

For Respondents Mr. Ankit Kumar, Advocate

ORDER

10-01-2020

This complaint petition is filed by the complainant, Sri Bikash Chandra Roy 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

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(Regulation and Development) Act, 2016 (hereinafter referred as the "Act, 2016") for refund of principal amount/consideration Rs.16,00,000/- and Service Tax Rs.43,151/- along with accrued interest @ 18% thereon and compensation of Rs.2,00,000/- for compensation 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 Bikash Chandra Roy on the basis of an advertisement entered in to an Oral Agreement and assurance on 13-11-2013 with 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 measuring super built-up area 1300 sq.ft. preferably in South-West corner of 2nd floor in Block-M of "I.O.B. Nagar" project at Sarai, Near Danapur Railway Station with one reserve car parking space in the ground floor/basement as also undivided share in the land of the said Complex. The total consideration for the flat along all amenities was fixed at Rs.21,00,000/- and as per Agreement, the complainant has paid Rs.16,00,000/- lacs through cheque and cash till 14-01-2015 and has also paid Service Tax Rs.43,151 in cash to the Respondents and the rest amount Rs.5,00,000/- has to be paid at the time of delivery of possession of the flat. The Promoter/Respondents have assured the complainant (para-5 of M.O.U. which was later on taken back by the

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Respondent No.2 with assurance to convert the same in to Agreement) that construction of the building shall be completed within 36 months with grace period of 6 months after approval of Map from P.M.C. The Respondent No.2 has told that the proposed Map has already been presented before P.M.C. for its approval and as soon as he will receive the approval of Map construction work of Block-M shall start in April, 2015. The complainant believed on the words of Respondent No.2 since construction of other buildings was going on. When the construction work did not start for a long period and Respondent No.2 falsely assured that construction work will commence shortly, then the complainant enquired from other persons, who were also suffering and misguided by the Respondents, told that the Respondents have not presented the Map before P.M.C. for approval of construction of the flats in Block-M of building on the said plot. Therefore, the complainant met several times with the Respondent No.2, Sri Alok Kumar for refund of his paid amount, but he did not do so, then he being helpless has filed this complaint petition with the above reliefs.

3. On appearance, the Respondents have pleaded *inter-alia* that they are ready to refund the actual amount to the complainant in two or three instalments within four months and in light of above assurances, the complaint case of the complainant may be disposed of.

4. On basis of pleadings of the parties, submissions of the complainant and learned lawyer on behalf of the Respondents, the following points are formulated to adjudicate the case:-

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- (1) Whether the complainant is entitled for refund of total principal amount Rs.16,00,000/- and Service Tax amount Rs.43,151/- along with accrued interest @ 18% per annum thereon against the Respondents?
- (2) Whether the complainant is entitled for compensation of Rs.2,00,000/- against the Respondents for his mental and physical harassment?
- (3) Whether the complainant is entitled for litigation cost against the Respondents?

Point No.(1):

5. Admittedly, the complainant, Sri Bikash Chandra Roy on the basis of an advertisement entered in to Oral Agreement and assurance on 13-11-2013 with Respondent No.1. M/s Agrani Homes Pvt. Ltd. through its C.M.D., Respondent No.2, Sri Alok Kumar for purchasing a flat having super built up area 1300 sq.ft. preferably in South West corner on 2nd floor in Block-M of the project namely; "I.O.B. Nagar" at Sarai, Near Danapur Railway Station on consideration of Rs.21,00,000/-. Later on, a K.Y.C. was also filled up between the complainant and authorised signatory of the Respondents, which has been brought on record by the complainant, which

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supports the claim of the complainant about the total consideration fixed between the parties for sale/purchase of the flat. The complainant has stated that he has paid Rs.16.00 lacs by means of cheques as well as cash, which excludes Service Tax Rs.43,151/- and rest amount Rs.5,00,000/- has to be paid at the time of delivery of possession of the flat. The complainant has filed photocopies of money receipt of Rs.4,00,000/- dated 11-12-2013, money receipt of Rs.6,00,000/- dated 13-11-2013, money receipt of Rs.2,00,000/- dated 14-03-2014, money receipt of Rs.1,00,000/- dated 21-04-2014 and money receipt of Rs.3,00,000/- dated 14-01-2015. The money receipts filed by the complainant show that the complainant has paid the principal amount Rs.16,00,000/- through cheques and cash Rs.43,151/- to the Respondents. The Respondents have assured to the complainant that the flat completed in all respect may be delivered to him within 36 months with grace period of 6 months after approval of Map from P.M.C. It is alleged by the complainant that M.O.U. was taken back by the Respondent No.2, Sri Alok Kumar with the assurance that the same may be converted in to Agreement for Sale, but the same was never returned to him. He has further stated that Respondents have assured that the Map has already been presented before P.M.C. for its approval and soon they will get approval and construction work shall start in April, 2015. The

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complainant believed on the words of the Respondent No.2, since the construction of other Blocks of the said building was going on, but when construction of Block-M did not start for a long period, then he enquired from other sufferers, who told that the Respondents have not presented the Map of Block-M for approval of P.M.C. So, he met several times with the Respondent No.2, Sri Alok Kumar for refund of his paid principal amount, but the Respondent No.2 for one or other reasons avoided the refund of the principal amount to the complainant.

