

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

**RERA/CC/332/2019
RERA/AO/61/2019**

Sri Niraj Kumar, S/o Uddhav Jee, R/o Ram Lagan Mehta, Indra Lagan Kutir, Road No.10-A, Rajendra Nagar, Opposite: R.B.I. Staff Quarter, P.S.-Kadam Kuan, P.O. ... Complainant
Rajendra Nagar, Patna-800016

Versus

M/s Raman & Kumar Construction Ltd.,
Through its Directors, (1) Sri Satish Raman
and (2) Sri Ajit Kumar, G-100, P.C. Colony,
Kankarbagh, P.O. & P.S.-Kankarbagh,
Patna-800020 ... Respondents
.

Present:

**Sri Ved Prakash
Adjudicating Officer**

Appearance:

For Complainant	1. Mr. Rama Kant Jha, Advocate 2. Mrs. Indu Kumari, Advocate
For Respondents	1. Mr. Puneet Sidhartha, Advocate 2. Mr. Aryan Sinha, Advocate

ORDER

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This complaint petition is filed by the complainant, Sri Niraj Kumar against the Respondent, M/s Raman & Kumar Construction Ltd., through its Directors (1) Sri Satish Raman and (2) Sri Ajit Kumar u/s 31 read with 71 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as the "Act, 2016") for refund of remaining principal amount Rs.4,51,000/- along with

accrued interest @ 10% compound interest on total principal amount and compensation for his mental and physical harassment.

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2. In nutshell, the case of the complainant is that on 22-10-2012 he had booked a flat No.403 having area of 969 sq.ft. on the 4th floor in "Ram Lakhan Complex" of the Respondent company, M/s Raman & Kumar Construction Ltd. on total consideration of Rs.31,97,700/- @ Rs.3300/- per sq.ft. The complainant has paid Rs.4,25,000/- through cheque no.02007921 dated 22-10-2012, Rs.1,26,000/- through cheque no.02007922 dated 08-11-2012 and got money receipts from the Respondents. The Respondents have promised to deliver possession of the flat and to execute Sale Deed within 1½ years since the time of booking. It is further case that the complainant came to know that the Respondents have sold the said flat to someone else. The complainant met with the Respondents and cancelled the booking and thereafter, the Respondents refunded Rs.1.00 lac to the complainant on 17-09-2016 and the Respondents got receipt from the complainant. The complainant was detected as cancer patient in the year 2014 and since then he is under medical treatment and is in urgent need of Rs.10.00 lacs for the meeting the medical expenses. Doctor has advised for mouth opening and creation of saliva of the complainant. The complainant met several times with the Respondents and requested them to refund his principal amount along with interest, but the Respondents instead of refund

insulted him. Later, on 16-05-2018 the complainant gave Legal Notice, but the Respondents did not give any attention towards the Legal Notice, then the complainant has filed this complaint petition with the above reliefs.

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3. On appearance, the Respondents have filed reply stating inter-alia that the complainant has not approached them on a single time after he had cancelled the booking and received refund of Rs.1.00 lac from the Respondents. It is further case that as alleged no Legal Notice has been served on them by the learned lawyer for the complainant. The Respondents have sympathy for the unfortunate diagnosis of the cancer of the complainant and they pray to God Almighty that he may recover soon, as with development of science and medicine there are cases of recovery from cancer, but such diagnosis may not be attributed on the Respondents. It is completely false and objectionable as alleged the Respondents have ill-treated and insulted the complainant. The complainant himself disappeared, may be for his treatment, but even none of his family members had contacted the Respondents' company for refund, whereas the flat booked by the complainant was not sold to any person when his booking subsisted. The Respondents are ready to settle the dispute with the complainant. If the case is not settled, then the Respondents will file further supplementary reply in the Court. The Respondents in their supplementary reply filed in the Court, have stated that they further refunded Rs.25,000/- to the complainant on 02-09-2019 through

cheque no.269420 of IDBI Bank. Now, after deduction of Rs.1,25,000/- the Respondents have to refund Rs.4,26,000/- to the complainant as per schedule of payment mentioned in supplementary show cause. The Respondents have shown in their supplementary show-cause the schedule of refund from 01-10-2019 to 01-08-2020 and have requested to dispose of the case as per their schedule of payment.

4. On the basis of the pleadings and submissions of the parties, the following points are formulated to adjudicate the case:-

- (1) Whether the complainant is entitled for refund of principal amount along with accrued interest on total principal amount against the Respondents?
- (2) Whether the complainant is entitled only for refund of his remaining principal amount Rs.4,26,000/- against the Respondent?
- (3) Whether the complainant is entitled for compensation against the Respondents for his mental and physical harassment?
- (4) Whether the complainant is entitled for litigation cost against the Respondents?

