

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

**RERA/CC/296/2019  
RERA/AO/54/2019**

Smt. Rubi Kumari, C/o Sri Anjani  
Kumar, Yo China, 929 Super Market,  
Bandar Bagicha, Patna-800001. ... Complainant

Versus

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

**Present:**

**Sri Ved Prakash  
Adjudicating Officer**

Appearance:

For Complainant                      In person

For Respondents                      Mr. Mani Shankar Kumar, Advocate

**ORDER**

29-08-2019                      This complaint petition is filed by the complainant, Rubi  
Kumari against the Respondent, 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,  
2016) for refund of her principal amount Rs.2.00 lacs along  
with accrued interest and compensation

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2. In nutshell, the case of the complainant is that the complainant, Rubi Kumari had booked a flat no.206 on 25-04-2013 in "Shivdhari Enclave" of the Respondents' company DPM Infrastructure & Housing Pvt. Ltd. and paid Rs.2.00 lacs through two cheques, in which one was bearing cheque no.055476 worth Rs.1.50 lacs of IDBI, Kankarbagh and the other cheque no.396452 worth Rs.50,000/- of SBI, Maurya Lok and she got receipt no.074 dated 25-04-2013 from the Respondent. The Respondents have assured to hand over the flat within 4 years, but there is no progress as yet, Hence, she demanded refund of her principal amount, whereon the Respondent, Mr. Pankaj Kumar Singh has handed over cheques twice, but both cheques dishonoured due to insufficient fund in the account of the Respondents. Now the Respondents do not pick up the calls of the complainant to answer about the refund. Hence, being bound she has filed this complaint petition with the above reliefs against the Respondents.

3. After appearance, the Respondents have admitted in their reply that the complainant has paid Rs.2.00 lacs as booking amount in respect of flat no.206 in "Shivdhari Enclave" of the Respondents. It is further case that the building will be completed within 4 years from the approval of the Map by the competent authority. The Respondents have not fixed any

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specific date to complete the project. The complainant has shown her inability to purchase the flat. Hence, the Respondents shall return the booking amount after deduction of 2% cancellation charge. However, the Respondents are ready to hand over the said flat in "Shivdhari Enclave". Hence, in light of above statement, this case may be disposed off.

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

(1) Whether the complainant is entitled for refund of her booking amount Rs.2.00 lacs along with accrued simple interest of nationalised Bank against the Respondents?

(2) Whether the Respondents are entitled to deduct 2% as cancellation charge from the whole booking amount Rs.2.00 lacs?

(3) Whether the complainant is entitled for compensation against the Respondents?

5. Points No.1 & 2: Both of these points being inter-related are taken together for discussion. Admittedly, the complainant has booked flat no.206 in "Shivdhari Enclave" of the Respondents' company, DPM Infrastructure & Housing Pvt. Ltd. and she had paid Rs.2.00 lacs through two

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aforementioned cheques dated 25-04-2013 to the Respondents, which also finds support from photocopy of the booking receipt No.074 dated 25-04-2013. The complainant has filed photocopies of two cheques issued by the Respondent, Pankaj Kumar Singh in the name of Anjani Kumar, husband of the complainant, which were dishonoured due to insufficient fund in the account of the Respondent, which shows that previously the Respondent was ready to refund simply the principal amount Rs.2.00 lacs. Now after filing of the complaint case in the Court, the Respondent is adamant to refund the principal amount after deduction of 2% as cancellation charge. Admittedly, there is no Agreement for Sale executed between the parties, which might have decided the terms and conditions of delivery of the completed flat by the Respondents to the complainant. Section 3 of the Act, 2016 says that the Respondents shall not advertise, market, book, sell, offer for sale or invite persons to purchase any flat, building, apartment, without RERA registration. But, in the instant case, the Respondents have taken advance money for sale of the flat to the complainant without obtaining RERA registration. So, the Respondents have violated the provisions of the Act, 2016 by booking the flat in favour of the complainant. It is also pertinent to note that the Respondents should have provided sanctioned plan, lay-out plan and

