



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

RERA/CC/390/2019
RERA/AO/95/2019

1. Sri Dhananjay Kumar, S/o Sri Brajesh Kumar Singh and Smt. Rinki Singh, W/o Sri Dhananjay Kumar – both r/o Village-Haldi Chhapra Nayka Tola, P.O.-Ramnagar, P.S.-Maner, District-Patna, PIN-801108.

... Complainants

Versus

1. M/s Agrani Homes Pvt. Ltd.
Address-1:
Yogipur, Chitragupta Nagar, P.S.-Patrakar Nagar, P.O.-Lohiya Nagar, Kankarbagh, Patna-800020.
2. Sri Alok Kumar, Director, M/s Agrani Homes Pvt. Ltd., 3/9 Sri Krishna Puri, Boring Road, P.S.-Shri Krishna Puri, District-Patna, PIN-800001.

... Respondents

Present:

**Sri Ved Prakash
Adjudicating Officer**

Appearance:

For Complainants : In Person

For Respondents : Sri. Ankit Kumar, Advocate

ORDER

19-10-2020

This complaint petition is filed by the complainant, Sri Dhananjay Kumar and his wife, Smt. Rinki Singh against the Respondent No.1, M/s Agrani Homes Pvt. Ltd. through its

Director, 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 refund of their paid principal amount Rs.16,52,819/- along with accrued interest @ 18% per annum and compensation for their economical, mental and physical harassment, consequent to non-delivery of flat allotted to them.

19-10-2020
CONTINUED

2. In nutshell, the case of the complainants, Sri Dhananjay Kumar and his wife, Smt. Rinki Singh is that the complainant, Sri Dhananjay Kumar is posted in Indian Army and he along with his wife, Smt. Rinki Singh has booked a 3 BHK flat in Block-R of the project “Agrani I.O.B. Nagar” at Sarari, Near Danapur Railway Station, P.O.-Khagaul, District-Patna on 18-04-2015. Thereafter, Sri Dhananjay Kumar and his wife, Smt. Rinki Singh on one side and Respondent No.1, M/s Agrani Homes Pvt. Ltd. through its Director, Sri Alok Kumar on other side have executed a Memorandum of Understanding (M.O.U.) on 30-07-2015 for sale/purchase of a 3 BHK flat in project “Agrani I.O.B. Nagar” at Sarari having super built-up area 1300 sq.ft. in Block-R on consideration of Rs.18.00 lacs plus applicable Service Tax, for which the complainant has paid Rs.16,52,819/- including Service Tax Rs.52,720/- through two cheques. It is further case that the Director, Sri Alok Kumar has assured that

the flat will be completed in all respect within 3-5 years, but even after lapse of 4 years neither the Plan of the project has been approved nor work of the project started as yet. The complainant, Sri Dhananjay Kumar is presently posted at China Border in Himachal Pradesh and he has invested his whole savings earned from his service with the Respondents. There was necessity of money in the family of the complainants in September, 2018, so they have requested for cancellation of booking of the said flat and demanded refund of their advance payment, but instead of refund of the said advanced principal amount, the Respondents for one or other reasons avoided for more than 3 months. Hence, being fed up with the behaviour of the Respondents, the complainants filed the present complaint case with above reliefs against the Respondents.

19-10-2020
CONTINUED

3. On appearance, the Respondents have pleaded *inter-alia* that they are ready to refund the principal amount to the complainants in instalments and they are also ready to obey the orders of the Court, but for refund of the total principal amount, they have demanded some time and in view of their assurances, they have stated that complaint case of the complainants may be disposed of.
4. On the basis of the pleadings and submissions of the complainants and learned lawyer on behalf of the Respondents, the following points are formulated to adjudicate the case:-

- (1) Whether the complainants are entitled for refund of their paid principal amount Rs.16,52,819/- along with accrued interest @ 18% per annum against the Respondents?
- (2) Whether the complainants are entitled for compensation against the Respondents for their economical, mental and physical harassment?
- (3) Whether the complainants are entitled for litigation cost against the Respondents?

19-10-2020
CONTINUED

Points No.(1):

5. Admittedly, the complainants, Sri Dhananjay Kumar and his wife, Smt. Rinki Singh have booked one 3 BHK flat in project "Agrani I.O.B. Nagar" at Sarari, Near Danapur Railway Station, P.O.-Khagaul, District-Patna, having super built-up area 1300 sq.ft. on 3rd floor in Block-R and one free car parking space on ground floor/basement and also undivided share in the land of the said project on consideration of Rs.18.00 lacs plus applicable Service Tax. It is also admitted that the complainants have paid Rs.16,52,819/- including Service Tax Rs.52,720/- to the Respondents through two cheques. Further both the parties have admitted in the M.O.U. dated 30-07-2015 itself that the complainants have paid RRs.16,52,819/-. The complainants have filed two receipts in this regard, in which receipt no.1835

dated 11-05-2015 shows receipt of Rs.8.00 lacs through SBI cheque no.064654 and receipt no.157 dated 11-06-2015 of Rs.8,52,819/- through SBI cheque no.064653. Photocopies of aforesaid cheques have also been filed by the complainants. In this way, it is clearly established that the complainants have paid Rs.16,52,819/- to the Respondents as booking amount, out of total consideration Rs.18.00 lacs plus Service Tax. Both the parties have also signed K.Y.C, prior to execution of M.O.U. Both the parties have agreed that the project shall be completed within a period of 36 months with relaxation of 6 months after approval of Map from P.M.C., provided that the time for completion shall be deemed to have been extended in the event of non-availability of building materials or delay due to Government Policies affecting the industry or due to Force Majeure. It is also agreed that if the Developer/Vendor is not able to give possession of the said flat to the buyer/vendee on account of reasons 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/her to the Developer/Vendor. However, in para-4 of M.O.U. it has been agreed that if the developer/builder shall not hand over the possession of flat within stipulated period and vendee/buyer wanted to get back his/her money, then developer shall return payments made by the buyer/vendee along with simple interest to buyer/vendee or

