



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

**4TH & 6TH FLOOR, BIHAR STATE BUILDING CONSTRUCTION CORPORATION CAMPUS
HOSPITAL ROAD, SHASTRI NAGAR
PATNA-800023**

RERA/CC/1797/2020

RERA/AO/626/2020

Sri Sardar Manikant, S/o Sri Umesh Prasad
@ Umesh Prasad Yadav, R/o Laharia Pokhar,
P.O.+P.S.-Barh, District-Patna-803213.

... Complainant

Versus

1. M/s S.D. Construction and Developers

Through it's Director,

2. Sri Sanjeev Raj, Director, S/o Sri Rajendra
Prasad Sinha, R/o B-331, Mitra Mandal
Colony, "Saket Vihar", Anishabad, Patna-
800002.

Marketing Office:

401, Divya Apartment, Beside Chandrabanshi
Niketan, Near Passport Office, Digha Road,
Ashiyana, Patna-800014

... Respondents

Present:

**Sri Ved Prakash
Adjudicating Officer**

Appearance:

For Complainant

- In person

For Respondents

- Sri Rajesh Kumar, Advocate

ORDER

10-06-2021 This complaint case is filed by the complainant, Sri Sardar Manikant against the Respondent No.1, M/s S.D. Construction and Developers through it's Director, Respondent No.2, Sri Sanjeev Raj, u/s 31 read

with Section-71 of Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as the “Act, 2016”) for refund of his advanced principal amount Rs.7,80,000/- along with accrued interest, @ 18% per annum thereon and compensation for his economical, physical and mental harassment with litigation cost, consequent to non-delivery of Duplex Bungalow allotted to him.

2. In nutshell, the case of the complainant is that the complainant, Sri Sardar Manikant, Lt Commander in Indian Navy and presently posted in Kochi (Kerala) has booked on 10-03-2016 Duplex Bungalow No.9 having plot area 1200 sq.ft.in the project “Sri Ganesh Township Duplex Bungalow” of the Respondents on consideration of Rs.28.00 lacs. Thereafter, a registered Agreement for Sale No.11489 dated 04-10-2016 was executed between the complainant, Sri Sardar Manikant on one side and Respondent No.1, M/s S.D. Construction and Developers through it’s Director, Respondent No.2, Sri Sanjeev Raj on other side for sale/purchase of Duplex Bungalow No.9 having plot area 1200 sq.ft. situated at Mauza-Painal, Pargana-Maner, Survey Thana-Bihta, Sub-Registry Office-Danapur and Sadar Registry Office and District-Patna under Thana No.70, Tauzi-Government of Bihar, Khata No.784, 298 bearing Plot No.8651 on consideration of Rs.28.00 lacs, out of which the complainant has paid Rs.7.00 lacs plus additional Rs.80,000/- as Registration and Administrative Expenses Fee to the Respondents. Further case is that the Director, Respondent No.2, Sri Sanjeev Raj has assured him that the Duplex Bungalow will be completed and delivered to him after 18 months. However, till now there has not been any

construction and the Respondents have no intention to complete it in future. Further case is that the Respondents have denied to refund his principal amount Rs.7,80,000/-. Hence, he being harassed has filed the present complaint case against the Respondents with above reliefs.

3. On appearance, the Respondents have filed reply pleading *inter-alia* that an Agreement for Sale was made between alleged land owner, Sri Jitendra Yadav and Sri Arjun Rai and another Agreement was made between Sri Rohit Rai with the Respondents. As per Sale Agreement, the Respondents have announced for construction of the project "Sri Ganesh Township Duplex Bungalow" over the said plot and after getting such knowledge, the complainant and others approached to the Respondents. Thereafter negotiations and going through the papers, the complainant accepted to purchase a Duplex Bungalow. Prior to acceptance of the proposed Duplex Bungalow, the complainant has also made enquiry in the locality and thereafter he accepted the proposal of the respondents. Further case of the Respondents is that the land owners, Sri Jitendra Yadav, Sri Arjun Rai and Sri Rohit Rai had been delaying execution of Sale Deed on one or other pretext. So, after enquiry, the Respondents have come to know that the said Sri Jitendra Yadav, Arjun Rai and Rohit Rai have played fraud with them. Thereafter, the Respondents have filed a complaint case no.4614/2017 before the Court of Ld. CJM, Patna and the same is still pending before the Court of Ld. Judicial Magistrate First Class-21, Patna and another complaint case no.5479/2018 was also filed before the Ld. CJM, Patna and the same is pending before the Court of Ld. Additional Chief Judicial Magistrate-II, Patna for disposal. Further case is that the