6. On going through the record, it appears that the Respondents have applied for Bihar RERA Registration with respect to the project "I.O.B. Nagar" Block M to Q, but still they have not submitted approved Map of Block-M and that is why RERA signatory authority on 26-12-2019 through letter No.RERA/PROJ.REG-468/2018/1633 has issued 'defect letter' to the Respondents to file approved Map of said Block along with approved Maps of different projects of the Respondents, which shows that the project "I.O.B. Nagar" Block-M is ongoing and it has not got RERA registration and the Map is still not approved from competent authority. It is also clear that still all required legal formalities have also not been fulfilled by the Respondents for start the project. Rather, they are reluctant about the progress of the project, so there is no fault on the part of the complainant, as he cannot wait for indefinite period

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for completion and delivery of the flat to him. He may also have some purpose for his residence in Patna, which has been frustrated. So, naturally the complainant has the right to get refund of his principal amount/consideration and since there is fault on the part of the Respondents, they cannot deduct any amount from the principal amount paid by the complainant. It is also to be added that since the Respondents used this amount in their business without giving delivery of the flat to the complainant, they have to pay interest on the said amount. However, the Respondents have refused refund of Service Tax amount Rs.43,151/- and also interest thereon. The Respondent may/may not have deposited Service Tax with Government, but if they would not have deposited, they have to pay with interest, but if they have deposited then they have to refund without interest. At this place, I presume that they would have deposited the same with Government and they must refund the same amount Rs.43,151/- without interest and as the same was deposited with Government, they will get adjusted the said amount in their future projects.

7. The complainant has claimed compound interest @ 18% per annum. The Respondents are running the present project as well as other projects in Patna and reportedly out of Patna as well. So, the payment of compound interest @ 18% per annum will adversely affect the business of the Respondents and it will also adversely affect the interest of the other

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consumers of the Respondents. So, in such circumstances, compound interest @ 18% appears much higher. I think, in the above facts and circumstances, simple interest on the paid principal amount will justify the end. It is also to be noted that Rules 17 and 18 of Bihar Real Estate (Regulation and Development) Rules, 2017 says that 2% above M.C.L.R. of S.B.I. has to be paid on principal amount. The present M.C.L.R of S.B.I. is about 8.20% for more than 3 years, so, if 2% is added, it will come to 10.20%. Hence, the Respondents have to pay simple interest @ 10.20% on paid principal amount Rs.16,00,000/-.

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

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.
11-12-2013	4,00,000.00	10-01-2020	4,00,000.00	2,52,606.03
13-11-2013	6,00,000.00	10-01-2020	6,00,000.00	3,76,994.46
14-03-2014	2,00,000.00	10-01-2020	2,00,000.00	1,18,809.03
21-04-2014	1,00,000.00	10-01-2020	1,00,000.00	58,359.00
14-01-2015	3,00,000.00	10-01-2020	3,00,000.00	1,52,713.68
TOTAL	16,00,000.00	-	16,00,000.00	9,59,482.50

On calculation of simple interest @ 10.20% per annum on principal amount Rs.16,00,000/- paid to the Respondents on

different occasions till date comes to Rs.9,59,482.50. Hence, the Respondents have to pay simple interest Rs.9,59,482.50 till date along with principal amount Rs.16,00,000/- to the complainant. The Respondents, in addition, have to refund Rs.43,151/- Service Tax paid by the complainant to the Respondents. Accordingly, Point No.(1) is decided in positive in favour of the complainant and against the Respondents.

Point No.(2):

9. The complainant has claimed compensation of Rs.2,00,000/- for his 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.16,00,000/- 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 him in the year 2013. 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 very high in comparison to the rate available in the year 2013. Out of total consideration Rs.21,00,000/-, the complainant has paid Rs.16,00,000/-, which is about 76.19% of the total consideration and the Respondents are still running the business of building construction. So, taking all situations in mind and the amount Rs.16,00,000/- paid by the

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complainant, Bikash Chandra Roy, Rs.2,00,000/-, which is about 12.50% of the principal amount paid by the complainant, will be appropriate amount to be paid by the Respondents to the complainant as compensation 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):

10. The complainant has repeatedly visited the office of the Respondents and consulted them as well as their staffs several times for refund of his principal amount, but neither the Respondents nor their staffs have given any attention towards his request till filing of the present complaint petition. The complainant would have incurred not less than Rs.20,000/- for conveyance to the office of the Respondents, conveyance to RERA Court, Court Fee, paper documentation, engagement of lawyer etc., 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.20,000/- 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 at litigation cost of Rs.20,000/- (Rupees twenty thousand only) against the Respondents. The Respondents are directed to refund the paid principal amount Rs.16,00,000/-

(Rupees sixteen lacs only) along with simple interest Rs.9,59,482.50 (Rupees nine lacs fifty nine thousand four hundred eighty two and fifty paise only) @ 10.20% per annum till date to the complainant. The Respondents are further directed to pay simple interest at the same rate 10.20% on remaining principal amount since tomorrow till refund to the complainant. The Respondents are further directed to pay Rs.2,00,000.00 (Rupees two lacs only) as compensation to the complainant for his mental and physical harassment. There 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.

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Sd/-
(Ved Prakash)
Adjudicating Officer
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