19-10-2020
CONTINUED



if the buyer/vendee wanted to get the scheduled flat, the developer/vendor shall pay simple interest on total payments made to the developer/vendor, over the delayed period to the buyer/vendee or buyer/vendee shall be at liberty to transfer adjust his/her said flat with the other flat of vendor/developer's constructed/under construction/proposed housing project. The Respondents have applied for registration of project in RERA, Bihar, but on scrutiny certain defects were found by the officers of RERA, Bihar, for which letter No.RERA/PRO.REG-524/2018/889 dated 26-11-2018 was issued to the Respondents for removal of the defects. On going through this letter, it appears that though the Map of the project has been approved by the Architect, but it is without date and explanation in this regard has been asked from the Respondents by RERA office, but up till now they have not filed any explanation. It shows that it is not clear from the record as to when the Map of the project was approved by the P.M.C. So in absence of any date of approval of the Map, the date of M.O.U. 30-07-2015 may be presumed to be the date of approval of the Map. Hence, the Respondents should have completed the project till 30-01-2019, but the project has not been started as yet by the Respondents. The complainants cannot wait for completion of the project for indefinite period, as their requirement may be urgent. Hence, it is reasonable to demand refund of the advanced principal amount by the

19-10-2020
CONTINUED

complainants and the Respondents must have refunded the advanced principal amount, which they have not done prior to filing of the complaint case by the complainants. In such view of the matter, I find that the complainants are entitled for refund of their advanced principal amount Rs.16,52,819/- without deduction along with reasonable interest.

6. The complainants have claimed interest @ 18% per annum on the principal amount Rs.16,52,1819/- paid by them to the Respondents. The Respondents have requested to allow them to refund the advanced principal amount in instalments. It is also clear that the Respondents have applied for registration of project in RERA, Bihar and they have also obtained approval of the Map of the project from P.M.C. and thereafter, they are ready to start construction of the project as per Plan and specifications. The Respondents are also running other projects in Patna and in other parts of Bihar. In such view of the matter, payment of compound interest @ 18% would not only adversely affect the development of the present project, but also affect the other projects as well as hamper the interest of other home buyers of the Respondents. On the other hand, there will be no much effect on the interest of the complainants, as they are going to repudiate themselves from the project. Hence, I think, instead of levying compound interest, simple interest will justify the end. In such case, rules 17 and 18 of Bihar Real Estate (Regulation

19-10-2020
CONTINUED

and Development) Rules, 2017 may be applicable, according to which the allottee/developer has to pay 2% above the MCLR of SBI. Presently, the MCLR of SBI of loan for more than 3 years loan is 7.3% per annum and if 2% is added, it will come 9.3% per annum. Hence, the Respondents have to refund the principal amount Rs.16,52,819/- along with accrued simple interest @ 9.3% per annum thereon since the date of payment by the complainants till refund by the Respondents to the complainants. Accordingly, Point No.1 is decided in positive in favour of the complainants and against the Respondents.

19-10-2020
CONTINUED

Point No.(2):

7. The complainants have also claimed compensation against the Respondents for their economical, mental and physical harassment. The complainants have cancelled booking of the flat due to delay in construction of the project. As per Section 72 of the Act, 2016 the Respondents are benefitted by using the principal amount Rs.16,52,819/- in their business without giving delivery of possession of the flat to the complainants. Now the complainants may not get a flat of same area in the same locality at the same rate, which was available to them in the year 2015. So, I think, Rs.3,25,000/-, which is about 19.7% of the principal amount Rs.16,52,819/- paid by the complainants to the Respondents may be appropriate amount for compensation to the complainants for their economical, physical and mental

harassment. Accordingly, Point No.(2) is decided in positive in favour of the complainants and against the Respondents.

Point No.(3):

8. The complainants have visited several times to the Respondents office, met with them and their staffs and requested for refund of their paid principal amount, whereon, the Respondents and their staffs did not give any attention which compelled the complainants to file this case. The complainants would have naturally incurred expenses in travelling to the office of the Respondents to meet them and their staffs and also for filing the present complaint case in RERA, Bihar, preparation of documents, payment of Court Fee etc. Though the complainants have not brought on record the actual expenditure incurred by them for this purpose, but I think, in all the process, the complainants would not have incurred more than Rs.25,000/-, which must be paid by the Respondents. Accordingly, Point No.(3) is decided in positive in favour of the complainants and against the Respondents.

Therefore, the complaint case of the complainants, Sri Dhananjay Kumar and Smt. Rinki Singh 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 principal amount Rs.16,52,819/- (Rupees sixteen lacs fifty two thousand eight hundred nineteen only) along with



accrued simple interest thereon @ 9.3% per annum since the date of payment by the complainants to the Respondents till refund by the Respondents to the complainants. They are further directed to pay Rs.3,25,000/- (Rupees three lacs twenty five thousand only) to the complainants as compensation for their economical, mental and physical harassment. The Respondents are directed to comply the order within 60 (sixty) days, failing which the complainants are entitled to get enforced the order through process of the Court.

19-10-2020
CONTINUED

Sd/-
(Ved Prakash)
Adjudicating Officer
RERA, Bihar, Patna
19-10-2020