

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

**RERA/CC/371/2019
RERA/AO/76/2019**

Sri Harish Kumar Srivastava, S/o
Late Brajdev Narayan, r/o Braj
Niketan, Sarvoday Nagar, Chiragora,
Hirapur, Dhanbad, Jharkhand- ... Complainant
826001.

Versus

(1) M/s Agrani Homes Pvt. Ltd.
(2) Alok Kumar, C.M.D., S/o
Sri Padum Singh, Agrani Homes
Pvt. Ltd., House No.15, Ward
No.1FA Patliputra Colony,
Patna-800013. ... Respondents

Present:

**Sri Ved Prakash
Adjudicating Officer**

Appearance:

For Complainant : In person

For Respondents : Mr. Ankit Kumar, Advocate

ORDER

19-12-2019

This complaint petition is filed by the complainant Sri Harish Kumar Srivastava against the Respondent No.1, M/s Agrani Homes Pvt. Ltd. through its C.M.D., 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 delivery of possession of the

allotted flat to him and compensation of Rs.5.00 lacs for his mental and physical harassment. He has further sought relief of interest @ 18% per annum on the total amount paid by him to the Respondents.

19-12-2019
CONTINUED

2. In nutshell, the case of the complainant, is that the complainant, Harish Kumar Srivastava has executed an Agreement for Sale with Respondent No.1, M/s Agrani Homes Pvt. Ltd. through its C.M.D., Respondent No.2, Sri Alok Kumar for Sale/Purchase of a flat No.104 on 1st floor of Block-D of the building named "I.O.B. Main Phase" having super built-up area 1300 sq.ft. and one reserve car parking space on ground floor, common swimming pool and a community hall as also undivided share in land of the building on consideration of Rs.27,50,000/-. It was also agreed between both the parties that the Developer/Vendor shall hand-over the flat completed in all respect along with other amenities till December, 2014 and time of completion shall be deemed to be extended in the event of non-availability of building materials or delay in receipt of instalments of the consideration amount from the buyers/vendees of other flats and/or delay due to Force Majeure. The complainant had paid Rs.22,76,068/- out of the total consideration of Rs.27,50,000/- to the Respondents and had got Money Receipts for the paid amount. The complainant and his wife are senior citizens and they are suffering from high

19-12-2019
CONTINUED

B.P. and diabetes. They have intention to purchase the flat for their residence at Patna, as they cannot move frequently due to knee joint pain to his wife. But, in spite of repeated requests, neither the Respondents completed the project nor delivered possession till date. So, he has filed this complaint petition with the above reliefs against the Respondents.

3 After appearance, the Respondents have filed reply pleading *inter-alia* that the Respondents are always making efforts to complete the project within stipulated time, but due to part payment by several consumers, there has become financial problems in construction, so the project could not be completed and delivery of possession of the flats could not be given to the complainant and others. It is further case that the Respondents needs 2 months further time to complete the said Block-D of "I.O.B. Main Phase". As such, the complaint petition may be disposed of keeping in mind the request of the Respondents.

4. On basis of the pleadings of the parties and submissions of learned lawyers, the following points may be formulated to adjudicate the case:-

(1) Whether the complainant is entitled for interest @ 18% per annum on the paid advance principal amount/consideration Rs.22,76,068/- against the Respondents?

(2) Whether the complainant is entitled for delivery of possession of the flat against the Respondents?

(3) Whether the complainant is entitled for compensation of Rs.5.00 lacs for his mental and physical harassment against the Respondents?

(4) Whether the complainant is entitled for litigation cost against the Respondents?

