

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

**RERA/CC/84/2018
RERA/AO/17/2018**

Sri Rahul Kishor Rai & Others
303-B, Sant Sai Enclave, Nehru Nagar,
Patna-800001.

... Complainants

Versus

M/s Agrani Homes Pvt. Ltd.,
Through its Director, Sri Alok Kumar, House
No.15, Ward No.1F-A. Patliputra Colony,
Patna-800013

... Respondents

Present:

**Sri Ved Prakash
Adjudicating Officer**

Appearance:

For Complainant	1. Mr. Jayant Nath Rai, Advocate
For Respondents	1. Ms. Manisha Singh, Advocate 2. Mr. Durga Narayan, Advocate

ORDER

19-09-2019

This complaint petition is filed by the complainants, Sri Rahul Kishor Rai and Sanjeev Kumar Rai against the Respondent, M/s Agrani Homes Pvt. Ltd., through its Director Sri Alok Kumar u/s 31 read with 71 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as the "Act, 2016") for house rent since May, 2015 till delivery of possession of

19-09-2019
CONTINUED

their flat and for recovery of interest on amount paid to builder by the complainants and for stay of interest on dues Rs.8,82,615/- with the complainants. They have further sought relief for delivery of possession of flat allotted to them by the Respondents, at the earliest.

2. In nutshell, the case of the complainants is that the complainant came to know through one Sri Rahul Kumar, an employee of the Respondents company, regarding sale of flats in the project of "I.O.B. Main Phase", Patna, Bihar of the Respondent company, M/s Agrani Homes Pvt. Ltd. Sri Rahul Kumar has given assurance that the project is genuine and approved by the concerned authority. After detailed discussion with Sri Rahul Kumar and Sri Alok Kumar, C.M.D. of the Respondents company the complainants paid Rs.1.00 lac to the Respondent on 26-09-2012 and an Agreement for Sale between both the parties was executed on 28-06-2013. The complainant No.1 repeatedly stated to the Respondents that the flat is urgently needed, as he was paying house rent about Rs.15,000/- per month, whereon the Respondent and his officers have given him assurance that the concerned flat will be delivered to the complainants by December, 2014. Later on, the complainant, Rahul Kishor Rai visited on the site of the said project in November, 2014, then he was shocked to see that the progress in work of the project was only 25%. Thereafter, he contacted the Respondent, Sri Alok Kumar, who

27-09-2019
CONTINUED

assured that the flat will be completed within 4-5 months and delivery of possession will be given to him as per assurance. Later on 24-07-2015, two e-mails were received by the complainant mentioning therein that the flat will be handed over to him by 20-11-2015, but after two hours the version was changed and it was intimated that the flat will be delivered till March, 2016. In spite of change of version of the Respondent, the complainant believed the Respondent, but when he visited on the site in April, 2015 he found that there was no progress in the construction since November, 2014. When he contacted, the Respondent again assured that the flat will be delivered within time assured to them. The complainants have paid Rs,15,40,000/- to the Respondents till May, 2015, but when they understood that the construction of the project is delayed, they stopped payment of further instalments in June, 2015. Thereafter, Rahul Kishor Rai visited the site several times, but there was no progress. In March, 2018 the complainant visited the office of the Respondents and enquired about the delivery of possession, but he could not get any satisfactory reply from the office of the Respondents. He talked on mobile with Respondent, Sri Alok Kumar, who once again assured that the flat will be delivered within time. When he became fed up with the assurances of the Respondents, he has sent Legal Notice through his learned lawyer to the Respondents on 19-05-2018, but the Respondents have not taken pain to reply the legal notice. Being

19-09-2019
CONTINUED

tired, the complainants requested the Respondents either to hand over possession of the flat booked by them or pay house rent, as the complainants were suffering from mental agony, torture and physical harassment, due to behaviour of the Respondents. Lastly, the complainants decided to file this complaint petition with the above reliefs against the Respondents.

3. On appearance, the Respondents have filed reply stating inter-alia that the flat allotted to the complainants in Block-E is almost complete and delivery of possession may be given to them by 31st December, 2018, as the work of flooring was going on and steps for plumbing of the Block was being taken up by the Respondents. It is further case that naturally there is delay in construction of the Block-E, but there are genuine reasons for such delay, as in December, 2012 Maps were prepared for the apartment and were being processed by the Department of Fire and competent authority till November, 2012. Since there were some complaints received by the Government about malfunctioning of the Department in clearing the building Maps in December, 2012. On 01-12-2012 the approval of maps were stopped in the entire State of Bihar. The Maps of "I.O.B. Nagar" was cleared in the month of September, 2012, thereafter certain works like Bhoomi Pujan, Soil Cutting, Rafting etc. started. It is further case that the Eastern Zone Green Tribunal by order passed in OA No.7/2016/EZ dated 19-01-2016 Aman Kumar Versus

