

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

**RERA/CC/304/2019
RERA/AO/44/2019**

Smt. Anamika Tiwari, 75, R.K. Puram, Near Ram
Dayal Apartment, Khagaul Road, Patna-801503 ... Complainant(s)

Versus

M/s Agrani Homes Pvt. Ltd.
Through: Sri Alok Kumar, C.M.D.,
1st Floor, House No.15, Ward No.IFA, Patliputra
Colony, Patna-800013 ... Respondent(s)

Present:

**Sri Ved Prakash
Adjudicating Officer**

Appearance:

For Complainant(s)

In person

For Respondent(s)

Sri Durga Narayan, Advocate

ORDER

02-08-2019

This complaint petition is filed by the complainant, Anamika Tiwari u/s 31 read with 71 of Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as the 'Act, 2016) against the Respondent for refund of remaining principal amount along with accrued interest @ 15.75% per annum on the total principal amount of

Rs.10,30,900/- and further to direct the Respondent to pay Rs.15.00 lacs as compensation for mental and physical harassment.

2. In nutshell, the case of the complainant is that she had booked a flat in "Sunrise City" of M/s Agrani Homes Pvt. Ltd. in the year 2014 with amount of Rs.10,30,900/- and the Respondent has given commitment to hand over the flat to her in the year 2017, but still the work has to be started on the project. On contact with the officials, it was informed to her that the project is yet to start, so her amount will be refunded. Thereafter, the complainant met several times with the Respondent as well as his staffs, but they did not reply properly and when she stated them that she will file criminal case against the Respondents, Rs.1.00 lac was credited in her account on 04-06-2018. Later on, the Respondent has issued four cheques worth Rs.9,30,900/, but only one cheque bearing Rs.2.00 lacs was cleared on 27-06-2018 and the rest cheques were dishonoured due to insufficient fund in the account of the Respondent. It is further case that on 07-07-2018, the Respondent has transferred Rs.1.00 lac through R.T.G.S. in her account. On repeated requests, the Respondent has further refunded Rs.50,000/- on 20-07-2018, Rs.50,000/- on 31-08-2018, Rs.50,000/- on 06-11-2018 and Rs.1.00 lac on 01-01-2019. Thus, the Respondent has refunded only Rs.6,50,000/-. But, when she felt that the Respondent will not refund the total principal amount, she filed complaint petition for refund of remaining principal amount of

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Rs,3,80,900/- along with accrued interest on the total principal amount along with compensation.

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3. Though the learned lawyer for the Respondent appeared, but he failed to file reply on behalf of the Respondent. The learned lawyer for the Respondent always insisted that there is no need to file reply as the Respondent is ready to refund the principal amount along with accrued interest to the complainant and she has also got refunded the principal amount Rs.3,80,000/- as per assurance.
4. On the basis of the facts, the following points are formulated to adjudicate the case:-
 - (1) Whether the complainant is entitled for accrued interest @ 15.75% on the total principal amount Rs.10,30,900/- against the Respondent.
 - (2) Whether the complainant is entitled for compensation amount Rs.15,00,000/- for her mental agony and physical harassment against the Respondent.
5. Both the points being inter-linked are taken together for discussion. Admittedly, the Respondent prior to filing of this case, has refunded Rs.6,50,000/- out of the total principal amount RS.10,30,900/- and after filing the case, the Respondent has refunded Rs.3,80,000/- to the complainant. They also admitted that no Agreement for Sale is executed on behalf of the parties. The complainant has also not filed booking paper like, filled-up Form,

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receipt etc. of the amount of Rs.10,30,900/-. The complainant has also failed to file any document, to show that the Respondent has agreed to pay interest @ 15.75% per annum, in case the flat allotted to her is not handed over within the stipulated period. The complainant has also failed to produce any document written by the Respondent as to why he was not constructing the concerned flat allotted to the complainant. It shows that there is no any rate of interest agreed between the parties. So, as per Rule 17, 18 of Bihar Real Estate (Regulation and Development) Rules, 2017, the promoter may be directed to pay 2% above the Marginal Cost of Lending Rate (MCLR) of S.B.I. Now, MCLR of SBI for public is 8.6% and if 2% is added in MCLR, it will become 10.60% rate of interest applicable in the present case. Either side has not stated the exact date of payment of principal amount to the Respondent, but she has simply stated in the beginning of the complaint petition that in the year 2014 she has booked the flat in "Sunrise City" of M/s Agrani Homes Pvt. Ltd. with payment of amount Rs.10,30,900/- and with the commitment that the flat will be handed over in the year 2017. Hence, since the exact date of payment of principal amount is neither unfolded by the complainant nor by the Respondent, so 04-06-2014 is presumed as date of payment of principal amount by the complainant to the Respondent and on basis of date 04-06-2014, the interest may be calculated on the principal amount. The payment by the complainant to the Respondent and

refund to the complainant by the Respondent along with simple interest on principal amount may be seen through a chart as under:-