5. Points No.(1) and (2):

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Admittedly, on 22-10-2012 the complainant had booked flat No.403 having area of 969 sq.ft. on consideration of

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Rs.31,97,700/- @ Rs.3300/- per sq.ft. on 4th floor in “Ram Lakhan Complex”, Patna of the Respondent company, M/s Raman & Kumar Construction Ltd. The complainant had paid Rs.4,25,000/- through cheque no.007921 dated 22-10-2012 and Rs.1,26,000/- through cheque no.007922 dated 08-11-2012 and he got receipts from the Respondent company. The complainant has filed photocopies of filled-up Booking Form and both the cheques, which also support the claim of the complainant. The complainant has submitted that the flat was to be handed over to him within 1½ years, but instead of handing over the flat, the same was sold to someone else. So, he cancelled the booking, knowing that the said flat could not be handed over to him. The complainant has also filed Annexure-6, which is on a letter-pad of Respondents, wherein the complainant after cancellation, has got refund of Rs.1.00 lac from Respondents’ company. The learned lawyer for the Respondents submitted that prior to cancellation of the flat by the complainant, the same was not sold to anyone else and the allegation of the complainant is false and defamatory, but the Respondents have not filed Sale Deed of the flat allotted to someone else, which might have proved that the flat was sold to someone else after cancellation of flat by the complainant and on non-filing of the Sale Deed, it will be presumed that prior to cancellation by the complainant, the flat was sold to some other person and that the claim of the complainant is correct. There is no Agreement for Sale executed between the parties, which may decide terms and conditions of the flat and interest etc. But,

the sale of flat to some other person and demand of refund of paid principal amount with interest by the complainant appears genuine, as it was duly cast as per Section 13(1) of the Act, 2016 on part of the Respondents to execute Agreement for Sale prior to taking of more than 10% cost of the flat from the complainant, in which they have completely failed. Hence, from all corners, the cancellation of booking of the flat by the complainant after the execution of Sale Deed by the Respondents to some other persons appears genuine and forceful in favour of the complainant.

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6. The complainant has stated that he is suffering from cancer and there is requirement of money for his further treatment, as the same is expensive and on availability of remaining principal amount from the Respondents, he may get his better treatment at the cancer hospital. The complainant has filed photocopy of radiation treatment summary issued from Rajiv Gandhi Cancer Institute and Research Centre, Delhi (Annexure-7), which support the claim of the complainant that he is a cancer patient and he is in process of treatment. The Respondents have stated that they have sympathy with the complainant and he will recover after better treatment, but such diagnosis may not be attributed on the Respondents. It is also to be noted that the complainant has alleged that instead of showing sympathy and refunding the remaining principal amount, the Respondents have insulted him. It is correct that allegations have to be proved that the Respondents have misbehaved with the complainant, but one thing is very clear that

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the Respondents even after knowing the fact that the complainant is a cancer patient, have not refunded the remaining principal amount to the complainant and now they are busy in filing schedule of the payment for refund, which shows that the Respondents will take one year for refund of only the remaining principal amount. I further think that at this juncture, the complainant need money for his medical treatment, as some part of which is still with the Respondents and very surprisingly the Respondents are taking one year for refund of remaining principle amount of the complainant. The Respondents should keep in mind that they have taken booking from the complainant on 22-10-2012 and have received Rs.4,25,000/- on the same day and Rs.1,26,000/- on 08-11-2012 totalling Rs.5,51,000/- and now when the person is struggling for his life due to cancer disease, the Respondents are showing inhuman attitude and saying to refund the remaining principal amount in 10 instalments from 01-10-2019 to 01-08-2020 and not talking about the interest on the amount paid by the complainant to them. The Respondents are builders/developers and they have better financial capacity than the complainant, so they must refund the remaining principal amount of the complainant within the stipulated period. Therefore, point no.(1) is decided in positive in favour of the complainant and against the Respondent and point no.(2) is decided in negative against the Respondents and in favour of the complainant.

7. The Respondents are running the building construction business and the complainant is withdrawing the paid principal amount from the project due to sale of the said flat by the Respondents to some other person. Hence, surely the withdrawal of fund by the complainant may somehow affect the business of the Respondents. So instead of compound interest, I think, simple interest may be levied on the Respondents on principal amount of the complainant. As per rule 17, 18 of the Bihar Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as the "Rules, 2017") the Respondents have to pay simple interest 2% above the MCLR of SBI. The present MCLR of SBI is 8.35% and if 2% is added, the rate of interest will come 10.35%. Hence the Respondents have to pay the accrued simple interest @ 10.35% on principal amount of the complainant.
8. The payment made by the complainant to the Respondents, refund made by the Respondents to the complainant and simple interest @ 10.35% on principal amount may be seen through the chart as under:-

Date of Payment by the complainant	Amount Rs.	Amount Refunded by the Respondent Rs.	Date of Refund by the Respondent	Interest Rs.
22-10-2012	4,25,000.00	4,25,000.00	27-09-2019	3,04,849.44
08-11-2012	1,00,000.00	1,00,000.00	17-09-2016	39,930.21
08-11-2012	25,000.00	25,000.00	02-09-2019	17,635.76
08-11-2012	1,000.00	1,000.00	27-09-2019	712.64

Total	5,51,000.00			3,63,128.05
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Accordingly, the Respondents have to pay accrued simple interest Rs.3,63,128.05 @ 10.35% per annum along with remaining principal amount Rs.4,26,000/- to the complainant.

