



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

**RERA/CC/761/2019**

**RERA/AO/199/2019**

Sri Avinash Kumar, s/o Sri Ram Janam  
Sinha, r/o At+P.O.-Masaurhi, Mohalla-  
Taregna Gola, Patna, PIN-804452.

Present Address:

C/o Sri Prem Shankar Singh, Pragati Vihar  
Colony, West of Jagdish Chowk, Jaganpura,  
Patna-800027.

... Complainant

Versus

1. M/s Agrani Homes Pvt. Ltd. House  
No.15, Ward No.1FA, Patliputra Colony,  
Patna-800013.

Through:

2. Sri Alok Kumar, S/o Sri Padum Singh,  
Director, M/s Agrani Homes Pvt. Ltd.,  
Yogipur, Chitragupta Nagar, P.S.-  
Patrakar Nagar, P.O.-Lohiya Nagar,  
Kankarbagh, Patna-800020.

... Respondents

**Present:**

**Sri Ved Prakash  
Adjudicating Officer**

Appearance:

For Complainant : Sri Ajit Kumar, Advocate

For Respondents : (1) Sri Mohit Raj, Advocate  
(2) Sri Ankit Kumar, Advocate  
(3) Sri Shantanu, Advocate

**ORDER**

21-10-2020

This complaint petition is filed by the complainant,  
Sri Sri Avinash Kumar 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 his principal amount Rs.15,50,000/- along with accrued interest @ 18% per annum and compensation for his economical, mental and physical harassment, consequent to non-delivery of flat allotted to him.

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2. In nutshell, the case of the complainant is that the complainant, Sri Avinash Kumar has booked a flat on 02-10-2016 in South-West corner of Block-O in project “I.O.B. Nagar” at Sarari, Near Danapur Railway Station, having super built-up area 1300 sq.ft. on consideration of Rs.17.00 lacs with other amenities of Rs.2.00 lacs plus Service Tax Rs.76,500/-. Thereafter, both the parties have executed Memorandum of Understanding (MOU) on 11-04-2017 with respect to said flat having super built-up area 1300 sq.ft. with one reserve free car parking space in ground floor/basement as also undivided share in the land of said project on consideration of Rs.17.00 lacs with other amenities of Rs.2.00 lacs plus Service Tax Rs.76,500/-. The complainant has paid Rs.15,50,000/- at the time of booking and it was agreed that Rs.2,16,746/- plus applicable Service Tax has to be paid by the vendee to the vendor at the time of delivery

of possession of the said flat. It was also agreed between the parties that the project shall be completed within a period of 36 months with a relaxation of 6 months after approval of the Map from P.M.C., provided 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 Force Majeure. It is further case that in spite of assurance, till filing of the complaint petition neither the Respondents have started construction of the project nor refunded the principal amount to the complainant. The complainant is residing in a rented house paying rent and also paying E.M.I. with interest to the Bank. Hence, being fed-up with the behaviour of the Respondents, he has filed the present complaint petition with above reliefs against the Respondents.

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

- (1) Whether the complainant is entitled for refund of his paid principal amount Rs.15,50,000/- along with accrued interest @ 18% per annum against the Respondents?
- (2) Whether the complainant is entitled for compensation against the Respondents for his economical, mental and physical harassment?
- (3) Whether the complainant is entitled for litigation cost against the Respondents?

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Points No.(1):

5. Admittedly, the complainant, Sri Avinash Kumar has booked one 3 BHK flat having super built up area 1300 sq.ft. in Block-O of project "Agrani I.O.B. Ngar" at Sarari, Near Danapur Railway Station, P.O.-Khagaul, District-Patna with one free car parking space on ground floor/basement and also undivided share in the land of the said project on consideration of Rs.17.00 lacs plus applicable Service Tax and both the parties have filled-up K.Y.C. on 02-10-2016. It is also admitted that both the parties have executed Memorandum of Understanding (MOU) on 11-04-2017 with respect to the above flat and the complainant has paid Rs.15,50,000/- out of total consideration Rs.17.00 lacs plus applicable Service Tax. It was also agreed between them that

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final amount Rs.2,16,746/- plus Service Tax has to be paid by the vendee to the vendor at the time of delivery of possession of the said flat. The complainant has filed photocopies of the cheques handed over to the Respondents. Further, it is to be added that the advance payment amount Rs.15,50,000/- is already mentioned as paid in the MOU executed between the parties, which is available on record. Admittedly both the parties have agreed that the Respondents shall hand over the flat completed in all respect to the complainant within a period of 36 months with a relaxation of six months after approval of Map of the project from P.M.C., provided that the time of completion of the project 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 was also agreed that if the developer/vendor is not able to give possession of the said flat within the stipulated period on account of the above reasons or any reasonable cause, the buyer may not be entitled to any damage whatsoever, but shall be entitled to receive back the entire money paid by him to the developer/vendor.

