

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

**RERA ComplaintCaseNo.166/2018
(Adjudicating Officer Case No.23/2019)**

Sri Ramesh Kumar Singh. Flat No.A-8, R.B.I.
Staff Quarters, Road No.10-A, Rajendra Nagar, ... Complainant(s)
Patna-800016.

Versus

M/s Agrani Homes Real Marketing Pvt. Ltd.
Through: Sri Alok Kumar, C.M.D., Khan Villa,
South-West of B.D. Public School, Budha
Colony, Patna-800001. ... Respondent(s)

Present:

**Sri Ved Prakash
Adjudicating Officer**

Appearance:

For Complainant(s)

Sri Ramesh Kumar Singh,
Complainant

For Respondent(s)

Sri SriKrishna Sinha, Advocate
Sri Ankit Kumar, Advocate

ORDER

05-07-2019 This complaint petition is filed by the complainant, Ramesh Kumar Singh against the Respondent, M/s Agrani Homes real Marketing Pvt. Ltd. and its Director, Sri Alok Kumar under the provisions of Sections-31 and 71 of Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as 'Act, 2016') for refund of capital amount Rs.7,12,360/- with interest @ 24% per annum from the date of payment till the date of refund and maximum

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compensation for his mental agony and physical harassment along with litigation cost.

2. In Nutshell, case of the complainant is that on 16-03-2015 he had booked a Duplex No.13 having plot area 900 sq.ft., floor area 1695 sq.ft. on the consideration of Rs.40,68,000/- in the project 'Agrani SBI Nagar' located near By-Pass Thana, Zero Mile, Patna of the Respondent. He had also paid booking amount Rs.4,12,360/- through cheque no.136050 dated 16-03-2015 and had further paid Rs.4.00 lacs through NEFT on 23-04-2015. So he had paid total Rs.8,12,360/- against the said Duplex to the Respondent. During the booking he was informed by the Respondent that the proposed plan has been completed and other sanction has also been obtained from authority for proposed Site Map. Fire clearance is also completed and only P.M.C. clearance has been left, which is in process and will be completed within months and the Duplex will be handed over to him by the end of the year 2017. As per assurance, the complainant had paid Rs.4.00 lacs within one month, so that there may be no delay on his part. But, in the year 2016 the proposed site of the project was unilaterally changed by the Respondent without consent of the complainant. When the complainant felt that there is some malpractice going on by the Respondent and his firm, he submitted an application on 03-12-2016 for cancellation of his booking and refund of his money, but in spite of repeated oral and written reminders, the Respondent has not responded and when he stated that he was going

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to file complaint case against him, then the Respondent has refunded Rs.1.00 lac on 14-12-2018, but thereafter he paid no heed to the request of the complainant. Hence, he filed this complaint case against the Respondent with above reliefs.

3. After appearing, the Respondent has filed reply denying the allegations of the complainant. The Respondent has stated that the company was in process of acquiring land to develop the project in the year 2015 and invested huge amount. The complainant was aware of these facts and knowing all the facts, invested the booking amount in the project. The Respondent has agreed to deliver the Duplex at lesser rate than available in the locality, to the complainant. However, the complainant has cancelled the project in mid-way and requested for withdrawal of money. When the Respondent asked for time, the complainant without providing adequate time presented the instant case against him. The Respondent is ready to return the booking amount to the complainant. After investment of huge amount by the Respondent in the project, filing of the withdrawal application by the complainant has caused financial trouble to the Respondent, for which he has requested for allowing the refund in instalments.

4. Though the complainant has filed complaint petition on 24-12-2018, but due to ignorance of the procedure, the office has produced the record on 16-01-2019 and thereafter notice was issued to the Respondent. The Respondent appeared on 11-02-2019, but

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again he has become absent on next date on 27-02-2019 and thereafter continuously on one or other pretext the Respondent sought adjournments, especially on the ground of part payment of capital amount, as the complainant was also willing to get his capital money refunded from the Respondent, so he never opposed adjournments sought by Respondent. The Respondent has transferred last instalment Rs.1,62,360/- on 27-06-2019, to which complainant has informed through petition dated 28-06-2019. In such circumstances, delay occurred and the record could not be disposed of within the period of 60 days, as stipulated in Section-71 of the Act.

