

**REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR**

**Complaint Case No. RERA/CC/23/2018**

**Smt Nitumani.....Complainant**

**Vs**

**M/s Agrani Homes Real Construction Pvt Ltd..... Respondent  
through its Managing Director, Mr Alok Kumar**

**Present: For the Complainant - In person  
For the Respondent - Mr Ashok Singh, Sr**

**Adv**

**Ms Manisha Singh, Adv**

**01/11/2018**

**ORDER**

1. Smt Nitumani has filed a complaint petition under Section-31 of the Real Estate (Regulation & Development) Act, 2016 to the Authority against M/s Agrani Homes Real Construction Pvt Ltd, a unit of Agrani Homes Pvt Ltd on 22/06/2018 in which the complainant herself defended her case whereas the respondent was represented by the learned senior counsel Mr Ashok Singh.

**Case of the Complainant :**

2. In her petition the complainant has stated that she had booked the Flat No.405 in C-Block in the Real State Project:- Agrani Angel of M/s

*Ans*



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Agrani Homes Real Construction Pvt Ltd on Khagaul Road through the sister (Mrs Alka Singh) of its CMD (Mr Alok Kumar) on 27<sup>th</sup> January, 2016.

3. She claimed that she had made the payment of Rs 2,77,506/- including the service tax for booking the apartment. At the time of booking, she claimed that she had selected Flat No.404 in C-Block but she was provisionally allotted Flat No.405 in C-Block with promise that she would be finally allotted Flat No.404 if the land owner agrees for exchange of flats.
4. She claimed that even after two years, Flat No.404 has not been allotted to her and Mrs Alka Singh has refused to talk to her regarding this matter. She was also not given the option for refund of her principal amount paid by her.
5. She claimed that other staff members of the company informed her through mail on 16<sup>th</sup> May, 2017 that a new floor plan of the project has been made which was entirely different from what was depicted in the brochure given to her at the time of booking and was available on the website of the project Agrani Angel Phase-I.
6. She claimed to have met the CMD of the Company Mr Alok Kumar but of no avail. She also claimed that she had written a letter to the CMD and sent an e-mail for executing agreement for sale of the flat of her choice or refund of the amount paid along with 12% compound interest. As she did not get any response, she approached RERA

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and filed a complaint with the Authority. She said that on 31/05/2018 the CMD of the company Mr Alok Kumar issued a post-dated cheque of 15/06/2018 for the principal booking amount of Rs 2,77,508/- drawn on Indian Overseas Bank, Kankarbagh Branch. On presentation, the said cheque was returned unpaid by the bank on 18/06/2018 due to insufficient fund. She has claimed refund of her principal amount deposited with the company along with 12% compound interest per annum. The complainant has prayed for the following reliefs :-

- 1- Relief u/s 12 of the Act - false advertisement shown by the builder.
- 2- Relief u/s 14 of the Act - change of plan of the flat.
- 3- Relief u/s 18 of the Act - refund with compensating interest.
- 4- Relief u/s 38 of the Act - fine of twice the amount of dishonoured cheque.

She has also claimed interim relief of refund of the principal amount with 12% compound interest per annum.

#### **Response from the Respondent :**

7. In their response, the respondent company has stated that the Petitioner's "Know Your Customer" (KYC) form itself indicated that Flat No.404 in Block-C was not available for her as the said flat was allocated to the land owner and the builder had only committed that if the land owner agrees to exchange the flat in future, it would be given to her.

