

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

**RERA/CC/214/2019  
RERA/AO/41/2019**

Sri Sonu Kumar, S/o Late Dhruv Narayan Prasad, Village+Post-Juafar, P.S.-Chauradano, ... Complainant(s)  
District-East Champaran, Motihari, Bihar

Versus

M/s Niwas Construction Pvt. Ltd.,  
Through Director, Sri Amit Kumar Poddar,  
S/o Late Pramod Narayan Poddar, "Gauri Shankar Complex", Lohia Nagar, Kankarbagh, ,  
Patna-800001 ... Respondent(s)

**Present:**

**Sri Ved Prakash  
Adjudicating Officer**

Appearance:

For Complainant(s) Mr. Rakesh Roshan Singh, Advocate

For Respondent(s) Mr. Prabhat Kumar, Advocate

**ORDER**

26-08-2019

This complaint petition is filed by the complainant, Sonu Kumar u/s 31 read with Section 71 of Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as the "Act, 2016") against the respondent, M/s Niwas Construction Pvt. Ltd. through its Proprietor, Amit Kumar Poddar for direction to allot/register two flats of 2 and 3 BHK bearing No.301 and 306 in "City (Sumitra)

Enclave” apartment, Anandpuri, Boring Road, Patna in favour of the complainant and further to direct the Respondent to pay heavy compensation to the complainant for his mental and physical harassment.

2. In nutshell, the case of the complainant is that the complainant, was in need of residential flats, so he contacted the then proprietor of the Respondent company (Late Pramod Narayan Poddar) in the year 2011 and requested him to allot him two flats – one of 3 BHK and the other of 2 BHK and consequently the Respondent had allotted the Flat No.301 and 306 in “City Enclave”, apartment at Anandpuri, Boring Road, Patna, which was earlier known as “Sumitra Enclave”. The Respondent had demanded Rs.1,800/- per sq.ft. for both the flats and there was a garage and the complainant had agreed to the allotment. It is further case that on 26-02-2011 the complainant has paid booking amount Rs.2,551/- to the Respondent towards registration and got money receipt no.50 dated 26-02-2011. Thereafter, on the same day the complainant has paid Rs.8.00 lacs through cheque to the deceased Respondent, Pramod Narayan Poddar. Later on, the complainant has repeatedly requested for execution of Agreement for Sale with the Respondent in respect of the said flats, but for one or other reasons, he was not ready to execute the Agreement for Sale. Once again in 2014 when the complainant tried to request the Respondent to execute the Agreement for Sale, the Respondent (Late Pramod Narayan Poddar) assaulted him at his residence for which the complainant has filed Case

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No.42(C)/2014, which is still pending in the Court. In the year 2015, the Respondent, Late Pramod Narayan Poddar compromised the matter and a compromise petition was prepared by scribe, Vinod Kumar and thereafter Pramod Narayan Poddar and the complainant put their signatures on the said compromise petition, wherein undertaking was given by Late Pramod Narayan Poddar that he would pay Rs.20.00 lacs to the complainant and thereafter the complainant will not claim flats from him. The complainant had also agreed to the said proposal. Thereafter, the Respondent, Late Pramod Narayan Poddar had issued two cheques bearing no.077441 dated 25-09-2015 and no.077442 dated 10-09-2015 for Rs.8.00 lacs and 12.00 lacs respectively of State Bank of Bikaner & Jaipur. Later on the complainant presented the said cheques, which were dishonoured in the Bank. Hence, the compromise petition remain unimplemented. So, the complainant has filed Kankarbagh P.S. Case No.536/2016, which is still pending in the Court. In such circumstances, equity demands that the present Proprietor, Respondent Amit Kumar Poddar, who is successor of Pramod Narayan Poddar may be directed to execute Sale Deed with respect to two flat nos.301 and 306 in favour of the complainant and he should also be directed to pay heavy compensation to the complainant for mental and physical harassment.