5. On the basis of above facts, the following points are formulated for adjudication of the case:-

- (i) Whether the complainant is entitled for interest @ 24% per annum on remaining principal amount Rs.7,12,360/-?
- (ii) Whether the complainant is entitled for maximum compensation against the Respondent for his mental agony and physical harassment?
- (iii) Whether the complainant is entitled for litigation cost?

6. All the three points being inter-related are taken together for discussion. Admittedly, on proposal of the Respondent, the complainant has booked Duplex No.13 with the Respondent in his project 'Agrani SBI Nagar' on 16-03-2015 on consideration of

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Rs.40,68,000/- and at the same time he paid an amount of Rs.4,12,360 through cheque and further paid Rs.4.00 lacs through N.E.F.T. on 23-04-2015/25-04-2015. These admissions also find support from the Booking paper executed between the complainant and authorised signatory of the Respondent.

7. The complainant has submitted that the Respondent without taking his consent unilaterally changed the site of the project 'Agrani SBI Nagar' and on enquiry it was found that the said site belongs to someone else. Later on, another site was shown to him for choosing, then he found that some malpractice is being played by the Respondent, as the Respondent without having land collected huge sums without necessary preparation/clearances/approvals. On 03-12-2016 he requested for cancellation of his allotment and demanded refund of his advance money, but one or other reasons, the Respondent did not refund the money. Lastly, when he stated that he is going to file complaint case, the respondent refunded only Rs.1.00 lac on 14-02-2018. The learned lawyer on behalf of the Respondent has directly not denied the allegations of the complainant, rather he submitted that the Respondent was in process of acquiring land to develop the project in the year 2015 and in such process, he invested huge amount and the complainant was aware about the above fact, even then he agreed to book the Duplex and thereafter paid the booking amount as he was getting the same on lesser price in comparison to projects running in the locality. But, since he left the

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project in mid-way, so it has become difficult to refund his invested amount atonce. However, the respondent is ready to refund the principal amount of complainant.

8. The complainant has filed photocopies of application for registration of the project dated 30-06-2018 submitted by the Respondent in RERA, Bihar showing that the project 'Agrani SBI Nagar' is ongoing, which is for construction of 3 BHK flats. The complainant has further filed photocopy of letter dated 10-10-2018 issued by RERA, Bihar, wherein defects have been found during the scrutiny of the application of the Respondent and he has been directed to submit certain documents. The Respondent has not filed any document issued by RERA, Bihar for registration of Duplex project in 'Agrani SBI Nagar'. It shows that since the Respondent has not applied for registration of Duplex in RERA, Bihar that is why he could not file any paper with respect to the Duplex, which was booked in favour of the complainant in the above project. All these documents go to show that the submission of the complainant that the Respondent has changed the project from Duplex to G-5 3 BHK flats in 'Agrani SBI Nagar' appears correct. The Respondent has also not filed any document, which may show that he has informed the complainant about the change of project. Hence, it is clear from the submission as well as documents that the Respondent, for his own interest, has collected money from the public including the complainant through advertisement etc. and when it was not suitable for him to construct

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the project, he has changed his mind without consent of the complainant and others and applied in RERA, Bihar for Registration of Project as discussed above.

As per provisions of Section-19, (1), (2) of the Act, 2016, the complainant is entitled to know about the stage of the concerned project, but as stated, the Respondent did nothing to inform the complainant about the change of the project, which led to cancellation of the booking by him. Hence, naturally, the Respondent has violated the provisions of Section-12, 14 (2), (i), 18 (1)(a), (b), 19(4) of the Act, 2016. Therefore, the complainant is entitled for the refund of his advanced capital amount along with interest from the Respondent.