However, in para-4 of M.O.U. it is agreed that if the developer/builder shall not hand over the possession of flat within stipulated period and buyer/vendee wanted to get his/her

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money back, then developer/builder shall return the payment made by the buyer/vendee along with simple interest to the buyer/vendee or if the buyer/vendee wanted to get scheduled flat, the developer /vendor shall pay simple interest on the total payments made to the developer/vendor, over the delayed period to the buyer/vendee or the buyer/vendee shall be at liberty to transfer/adjust his/her said flat with other flat of vendor/developers constructed/under construction / proposed housing project.

6. The Respondents have applied for registration of the project in RERA, Bihar, but certain defects are found during the scrutiny by the officers of RERA, Bihar and a letter No.RERA/PRO.RG-468/2018/1633 dated 26-12-2019 with respect to defects in the application for registration was issued to the Respondents to remove the same till 20-01-2020, but up-till-now the Respondents have not removed these defects. It also appears that the Respondents have not filed approved Map of Block-O of the project "I.O.B. Nagar" in RERA, Bihar and that is why the project could not be registered. It shows that the Respondents are totally reluctant about the progress of the project, otherwise they would have got approved the Map of the project and filed the same in RERA, Bihar for registration of the project. The Respondents have not filed approved Map of the

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project, so it could not be established as to whether the Map of the project has been approved by P.M.C. or not and in absence of approved Map, what is the date of approval of the Map is not known to the Court. Hence, in absence of availability of approved Map of the project, the date of execution of MOU 11-04-2017 is presumed as date of approval of Map and accordingly, the project should have been completed till 11-10-2020. But, as alleged by the complainant, neither Map of the project has been approved by the competent authority nor the construction work has started, as yet. Hence, in such circumstances if the complainant is willing to cancel the allotment of his flat from the project "I.O.B. Nagar" of the Respondents, there is no unreasonability, as he cannot wait for indefinite period for delivery of the allotted flat, because there may be different type of necessities to different persons. In such view of the matter, I think, the Respondents must cancel allotment of the flat and refund the principal amount to the complainant without any delay and deduction. Accordingly, the complainant is entitled for refund of his principal amount Rs.15,50,000/- along with reasonable accrued interest thereon from the Respondents without deduction.

7. The complainant has demanded compound interest @ 18% per month on principal amount Rs.15,50,000/- paid to the

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Respondents. On going through the record, it appears that the Respondents have applied for registration of the said project in RERA, Bihar, but on scrutiny of the application certain defects including non-filing of approved Map of the project “I.O.B. Nagar” were found by the officers of RERA, Bihar. But, however, the Respondents are showing their positive gesture for starting the project. The Respondents are running other projects in Patna and in other parts of Bihar. So, taking all materials into consideration, levying of compound interest @ 18% per annum will not only adversely affect the development of the present project as well as their other projects, but also it will hamper the interest of other home buyers in various projects of the Respondents. On the other hand, there will not be much effect against the interest of the complainant, as he is going to repudiating himself from this project. In such view of the matter, instead of compound interest, I think, simple interest will justify the end. In such cases, rules 17 and 18 of Bihar Real Estate (Regulation and Development) Rules, 2017 are applicable, according to which the vendor/developer has to pay 2% above the MCLR of SBI. Presently, MCLR of SBI for a loan for more than 3 years is 7.3% per annum and if 2% is added, it will come to 9.3% per annum. Hence, the Respondents have to pay simple interest @ 9.3% per annum on the principal amount



Rs.15,50,000/- since the date of payment by the complainant to the Respondents till the date of refund by the Respondents to the complainant. Accordingly, Point No.(1) is decided in positive in favour of the complainant and against the Respondents.

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Point No.(2):

8. The complainant has also claimed compensation against the Respondents for their economical, mental and physical harassment. The complainant has cancelled the booking of the flat due to delay in construction of the project. As per Section-72 of the Act, 2016, the Respondents are benefitted in their business by using the principal amount of Rs.15,50,000/- paid by the complainant without giving delivery of possession of the flat to the complainant. Now the complainant will not get a flat of same area in the same locality at the same rate, which was available to him in the year 2016-17. So, I think, Rs.3,00,000/-, which is about 19% of the principal amount Rs.15,50,000/- paid by the complainant to the Respondents, may be appropriate amount for compensation to the complainant for his economical, physical and mental harassment. Accordingly, Point No.(2) is decided in positive in favour of the complainant and against the Respondents.

Point No.(3):

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9. The complainant has visited several times to the Respondents office, met with them and their staffs and requested for refund of his paid principal amount, whereon, the Respondents and their staffs did not give any attention, which compelled the complainant to file this case. The complainant would have naturally incurred expenses in travelling to the office of the Respondents to meet with them and their staffs and also in filing the present complaint case in RERA, Bihar, preparation of documents, engagement of lawyer, payment of Court Fee etc. Though the complainant has not brought on record the actual expenditure incurred by him for this purpose, but I think, in all the processes, the complainant 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 complainant and against the Respondents..

Therefore, the complaint case of the complainant, Sri Avinash Kumar 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.15,50,000/- (Rupees fifteen lacs fifty thousand only) along with accrued simple interest thereon @ 9.3% per annum since the date of payment by the complainant till the date of refund by the Respondents to the complainant.



They are further directed to pay Rs.3,00,000/- (Rupees three lacs only) to the complainant as compensation for his economical, 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 order through process of the Court.

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