

IN THE COURT OF ADJUDICATING OFFICER,  
REAL ESTATE REGULATORY AUTHORITY, BIHAR, PATNA

Complaint Case No.RERA/20/2018  
[Adjudicating Officer Case No.06/2018]

Mr. Mahesh Kumar Jha,  
102 E, Keshav Palace,  
Khajpura, Bailey Road,  
Patna-800014.

- Complainant

Vs.

Sri Alok Kumar, Developer,  
Agrani Homes Pvt. Ltd.,  
House No.15,  
Ward No.1 FA,  
Patliputra Colony,  
Patna-800001.

- Respondent

Present:

**Sri Ved Prakash**  
**Adjudicating Officer**

For the Complainant

- Mr. Lakmesh Marvind  
Advocate

For the Respondent(s)

- Ms.Manisha Singh, Advocate

**ORDER**

03-01-2019

This complaint petition is filed by complainant, Mahesh Kumar Jha against Respondent, Alok Kumar, Developer, Agrani Homes Pvt. Ltd. u/s 12, 18 and section 19 read with section 72 of the Real Estate (Regulation and Development) Act, 2016 (later on it will be named as Act, 2016) for relief of payment of accrued interest on Rs.14,55,040 @ 8% since 20-01-2015 till date of refund. He has further sought relief for refund of Service Tax Rs.44,960/- along with interest accrued on said amount @ 8% per

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annum since 20-01-2015 till the date of payment and further claimed compensation of Rs.5.00 lacs for mental torture and physical harassment for last 3 years.

2. In nutshell, the case of the complainant is that on the basis of an advertisement, the complainant entered into an M.O.U. on 23-02-2015 with Alok Kumar, Promoter-cum-Director, Agrani Homes Pvt. Ltd. for purchasing a flat having area of 1300 sq.ft. in the east facing corner of second floor in Block-S of the building namely; 'I.O.B. Nagar' at Sarai near Danapur railway station with one free car parking space in the ground floor and also an undivided share in the land of the aforesaid building on consideration of Rs.17,52,530/- and as per agreement, the complainant paid Rs.15.00 lacs by means of 3 cheques dated 20-01-2015 to the Promoter. The rest amount was to be paid at the time of delivery of the possession of the said flat. The Promoter had assured that construction of the said building shall be completed within a period of 36 months with the relaxation period of 6 months after approval of PMC Map. It was shown by the Promoter that the proposed Map was already presented before PMC authorities for its approval and soon he will receive the approval order and the construction of the Block-S shall start in April, 2015. The complainant believed on the words of the Promoter since the construction for other Blocks of the aforesaid building was going on, but the construction work of Block-S did not start for a long period and the Promoter always falsely assured the complainant that the construction work will commence shortly. Therefore, the complainant filed an application under R.T.I. Act before the Chief Executive Officer, P.R.D.A. regarding passing of the Map for construction of Block-S over the survey of Floor No.1430, then it was informed on 05-10-2017 that the aforesaid company has not presented Map for construction of the flats in Block-S of the aforesaid building on the said plot. Thereafter, the complainant several times met Mr. Alok Kumar for refund of the paid amount,

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but he did not do so, then the complainant filed an application before the Public Grievances Redressal Officer, Urban Development and Housing Department, Bihar for directing the Promoter for refunding of Rs.15.00 lacs, which he had taken from the complainant as an Earnest Money on 20-01-2015. Due to intervention of said officer, the Developer refunded Rs.1.00 lac on 12-04-2017, Rs.1.00 lac on 05-09-2017 and Rs.12,55,040/- on 27-09-2017 to the complainant, after deducting Rs.44,960/- as Service Tax out of Rs.15.00 lacs. It is further case of the complainant that the Promoter is liable to pay the amount of Service Tax along with interest on Rs.44,960/- and amount of interest accrued on Rs.14,55,040/- and so the Respondent may be directed to pay the above interest along with compensation for physical torture and mental harassment to the complainant.

