

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

**RERA/CC/368/2019
RERA/AO/80/2019**

Smt. Kanak Kumari, W/o Sri Rahul
Kumar, Flat No.104, Dakshineswar
Apartment, Nandanpuri, Khajpura,
Bailey Road, Patna-800014 ... Complainant

Versus

M/s DPM Infrastructure & Housing
Pvt. Ltd.
Through:-Mr. Pankaj Kumar Singh,
Director, Indu Shree Apartment, Sur
Sudha Lane, Boring Canal Road
(East), Opp-Singh Bajaj, Patna-
800001.

... Respondent

Present:

**Sri Ved Prakash
Adjudicating Officer**

Appearance:

For Complainant In person

For Respondent Mr. Mani Shankar Kumar, Advocate

ORDER

29-08-2019

This complaint petition is filed by the complainant, Kanak Kumari against the Respondents, M/s DPM Infrastructure & Housing Pvt. Ltd. through its Director, Mr. Pankaj Kumar Singh u/s 31 read with Section-71 of Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as the "Act,

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2016) for refund of her principal amount Rs.9.50 lacs along with accrued interest and compensation.

2. In nutshell, the case of the complainant is that the complainant, Kanak Kumari had booked a flat no.204 having super built-up area of 940 sq.ft. and car parking space in “Basudev Kunj” Apartment of the Respondents company, M/s DPM infrastructure & Housing Pvt. Ltd. for a total consideration of Rs,15,98,000/-. The complainant has paid Rs.9.50 lacs between 12-06-2015 and 13-10-2015 to the Respondent. Later on 16-04-2018 an Agreement for Sale was executed between both the parties. During this period she waited for delivery of possession of the said flat, but of no avail, even the Respondents have not given proper response to the complainant. When the complainant found that it is not possible to get possession of the said flat in near future, she has cancelled the booking and demanded refund of her principal amount from the Respondents. Later on, the Respondent, Pankaj Kumar Singh has issued cheques, which dishonoured due to insufficient fund in his account. Now a days, the Respondents have left to pick up telephone calls of the complainant. Hence, she has filed this complainant case with the above reliefs against the Respondents.
3. After appearance, the Respondents have admitted in their reply that the complainant has paid Rs.9.50 lacs as

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advance for purchase of a flat No.204 in their project “Basudev Kunj”, but due to some unavoidable reasons and technical difficulties, there were disturbances in the progress of the project. However, the problems are likely to be sorted out and the project will now run in full swing. It is further case that the Agreement for Sale annexed with the complaint petition is void, as from perusal of the Agreement for Sale it appears that the aforesaid Agreement was prepared on 01-03-2018, but it was signed on 16-04-2018 and copy of this Agreement for Sale is not in the record of the Respondents company and signature of the Respondent, Pankaj Kumar Singh is also doubtful. However, the Respondents are still ready to hand over allotted flat after sometime to the complainant and in alternate arrangement, it may be shifted in another project as per the choice of the complainant. Since the other project is also going on, there are financial problems, as such, if the complainant want to withdraw the money, there may be financial crunch before the Respondents. However, even then the Respondents are ready to refund the advance money in instalments to the complainant. In light of above facts, the complaint petition of the complainant may be disposed of.

4. On the basis of pleadings of the parties and submissions of the complainant and learned lawyer on behalf of the

Respondents, following points are formulated for adjudication of this case:-

- (1) Whether the Respondents are responsible for refund of only the principal amount Rs.9.50 lacs to the complainant?
- (2) Whether the complainant is entitled for principal amount Rs.9.50 lacs along with accrued interest thereon?
- (3) Whether the complainant is entitled for compensation against the Respondents for her mental and physical harassment?

5. Points No.1 and 2:

Admittedly, the complainant has paid booking amount Rs.9.50 lacs between 12-06-2015 and 13-10-2015 out of total consideration Rs.15,98,000/- for purchase of a flat No.204 along with car parking space in “Basudev Kunj” Apartment of the Respondent’s company. The flat has a built-up area of 940 sq.ft. The complainant has stated that both the parties have executed Agreement for Sale of the flat No.204 in “Basudev Kunj” Apartment, but the Respondents have stated that it is void document and there is also doubt in signature of the Respondent, Pankaj Kumar Singh. It may be noted that the Respondent, Pankaj Kumar Singh has not completely denied the putting of his signature on the relevant Agreement for Sale. In my opinion, when the Respondent has not clearly

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denied the execution of Agreement for Sale and signature thereon, it cannot be doubtful as pleaded by the Respondents.

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If the Agreement for Sale is doubtful, then why the Respondent is admitting the payment of booking amount Rs.9.50 lacs by the complainant. I think, the Respondent is creating doubt on Agreement for Sale due to the decision of terms and conditions fixed therein, which cannot/should not be accepted as the Respondents are not illiterate, rather they are developers and Pankaj Kumar Singh has signed with open eyes after reading and understanding the contents of the said Deed. The Respondents have still not got RERA registration and there is no work done by the Respondents on this site that is why they have agreed to refund the booking amount to the complainant. It is also not out of place to mention that the Respondent, Pankaj Kumar Singh has issued two cheques, which dishonoured due to insufficient fund in his account. The complainant may if advised, to take recourse of Criminal Court for bouncing of cheques as per Section 138 of Negotiable Instrument Act, 1881. It has come to the knowledge of this Court that it has become habit of the Respondent to issue cheques with malafide intention not to pay amount to the complainant and others, otherwise he would have honoured the cheques issued by him. The Respondents have further claimed that since they are running other projects, so due to