3. On appearance, the Respondent has filed reply pleading *inter-alia* that the case is not maintainable in the eye of law as well as facts. He has further stated that since this case is filed against the dead person, Late Pramod Narayan Poddar, who had expired on 08-02-2019, hence,

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the case is abated and it cannot be continued in the name of present Respondent, Amit Kumar Poddar. It is further case that the complainant has filed complaint case no.42(C) /2014 for similar cause of action against Late Pramod Narayan Poddar when he was alive and he was granted anticipatory bail by the learned Sessions Judge, Patna On 03-01-2015 through ABP No.23096/2014. The complainant has refused to take back the amount during the Proceedings of the hearing of bail petition, which he had paid to Late Pramod Narayan Poddar. The complainant has again filed Kankarbagh P.S. Cse No.536/2016 for the same cause of action, wherein the respondent Late Pramod Narayan Poddar was granted anticipatory bail by the Court of learned Sessions Judge, Patna. Again the complaint has brought this case on the basis of chit of paper alleged to have been written by Late Pramod Narayan Poddar, which is not an Agreement. Hence, it is not binding in the eye of law and mere a chit of paper cannot assume the character of an enforceable Agreement. Hence, the claim of the complainant cannot and should not be acceptable in the eye of law. The contents of alleged chit of paper has been written by Late Pramod Narayan Poddar under duress and coercion of the complainant, Sonu Kumar, which is not enforceable and acceptable in the eye of law and it has to be proved by the complainant, in which he has failed. Hence in light of legal and factual aspects, the case of the complainant is bogus and false and is fit to be dismissed.

4. The learned lawyer for the Respondent much emphasised that since the complainant has filed this case against the Respondent Pramod Narayan Poddar, who is already dead on 08-02-2019, hence, the case is abated and cannot continue against the present Respondent, Amit Kumar Poddar, which is opposed by the learned lawyer for the complainant and he submitted that the deceased Respondent, Pramod Narayan Poddar was alive at the time of filing of this case. So, this case cannot be abated as submitted by the learned for the Respondent. On going through the record, it appears that the learned lawyer for the Respondent has filed Death Certificate of deceased Pramod Narayan Poddar, wherein his date of death is mentioned as 08-02-2019 at Ashoka Hospital, Patna Sadar, Patna, Bihar. It also appears from the record that though the complainant has filed this case against the Respondent, Pramod Narayan Poddar on 21-01-2019, but in order sheet dated 29-03-2019 it is mentioned that the complainant has filed a petition mentioning therein that the Respondent, Pramod Narayan Poddar had died on 09-02-2019 and his work is being done by his son, Amit Kumar Poddar as proprietor of the firm. Hence, name of Pramod Narayan Poddar may be deleted and name of his son Amit Kumar Poddar may be substituted on his place. Since the record was pending for appearance, hence, petition of the complainant was allowed on the same date 29-02-2019 and the name of present Respondent Amit Kumar Poddar was substituted in the place of his father late Pramod Narayan Poddar. It is also clear that on 21-01-2019 when complainant has filed this case

against him, Promod Narayan Poddar was alive. In this way, this case is not abated as argued by the learned lawyer for the Respondent, rather this case is continue against the present Respondent, Amit Kumar Poddar, as he is successor of his father.

5. On the basis of the pleadings of the parties and submissions of learned lawyers, the following points are formulated for adjudication of the case:-

- (1) Whether the Respondent, Late Pramod Narayan Poddar had executed the alleged compromise petition and he put his signature along with complainant and his scribe Vinod Kumar?
- (2) Whether the present Respondent, Amit Kumar Poddar, S/o Late Pramod Narayan Poddar is liable to pay Rs.20.00 lacs along with accrued interest to the complainant?
- (3) Whether the Respondent may be directed to execute/register the flat No.301 and 306 of 2 BHK and 3 BHK in "City (Sumitra) Enclave" in favour of the complainant?
- (4) Whether the complainant is entitled to receive only Rs.8.00 lacs and accrued interest against the present Respondent, Amit Kumar Poddar?

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- (5) Whether the complainant is entitled for compensation against the present Respondent for mental and physical harassment?

