

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

**RERA/CC/421/2019  
RERA/AO/94/2019**

Smt. Madhavi Sinha, w/o Sri Bhishma  
Kumar Sinha, r/o 4N L.I.C. Colony,  
District-Patna, PIN-800020. ... Complainant

Versus

1. M/s Agrani Homes Real Service  
Pvt. Ltd.
2. Sri Alok Kumar, s/o Sri Padum  
Singh, Director, Agrani Homes Real  
Service Pvt, Ltd., House No.15, Ward  
No,1 FA, Patliputra Colony, District-  
Patna, PIN-800013. ... Respondents

**Present:**

**Sri Ved Prakash  
Adjudicating Officer**

Appearance:

For Complainant : Mr. Puneet Sidhartha, Advocate

For Respondents : Mr. Ankit Kumar, Advocate

**ORDER**

16-01-2020

This complaint petition is filed by the complainant, Smt. Madhavi Sinha against the Respondent No.1, M/s Agrani Homes Real Service 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 as the "Act, 2016") for refund of

principal amount/consideration Rs.14,63,000/-along with accrued interest @ 18% per annum thereon with litigation cost, consequent to non-delivery of flat allotted to her. She has further sought relief for compensation of Rs.5,00,000/- against the Respondents for her mental and physical harassment.

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2. In nutshell, the case of the complainant is that the complainant, Smt. Madhavi Sinha is that the Respondents had advertised regarding its project for making and allotting flats. On basis of said advertisement, the complainant has approached the Respondent No.2, Sri Alok Kumar for purchasing a flat. As per assurances, the complainant entered into negotiation with the Respondent No.2. Thereafter, a M.O.U. was executed on 30-07-2016 between the complainant Madhavi Sinha and the Respondent No.1, M/s Agrani Homes Real Service Pvt. Ltd. through its Director, Respondent No.2, Sri Alok Kumar for sale/purchase of flat No.203 having area 1090 sq.ft. in Block-B of the project namely "Agrani Sunshine Enclave" on total consideration of Rs.16,56,600/-. The complainant has paid Rs.14,63,000/- including Service Tax, for which the Respondents have issued money receipts on 04-06-2016 and on 03-07-2015. The complainant visited several times in the office of the Respondents to get information about progress of construction of the project, but he did not get any information regarding

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completion and delivery of possession. It was also agreed in the M.O.U. that the project shall be completed within 36 months with grace period of 6 months after approval of Map from P.M.C. On further enquiry, the complainant learned that the project has not started as yet. Thus, the Respondents have taken money from the complainant with wrong intention to defraud him. When the complainant found that the project has not even started, then she filed an application to the Respondents on 01-09-2017 for cancellation of her booking and demanded refund of principal amount. Thereafter, she has also sent a Legal Notice on 12-09-2018 to the Respondents, which was also not responded by the Respondents. Hence, the complainant has filed this complaint case with prayer for above reliefs against the Respondents.

3. On appearance, the Respondents have pleaded *inter-alia* that due to cancellation of flat by the complainant, they are ready to refund the principal amount in 2 or 3 instalments within 3 months and in light of above assurances, the case may be disposed of.
4. On basis of pleadings of parties and submissions of the complainant, her learned lawyer and learned lawyer for the Respondents, the following points are formulated to adjudicate this case:-

- (1) Whether the complainant is entitled for refund of her principal amount Rs.14,63,000/- along with accrued interest @ 18% against the Respondents?
- (2) Whether the complainant is entitled for compensation of Rs.5,00,000/- against the Respondents for her mental and physical harassment?
- (3) Whether the complainant is entitled for litigation cost against the Respondents?

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Point No. (1):

5. Admittedly, the complainant has approached to the Respondents on advertisement to purchase a flat in their project. Thereafter, both the parties entered into negotiation and lastly on settlement a M.O.U. was signed between the Respondent No.1, M/s Agrani Homes Real Service Pvt. Ltd. through its Director, Respondent No.2, Sri Alok Kumar for sale/purchase of flat No.203 in Block-B of the complex "Agrani Sunshine Enclave" having area 1090 sq.ft. on consideration of Rs.16,56,600/- and accordingly in lieu of said amount, she has paid Rs.14,63,000/- including Service Tax, for which the Respondents have issued money receipts on 03-07-2015 and 04-06-2016. The complainant has filed these money receipts dated 03-07-2015 for Rs.7,00,000/- and money dated 04-06-2016 for Rs.7,63,000/- issued by the authorised

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signatory of the Respondents. The payment of the above amount Rs.14,63,000/- has also been admitted in Schedule-III of M.O.U. dated 30-07-2016. Hence, it is well proved from the above facts that the complainant has paid Rs.14,63,000/- to the Respondents. It was also agreed between the parties in M.O.U. that construction of this project shall be completed within 36 months with grace period of 6 months. The complainant visited several times in the office of the Respondents, but she got no information about start of the project. When she made further enquiry, she found that the project has not been started as yet. The Respondents have applied for registration of their project "Agrani Sunshine Enclave", Danapur, wherein certain defects were found during verification of documents and it was found that along with other defects the Respondents have not filed approved Map of the present project and that is why on 19-11-2019 a letter No.RERA/PRO-REG-494/2018/838 has been issued to the Respondents by authorised signatory of RERA, Bihar to remove the defects within 15 days. It appears that since Map of the project itself has not been approved from P.M.C. and RERA Registration has also not been obtained, so how the construction of the project will start by the Respondents? It shows that here, it is fault on the part of the Respondents in not starting and completing the flat even after expiry of

stipulated period of construction in M.O.U. The complainant cannot wait for indefinite period for delivery of her allotted flat. Hence, the Respondents have to refund the principal amount without deduction.