Respondents have paid Rs.1,12,00,000/- to the land owners Sri Jitendra Yadav and Sri Arjun Rai and Rs.13,62,000/- to Sri Rohit Rai, who is tort of land sellers and purchasers business. The Respondents have no other remedy to refund the principal amount of the complainant without refund of the said amount and the said matter is sub-judice before the aforesaid learned Courts. The Respondents have not committed any offence either with the complainant or any other person. Hence, the allegations of the complainant are not acceptable, as the Respondents are innocent. Therefore, the proceedings of this case may be stayed till disposal of above complaint cases, which are still pending for disposal.

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

- (i) Whether the complainant is entitled for refund of his principal amount Rs.7,00,000/- and Rs.80,000/- expensed in purchase of stamp paper etc. along with accrued interest @ 18% per annum thereon against the Respondents ?
- (ii) Whether the complainant is entitled for compensation for his economical, physical and mental harassment against the Respondents?
- (iii) Whether the complainant is entitled for litigation cost against the Respondents?

Point No.(i):

5. Admittedly, the Respondents have offered to the complainant for purchase of a Duplex Bungalow in their project “Sri Ganesh Township Duplex Bungalow” and after negotiation, the complainant has booked on 10-03-2016 Duplex Bungalow No.9 having plot area 1200 sq.ft. in the above project of the Respondents situated at Mouza-Painal, Pargana-Maner, Survey Thana-Bihta, Sub-Registry Office-Danapur and Sadar Registry office and District-Patna. The complainant has filed photocopy of Booking Application Form, which support the case of the complainant. Later on 04-10-2016 the complainant, Sri Sardar Manikant on one side and Respondent No.1, M/s S.D. Construction and Developers through it’s Director, Respondent No.2, Sri Sanjeev Raj on other side executed registered Agreement for Sale No.11489 for sale/purchase of Duplex Bungalow No.9 in the above project of the Respondents situated in Mouza-Painal, Sub-Registry Office-Danapur, District-Patna on consideration of Rs.28.00 lacs, out of which the complainant has paid Rs.7.00 lacs including Service Tax Rs.26,250/- through NEFT to the Respondents, for which the authorised signatory of the Respondents has issued money receipt no.070 dated 10-03-2016 worth Rs.2,80,000/- and money receipt no.090 dated 01-10-2016 worth Rs.4,20,000/-, which is also mentioned in the Agreement for Sale. Neither the Respondents have denied the payment of Rs.7.00 lacs by the complainant in their reply nor issuing of receipts by them of the above amount. Hence, it is established that the complainant has paid Rs.7.00 lacs as advance principal amount out of the total consideration of Rs.28.00 lacs to the Respondents.

6. The Respondents have promised in Agreement for Sale that construction of the Duplex Bungalow shall be completed within one year with relaxation of 6 months, provided that the time for completion shall be deemed to have been extended in the event of non-availability of building materials or delay in receipt of instalments of the consideration amount from the buyers/vendees of other flats/bungalows and/or due to Force Majeure. If the Developers/Vendors are unable to give possession of Duplex Bungalow to the buyer/vendee on the above account or any other reasonable cause, the buyer/vendee may not be entitled to any damage whatsoever, but shall be entitled to receive back the entire money paid by him to the Developers/Vendors. It appears that more than 5 years have elapsed since execution of Agreement for Sale, but neither the Respondents have got approval of Map of the project from the competent authority nor registration of the project from RERA, Bihar, which shows that the Respondents are completely reluctant about their responsibilities towards the interest of the allottee. Section 14(1) of the Act, 2016 says that:-

“The proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, lay-out plans and specifications as approved by the competent authority”.

It is clear that up till now the Respondents have not got the required approval of the above project from the respective authorities, so it is not possible for them to complete the same within the stipulated period mentioned in the Agreement for Sale. The Respondents have filed photocopy of one unregistered Agreement for Sale dated 20-01-2015 executed between the land