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8. The respondent company also stated that the changes made in the plan of the project had arisen due to new building bye-laws issued by the Government and there was no malafide intention of the company in this regard.
9. The company has further stated that as per then prevailing practice, the agreement for sale was to be signed only when borrowers paid the entire amount of 25% of the unit price. In this case, though the first instalment was paid on 27/01/2016, she did not pay the 25% of the unit price till date.
10. The company further stated that the cheque given to her in June, 2018 bounced for no deliberate intention of theirs and once it came to the knowledge of the company, the entire amount was transferred through RTGS to the complainant on 11/07/2018.
11. The respondent company has also contested all the four reliefs claimed by the petitioner stating that there was no false advertisement and the plan of the building was changed due to changes made in the building bye-laws by the Government on which the promoter/company had no control. Therefore, no registration of agreement for sale was done as she had not paid 25% booking amount till date. As regards dishonoured cheque is concerned, the full amount has already been transferred to the complainant and she has already accepted the same.
12. The respondent company further stated that though the petitioner has made various allegations against the respondent company, she

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has not highlighted the fact that she has failed to honour her own responsibility as an allottee of making timely payment of instalments as per Section 19 of the Act.

13. The respondent further contended that the complainant had booked the flat in January, 2016 but she made demand for refund only on 07/12/2017. Therefore, the complainant can be entitled for any interest under the Act only for the period after 07/12/2017 till the date of payment.

**Hearing :**

14. In course of hearing held on 05/10/2018 the petitioner reiterated her complaint and stated that the company did not listen to her for more than two and half years and refunded the principal amount only after she issued legal notice, filed FIR and complaint to RERA. She furnished the copies of the legal notice, return memo of cheque issued by the SBI, Bailey Road Branch, copy of the cheque issued by the company dated 15/06/2018 along with all receipts of deposits made by her with the respondent company.
15. Learned Senior Counsel of the respondent company claimed that there was no malafide action by the company. The company had already informed the applicant at the time of booking that the desired flat could only be given to her when the land owner agrees to exchange his flat with any other flat of the builder's quota. Since he did not agree, hence Flat No.404 in C-Block could not be given. Further, regarding change in the map of flat is concerned, it

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happened due to reasons beyond their control as the new building bye-law were prescribed by the Government necessitating certain changes in the plan.

16. Learned counsel informed that the entire deposit of the petitioner has been refunded back through RTGS and there was no reason as to why the petitioner's claim be admitted by the Authority.
17. The Bench wanted to know from the learned counsel the date of issue of the Bihar Building Bye-laws to which the learned counsel said that it was issued sometime in 2015. Further, the Bench enquired as to why the petitioner was not informed at the time of booking or subsequently till May, 2017 regarding proposed/likely changes in the plan of the project to which the learned counsel admitted that the petitioner was informed in May, 2017 about the changes proposed to be included in the project.

**Order :**

18. The petitioner was aggrieved on two counts – firstly, that she was not allotted the flat of her choice i.e. Flat No.404 C-Block and secondly, that there was drastic changes in the plan of the project radically changing the location of her flat. Though the response given by the respondent company appears to be convincing regarding the first issue i.e.e non-allotment of Flat No.404 C-Block to the fact that the said flat was in land-owners quota and they did not agree to exchange that flat with the builder. However, as regards the second issue regarding significant changes of plan of the project, the


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argument given by the respondent company does not appear to hold water as the Bihar State Building Bye-laws were promulgated in December, 2014 whereas the booking of the flat was done in January, 2016. Hence, the brochure of the project should have been changed by the builder after incorporating the changes resulting out of the introduction of the new building bye-laws. Or Alternatively the Brochure would have given a caveat that the shown plan was likely to change in view of new Building bye-laws. Further, against the petitioner's claim for refund of the deposited amount along with due interest in December, 2017, the respondent did not react and reacted only when she approached the RERA in May 2018.

19. As the benefit of deposited amount was availed by the respondent company for more than two and half years, equity demands that the principal amount ought to be refunded along with suitable rate of interest. Since the principal amount has already been refunded on 11/07/2018, the Authority directs the respondent company to pay the interest at two percent above the Marginal Cost of Lending rate (MCLR) of State Bank of India on the deposit from the date of deposit till the date of refund of the principal amount within 60 days of issue of this order.

  
Member  
(R B Sinha) 11/11/2018



  
Member  
(Dr S K Sinha)