3. After appearance, the Respondent has filed his written statement pleading *inter-alia* that the case of the complainant is neither maintainable in the eye of law nor on fact, as he himself has entered into the M.O.U. for only getting Earnest Money in case the Developer does not deliver possession of the flat to the complainant within a reasonable time after fixed period of 42 months. It is further case that the said period of 42 months for delivery of possession shall be applicable with effect from the date on which the competent authority approves the Map. In normal course, if the entire procedure is adopted, it may take about one year time and thereafter 42 months is to be provided for delivery of possession, which come around June-July, 2019. It is 2018, so still about one year is left to complete the project and to deliver possession to the complainant. As per Building Bye-Laws, 2014, a Fire Clearance is required before the proposal is sent to the competent authority for approval of the Map. Hon'ble Patna High Court on 15-12-2014 passed in interim order staying the approval of Maps in Patna. It is further case that on perusal of report of Public Grievances Redressal Department during the period no Map was being approved by the authority, as the New Master Plan was



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contemplated to be declared. After the vacation of the interim order, the Map was sent to the Fire Department and after it was approved from the Department of Fire, it was sent before the competent authority for approval after observing all the formalities. Since the complainant had demanded refund, a sum of Rs.14,55,040/- was returned to the complainant before 27-09-2017, which has been accepted by him and so far as the refund of Service Tax is concerned, since it has been deposited to the Service Tax authority, the company is not liable to pay any interest over this amount. It is further case that the Public Grievances Redressal Officer had directed the complainant to appear on 02-11-2017 for filing his response, the complainant did not state anything about what happened on the said date. Therefore, it can be safely inferred that the complainant has not come with a clean hand before this Court. Since the entire amount has already been refunded to the complainant and his file has been closed in the Respondent company and he has also accepted the said amount, so he is not entitled for any interest. As per M.O.U. signed between the parties, it is clearly mentioned that the Service Tax is non-refundable as stated in para-4 of M.O.U. It states that 5% Cancellation Charges will be deducted, which includes Service Tax. The Service Tax so deducted has already been paid to the concerned department in the financial year 2014-15 and now as per provisions laid-down in D4, E4 and F4 rule 6(3) of the Service Tax Rules, 1994, it allows adjustment of Service Tax amount, which was paid earlier. It is important to mention that the above Service Tax is now replaced with G.S.T. In view of the above mentioned facts and circumstances, the complainant is not entitled for any relief and hence, the complaint petition may be dismissed.

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4. In light of above facts, the following points are formulated for adjudication of the case :-

(1) Whether the complainant is entitled for interest @ 8% per annum on Rs.14,55,040/- since 20-01-2015 till the date of refund.

(2) Whether the complainant is entitled for refund of paid Service Tax Rs.44,960/- along with accrued interest @ 8% per annum on such amount?

(3) Whether the complainant is entitled for compensation of Rs.5.00 lacs for mental torture and physical harassment?

All these points are taken together for discussion, as they are linked with one and another.

5. The learned Lawyer on behalf of complainant submitted that the complainant had paid Rs.15,00,000/- including Service Tax of Rs.44,960/- on 20-01-2015 to the Respondent out of total consideration money of Rs.17,52,530/- and both the parties had executed M.O.U. wherein it was agreed by Respondent that possession of flat will be delivered within 36 months with relaxation of 6 months after the approval of Map from P.M.C. authorities. The Respondent had assured that construction will start in April, 2015, but construction for Block-S did not start. When construction did not start for long period, then the complainant doubted on words of Respondent and filed an R.T.I. application before Chief Executive Officer, P.R.D.A., who replied that up till 05-10-2017, no Map was presented by Respondent for approval of Block-S. Hence, the complainant demanded refund of paid amount and on no reply by Respondent, the complainant had filed an application before Public Grievance Redressal Officer of Urban Development and Housing Department, Bihar. On intervention of such officer, the Respondent refunded Rs.14,55,040/- after deducting Service Tax amount Rs.44,960/-. He further submitted that on repeated request neither the Respondent started construction work nor refunded Earnest Money along with interest nor he well behaved with the complainant and in this way, the complainant is not only entitled

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to interest on Earnest Money Rs.14,55,040/- and Rs.44,960/- along with refund of Service Tax Rs.44,960/-, but also entitled to compensation of Rs.5,00,000/- for mental torture and physical harassment.