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6. The complainant has stated that she came to know that construction of the building has not started till 01-09-2017, so she has filed an application to the Respondents for cancellation of booking of the flat and refund of her principal amount, as the flat could not completed within that time. The complainant has filed photocopy of letter dated 01-09-2017, which supports that the complainant has requested for refund of her principal amount, as the flat construction has not started at that time by the Respondents.

7. The Respondents have retained the principal amount of the complainant without any progress of the project. They were/are also developing their business in Patna and out of Patna, but the complainant is not getting benefit from such retaining of money. Thus, the Respondents are benefitted with the principal amount paid by the complainant, without giving delivery of possession of the flat to the complainant. Therefore, the Respondents have to pay interest on principal amount paid by the complainant. The complainant has demanded interest @ 18% per annum on principal amount. At this juncture, since the Respondents are running their

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business and developing projects in Patna and out of Patna as well, levying 18% compound interest on principal amount paid by the complainant will cause financial burden on the Respondents, which will adversely affect the interest of other consumers of the Respondents. Hence, it is reasonable to levy simple interest on principal amount of the complainant. It is also not out of place to mention that interest of 18% is much higher, hence, it has to be looked in light of provisions of Rules 17 and 18 of Bihar Real Estate (Regulation and Development) Rules, 2017, which says that 2% above M.C.L.R. of S.B.I. has to be paid on principal amount. Present M.C.L.R. of S.B.I. is about 8.20% for 3 years or more and if 2% is added it will come to 10.20%. Hence, the Respondents have to pay simple interest @ 10.20% on principal amount Rs.14,63,000/- paid by the complainant to the Respondents.

8. The date and amount of payment of principal amount by the complainant, date and amount of refund by the Respondents and interest payable by the Respondents to the complainant may be seen through the chart as under:-

Date of payment by the complainant	Amount paid by the complainant Rs.	Date of refund by the Respondent	Amount of Refund by the Respondent Rs.	Amount of Interest Rs.
03-07-2015	7,00,000.00	16-01-2020	7,00,000.00	3,23,843.06
04-06-2016	7,63,000.00	16-01-2020	7,63,000.00	2,81,435.14
			TOTAL	6,05,278,20

On calculation of simple interest @ 10.20% per annum on principal amount Rs.14,63,000/- paid by the complainant to the Respondents on different occasions till date comes to Rs.6,05,278.20. Hence, the Respondents have to pay simple interest till date Rs.6,05,278.00 along with principal amount Rs.14,63,000/- to the complainant. Accordingly, Point No.(1) is decided in positive in favour of the complainant and against the Respondents.

Point No.(2):

9. The complainant has claimed compensation for her mental and physical harassment against the Respondents. As per Section 72 of the Act, 2016, the Respondents are benefitted by using the amount of Rs.14,63,000/- paid by the complainant in their business, without giving delivery of possession of the flat to her. Now, the complainant will not get a flat of the same area in the same locality at the same rate, which was available in the year 2015. The present rate of flat in the same locality has not come on record from either side, but naturally, the rate of the flat would have gone high in comparison to the rate available in the year 2015. Out of total consideration Rs.16,56,600/-, the complainant has paid Rs.14,63,000/-, which is about 88.35% of the total consideration and the Respondents are still running the business of building construction. So, taking all situations in



mind and the amount paid by the complainant, Rs.2,00,000/- which is about 13.67% of the principal amount paid by the complainant, will be appropriate amount to be paid by the Respondents to the complainant as compensation for her mental and physical harassment. Accordingly, Point No.(2) is decided in positive in favour of the complainant and against the Respondents.

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Point No.(3):

10. The complainant has repeatedly visited the office of the Respondents and consulted them as well as their staffs several times for refund of her principal amount, but neither the Respondents nor their staffs have given any attention towards her request till filing of the present complaint petition. The complainant would have incurred not less than Rs.20,000/- for conveyance to the office of the Respondents, conveyance to RERA Court, Court Fee, paper documentation, engagement of learned lawyer, which must be paid by the Respondents to the complainant. Accordingly, I find and hold that the complainant is entitled for litigation cost of Rs.20,000/- against the Respondents. 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.20,000/- (Rupees

twenty thousand only) against the Respondents. The Respondents are directed to refund the paid principal/consideration amount Rs.14,63,000/-, (Rupees fourteen lacs ninety sixty three thousand only) along with till date simple interest Rs.6,05,278.00 (Rupees six lacs five thousand two hundred and seventy eight only) @ 10.20% per annum. The Respondents are further directed to pay simple interest at the same rate 10.20% since tomorrow till refund of remaining principal amount. The Respondents are further directed to pay Rs.2,00,000/- (Rupees two lacs only) as compensation to the complainant for her mental and physical harassment. There Respondents are directed to comply the order within 60 (sixty) days, failing which the complainant may get enforced the same through process of the Court.

Sd/-  
(Ved Prakash)  
Adjudicating Officer  
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