6. Points No.1 to 4:

Points no.1 to 4 being inter-related are taken together for discussion. Admittedly, original Respondent, Late Pramod Narayan Poddar had agreed to sell two flats of 2 and 3 BHK numbering 301 and 306 having area of 1016 sq.ft and 1384 sq.ft @ Rs.1,800/- per sq.ft. in "City Enclave" previously known asn "Sumitra Enclave" and the complainant has paid booking amount Rs,2,551/- and advance amount Rs.8.00 lacs on 26-02-2011 to the deceased Respondent, Pramod Narayan Poddar out of total consideration Rs.43,20,000/-. The complainant has claimed that after 10 days, when he contacted the deceased Pramod Narayan Poddar he sought adjournment of one and half months and when he again tried to contact after one and half months, he learnt that both the Respondents- father and son have gone to jail in connection with a murder case registered at Airport P.S.. When they came out after one year, the complainant again contacted and repeated the request, then the Respondent again sought time for execution of Agreement for Sale. When the complainant again requested them for execution of Agreement for Sale on 29-12-2013, the Respondent Late Pramod Narayan Poddar and the present Respondent, Amit Kumar Poddar abused and assaulted to him, for which he had lodged a complaint case no.42(C)/2014).

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7. The Respondent has filed photocopy of bail order dated 03-01-2015 passed by learned Sessions Judge, Patna passed in ABP No.23096/2014, wherein the learned lawyer for the Respondent has submitted that as per application for allotment of flats, the complainant had to deposit the remaining amount of consideration within one month, but the same was not deposited within such period, so the construction material cost had gone high. Hence, the Agreement for Sale failed. The Respondent was ready even then to refund the deposited advance money, but the learned lawyer for the complainant submitted that the complainant was not ready for taking refund of advance money, rather he wanted the execution of Sale Deed by the Respondent. The complainant has asserted that since the Respondents have been sent to jail in April, 2011 in Airport P.S. Case, so he could not deposit the remaining amount of the consideration and when he learnt in 2013 that the Respondents have come out of the jail then on 29-12-2013 he requested them to execute the Agreement for Sale. However, before the learned Sessions Judge, Patna the Respondents have claimed that they were allowed bail in the month of October, 2011 itself, but the complainant kept mum during the whole one year, which shows that the complainant himself has done mistake and has not deposited the remaining consideration money of the flats with the Respondents. There may be possibility that during the period of April, 2011 to December, 2013, the price of construction materials would have gone high and cost of flats would have been more than that agreed



between the parties, so naturally there was fault on the part of the complainant and not on the Respondent for cancellation of the allotment of the flats. Even then, the Respondent was ready to refund the advance money along with interest without cut-off, but the complainant denied to accept refund.

8. The complainant has claimed that on 10-09-2015 the deceased Respondent, Pramod Nrayan Poddar had agreed to refund Rs.8.00 lacs plus Rs.12.00 lacs for abstaining from the claim for the booked flats and at the same time the deceased Respondent executed the compromise petition with the complainant. The said compromise petition was scribed by scribe, Vinod Kumar and both the parties and scribe had put their signatures on the said compromise petition. The deceased Respondent, Pramod Narayan Poddar had issued two cheques worth Rs.8.00 lacs and Rs.12.00 lacs. Later on, these cheques were dishonoured, for which the complainant had lodged F.I.R. under Kankarbagh P.S. Case No.536/2016 for cheque bouncing against the Respondents.