6. On other hand, learned Lawyer for Respondent denied the allegations of complainant and submitted that firstly complainant had accepted the conditions imposed in the M.O.U. signed on 23-02-2015, wherein it was agreed that possession shall be delivered to complainant within 36 months with relaxation period of 6 months with effect from the date on which competent authority approves the Map and in normal course, if all the procedures including Fire Clearance etc. is received about one year time is consumed. If it is calculated, this project may be completed in June-July, 2019 and possession may be delivered to the complainant. So, still one year time is safe with Respondent for completing the project. Secondly, Hon'ble Patna High Court had stayed the approval of Maps in Patna since 15-12-2014 and as per Building Laws, 2014, a Fire Clearance is required before the Map is sent for approval before competent authority. It shows that there is no latches on part of Respondent, as he has presented the Map for approval after vacation of stay order by Hon'ble Court. Thirdly, as per request of complainant, Rs.14,55,040/- was refunded to him before 27-09-2017 and so far as refund of Service Tax Rs.44,960/- is concerned, since it has been deposited to the Tax authority, he can claim the same from such authority. She further submitted that now the Service Tax cannot be claimed against the Respondent. It is also important that Service Tax has been replaced by G.S.T., so it is difficult to refund to the complainant. Fourthly, as per M.O.U. signed by the parties, Service Tax is non-refundable and 5% cancellation charges will be deducted which includes Service Tax. As per provision of Service Tax Rules, 1994, this paid Service Tax cannot be adjusted by the Respondent. Fifthly, the complainant himself has changed his version from time to time, so there is harassment to Respondent and not to the

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complainant, so he is neither entitled for interest nor for compensation nor for Service Tax, hence, he is not entitled for any relief as claimed by him.

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7. Admittedly, M.O.U. was executed between both the parties on 23-02-2015 for sale and purchase of a flat having area of 1300 sq.ft. on consideration of Rs.17,52,530/- and out of which the complainant has paid Rs.15.00 lacs on 20-01-2015 through 3 cheques. It is also admitted case that the complainant has filed complaint case before the Public Grievance Redressal Officer, Urban Development and Housing Department, Bihar and as per direction of concerned officer, the Respondent has paid Rs.14,55,040/- to complainant, in which he paid Rs.1.00 lac on 12-04-2017, Rs.1.00 lac on 05-09-2017 and Rs.12,55,040 on 27-09-2017 and refused to refund Service Tax Rs.44,960/- and interest accrued on amount Rs.14,55,040/- and Rs.44,960/-. It is stated that Service Tax Rs.44,960/- was paid to Service Tax department.

8. According to the Respondent as per Building By-Laws, 2014 a Fire Clearance is required prior to sending of Map for approval of competent authority of P.M.C. She has also argued that Hon'ble High Court has stayed on 15-12-2014 passing of Map in Patna as new Master Plan was going to be declared and on vacation of stay order Respondent has sent the Map to Fire department for clearance and after clearance it was sent to competent authority for approval. I think, when it was in knowledge of Respondent then he should not have received such huge amount from complainant without clearance from the Fire department and approval of Map from P.M.C. authorities, as by-laws was issued in 2014 and stay order by Hon'ble Court was passed on 15-12-2014 prior to M.O.U. dated 23-02-2015. It has come into light through R.T.I. that till 05-10-2017 Respondent has not presented Map for construction of flats in Block-S of the aforesaid building. The learned Lawyer for Respondent emphasized that R.T.I was not correctly sought by the complainant, but if it was incorrectly

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sought and reply given, then the Respondent should have brought any document on record to show that till 05-10-2017, the Map was presented and approved. She has also not brought on record as to when the Hon'ble High Court has vacated the stay order and as to what was the position of construction on the site at the time of claim of refund by the complainant. All these points go to show that Respondent before and after receiving the advance money from complainant did nothing on the site of construction including process of Map approval within a reasonable time, which supports the demand of refund of advance money by the complainant, as no one can wait for indefinite period for starting the project and thereafter delivery of possession and particularly when the Respondent has assured that within due time delivery of flat will be done.