owners, Sri Jitendra Kumar, S/o Sri Lala Rai, R/o Village-Bela, P.O.-Newra. P.S.- Bihta, District-Patna and Respondent No.1, M/s S.D. Construction and Developers through it's Director, Respondent No.2, Sri Sanjeev Raj for sale of 5 *Bigha* 17 *Katha* land @ Rs.10.00 lacs per *katha*, for which the Respondents have paid Rs.60.00 lacs as an advance amount to the land owners. It is very surprising that neither the Respondent No.2, Sri Sanjeev Raj has got the said Agreement for Sale registered nor payment receipt has been obtained from the land owners and filed on the record. It shows that the Respondents have done nothing towards the development of the project, rather they have done only the formalities to show that they are active towards their responsibilities. I am further surprised to see the basis on which the Agreement for Sale was executed by the Respondents with the complainant and others. The promise given in the Agreement for Sale for completion of the project appears to have been mentioned half-heartedly, otherwise the Respondents should have performed all the proceedings of the project in a well planned manner. I further think that it is the responsibility of the Respondents to start and complete the project in a legal manner and provide all the amenities as per promise given in the Agreement for Sale. If there is dispute between the land owners and the Respondents, then the complainant cannot be asked to wait indefinite period for delivery of the possession of the Duplex Bungalow, which also find support from the ruling of Hon'ble Supreme Court of India in Fortune Infrastructure and Others Vs. Trevor D, Lima and Others (2018)5 SCC 442. So, the pleadings of the Respondents to stay the proceedings of this case are not tenable in the eye of law. I further think that the criminal complaint cases filed by the Respondent No.2, Sri Sanjeev Raj against the

land owners, Sri Jitendra Yadav and others may take their recourse for order, but at this stage of proceedings of this case, it is unreasonable to say that they are unable to refund the principal amount of the complainant during the pendency of complaint cases against the land owners. In the above circumstances of this case, it appears that the complainant is not going to get delivery of possession of the Duplex Bungalow No.9 as required by him and he cannot be asked to wait indefinite period for delivery of the Duplex Bungalow. So, it is quite reasonable for the complainant to demand cancellation of his allotment and thereafter get refunded his principal amount Rs.7.00 lacs against the Respondents. Hence, the Respondents have to refund the principal amount Rs.7.00 lacs to the complainant without delay and deduction.

7. The complainant has also claimed interest @ 18% per annum on paid principal amount Rs.7.00 lacs and Registration and Administrative Expenses Rs.80,000/- from the Respondents. It is fact that the Respondents have retained the principal amount Rs.7.00 lacs of the complainant since 10-03-2016 till date, so the Respondents have to pay interest on respective principal amounts for it's retention period. Hon'ble Supreme Court of India in Alok Shankar Pandey Vs. Union of India and Others on 15-02-2007 in Appeal (Civil) 1598/2005 has held that:

“it may be mentioned that there is mis-conception about the interest. Interest is not a penalty or punishment at all, but it is normal accretion on capital. For example; if ‘A’ had to pay ‘B’ certain

amount, say 10 years ago, but he offers that amount to him today, then he has pocketed the interest on the principal amount. Had 'A' paid that amount to 'B' 10 years ago, 'B' would have invested that amount somewhere and earned interest thereon, but instead of that 'A' has kept that amount with himself and earned interest on it for this period. Hence, equity demands that 'A' should not only pay back the principal amount, but also the interest thereon to 'B'."

The Hon'ble Apex Court in the above ruling has allowed interest @ 12% per annum. The Respondents have stated in the Agreement for Sale that vendee/buyer shall not be entitled for any damage whatsoever, but shall be entitled to receive back the entire money paid by him to the developers/vendors. I think, when the Respondents have used this amount in their business development, then they have to pay interest for such retention period, which also find support of above ruling of the Hon'ble Apex Court. Now, I have to see as to how much rate of interest may be allowed to the complainant against the Respondents?

The rule 17, 18 of the Bihar Real Estate (Regulation and Development) Rules, 2017 says;

"the rate of interest payable by the promoter to the allottee or allottee to the promoter, as the case may be, shall be 2% above the P.L.R./M.C.L.R. of State Bank of India (S.B.I.) prevailing on due date of

amount and the same has to be paid within 60 days.”

Presently, the MCLR of SBI is 7.30% per annum for a home loan of 3 years or more and if 2% is added, it will come 9.30% per annum. Hence, the Respondents have to refund the principal amount Rs.7.00 lacs to the complainant along with accrued simple interest @ 9.30% per annum thereon since the date of payment of respective amount by the complainant to the Respondents till refund of the said amount by the Respondents to the complainant.