19-09-2019
CONTINUED

State of Bihar stopped the extraction of sand from the river bed of the State. In persuasion of the aforesaid order of Hon'ble Green Tribunal Eastern Zone, the Chief Secretary, Government of Bihar through memo no.404/14 dated 09-02-2016 directed/informed the Departments who extract sand minerals. Thereafter the Collector, Patna on the same day through memo no.122 dated 09-02-2016 communicated order to stop the extraction of sand. After two years the sand became available from December, 2017. It is further case that Hon'ble Patna High Court in C.W.J.C. No.17809 of 2015 Sunil Kumar Singh Vs State of Bihar and Others passed an order with respect to extraction of sand from Sone river. Hon'ble Chief Justice, after hearing L.P.A. No.328/2017 and 342/2017 called for record of in C.W.J.C. No.17809 of 2015 and disposed of both the L.P.A. and directed to put the matter, if required, before the Enquiry Committee to look into the grievances of illegal mining and thereafter the construction work came on track. "Bihar Building Bylaws, 2014" also came into existence to regulate the construction activities in the State. The complainants are neither entitled for rent nor compensation, as delay was not due to Respondents, rather it was due to the orders of various authorities of the State

19-09-2019
CONTINUED

Government and Central Government, which was beyond the control of the Respondents. It is further case that the complainants while making complaint before the Authority, have failed to take note of the paragraph 15 of the Agreement for Sale, which contemplates that the time of completion shall be deemed to extended in the event of non-availability of building materials or delay in receipt of instalments of the consideration from buyer/vendee or delay due to "Force Majeure". The complainants have to pay dues about Rs.9.00 lacs atonce to complete the project. Hence, in light of such factors, the complaint case of the complainant may be dismissed.

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

- (1) Whether the complainants are entitled for House Rent since May, 2015 till delivery of possession of their flat against the Respondents?
- (2) Whether the complainants are entitled for interest on the principal amount, which they have paid to the Respondents?

19-09-2019
CONTINUED

- (3) Whether the Respondents are entitled for interest on dues Rs.8,82,615/- against the complainants?
- (4) Whether the complainants are entitled for delivery of possession of their allotted flat against the Respondents?
- (5) Whether the complainants are entitled for compensation against the Respondents for their mental and physical harassment?

5. Points No.1 to 3 and 5:

Admittedly, registered Agreement for Sale between both the parties was executed on 28-06-2013 for sale/purchase of flat no.103 on 1st floor of Block-E of the complex "I.O.B. Nagar, Main Phase" having super built-up area of 1100 sq.ft. with one car parking space on ground floor on total consideration of Rs.24,22,615/- including Service Tax Rs.72,615/-. It was agreed between the parties that the complainants shall pay the total consideration in 8 instalments. It was also agreed in para 15 of the Agreement for Sale that the construction of the building shall be completed till December, 2014, provided that the time for completion will be deemed to be extended in the event of non-

19-09-2019
CONTINUED

availability of building materials or delay in receipt of the instalments of consideration amount from the buyers/vendees of the other flats and/or delay due to Force Majeure. It was also agreed that if the vendor is not able to give possession of the flat to the buyer, on the above account or any other reasonable cause, the buyer may not be entitled for any damage whatsoever, but shall be entitled to receive back the entire money paid by him to the developer.

6. The Hon'ble National Green Tribunal, Eastern Zone, Kolkata in Appeal No.06/2016/EZ with M.A. No.1086/2016/EZ Aman Kumar Singh Vs State of Bihar and Others on 22-08-2016 while disposing of the Appeal has not found any substance in grounds of Appeal. Obviously, the illegal mining in the State of Bihar was banned. Hon'ble High Court Patna in C.W.J.C. No.17809/2015 Sunil Kumar Singh Vs State of Bihar and Others with the L.P.A. No.328/2017 on 02-04-2018 held that the statutory authority, Principal Secretary, Mining Department-cum-Mines Commissioner has already passed order finding that there was no illegal mining and restored the mining activities with certain guidelines and instructions issued. Hon'ble Supreme Court in Civil Appeal No.6784-6785 of 2018 with Civil Appeal No.6786-6787 of

