

**IN THE COURT OF ADJUDICATING OFFICER,
REAL ESTATE REGULATORY AUTHORITY (RERA)
6TH FLOOR, BIHR STATE BUILDING CONSTRUCTION CORPORATION BUILDING
HOSPITAL ROAD, SHASTRI NGAR
PTNA-800023**

RERA/CC/403/2019
RERA/AO/97/2019

1. Sri Santosh Kumar Pathak, s/o Late Madhukant Pathak
2. Smt. Bibha Kumari, w/o Sri Santosh Kumar Pathak
 - Both r/o Village-Keshawe, Via-Ulao, P.S.-Barauni, District-Begusarai (Bihar), PIN-851134.
Presently residing at Juggat Pharma, Mehta Building, Sandalpur, Near S.B.I. A.T.M., Patna-800004. ... Complainant

Versus

1. M/s Agrani Homes Pvt. Ltd.
M-3/9, S.K. Puri, Boring Road, P.S.-Sri Krishna Puri, District-Patna, PIN-800001.
2. Sri Alok Kumar, S/o Sri Padum Singh, Director, Agrani Homes Pvt, Ltd., r/o "Alok Bhawan", Yogipur, Chitragupta Nagar, P.S.-Patrakar Nagar, P.O.-Lohiya Nagar, Kankarbagh, District-Patna, PIN-800020. ... Respondents

Present:

**Sri Ved Prakash
Adjudicating Officer**

Appearance:

- For Complainant : In Person
- For Respondents : 1. Mr.Ankit Kumar, Advocate
2. Mr. Mohit Raj, Advocate

ORDER

01-10-2020

This complaint petition is filed by the complainant,
Sri Santosh Kumar Pathak and his wife, Smt. Bibha 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 to as the “Act, 2016”) for delivery of possession of flat no.107 on 1st floor in Block-H of the building “I.O.B. Main Phase” along with rent @ 10,500/- per month since January, 2015 or in alternate allot, execute Sale Deed and deliver possession of other flat of same area and size along with rent at the rate of Rs.10,500/- p.m. since January, 2015 and in alternate refund of their principal amount Rs.14,14,064/- along with compound interest @ 18% thereon and compensation for their physical and mental harassment.

01-10-2020
CONTINUED

2. In nutshell, the case of the complainants, Sri Santosh Kumar Pathak and his wife, Smt. Bibha Kumari is that they have approached to the Respondents for purchase of a flat in their project “I.O.B. Main Phase” and on settlement both the parties have executed Agreement for Sale on 22-12-2012 for sale/purchase of flat no.107 on 1st floor of Block-H of the building in the name and style as “I.O.B. Main Phase” having super built-up area measuring 612 sq.ft. and one reserve car parking space on ground floor along with common Swimming Pool and Community Hall and also undivided share in the land of the building on consideration

of Rs.14,89,484/-. It is further case that the complainant has paid Rs,14,14,064/- out of total consideration Rs.14,89,484/- along with Service Tax Rs.46,024/-. The complainants, Sri Santosh Kumar Pathak and Smt. Bibha Kumari have physically inspected the site of the project on 27-05-2019 and found that it will take about 2 years in handing over the flat completed in all respect, but on enquiry, the Respondents could not assure positively about the time of delivery of the flat. In the meantime, the complainants are bound to pay E.M.I. Rs.10,448/- per month besides house rent. The complainants requested the respondents either to deliver their flat complete in all respect or to refund their paid principal amount Rs.14,14,064/- along with 18% compound interest and rent Rs.10,500/- per month since January, 2015. But, the Respondents could not answer positively, so being fed-up they have filed the present complaint case against the Respondents with prayer of the above reliefs.

- 01-10-2020
CONTINUED
3. On appearance, the Respondents have pleaded *inter-alia* that they are always ready to obey the order of the Court and they will hand over the flat to the complainants and in alternate, they are also ready to refund the paid principal amount in instalments to the complainants.