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withdrawal of fund by the complainant, they will be in financial crunch, so they will pay only the principal amount. The Respondents have not brought any document on the record, which may show that the Respondents have completed the said project 70 to 90% and in absence of any documentary evidence, it appears that such type of defence has been taken by the Respondents only to avoid payment of interest on principal amount to the complainant. The Hon'ble Supreme Court in Civil Appeal No.3182/2019 SLP No.1795/2017 in Kolkata West International City Pvt. Ltd. Vs. Devasis Rudra has held that "the buyer cannot be required to wait indefinitely for possession. Developer has to refund the buyers money". There may be his/her requirement of flat in time and place and after expiry of said time and place the purpose of the purchaser is frustrated. Any party can change his/her choice for residence, only on his/her requirement. But, there is no such choice brought by the complainant, so her money has to be refunded, on which the Respondents either by choice or by boundation are ready to refund the principal amount to the complainant. The Respondents have used the principal amount of the complainant for their business, so they must refund the principal amount along with accrued interest thereon.

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6. As per rule 17, 18 of Bihar Real Estate (Regulation and Development) Rules, 2017, the Respondents have to pay 2% above the MCLR of SBI on the principal amount. Recently, the MCLR of SBI is 8.45% and if 2% is added, it will come 10.45%. The complainant has paid Rs.9.50 lacs to the Respondents, so the interest will be calculated @ 10.45% on the above principal amount.
7. The amount paid by the complainant to the Respondents, the amount refunded by the Respondents to the complainant and interest payable by the Respondents to the complainant on the said amount may be seen through a chart hereunder:-

Amount paid by the complainant to the Respondent		Amount refunded by the Respondent to the complainant		Accrued Interest Payable by the Respondent to the complainant
Date	Amount Rs.	Date	Amount Rs.	Amount Rs.
12-06-2015	1,50,000.00	29-08-2019	1,50,000.00	66,042.65
12-06-2015	1,50,000.00	29-08-2019	1,50,000.00	66,042.65
12-06-2015	49,000.00	29-08-2019	49,000.00	21,569.87
12-06-2015	1,51,000.00	29-08-2019	1,51,000.00	66,470.27
02-09-2015	1,50,000.00	29-08-2019	1,50,000.00	62,553.40
02-09-2015	1,50,000.00	29-08-2019	1,50,000.00	62,553.40
24-09-2015	80,000.00	29-08-2019	80,000.00	32,821.13
24-09-2015	20,000.00	29-08-2019	20,000.00	8,205.28
13-10-2015	50,000.00	29-08-2019	50,000.00	20,237.26
Total	9,50,000.00	Total	9,50,000.00	4,06,495.91

Thus, simple interest on the remaining advance money comes to Rs.4,06,495.91 as on today and this amount has to be paid by the Respondents to the complainant. Accordingly, Point No.1 is decided in negative against the Respondents and

in favour of the complainant and Point No.2 is decided in positive in favour of the complainant and against the Respondents.

8. Point No.3:

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The complainant has also claimed maximum compensation applicable under the Act, 2016. As per Section 72 of the Act, 2016, the Respondents have been benefitted with the amount of Rs.9.50 lacs paid by the complainant till this amount is refunded to the complainant. The Respondents have used the above amount in their business without giving delivery of the flat and car parking space to the complainant as per booking and execution of deed of Agreement for Sale. Now, the complainant will not get other flat in the same locality at the same rate, which was available to her at the time of booking in the year 2013. The present rate of flats in the same locality has not come on the record, but naturally the rate of flats would have gone very high in comparison to the rate available in the year 2013 to 2018. Since the complainant has paid Rs.9.50 lacs out of total consideration Rs.15,98,000/- it is about 55% of the total cost and the Respondents have claimed that they are still running the project in the name of "Basudev Kunj" and other projects are also running by the Respondents company. So, taking all situations into the mind and the amount paid by the

complainant to the Respondents, I think, Rs.40,000/- will be appropriate amount to be paid by the Respondents to the complainant as compensation for her mental and physical harassment. Accordingly, Point No.3 is decided in positive in favour of the complainant and against the Respondents.

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9. The complainant has visited repeatedly to the office of the Respondent, Pankaj Kumar Singh and has consulted him as well as his staffs at several times for refund of her advance principal amount, but neither the Respondent nor his staffs have taken pain to consider her request till filing of the instant complaint case in this Court. The complainant would not have incurred more than Rs.10,000/- for conveyance to the office of the Respondents, A.O. Court in RERA, Bihar, paper documentation etc., which must be paid by the Respondents. Accordingly, Point No.3 is decided in positive in favour of the complainant and against the Respondents. Hence, I find and hold that the complainant is entitled for Rs.10,000/- as litigation cost against the Respondents.

Therefore, the complaint case of the complainant is allowed on contest with litigation cost of Rs.10,000/- (Rupees seven thousand only) against the Respondents. The Respondents are directed to refund the principal amount Rs.9.50 lacs along with accrued simple interest Rs.4,06,495.91 @ 10.45% per annum as on today on the said

principal amount. The Respondents are further directed to pay simple interest @ 10.45% per annum on the principal amount till actual payment. The Respondents are further directed to pay Rs.40,000/- to complainant as compensation for her mental and physical harassment. The Respondents are directed to comply the order within 60 (sixty) days, failing which the complainant is entitled to enforce the same through process of the Court.

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Sd/-
(Ved Prakash)
Adjudicating Officer
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