19-09-2019
CONTINUED

2018, C.C. Projects (Pvt.) Ltd. Vs Vrajendra J. Thakkar on 27-11-2018 held that there was no complete ban on sand mining, but due to reduced availability of sand in the market, the demand and supply ratio must have been upset. The appellant would, therefore, be entitled to some benefit on that count. It is also important to note that it was submitted before the Hon'ble National Green Tribunal that this Hon'ble Tribunal had banned the sand mining activities across the country on 05-08-2013, which came to be relaxed when new policy was formulated by Union of India in September, 2015, so during this period the availability of sand had come down to 20% of what it was before. It shows that though there was ban on sand extraction, but it was not complete ban, as submitted by learned lawyer for the Respondent. However, there may be some effect due to less availability of sand, as discussed, in construction of the building by the Respondents, which may be discussed at appropriate place. Secondly, as per Respondents, approval of Map in the State of Bihar stopped since December, 2012 by the competent authority. But, it is not correct in the eye of law, as prior to the present Bihar Building Bylaws, 2014, the Building Bylaws, 1981/ Municipal Act, 2007 were also existing and the approval of the

19-09-2019
CONTINUED

Map was continuing. The Respondents themselves have admitted that Map of I.O.B. Nagar was passed in September, 2012, so there was no hindrance to start the construction of building just after 28-06-2013. In my opinion, if approval of Map was completely banned in the State of Bihar, then the said order of the Government should have been produced by the Respondent, in which they have completely failed. So, it will be presumed that the Respondents only to save their neck have taken such defence, which is immaterial/unacceptable. It is also important that the Agreement for Sale between both the parties was executed on 28-06-2013. The Respondents had much time to get it approved from the competent authority. It has also to be noted that if the Respondents had knowledge that the approval of Map is stopped since December, 2012, then they should have mentioned these things in Agreement for Sale, but that is lacking and they knowingly and intentionally for duping the allottees have mentioned in page-15 of the Agreement that building shall be completed in December, 2014. So on this score the Respondents cannot be given benefit of the defence that the Map was not being approved in the State of Bihar since December, 2012. However, they may be given some relief with

19-09-2019
CONTINUED

regard to non-availability of sand, which has come down about 20%. The Respondents have stated that the sand was available since December, 2017, which is incorrect, as they have not brought any evidence on the record to show that the sand was not available in the whole year of 2017. Accordingly, as discussed, it is clear that the sand was available in the State of Bihar since January, 2016 like other parts of the country and the Respondents are taking defence of non-availability of sand only to extend the period of completion of building, which cannot be allowed.

7. The complainants have admitted that still Rs.8,82,615/- have to be paid by them to the Respondents, as they have stopped payment of instalments since June, 2015, due to non-progress in construction of the project. As per schedule of the payment agreed in the Agreement for Sale, the complainants have to pay total consideration Rs,24,22,615/- in 8 instalments in phase-wise, but either of the parties have not brought any evidence on the record as to what was the stage of the project when the complainants have stopped payment in June, 2015. As such, it is not possible to assess as to who is more responsible and what liability may be fixed on which party in June, 2015, but one thing through Video

19-09-2019
CONTINUED

produced in the Court in C.D. by the complainants is clear that presently the structure of the Block-E is completed. The Respondents, in spite of repeated assurances to the complainants in the Court through their learned lawyers, have failed to complete Block-E with all requirements/amenities as per Agreement for Sale. It has also come in the Video that boundary wall, installation of lift, stairs, generator set etc. are still lacking on the spot. The Respondents have also not provided doors, windows in the flat of the complainants. It is not out of place to mention that the learned lawyers of the Respondents during hearing on several times have assured to the complainants in the Court that the whole Block-E and their flat will be completed and delivery of possession will be handed over to them on such and such date. But, every assurances have gone in vain. I think, it is due to inactive attitude of the Respondents, as they have not co-operated with the allottees and have not provided them all amenities at right time as per assurances in the Agreement for Sale.

8. The Respondents have constructed the structure of Block-E of the building, but they have not furnished as yet as per Agreement for Sale. Admittedly, the complainants have dues Rs.8,82,615/- to the Respondents, whereas the

19-09-2019
CONTINUED

Respondents have demanded Rs.8,89,131/- through demand letter dated 23-05-2019. So, there is some minor differences of Rs.6,516/- between both the sides, so demands of Respondents may be presumed as correct for making payment by the complainant. But at the same time, there being delay in delivery of possession of the flat, the Respondents are not entitled for interest on the dues amount of the complainants, as the complainants are ready to make payment, if the delivery of possession of flat is handed over to them at the earliest. It is also very important that the complainants have claimed interest on principal amount paid to the Respondents, to which they are not entitled, as the Respondents have spent towards the construction of the building and at the same juncture they may not be liable for paying interest of the same amount, which they have received from the complainants for construction of the building. However, as discussed earlier, the sand is available in the State of Bihar since January, 2016. Hence, it may be deemed that delivery of possession is extended from December, 2014 to December, 2015. So, period of delivery of possession is extended for one year, as Respondents would have faced difficulty in approval of Map and availability of sand etc. But, naturally the Respondents