4. On the basis of the pleadings and submissions of complainants and learned lawyer on behalf of the Respondents, the following points are formulated to adjudicate the case:-

- (1) Whether the complainants are entitled for delivery of possession of the allotted flat no.107 on 1st floor of Block-H of the project “I.O.B. Main Phase” or in alternate, allotment, execution of Sale Deed and delivery of possession of other flat of same area and size along with rent at the rate of Rs.10,500/- per month since January, 2015 against the Respondents?
- (2) Whether the complaints have to pay the remaining principal amount to the Respondents?
- (3) Whether the complainants are entitled for refund of their principal amount Rs.14,14,064 along with compound interest @ 18% per annum thereon and rent @ RS.10,500/- p.m. since June, 2015 against the Respondents?
- (4) Whether the complainants are entitled for compensation against the Respondents for their mental, economical and physical harassment?
- (5) Whether the complainants are entitled for litigation cost against the Respondents?

01-10-2020
CONTINUED

Points No.(1) and (2):

5. Admittedly, both the parties have executed Agreement for Sale on 22-12-2012 for sale/purchase of flat no.107 on 1st floor in Block-H of building namely "I.O.B. Main Phase" having super built-up area measuring 612 sq.ft. and one reserve car parking space on the ground floor, common Swimming Pool and Community Hall and also undivided share in the land of the said project on consideration of Rs.15,35,508/- including Service Tax Rs.46,024/-. The Builder has agreed that construction of the building shall be completed till December, 2014, provided that the time of completion shall be deemed to have been extended in the event of non-availability of building materials or delay in receipt of instalments of consideration amount from the buyers/vendees of other flats and/or delay due to Force Majeure. If the Developer/Vendor is not able to hand-over possession of the flat to the buyer/vendee on the above account or any reasonable cause, the buyer/vendee may not be entitled to any damage whatsoever, but shall be entitled to receive back the entire money paid by him/her to the Developer/Vendor. Admittedly, up-till-now the complainant has paid Rs.14,14,064/- out of total consideration Rs.15,35,508/- including Service Tax. It appears that the complainants have paid major portion of consideration amount, but the Respondents have failed to complete the project and deliver possession of the said flat in

01-10-2020
CONTINUED

01-10-2020
CONTINUED

more than 5 years and 9 months, as they were to deliver possession of the flat in December, 2014. Except RERA, Bihar Registration, the Respondents have not brought any document on record to show that as to what were the reasons for the delay in completion of the project including the flat of the complainants within the stipulated time. I think, in absence of any reasonable documentary evidence, the defence/reply taken by the Respondents appears very weak. It also appears that the Respondents have got the Map approved from the competent authority and they have also obtained registration of the project from RERA, Bihar through Registration Certificate No.BRERA/P00011-11/192/R-305/2018, wherein the Respondents were directed to complete the project till 31-12-2019. But, neither the Respondents have completed the project till 31-12-2019 nor they have sought extension of validity the project registration from RERA, Bihar, otherwise they would have filed petition for seeking extension of validity of project registration in RERA, Bihar. The learned lawyer for the Respondents submitted that the construction and finishing of the project has again started and it will be completed at the earliest. Had there any reasonable cause adversely affecting the construction and finishing of the said project, the Respondents should have filed evidence for the same in the Court, so delay for 6 months might have been condoned, but they have not done so

and that is why the additional delay cannot condoned. I think, the Respondents should have either delivered possession of the said flat completed in all respect to the complainants or should have refunded the principal amount along with interest on the principal amount paid by the complainant to them. In such view of the matter, if the Respondents are ready to complete the building at the earliest and deliver the possession to the complainants, they can do it, but the same is possible with strong will on their part. Further, I have no hesitation to add that if the Respondents come with positive attitude, the complainants will have to pay the remaining consideration for construction the residual project as well as installation of all amenities. In alternate, the Respondents may allot, execute Sale Deed and deliver possession of another flat ready to move of same area and size and also pay some interest on paid principal amount by the complainants. Accordingly Point No.(1) is decided in positive in favour of the complainants and against the Respondents and Point No.(2) is decided in positive in favour of the Respondents and against the complainants.

01-10-2020
CONTINUED

Points No.(3) and (4) :

6. From the discussion of para-5 above, it is apparently clear that the Respondents have already delayed the project for more than 5 years 9 months as submitted by the complainants and established through the records/evidence. But, still the

complainants are hopeful that the Respondents can provide them the completed flat at the earliest. However, the complainants have stated that they are residing in rented house and also paying E.M.I. including interest against Home Loan borrowed from the Bank. So, they are mentally, physically and economically harassed due to the activities of the Respondents. The Respondents have paid no attention towards the problems being faced by the complainants.