19-12-2019
CONTINUED

Point No.(1)

5. Admittedly, both the parties have executed Agreement for Sale on 19-09-2012 for sale/purchase of flat no.104 on 1st floor of Block-D of the building "I.O.B. Main Phase" having super built-up area measuring 1300 sq.ft. and one reserve car parking space on the ground floor of the Apartment, one common swimming pool and a community hall as also undivided share in land of the Apartment on consideration of Rs.27,50,000/-. The complainant has stated that he has paid Rs.51,000/- on 01-08-2012, Rs.4,85,068 on 05-10-2012, Rs.3,40,000/- on 17-02-2013, Rs.2,00,000/- on 20-04-2013, Rs.1,00,000/- on 13-05-2013, Rs.3,00,000/- on 06-09-2014, Rs.3,50,000/- on 25-11-2014, Rs.3,50,000/- on 07-04-2015 and Rs.1,00,000/- on 21-01-2017 total Rs.22,76,068/- to the Respondents. The complainant has filed photocopies of money receipts of the above amounts paid to the

19-12-2019
CONTINUED

Respondents, which supports the version of the complainant about payment of advance consideration to the Respondents. The complainant has further stated that he is ready to pay the remaining consideration at the time of delivery of possession of the concerned flat as per Agreement for Sale. The Respondents have agreed in Agreement for Sale that the delivery of possession of the flat complete in all respect will be given to the complainant till December, 2014, provided the completion of the project shall be deemed to be extended in the event of non-availability of building materials or delay in receipt of instalments of the consideration amount from the buyers/vendees of other flats or delay due to Force Majeure. It was also agreed between the parties that if the Developer/Vendor is not able to give possession of the said flat to the buyer/vendee on above account or on any other reasonable cause, the buyer/vendee 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. I think, the above provision of the Agreement executed by the Developer/Vendor is against the natural justice and the complainant cannot be said to be bound by such clause got scribed by the Respondents, as naturally the complainant may be entitled for interest etc. for delay in delivery of flat due to slackness on part of Respondents.

6. The Respondents have not brought any material evidence on record to show that any building material was not available to them during the agreed construction period, for which construction work was affected. They have also not brought any evidence to show that other buyers of the flats have not paid instalments to them during this period. It is also not brought on record that the construction was affected due to Force Majeure. So, there no material brought on behalf of the Respondents to explain the delay in construction of the Apartment. The Respondents have been granted Bihar RERA Registration No.BRERAP00011-10/191/R-364/2019 on24-01-2019 for the project, wherein the commencement of the project has been shown from 24-01-2019 and ending with 31-08-2019. In this way, it is clear that the Respondents are slack in construction and intentionally they have not paid attention towards construction and delivery of flats to the consumers including the complainant. On the other hand, the complainant and his wife are senior citizens and suffering from high B.P. and diabetes and his wife has also joint knee pain and they have intention to purchase the flat for their residence at Patna, as they are unable to move frequently. But, the Respondents for one or other reasons have not taken pain to accede to the requests of the complainant and have not delivered the

19-12-2019
CONTINUED

completed flat to them within the stipulated time. It shows that the Respondents have delayed more than 5 years in completion and delivery of the concerned flat. It also shows that the Respondents have non-cooperative attitude towards the buyers. Hence, the Respondents have to pay for the financial loss as well as mental and physical sufferings of the complainant.

19-12-2019
CONTINUED

7. The complainant has claimed compensation / interest @ 18% per annum on the paid advance consideration against the Respondents for the delay in completion of the project and delivery of possession of the concerned flat to the complainant since December, 2014. I think, the compensation/interest of delayed period after December, 2014 is not admissible, as such amount has been used by the Respondents for construction of the project including the concerned flat and other amenities of the complainant, which also becomes the part of the consideration amount Rs.27,50,000/-. But, since there is delay in delivery of the flat and other amenities to the complainant, so naturally he may be entitled to receive rent of the flat in lieu of non-delivery of flat by the Respondents after December, 2014. The complainant has agreed to purchase 3 BHK flat having area measuring 1300 sq.ft. from the Respondents, for which the rent may be about

Rs.9,000/- per month in the said locality. But, since the complainant has not paid remaining consideration Rs.4,73,932/- to the Respondents, the rent may be fixed at Rs.8,000/- per month instead of Rs.9,000/- per month. Accordingly, I think, the complainant is entitled for rent @ Rs.8,000/- per month against the Respondents since January, 2015 and this amount has to be revised @ 10% higher than the current amount of particular year for each and every subsequent years till delivery of possession of the concerned flat to the complainant by the Respondents. Accordingly, Point No.1 is decided in positive in favour of the complainant and against the Respondents.

