

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

**RERA/CC/485/2019
RERA/AO/117/2019**

Smt. Sabita Kumari, W/o Dr. Sanjay
Kumar Sinha, FlatNo.304, Laxmi
Niwas, Khagaul Road, Beside Canara
Bank, Mithapur, Patna-800001 ... Complainant
(Bihar).

Versus

(1) M/s Agrani Homes Pvt. Ltd.
(2) Alok Kumar, C.M.D., 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

11-11-2019

This complaint petition is filed by the complainant, Smt. Sabita Kumari against the Respondent No.1, M/s Agrani Homes 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 Rs.17,52,530/- along with accrued interest @ 18% per annum thereon. She has further

sought relief of compensation Rs.2.00 lacs against the Respondents for her mental and physical harassment.

2. In nutshell, the case of the complainant, Sabita Kumari is that on basis of an advertisement, she entered into an M.O.U. on 19-01-2014 with the Respondent No.2, Sri Alok Kumar, Promoter-cum-Director of Respondent No.1, M/s Agrani Homes Pvt. Ltd. for purchasing Flat No.402 on 4th Floor in Block-K of the building named as "I.O.B. Main Phase" having super built-up area 1300 sq. ft. with one reserve car parking space in the basement and also an undivided share on the land on consideration of Rs.17,52,530/- including Service Tax Rs.52,530/-. The complainant had paid the total consideration Rs.17,52,530/- through cheques till 12-12-2013. The Respondents have assured in the M.O.U. that the construction of the building shall be completed within 36 months with grace period of 6 months after approval of Map from P.M.C. It was assured by Respondent No.2, Sri Alok Kumar that the proposed Map was already presented before the P.M.C. for its approval and he will receive soon the approval order and construction of the building shall start in April, 2015. The complainant believed on the assurances of the Respondents, as the construction of other Blocks of the aforesaid building was going on. However, the construction work of Block-K did not start for a long period and the Respondents were always giving false assurances to the

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complainant. The complainant enquired from several persons about starting of the construction of Block-K, who stated that they were also being misguided by the Promoter, Sri Alok Kumar and he has still not presented the Map of Block-K for approval of P.M.C. Later on, the complainant met several times with the Respondent No.2, Sri Alok Kumar for refund of her advance money, but for one or other reasons he avoided to refund. So, she has filed this complaint petition before this Court for the above reliefs.

3. On appearance, the Respondents have pleaded *inter-alia* that they are ready to refund the advance money of the complainant in six equal instalments, so they may be provided some time for refund to the complainant. They further stated that like the other consumers, they are ready to refund the amount of the complainant as per direction of the Court and in light of their pleading, the case of the complainant may disposed of.

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 refund of principal amount Rs,17,52,530/- along with accrued interest @ 18% per annum against the Respondents?

(2) Whether the complainant is entitled for compensation of Rs.2.00 lacs for her mental and physical harassment against the Respondents?

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

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Points No.(1) to (3) :

5. Admittedly, a M.O.U. was executed on 14-01-2014 between both the parties for sale/purchase of Flat No.402 on 4th floor of Block-K of the building named "I.O.B. Main Phase" having super built-up area 1300 sq.ft. with one reserve car parking space in basement and also undivided share in the land on total consideration of RS.17,52,530/- including Service Tax Rs.52,530/-. It was also agreed in the M.O.U. that the Respondents shall deliver possession of the flat to the complainant within 36 months with grace period of six months after approval of Map from P.M.C. It was also agreed that if the Developer is not able to give possession of the said flat to the buyer/vendee on the above account or on any other reasonable case, the buyer/vendee shall not be entitled to any damage whatsoever, but shall be entitled to receive back the entire money paid by her to the Developer. Though the complainant has not filed money receipts of above advance money by the Respondents, but on going through the M.O.U. dated 14-01-2014, it appears that the Respondents have admitted that the

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complainant has paid total consideration Rs.17,52,530/- to the Respondents. So, due to non-filing of the money receipts by the complainant, there is no effect on proof of the payment of consideration money to the Respondents. However, the Respondents themselves have admitted in their reply that they have received the advance money paid by the complainant and they are ready to refund the same in six equal instalments.

6. Though the complainant has not mentioned in her complaint petition that she has executed Agreement for Sale with the Respondents, but on going through the record, it appears that on 06-02-2018, the complainant, Smt. Sabita Kumari has executed Agreement for Sale for the said flat with the Respondents on the same consideration and therein the Respondents have got extended the time of delivery of the possession of the flat and they have got mentioned in para-14 that the construction of the building shall be completed up to July,2021 with grace period of six months, provided that the time for completion shall be deem to have been extended in the event of non-availability of building materials or delay in receipt of instalment of the consideration amount from the buyers of other flats or delay to the Force Majeure. So, the Respondents have got extended the period of delivery of possession till December, 2021. But, the complainant kept mum in explanation of this

extension period in his complainant petition. However, she has filed photocopy of petition dated 25-04-2019 sent to Respondent No.2 regarding refund of amount with bank interest, due to non-start of the project and she has explained in para-8 that when she met on 01-01-2018 with Respondent No.2, then he asked her to deposit the M.O.U. dated 24-01-2014 with him and thereby the Respondent No.2 has taken the prior M.O.U. dated 14-01-2014 from her with ulterior motive and converted the same with Agreement for Sale dated 06-02-2018 with an assurance that the project shall commence and he shall give possession of the flat within some time or else will give another flat. But, within given time the Respondents have failed to start the construction work due to non-approval of the Plan by the competent authorities and accordingly, the assurances given by the Respondent No.2 once again failed. She has further stated that she tried to get loan on the paper of Agreement for Sale, but the Bank authorities told her that they will see the project and actual physical verification and possession of the flat. Hence, the paper for Agreement for Sale is useless in term of getting loan from the Bank. During this period she got pressure from several persons, who have given loan to her for payment of consideration amount to the Respondents and that is why she has taken decision to get back her advance money along with accrued interest from the Respondents and accordingly, she has