Record shows that when start of project was delayed, the Respondent should have informed the stage of progress to the complainants, as per section-19 of the Act, 2016, but he has not informed to the complainant rather complainant himself has repeatedly consulted with the Respondent and he found that the project is much delayed, so he demanded refund of advance amount, but the Respondent instead of showing positive gesture, not only neglected to the complainant, but also denied to refund the money, so the complainant has brought a case before Public Grievance Redressal Officer of Urban Development and Housing Department, Bihar and on direction of concerned officer, the Respondent refunded only advance money Rs.14,55,040/- after deducting Service Tax Rs.44,960/- from paid advance money Rs.15.00 lacs.

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The learned Lawyer for Respondent also argued that due to Master Plan proposed by Government of Bihar and stay order of Hon'ble High Court, Force Majeure is applicable in this case. She further submitted that building materials were also not available during this period, that is why the project delayed and if the complainant is withdrawing from the project, then as per para-4 of



M.O.U. signed by the complainant, 5% cancellation charges was also to be deducted, but that has not been done with the complainant. On the other hand, the learned Lawyer for complainant submitted that Force Majeure is not applicable in this case, as it does not come within the definition of explanation of section-6 of the Act, 2016. "Force Majeure" has been explained in proviso of section-6 of the Act, 2016, which says that Force Majeure means a case of war, flood, drought, fire, cyclone, earth quake or any other calamity caused by nature affecting the regular development of the real estate project. In the instant case, except order of stay by Hon'ble High Court and Master Plan, nothing has happened. But whether this project was effected by the order of Hon'ble Court and Master Plan or not, has not been brought on the record. However, the so-called problem stated by the Respondent may be considered at the time of considering interest on particular amount.

10. The learned Lawyer for Respondent has much emphasized that paid Service Tax Rs.44,960/- cannot be refunded by Respondent, as the reasons cited above, but nothing is brought by Respondent on the record, which may support that the allottee cannot be refunded his paid Service Tax and implementation of G.S.T. has debarred the claim of refund of paid Service Tax. On the other hand, provisions of D4, E4 and F4 of Service Tax Rules, 1994 very well say that Rule 6(3) allows adjustment of Service Tax amount which was paid earlier in respect of Taxable Service not provided wholly or partially by the Service Provider or where the amount of invoice is re-negotiated. Such adjustment is shown with examples that a Service Provider receives an advance of Rs.1,000/- and on which he pays a Service Tax Rs.120/-. However, later on if he does not provide this service and refunds the amount to the person from whom the advance was received, he can, in this case, adjust the amount of Rs.120/- for any of his future liability of Service Tax. In this way, there is no substance in argument of learned Lawyer of Respondent. The Respondent is a big builder

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and he has several other projects and he can adjust the Service Tax of the complainant in such other projects and at this stage he should refund the Service Tax amount Rs.44,960/- to the complainant.

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11. Hon'ble Supreme Court on appeal of M/s Supertech filed against Hon'ble Allahabad High Court order dated 11-04-2014 has directed refund of money to home buyers with 14% interest. In the case in hand, it is clear that advance money Rs.14,55,040/- has been refunded, but accrued interest not paid on this amount, while the Respondent has retained the money for more than two years. The home loan is being given to the home buyers at the rate of about 8.75% by S.B.I., 8.7% by L.I.C., 8.8% by H.D.F.C. Fixed deposit rate of interest is about 6.3%, while personal loan rate of interest is about 12.5% and above. The MCLR rate is about 8.45% of S.B.I. and for 3 years is about 8.65%. S.B.I. business loan interest rate is about 11.20% to 13.5%. Hence, the respondent should have paid at least 8.65% along with 2%, but he has done nothing towards payment of interest within a reasonable time.

12. Some advance money has already been refunded to the complainant comprising Rs.1.00 lac on 12-04-2017, Rs.1.00 lac on 05-09-2017 and Rs.12,55,040/- on 27-09-2017 after deducting Service Tax Rs.44,960/- out of Rs.15.00 lacs. The respondent has used the advance money Rs.15.00 lacs for his business and on other hand the complainant could not get the flat within reasonable time, so he sought for cancellation of flat and refund of advance money from the Respondent, which was accepted by the Respondent, but he refunded only Rs.14,55,040/- and refused to pay interest on the said amount. Naturally, the market value of flat has gone very high from the time of booking. So, M.C.L.R. rate of interest 8.65% plus 2% may be paid to the allottee along with compensation for physical torture and mental harassment.