19-12-2019
CONTINUED

Pont No.(2):

8. As discussed, the Respondents have got Bihar RERA Registration Certificate for the project and it was scheduled to be completed till 31-08-2019, but it could not be completed within the stipulated time, yet extension was not sought by the Respondents before RERA, Bihar. The complainant has already paid advance consideration Rs.22,76,068/- out of total consideration of Rs.27,50,000/- and he is ready to pay the remaining consideration on delivery of possession of the concerned flat to him. Now, it is turn of the Respondents to complete the project and deliver possession of the flat and other amenities to the

19-12-2019
CONTINUED

complainant. It also appears that the Respondents are slack not only in physical construction of the project, but also in paper works before RERA, Bihar, as they have neither completed the project nor sought extension of the period from RERA, Bihar for completion of the project. However, the complainant has to be granted relief as he is suffering due to wrong activities of the Respondents. In such circumstances, the Respondents may be directed to complete the project and deliver possession of the concerned flat along with other amenities to the complainant at the earliest. Accordingly, the complainant is entitled for delivery of the concerned flat along with other amenities within the stipulated period. Hence, Point No.(2) is decided in positive in favour of the complainant and against the Respondents.

Point No.(3):

9. The complainant has also claimed compensation of Rs.5.00 lacs against the Respondents for his mental and physical harassment. As per Section 72 of the Act, 2016, the Respondents are being benefitted by using the amount Rs.22,76,068/- paid by the complainant for their business without giving delivery of possession till December, 2014 to the complainant. At this juncture, it is also to be mentioned that rent @ Rs.8,000/- per month since January, 2015 with increase @ 10% in each and every subsequent years is being

19-12-2019
CONTINUED

granted to the complainant by the Respondents, but repeated visits and requests by the complainant to the Respondents and their staffs, has naturally caused mental and physical harassment in his old age. So a lump sum amount of Rs.30,000/- may be paid by the Respondents to the complainant. Accordingly, Point No.(3) is decided in positive in favour of the complainant and against the Respondents.

Point No.(4):

10. The complainant has visited several times in the office of the Respondents with request of delivery of possession of the flat, but on non-fulfilment of his demand, he has filed the present complaint petition. It shows that naturally the complainant has incurred expenditure on conveyance to the office of Respondents, A.O. Court in RERA, Bihar, documentation of papers, Court Fee etc., which must be paid by the Respondents. The complainant has not filed any receipts/documents for expenditure incurred in the above process. But, I think, he would not have incurred more than Rs.10,000/- in all the above processes. Accordingly, I find and hold that the complainant is entitled for Rs.10,000/- as litigation cost against the Respondents. Hence, Point No.(4) is decided in positive in favour of the complainant and against the Respondents.

Therefore, the complaint petition of the complainant is allowed on contest at litigation cost of Rs.10,000/- (Rupees ten thousand only) . The Respondents are directed to pay Rs.8,000/- (Rupees eight thousand only) per month as rent since January, 2015 to the complainant. They are further directed to pay revised rent @ 10% more on the current amount of particular year for each and every subsequent years till delivery of possession of the concerned flat to the complainant. The Respondents are further directed to pay Rs.30,000/- (Rupees thirty thousand only) as compensation to the complainant. The Respondents are further directed to deliver possession of the concerned flat along with other amenities to the complainant within the stipulated period. The Respondents are further directed to comply the order within 60 (sixty) days, failing which the complainant may get enforced the order through process of the Court.

19-12-2019
CONTINUED

Sd/-
(Ved Prakash)
Adjudicating Officer
19-12-2019