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Date of Payment by complainant	Amount Rs.	Date of Refund	Amount Rs.	Interest Payable Rs.
04-06-2014	10,30,900	01-01-2019	1,00,000	42,400.00
		27-06-2018	2,00,000	86,135.84
		07-07-2018	1,00,000	43,370.45
		20-07-2018	50,000	21,873.99
		31-08-2018	50,000	22,475.38
		06-11-2018	50,000	23,437.39
		01-01-2019	1,00,000	48,213.10
		03-06-2019	1,80,000	95,325.83
		05-07-2019	2,00,000	1,07,824.75
<u>Add:</u> Interest on outstanding principal amount Rs.900/- from 04-06-2014 to 02-08-2019 (date of this Order)				492.49
TOTAL				4,91,549.22

Thus, simple interest on the principal amount has come as Rs.4,91,549/- and this amount has to be paid by the Respondent to the complainant. It is not out of place to mention that the Respondent has refunded Rs.10,30,000/- out of total principal amount Rs.10,30,900/-. Thus, there is remaining principal amount of Rs.900/- payable by the Respondent to the complainant, on which interest has been calculated and added, but principal amount Rs.900/- has also to be added. Thus, the total interest payable by the Respondent to the complainant is Rs.4,91,549/- as mentioned in the above chart and if principal amount is added, it will come to the tune of Rs.4,92,449/-.

6. The complainant has also claimed compensation of Rs.15.00 lacs against the Respondent. As per section 72 of the Act, 2016, the Respondent

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has been benefitted with the amount of Rs.10,30,900/- 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 flat to the complainant as per booking criteria. Now, the complainant may not get other flat in the same locality at the same rate, which was available to her at the time of booking of the flat in the year 2014. It is also important to note that the complainant has paid total consideration money Rs.10,30,900/- to the Respondent, but the Respondent did nothing towards the construction of the project, as it is still incomplete and reasonable answer could not be given by the Respondent for not constructing the concerned flat in the said project. The complainant has claimed Rs.15.00 lacs as compensation, which is very high, as she has also failed to get executed the Agreement for Sale with the Respondent and failed to produce any document to show the booking etc., as discussed on earlier occasion. It is also necessary to note that the Respondent has already refunded the principal amount to the complainant in instalments, which was not opposed by the complainant. Rather, she accepted the same prior to the filing of the case as well as after the filing also. The Respondent has also done equal fault that he has issued 4 cheques, in which only one was encashed and 3 cheques bounced, which shows that there is more fault of the Respondent than the complainant in documentation of the papers. So taking all the situations into mind and amount paid by the complainant, I think, 5% of the total principal amount will be appropriate as

compensation to be paid by the Respondent to the complainant, which will be equal to Rs.51,545/-.

7. 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 her principal amount, but neither the Respondent nor his staffs have taken proper action on her request and refunded the total principal amount along with interest till filing of the complaint case in this Court. I think, the complainant would have incurred not less than Rs.10,000/- for conveyance to the office of the Respondent, A.O. Court in RERA, Bihar, proper and proper documentation etc., which must be paid by the Respondent. Accordingly, I find and hold that the complainant is entitled for Rs.10,000/- as litigation cost against the Respondent.

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8. From the above discussion of the facts, documentary evidence and other materials on the record, it is apparently clear that the complainant has well established her complaint case against the Respondent. Accordingly, I find and hold that the complainant is entitled for simple interest @ 10.60% on the principal amount Rs.10,30,900/, which comes as 4,91,549/-. She is also entitled for remaining principal amount Rs.900/- along with 10.60% interest thereon from the Respondent, which jointly will be Rs.1,392/- The complainant is also entitled for compensation of Rs,51,545/- for her mental agony and physical harassment along with litigation cost of Rs.10,000/- against the Respondent.

Therefore, the complaint petition of the complainant is allowed on contest with cost of Rs.10,000/-. The Respondent is directed to pay interest

Rs.4,91,549/- to the complainant. The Respondent is further directed to pay principal amount Rs.900/- and compensation of Rs.51,545/- to the complainant within 60 (sixty) days, failing which the complainant is entitled to enforce the order through process of the Court.

Sd/-
(Ved Prakash)
Adjudicating Officer
02-08-2019