13. Hon'ble Supreme Court in Ghaziabad Development Authority Vs. Balbir Singh has held on 17-03-2004 that "However, the power

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to and duty to award compensation does not mean that irrespective of facts of this case; compensation can be awarded in all matters at uniform rate of interest @ 18% per annum. As seen above what is being awarded is compensation i.e. recompense for loss or injury. It is, therefore, necessarily has to be based on a finding of loss or injury and has to co-relate with the amount of loss or injury”.

14. As per sec-72 of the Act, 2016, the Respondent has to compensate for disproportional gain for himself or loss caused to the complainant due to result of default of the Respondent. In absence of any documentary evidence, the Respondent cannot be given the benefit of 'Force Majeure' as discussed above for delay of completion of Project. It was duty of Respondent to timely complete and deliver the possession of flat to the complainant, and if it was not possible, he should have refunded the advance money along with interest and compensation for loss to complainant and gain for himself, but instead of doing his duty, the Respondent is taking unreasonable tactics to avoid payment of interest. Though the present rate of sale of flat in this area is not brought on record by either side, but the Respondent should compensate the complainant for his physical torture and mental harassment, as he did not return the advance money suo motu within a reasonable time and for recovery of which, the complainant has to run from one forum to other. The respondent has well used the advance money Rs.14,55,040/- for about two and half years in his business and business rate of interest is much higher about 11.20% to 13.5% per annum than MCLR rate of interest. I think, in the above facts and circumstances, a lump sum amount only Rs.50,000/- may justify the end for compensation.



15. The interest may be calculated from the time of payment of amount by the complainant to the Respondent. A round about 10% per annum simple interest may justify for both the parties.

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The amount of Rs.15 lacs was paid by the complainant to the Respondent on 20-01-2015 and, out of the said money Rs.1.00 lac was refunded on 12-04-2017 and if it is calculated on the simple interest at the rate of 10% per annum, the amount of interest will come Rs.22,500/-. The Respondent has refunded Rs.1.00 lac on 05-09-2017 and Rs.12,55,040/- on 27-09-2017 and on calculation of this amount the interest will come Rs.3,61,344/-. In this way, total interest on Rs.14,55,040/- will come to Rs.22,500/- + Rs.3,61,344/- = Rs.3,83,844. Taking above different Bank rates in mind, I was inclined to order to pay simple interest at the rate of 10% per annum, but since the complainant has claimed only 8% interest per annum, the Respondent may be directed to pay interest at the rate of only 8% simple interest per annum. Hence, on calculation simple interest of 8% per annum on Rs.1.00 lac will come Rs.18,000/- and on Rs.13,55,040/- the simple interest will come about Rs.2,89,075/-. The total interest on amount of Rs.14,55,040/- will come Rs.3,07,075/-.

16. The Respondent has deposited Service Tax Rs.44,960/- in the Tax Department, so he could not utilise it. If the Respondent has not used this amount in running his business, he should not be liable to pay interest on this amount. However, this amount should be refunded by him to the complainant as the Respondent is leading a big firm and in future on tax deposit, he may adjust the said amount.

17. From the above discussions, it is apparently clear from all corners that the complainant has well proved the allegation of complaint petition and point nos.2 and 3 are decided in Positive in Part in favour of complainant and against the Respondent and Point-1 is decided in Positive in favour of complainant and against the Respondent. Hence, as stated taking equity for both parties, the complainant may be allowed simple interest at rate of 8% per annum on Rs.14,55,040/- along with Service Tax amount Rs.44,960/- against the Respondent with compensation of Rs.50,000/-.



Therefore, the complaint case of complainant is allowed on contest against the Respondent along with litigation cost of Rs.10,000/-. The Respondent is directed to pay interest Rs.3,07,075/- on amount Rs.14,55,040/- at the simple interest rate of 8% per annum. He is further directed to pay compensation amount of Rs.50,000/- to the complainant. He is further directed to refund paid Service Tax amount Rs.44,960/- to the complainant. The Respondent is directed to comply this order within 60 (sixty) days, failing which the complainant is entitled to get enforce the order through process of the Court.

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*Ved Prakash*

(Ved Prakash)  
Adjudicating Officer  
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