9. Point No.(3):

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The complainant has also claimed compensation for his mental and physical harassment. As per Section 72 of the Real Estate (Regulation and Development) Act, 2016, the Respondents have been benefitted with the amount of Rs.5,51,000/- paid by the complainant and still an amount Rs.4,26,000/- is lying with the Respondents, which they have been regularly using in their business along with already refunded amount. The complainant has booked the flat in the year 2012 and the flat was to be delivered within 1½ years, but the Respondents instead of executing Sale Deed/Agreement for Sale in favour of the complainant, have executed Sale Deed of the concerned flat to someone else. When the complainant has found that the flat booked by him has been sold to someone else, he cancelled the booking on 17-09-2016 and demanded refund of his principal amount, but instead of refund of total amount, the Respondents have refunded only Rs.1.00 lac out of the total principal amount of Rs.5,51,000/-. On repeated requests by the complainant to the Respondents to refund his principal amount, they have given no heed to his request. Now, the price of

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flat in the said locality has much increased in comparison to the rate available in the year 2012. The present rate of the flat has not come on the record from either side, but naturally the price would have been more than multiplied. Out of the total consideration Rs.31,97,700/-, the complainant had paid Rs.5,51,000/-, which is about 17.23% of the total consideration. The Respondents are running their business of other projects and improving their business. In spite of repeated requests by the complainant in the Court and out of the Court to refund his principal amount along with accrued interest, the Respondents are filing schedule of the refund, which is starting from 01-10-2019 and ending on 01-08-2020 and it is only for refund of the principal amount. It has also been established on the record that the complainant is a cancer patient and is struggling for his life and in spite of which the Respondents have taken no pain to give relief to the complainant by refunding the principal amount of the complainant along with accrued interest. Therefore, taking all situations in to consideration and amount paid by the complainant to the Respondents, in my opinion, Rs.75,000/- which is about 13.61% of the principal amount paid by the complainant to the Respondents, will be appropriate to be paid by the Respondents to the complainants as compensation for his mental and physical harassment. Therefore, point no.3 is decided in positive in favour of the complainant and against the Respondents.

10. Point No.(4):

The complainant has visited to the office of the Respondents and consulted them as well as their staffs several times for refund of his principal amount along with accrued interest, but they have not listen to his requests. In my opinion, the complainant would not have incurred more than Rs.15,000/- for conveyance to the office of the Respondents, A.O. Court in RERA, Bihar, paper documentation, engagement of learned lawyer, Court fee etc., which has to be paid by the Respondents to the complainant. Accordingly, I find and hold that the complainant is entitled for litigation cost of Rs.15,000/- against the Respondents. As such, point no.(4) is decided in positive in favour of the complainant and against the Respondents.

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From the above discussions of the fact, documentary evidence and other materials on record, it is apparently clear that the complainant has well established his complaint case against the Respondents. Accordingly, I find and hold that the complainant is entitled for refund of remaining principal amount Rs.4,26,000/- and accrued interest Rs.3,63,128.05 @ 10.35% per annum on the total advanced principal amount. The complainant is also entitled for compensation of Rs.75,000/- for his mental and physical harassment against the Respondents.

Therefore, the complaint case of the complainant is allowed on contest with cost of Rs.15,000/- (Rupees fifteen thousand only) against the Respondents. The Respondents are directed to refund the remaining principal amount Rs.4,26,000/- (Rupees four lacs

twenty six thousand only) to the complainant. The Respondents are further directed to pay accrued simple interest till date Rs.3,63,128.05 (Rupees three lacs sixty three thousand one hundred twenty eight and paise five only) @ 10.35% per annum on the total advanced principal amount Rs.5,51,000/- (Rupees five lacs fifty one thousand only) to complainant. The Respondents are further directed to pay simple interest @ 10.35% per annum on the above remaining principal amount Rs.4,26,000/- (Rupees four lacs twenty six thousand only) from tomorrow till actual payment. The Respondents are further directed to pay Rs.75,000/- (Rupees seventy five thousand only) as compensation to the complainant for his mental and physical harassment. The Respondents are further directed to comply the order within 60 (sixty) days, failing which the complainant is entitled to enforce the order through process of the Court.

Sd/-

(Ved Prakash)
Adjudicating Officer
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