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requested the Respondents to refund her advance money with interest. The Respondents have not filed any document to show that they have got approval of the Map from P.M.C. and accordingly, they have started the construction works of Block-K of "I.O.B. Main Phase", Sarari, near Danapur railway station, Khagaul. Non-filing of any document by the Respondents shows that they have still not got approval of the Map from P.M.C. and have failed to start as yet the construction work of Block-K along with allotted Flat No.402 of the complainant. In such circumstances, it appears that the demand of the complainant for refund of her principal amount along with accrued interest is genuine, as no buyer can wait for delivery of possession of his/her flat till indefinite period. This view finds support from the rulings of the Hon'ble Supreme Court passed in Fortune Infrastructure Vs. Treveor D. Lima (2018) SCC-442 and Civil Appeal No.3182/2019. The Respondents have still not applied for registration of the project "I.O.B. Main Phase" of Block-K" in RERA, Bihar and unless and until the project is not registered with RERA, Bihar and Map is not approved by P.M.C., the construction work cannot start. In such circumstances, the complainant is entitled for refund of her total principal amount Rs.17,52,530/- along with accrued interest without any deduction, against the Respondents.

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7. Now, I have to see as to whether interest to be levied on the Respondents may be 'simple' or 'compound' interest on the advanced principal amount. Though the complainant has demanded 18% interest per annum on advanced principle amount, but the Respondents are running other projects, so levying compound interest will naturally hamper their business, which will also go against the other consumers of the Respondents, but there will be no much effect on the complainant, as she is already repudiating herself from this project. As such, I think, simple interest on total advanced principle amount Rs.17,52,530/- will justify the end.
8. As per rule 17, 18 of Bihar Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "Rules, 2017"), the Respondents have to pay 2% above the M.C.L.R. of S.B.I. Presently, the M.C.L.R. of S.B.I. is 8.25% and if 2% is added, it will come to 10.25%. Hence, the Respondents have to pay simple interest @ 10.25% per annum on the advanced principal amount Rs,17,52,530/- paid by the complainant to the Respondents. Accordingly, Point No.1 is decided in positive in favour of the complainant and against the Respondents.
9. The complainant has also claimed compensation Rs.2.00 lacs against the Respondents for her mental and physical harassment. As per section 72 of the Act, 2016, the Respondents are being benefitted by using the amount Rs,17,52,530/- paid

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by the complainant in their business, even without giving delivery of possession of the flat. Now, the complainant will not get a flat of the same area in the same locality at the same rate, which was available in January, 2014. The present rate of flat in the same locality has not come on the record from either side, but naturally the rate would have gone high in comparison to the rate available in the year 2014. The complainant has paid total consideration Rs.17,52,530/- of the concerned flat to the Respondents. The Respondents are still running other projects in Patna as well as other cities in Bihar. However, it is a fact that the Respondents have not applied as yet for registration of the concerned project in RERA, Bihar. So, naturally there is much loss to the complainant by the conduct of the Respondents. So, taking all situations in mind and the amount paid by the complainant to the Respondents, I think, Rs.4.00 lacs, which is around 23% of the advanced money, would have been an appropriate amount to be paid by the Respondents to the complainant as compensation for her mental and physical harassment. But, since the complainant has demanded only Rs.2.00 lacs as compensation, so the Respondents have to pay Rs.2.00 lacs to the complainant for her mental and physical harassment. Accordingly, Point No.(2) is decided in positive in favour of the complainant and against the Respondents.

10. The complainant has repeatedly visited the office of the Respondents and consulted them as well as their staffs several times for delivery of her flat, but when she enquired and came to know that the Respondents have not applied for approval of Map before P.M.C., she has got cancelled her allotment from the Respondents and tried to get refunded her advanced amount from the Respondents, but in spite of several visits she could not get back her money. Neither the Respondents nor their staffs have paid any heed to her request till filing of the present case. The Respondents instead of refunding the amount, have tried to get executed another Agreement for Sale on 06-02-2018 for the object to get extended period of completion of the project, but even then they have not applied for registration of the said project in RERA, Bihar. In such circumstances, I think, the complainant would have incurred not less than Rs.25,000/- for conveyance to the office of Respondents, A.O. Court in RERA, Bihar, Court Fee, paper works etc, which must be paid by the Respondents to the complainant. Accordingly, I find and hold that the complainant is entitled for Rs.25,000/- as litigation cost 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.25,000/- (Rupees twenty five

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thousand only) against the Respondents. The Respondents are directed to refund the advanced principal amount Rs.17,52,530/- (Rupees seventeen lacs, fifty two thousand, five hundred and thirty only) to the complainant with accrued simple interest @ 10.25% per annum since the respective date of payment of amount by the complainant to the Respondents. The Respondents are further directed to pay Rs.2.00 lacs (Rupees two lacs only) to the complainant as compensation for her mental and physical harassment. The Respondents are directed to comply the order within 60 (sixty) days, failing with the complainant may enforce the same through process of the Court.

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Sd/-
(Ved Prakash)
Adjudicating Officer
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