8. Though the complainant has not filed any document/receipt etc. for payment of Rs.80,000/- by him to the Respondents, but photocopy of the registered Agreement for Sale dated 04-10-2016 and Challan shows that the Respondent No.2, Sri Sanjeev Raj has presented the Deed of Agreement for Sale before the Sub-Registrar-Danapur for registration, wherein stamp duty of Rs.56,000/- and other Fee Rs.1,500/- was paid. The Respondent No.2, Sri Sanjeev Raj has not claimed payment of Rs.57,500/- from his pocket. So, it is established that the complainant has paid aggregate Rs.57,500/- towards the registration of Agreement for Sale.

The complainant could not show the receipt/document etc. with respect to the expenses made on administrative matter. Hence, in absence of receipt/document etc., the claim of rest amount Rs.22,500/- out of Rs.80,000/-, cannot be accepted to have expensed by the complainant on administrative matter. Therefore, this amount Rs.22,500/- cannot be allowed to be paid to the complainant by the Respondents. It is also not out of place to mention that the Respondents may take back the above mentioned amount

Rs.57,500/- from the Treasury. Hence, there is no problem for them to refund this amount Rs.57,500/- to the complainant, but interest on this amount Rs.57,500/- cannot be allowed to the complainant, as there was/is no benefit on this amount to the Respondents in their business development, as the said amount was deposited in the Treasury. Accordingly I find and hold that the Respondents have to refund Rs.7.00 lacs to the complainant along with accrued interest @ 9.30% per annum thereon since the date of payment of respective amounts by the complainant to the Respondents, till refund of the said amount by the Respondents to the complainant. The Respondents should also refund Rs.57,500/- to the complainant without any interest thereon. Accordingly, Point No.(i) is decided in positive in favour of the complainant and against the Respondents.

Point No.(ii):

9. The complainant has also claimed compensation for his economical, physical and mental harassment against the Respondents. As per Section 72 of the Act, 2016, the Respondents have been benefitted with the advanced principal amount Rs.7.00 lacs paid by the complainant and still the said amount is lying with the Respondents and they are using the same in their business development. Presently, neither the Respondents are able to deliver possession of the said Duplex Bungalow nor they are refunding the above principal amount to the complainant. At present, a Duplex Bungalow of same area will not be available to the complainant in the same locality at the same price, which was available to him in the year 2016. Rather, the price of Duplex Bungalow would have been much higher. The claim of compensation has to be decided in a reasonable manner, keeping in mind the quantum of

advance principal amount paid by the complainant to the Respondents, duration of the amount retained by the Respondents as well as proportion of loss to the complainant and benefit to the Respondents. The complainant has paid Rs.7.00 lacs, out of total consideration Rs.28.00 lacs, which is 25% of the total consideration. In such facts and circumstances, I think, Rs.85,000/-, which is about 12% of the advance principal amount Rs.7.00 lacs paid by the complainant to the Respondents, may be appropriate amount of compensation to the complainant for his economical, physical and mental harassment. Accordingly, Point No.(ii) is decided in positive in favour of the complainant and against the Respondents.

Point No.(iii):

10. The complainant has visited repeatedly to the office of Respondents and he has contacted to the Respondents as well as their staffs several times for refund of his advanced principal amount, but neither the Respondents nor their staffs have given any heed to his request till filing of the complaint case in this Court. Though the complainant has not brought any document on record as proof of actual expenditure incurred by him, but I think, the complainant would not have incurred more than Rs.15,000/- for conveyance to the office of the Respondents, A.O. Court in RERA, Bihar, remittance of Court Fee, paper work etc., which must be paid by the Respondents. Accordingly, I find and hold that the complainant is entitled for Rs.15,000/- as litigation cost against the Respondents. Hence, Point No.(iii) is decided in positive in favour of the complainant and against the Respondents.

Therefore, the complaint case of the complainant, Sri Sardar Manikant 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.7.00 lacs (Rupees seven lacs only) to the complainant along with accrued simple interest @ 9.30% per annum thereon since the date of payment of respective amount by the complainant to the Respondents till refund of said amount by the Respondents to the complainant. The Respondents are further directed to refund Rs.57,500/- (Rupees fifty seven thousand five hundred only) to the complainant, which he has expensed on Stamp Duty and Challan etc. The Respondents are further directed to pay Rs.85,000/- (Rupees eighty five thousand only) to the complainant as compensation for his economical, physical and mental harassment. The Respondents are further directed to comply the order within 60 (sixty) days, failing which the complainant is entitled to get enforced the order through process of the Court.

Sd/-
(Ved Prakash)
Adjudicating Officer
RERA, Bihar, Patna
10-06-2021