9. The Respondent after appearance in the Court, has refunded advanced capital amount in instalments to the complainant, to which he was legally bound to do on change of project, which he on one or other pretext has avoided. In such circumstances, the Respondent cannot be excused for his fault. The complainant has claimed 24% interest on the remaining capital amount Rs.7,12,360/-, which is with the Respondent. On going through the record, it appears that the Respondent is running other projects in SBI Nagar in the interest of other consumers. In such view of matter, It appears that the interest claimed by the complainant is very high, which should be reasonable. Rule-17 of the Bihar Real Estate (Regulation and Development) Rules, 2017 says that the rate of interest payable by the promoter to the

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allottee or by the allottee to the promoter shall be 2% above the MCLR of the SBI. Presently, MCLR of SBI is about 8.5% and if 2% is added, it will come to 10.5%. Hence, it appears that it is reasonable that the Respondent should pay simple interest @ 10.5% per annum to the complainant on his advanced capital amount Rs.7,12,360/-. The complainant has admitted in his complaint petition that the Respondent has refunded Rs.1.00 lac on 14-12-2018 prior to filing of instant case and so he has not claimed interest on this amount. Hence, interest will be calculated only on amount of Rs.7,12,360/-.

10. The payment by the complainant to the Respondent and refund to the complainant by the Respondent along with simple interest on remaining advance amount of Rs.7,12,360/- may be seen through a chart hereunder:-

Date of Payment by complainant	Amount Rs.	Date of Refund	Amount Rs.	Interest Rs.
16-03-2015	4,12,360/- (Rs.3,12,360 claimed)	07-05-2019	1,50,000/-	65,281/-
		27-06-2019	1,62,360/-	72,810/-
25-04-2015	4,00,000	11-04-2019	2,00,000/-	83,178/-
		20-05-2019	1,00,000/-	42,754/-
		05-06-2019	1,00,000/-	43,165/-
		Total	7,12,360/-	3,07,188/-

Thus, Simple interest on the remaining advance money Rs.7,12,360/- has come on as Rs.3,07,188/- and this amount has to be paid by the Respondent to the complainant.

11. The complainant has also claimed maximum compensation applicable under RERA Act, 2016. As per Section 72 of the Act, 2016, the Respondent has been benefitted with the amount of Rs.8,12,360/- paid by the complainant till the amount is refunded to the complainant. The Respondent has used the above amount in his business without giving delivery of the Duplex to the complainant as per booking document. Now, the complainant will not get other Duplex in the same locality at the same rate, which was available to him at the time of booking of the Duplex in the year 2015. The present rate of Duplex in the locality has not come on the record, but naturally the rate of Duplexes would have gone very high in comparison to the rate available in the year 2015. Since the complainant has paid only Rs.8,12,360/- out of total consideration amount Rs.40,68,000/-, which is about 20% of the cost of Duplex and the Respondent is still running project in the name and style as 'Agrani SBI Nagar'. So, taking all the situations into mind and amount paid by the complainant, I think, Rs.50,000/- will be appropriate to be paid by the Respondent to the complainant.

12. The complainant has visited repeatedly to the office of the Respondent and has consulted him as well as his staffs several times for refund of his advance capital amount, but neither the

Respondent nor his staffs have given any heed to his request till filing of the instant complainant case in this Court. The complainant would not have incurred more than Rs.10,000/- for conveyance to the office of the Respondent, A.O. Court in RERA Bihar, paper documentation etc., which must be paid by the Respondent. Cost of Rs.1,000/- was also imposed on the Respondent due to non-compliance of the order passed by this Court on 16-04-2019 during hearing of the proceeding. It should also be added in the cost of Rs.10,000/-. Accordingly, I find and hold that the complainant is entitled for Rs.11,000/- as litigation cost against the Respondent.

13. From the above discussion of the facts, documentary evidence and other materials on record, it is apparently clear that the complainant has well established his complaint case against the Respondent and all the three points are decided in positive in favour of the complainant and against the Respondent. Accordingly, I hold that the complainant is entitled for accrued simple interest of Rs.3,07,188/- (Rupees three lacs seven thousand one hundred and eighty eight only) on advance capital amount Rs.7,12,360/-. The complainant is also entitled for compensation of Rs.50,000/- (Rupees fifty thousand only) for his

mental agony and physical harassment along with litigation cost of Rs.11,000/- against the Respondent.

Therefore, the complaint case of the complainant is allowed with litigation cost of Rs.11,000/-(Rupees eleven thousand only) against the Respondent. The Respondent is directed to pay accrued simple interest Rs.3,07,188/- (Rupees three lacs seven thousand one hundred and eighty eight only) on the advance principal amount Rs.7,12.360/- and compensation of Rs.50,000/- to the complainant 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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