19-09-2019
CONTINUED

have much delayed the construction of the building, for which they must be liable to the complainants. The learned lawyer for the Respondents have assured to the complainants during hearing of the case that alternative flat taken on rent by the Respondents may be provided to them, but in such effort also they have failed, as the Respondents have not taken interest in hiring such flats for the complainants. The complainants have submitted that the Respondent, Sri Alok Kumar has repeatedly assured them that he will pay rent of their flat taken on rent, but up-till-now the Respondents for one or other reasons have avoided to pay the house rent to the complainants. The Respondents had to deliver the concerned flat to the complainants in December, 2014, but the same is extended from December, 2014 to December, 2015. As such, either Respondents have to deliver possession of flat or pay house rent to the complainants in January, 2016, but still neither they have delivered possession of the flat nor they are paying house rent to the complainants since January, 2016. In my opinion, equity must be done with both the sides. so I think, Rs.8,000/- per month may be appropriate house rent in January, 2016 for a flat of complainants and after one year the rate of house rent may be increased by Rs.2,000/-,so it

19-09-2019
CONTINUED

will come Rs.10,000/- per month since January, 2017 and the same shall be revised after one year in January, 2018 with further enhancement of Rs.2,000/- and one year thereafter the house rent will be Rs.12,000/- per month with effect from January, 2018 and the said amount will increase to Rs.14,000/- per month with effect from January, 2019 till delivery of the flat by the Respondents. In my opinion, in light of above facts, the claim of the complainants for house rent since May, 2015 appears unreasonable, hence, it is rejected, but the same may be allowed, as per the rate of house rent as mentioned above, since January, 2016 till delivery of possession of the flat to the complainants. On the basis of aforesaid materials, I think that since the complainants are being allowed house rent in place of delivery of possession of their flat since January, 2016, so they cannot be allowed additional compensation along with house rent, as the same will hamper business of the Respondents. Therefore, the Point No.1 is decided partly positive in favour of the complainants and against the Respondents and Point No.2 is decided in negative against the complainants and in favour of the Respondents. Point No.3 is decided in negative against the Respondents and in favour of the complainants. Point No.5 is

19-09-2019
CONTINUED

decided in negative in favour of the Respondents and against the complainants.

9. Point No.4:

Admittedly, as discussed, the Respondents had to deliver possession of the flat to the complainants up to December, 2014, but C.D. visuals of the concerned flat produced by the complainants shows that though construction work is completed, but finishing work including fitting of doors, windows, installation of generator set, lift, construction of stair case etc., which are essential for residential flat, are still lacking in Block-E of the building. The Respondents have applied for registration of the Block-A to F and as per their application, Registration Certificate No.BRERA P00011-10/191/R-364/2019 has been issued on 24-01-2019 with commencement date on 24-01-2019 and ending date with 31-08-2019. So the date of completion of the project has expired and presently the Respondents have not applied for extension of the validity period of registration of the project in RERA, Bihar. It is very surprising that in spite of non-completion of the project, the Respondents have left the work to complete, which they have to complete as early as possible with extended validity period of RERA, Bihar

19-09-2019
CONTINUED

Registration Certificate. In such facts and circumstances, the Respondents have to deliver the possession of the flat to the complainants within the stipulated period. Accordingly, Point No.4 is decided in positive in favour of the complainants and against the Respondents.

10. The complainant has visited to the office of the Respondents and consulted them as well as their staffs several times for delivery of possession of their flats, but they have not listen to their requests. In my opinion, the complainant would not have incurred more than Rs.20,000/- 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 complainants. Accordingly, I find and hold that the complainants are entitled for litigation cost of Rs.20,000/- against the Respondents.

Therefore, the complaint petition of the complainants is partly allowed on contest with cost of Rs.20,000/- (Rupees twenty thousand only) against the Respondents. The Respondents are directed to deliver possession of the flat to the complainants within the period mentioned as under. They are further directed to pay house rent to the complainants since January, 2016 @ Rs.8,000/- (Rupees eight thousand only) per month till December, 2016 and further pay house

19-09-2019
CONTINUED

rent on revised rate of Rs.10,000/- (Rupees ten thousand only) per month from January, 2017 till December, 2017 and further to pay house rent @ Rs.,.12,000/- (Rupees twelve thousand only) per month from January, 2018 till December, 2018 and further to pay on revised rate of house rent Rs.14,000/- (Rupees fourteen thousand only) per month since January, 2019 till delivery of possession of the flat to the complainants. The Respondents shall adjust total rent amount of complainants in their dues amount Rs.8,89,131/-. The complainants are not entitled for any interest on principal amount paid to the Respondents. The Respondents are also not entitled for interest on dues amount Rs.8,89,131/- from complainants. The Respondents are directed to comply the order within 60 (sixty) days, failing which the complainants may enforce the order through process of the Court.

Sd/-
(Ved Prakash)
Adjudicating Officer
19-09-2019