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specifications approved by the competent authority at the time of booking of the flat in favour of the complainant, but he has not done so. As such, he has violated the provisions of Section 11(3) of the Act, 2016. The Respondent should have also specified the date of delivery of possession of the flat as per Section 13(2) of the Act, 2016. He should have also disclosed the information to the complainant about the schedule of the completion of the project. But he did nothing, so also he has violated the provisions of Section 19 of the Act, 2016. The Respondent has applied for registration before RERA, Bihar through application ID No.RERAP295201800434-1 and altogether 4 defects were found in his application and he was informed on 27-09-2018 through letter No.RERA/PRO.REG-344 / 2018 / 531, but till now he has failed rectify these defects. The complainant has filed 2 photographs of the site of "Shivdhari Enclave" whereon there is no progress and simply some piling work is done by the Respondents. It shows that still there is no work done by the Respondents on site of the project. In this way, neither there is RERA registration nor he has furnished Plan, Map etc. to the complainant nor there is any Agreement for Sale nor has he disclosed the stage of the flat to the complainant nor the time of delivery of the possession. So, on what basis the Respondents are willing to deduct 2% cancellation charge is

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unknown. Rather, in my mind, it is the adamant and selfishness behaviour of the Respondent that they will not refund the whole principal amount whatever the complainant may do against them. It is also to be noted that in the above circumstances, the Respondents have also done criminal act by issuing cheques towards refund of her principal amount knowing that there is insufficient fund in their account and the cheques issued are bound to bounce, so if she would have been advised, she (complainant) might have lodged criminal case against the Respondents u/s 138 of Negotiable Instrument Act, 1881. It is also to be added that if there would have been progress in the works of the project and the complainant would have decided to cancel booking of the said flat, the Respondents would have right to deduct 2% as cancellation charge or deduct whatever might have been fixed between the parties in Agreement for Sale. But, here this is not the case of the Respondents, rather they themselves failed to do their responsibilities of up-keeping the works in desired phase and handing over possession of the completed flat to the complainant. In this way, I come to the conclusion that the complainant is entitled for refund of her principal amount Rs.2.00 lacs along with accrued interest thereon. But, the Respondents are not at all entitled to deduct cancellation

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charge @ 2% as claimed by them in their reply filed in the Court.

6. As per Rule 17 and 18 of Bihar Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as the "Rules, 2017") the Respondents have to pay 2% above the MCLR of SBI. Now MCLR of SBI is about 8.45% and if 2% is added, it will come 10.45%. On calculation @ 10.45%, the accrued interest will come Rs.1,32,595.71. as on today. So, the Respondents have to refund booking amount along with accrued interest Rs.1,32,595.71 to the complainant. Accordingly, Point No.1 is decided in positive in favour of the complainant and against the Respondents and Point No.2 is decided in negative against the Respondents and in favour of the complainant.
7. Point No.3: The complainant has also claimed compensation applicable under the Act, 2016. As per Section 72 of the Act, 2016, the Respondents have been benefitted with the amount of Rs.2.00 lacs paid by the complainant till the amount is refunded to the complainant. The Respondents have used the above amount in their business without giving delivery of the said flat to the complainant. Now, due to delay in delivery of possession, the complainant has cancelled booking of her flat and she will not get another flat in the same locality at the same rate, which was available at the time of

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booking in the year 2013. The present rate of flat in the said locality has not come on record, but naturally the rate of flats would have gone very high in comparison to the rate available in the year 2013. Though the Respondent is running the project in the name of "Shivdhari Enclave", but there is very slow progress. So, taking all situations in mind and the amount paid by the complainant, I think, Rs.15,000/- will be appropriate to be paid by the Respondent to the complainant as compensation.

8. The complainant has visited repeatedly to the office of Respondent and she has consulted to the Respondent as well as his staffs several times for refund of her advance principal amount, but neither the Respondents nor their staffs have given any heed to her request till filing of the complaint case in this Court. In think, the complainant would not have incurred more than Rs.5,000/- for conveyance to the office of the Respondents, A.O. Court in RERA, Bihar, paper work etc., which must be paid by the Respondents. Accordingly, I find and hold that the complainant is entitled for Rs.5,000/- as litigation cost against the Respondent. Hence, Point No.3 is decided in positive in favour of the complainant and against the Respondents.

Therefore, the complaint case of the complainant is allowed on contest with litigation cost of Rs.5,000/- against

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the Respondent. The Respondents are directed to refund principal amount Rs.2.00 lacs along with accrued interest Rs.1,32,595.71 @ 10.45% on said amount to the complainant. The Respondents are further directed to pay interest @ 10.45% on principal amount till actual payment to the complainant. They are further directed to pay Rs.15,000/- as compensation to complainant for her physical and mental 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.

Sd/-  
(Ved Prakash)  
Adjudicating Officer  
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