01-10-2020
CONTINUED

In such facts and circumstances, I think, as per Rules 17 and 18 of Bihar Real Estate (Regulation and Development) Rules, 2017, the Respondents have to pay interest/rent to the complainants 2% above the M.C.L.R. of S.B.I. The current M.C.L.R. of S.B.I. is 7.3% per annum for loan of more than 3 years and if 2% is added, it will come 9.3%% per annum. Accordingly, as per above rules, the Respondents are required to pay simple interest @ 9.3% per annum on the principal Rs.14,14,064/- paid by the complainants to the Respondents, in case the Respondents are ready to refund the paid principal amount to the complainants. However, the above mentioned rate of simple interest @ 9.3% per annum appears to be very high, in case the Respondents come forward to hand-over possession of the said flat or in alternate other flat of the same area and size complete in all respect with all amenities at the earliest and in such case the principal amount Rs.14,14,064/- paid by the complainants has to be adjusted against the total consideration Rs.15,35,508/- including Service

Tax and in that case, instead of simple interest @ 7.3% per annum, simple interest @ 5% per annum on the paid principal amount Rs.14,14,064/- with effect from the respective date of payment by the complainants will justify the end. In addition in case of refund of principal amount, since the said amount has been utilised by the Respondents, so as per Section-72 of the Act, 2017, the Respondents have to pay additional compensation to the complainants, as now a flat of same area in the same locality will not be available to them at the same rate, as it was available in the year 2012. Presently, the rate of flat must have been multiplied. The present price of flat is not brought on record by either side. But, since the price of the flat has gone much higher, hence, complainants have to be compensated. I think, Rs.2,50,000/- as compensation, which is 17.70% of the principal amount Rs.14,14,064/- paid by the complainant, would be appropriate amount to be paid by the Respondents to the complainants. Accordingly, Point No.(3) and (4) are decided in positive in favour of the complainants and against the Respondents.

01-10-2020
CONTINUED

Point No.(5):

7. The complainants have visited several times to the Respondents office, met with them and their staffs and requested for refund of their paid principal amount, whereon, the Respondents and their staffs did not give any attention, which compelled the complainant to file this case. The complainants

would have naturally incurred expenses in travelling to the office of the Respondents to meet them and their staffs and also for filing the present complaint case in RERA, Bihar, preparation of documents, payment of Court Fee etc. Though the complainant have not brought on record, the actual expenditure incurred by them for this purpose, but I think, in all the process the complainant would not have incurred more than Rs.20,000/-, which must be paid by the Respondents. Accordingly, Point No.5 is decided in positive in favour of the complainants and against the Respondents.

01-10-2020
CONTINUED

Therefore, complaint case of the complainants Sri Santosh Kumar Pathak and his wife, Smt. Bibha Kumari is allowed on contest with litigation cost of Rs.20,000/- (Rupees twenty thousand only) against the Respondents. The Respondents are directed that on receipt of remaining consideration Rs.1,21,444/- (Rupees one lac twenty one thousand four hundred forty four only), execute Sale Deed and hand over the concerned flat or in alternate other flat of same area and size completed in all respect, as per Agreement for Sale within the stipulated period to the complainants and also pay simple interest @ 5% per annum on paid principal amount of the complainants since January, 2015 for payment of rent and their economical, mental and physical

harassment. It is further directed that in case of failure on the part of the Respondents in delivery of the completed flat to the complainants within the stipulated period, they shall refund the paid principal amount Rs.14,14,064/- (Rupees fourteen lacs fourteen thousand sixty four only) without any deduction along with accrued simple interest @ 9.3% per annum thereon from the respective date of payment by the complainants to the Respondents till the date of refund of full amount to the complainants and in addition they shall pay Rs.2,50,000/- (Rupees two lacs fifty thousand only as compensation to the complainants for their economical, physical and mental harassment. The Respondents are directed to comply the order within 60 (sixty) days, failing which the complainants are entitled to get enforced the order through process of the Court.

01-10-2020
CONTINUED

Sd/-
(Ved Prakash)
Adjudicating Officer
RERA, Bihar, Patna
01-10-2020