9. The complainant has filed photocopy of alleged compromise petition, which bears signature of deceased Pramod Narayan Poddar, complainant, Sonu Kumar and scribe, Vinod Kumar. The complainant had asserted that the said petition was scribed by Vinod Kumar. The complainant has not filed original compromise petition, which was necessary for verification. On query as to why original compromise petition is not brought on record and photocopy of the same is brought

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on record, the complainant answered that the original copy of the compromise petition was retained by Late Pramod Narayan Poddar and photocopy was handed over to him, which is filed by him in the Court. The learned lawyer for the Respondent submitted that this petition was obtained under duress, coercion as well as on political pressure, so it could not be admitted in the eye of law as well as facts. On going through this document, it appears that there are several over-writings in the dates and amount written in the alleged compromise petition. The date of execution is also not written on this compromise petition. The complainant could not explain in the Court about non-writing of the dates of execution and as to who has made cuttings on the dates in the compromise petition. The complainant has stated the presumptive date in the Court, for execution of the compromise petition, which is not admissible in the eye of law. For legal admission of the alleged compromise petition, the complainant should have contacted the scribe, Vinod Kumar, who would have disclosed the state of affairs of the execution. Now, the original Respondent, Pramod Narayan Poddar is dead, who might have disclosed the circumstances for execution of the compromise petition by the parties in presence of the scribe. There is no other witness named in the petition, who might have disclosed the circumstances of execution of the compromise petition. There is no address of the scribe, Vinod Kumar, who may be identified and verified by the Respondent. This scribe has also not written his number allotted by any learned advocate/authority. In this way, from all

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circumstances, it appears that neither there is original alleged compromise petition nor real scribe is available nor there is any witness nor there is original deceased Respondent, Pramod Narayan Poddar for proving the execution of alleged compromise petition and simply there is mere presence of complainant, which in suspicious circumstances cannot be accepted. In such circumstances I find and hold that the execution of compromise petition cannot be basis for justification of demand for Rs.20.00 lacs from the present Respondent, who is nowhere present during execution of this compromise petition. I also find that this petition cannot be held as Agreement between the parties, as there is no terms and conditions decided. Therefore, the demand for Rs.20.00 lacs by the complainant from the present Respondent, Amit Kumar Poddar is hereby disallowed/rejected.

10. The complainant has filed photocopy of booking receipt No.50 dated 26-02-2011 and advance money receipt no.51 dated 26-02-2011 wherein Rs,2,551/- and Rs.8.00 lacs have been received by the deceased Respondent, Pramod Narayan Poddar from the complainant. The Respondent was/is ready to refund the booking and advance money along with interest to the complainant, to which the learned lawyer for the Respondent submitted that, as since November, 2011 to December, 2013 the complainant has kept mum and during this period the price of the flats have also gone high due to hike in building construction materials since the time of booking of the flats by the complainant, hence, the flats were sold to someone else by the

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Respondent. The complainant has not brought any evidence on the record to prove that the flats are still not sold to anyone by the deceased/present Respondent. In this way, it is clear that both the flats No.301 and 306 have already been sold to anyone else by the Respondent, so execution/registration of Agreement for Sale and registration of Sale Deed cannot be done by the present Respondent. However, the complainant has paid Rs.2,551/- as booking amount and Rs.8.00 lacs as advance of consideration of the flats. Both sides have admitted these payments and the present respondent is ready to refund these amounts to the complainant, as he is successor of properties of deceased Respondent, Pramod Narayan Poddar. Hence, he is responsible for the refund of the said money. Accordingly, the point No.1 to 3 are decided in negative against the complainant and in favour of the Respondent.

As per discussions in previous paras, it is clear that the present Respondent, Amit Kumar Poddar has to pay the advance money as well as booking amount to the complainant along with interest, for which he is also ready. As per Rule 17 and 18 of Bihar Real Estate (Regulation and Development) Rules, 2017, the allottee/complainant is entitled for 2% above the MCLR rate of SBI. Presently, the MCLR rate of SBI is 8.40%, so the complainant has to pay simple interest @ 10.40% on the advance money Rs.8.00 lacs and booking amount Rs.2,551/-

11. The payment by the complainant to the Respondent, refund by Respondent to the complainant and interest payable by the Respondent to the complainant may be seen through the chart detailed as under:-

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Amount Rs.	Date of payment by the complainant	Date of Refund by the Respondent	Interest payable by the Respondent Rs.
2,551.00	26-02-2011	26-08-2019	2,255.08
8,00,000.00	26-02-2011	26-08-2019	7,07,200.00
		<b>TOTAL</b>	<b>7,09,455.08</b>

Thus, simple interest on above principal amount Rs.8,02,551/- has come to Rs,7,09,455.08 and this amount has to be paid by the present Respondent, Amit Kumar Poddar along with principal amount and booking amount Rs.15,12,006.08 to the complainant. Accordingly, point No.4 is decided in positive in favour of the complainant and against the Respondent.

12. Point No.5:

The complainant has also claimed heavy compensation against the Respondent. As per Section 72 of the Act, 2016, the Respondent has been benefitted with the amount of Rs.8,02,551/- paid by the complainant till it is refunded to the complainant. Naturally, the Respondent has used this amount in his business without giving delivery of possession of the flats to the complainant. It is also not out of place to mention that due to hike in price of the flats, the Respondent was not ready to execute the Sale Deed/Agreement for Sale on same

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consideration in favour of the complainant, which was available at the time of booking of the flats on 26-02-2011. Though the present rate of flats in the same locality has not come on the record, but admittedly the rate of the flats would have gone high in comparison to the year 2011. Since the complainant has paid only Rs.8,02,551/- as advance money out of total consideration of Rs.43,20,000/-, which is about less than 20%. So, taking all circumstances in mind and amount paid by the complainant, I think, Rs,50,000/- will be appropriate compensation to be paid by the Respondent to the complainant. Accordingly Point No.5 is decided in positive in favour of the complainant and against the Respondent.

13. The complainant has repeatedly visited the office of the Respondent and consulted to him as well as his staffs several times for execution of Sale Deed/Agreement of Sale, so he would have incurred about Rs.15,000/- in conveyance to the office of the Respondent, A.O. Court in RERA, Bihar, paper documentation, RERA, Bihar filing fee and fee of his learned lawyer. Hence, I find and hold that the complainant is entitled for the litigation cost of Rs.15,000/- against the Respondent.

14. From the above discussion of facts, documentary evidence and other materials available on the record, it is apparently clear that the complainant has established that he had paid booking amount Rs.2,551/= and advance money Rs.8.00 lacs towards the consideration of the flats. But, as discussed, the said flats have already been sold to someone else, so presently it is not possible to sell these flats to the

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complainant. Hence, the claim of the complainant for execution/registration of Sale Deed/Agreement for Sale being unreasonable, cannot be accepted. Accordingly, it is rejected. However, the above booking and advance amount Rs.8,02,551/- paid by the complainant to the deceased Respondent, Pramod Narayan Poddar has to be refunded. As discussed earlier, since the present Respondent, Amit Kumar Poddar is successor of properties of his father, Pramod Narayan Poddar, he is responsible to refund the booking and principal amount Rs.8,02,551/- along with interest Rs.7,09,455/- to the complainant. The complainant is also entitled for compensation of Rs.50,000/- for his mental and physical harassment along with litigation cost of Rs.15,000/- from the Respondent.

Therefore, the complaint case of the complainant is partly allowed on contest with cost of Rs.15,000/-. Hence, the relief of the complainant to direct the Respondent to execute/register the Sale Deed/Agreement for Sale with respect to the flat Nos.301 and 306 of “:City (Sumitra) Enclave” is hereby dismissed. The Respondent is directed to refund booking and principal amount Rs.8,02,551/- (Rupees eight lac two thousand five hundred and fifty one only) along with accrued interest Rs.7,09,455/- (Rupees seven lac nine thousand four hundred and fifty five only) @ 10.40% to the complainant. The Respondent is further directed to pay the interest at the same rate of 10.40% on the principal and booking amount Rs.8,02,551/- (Rupees eight lac two thousand five hundred and fifty one only) till the actual

payment to the complainant. He is further directed to pay Rs.50,000/- (Rupees fifty thousand only) as compensation to the complainant for his mental and physical harassment. The Respondent is directed to comply the order within 60 (sixty) days, failing which the complainant may enforce the order through process of the Court.

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Sd/-  
(Ved Prakash)  
Adjudicating Officer  
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