

**REAL ESTATE REGULATORY AUTHORITY, BIHAR.**  
**Before Mr. S.K. Sinha, Member of the Authority.**

**Complaint Case No.: CC/397/2019**

Dr. Pankaj Kumar.....Complainant

Vs

M/s Vasundhara Homes Pvt.Ltd.....Respondents

**28/12/2020**

Mr. Dr. Pankaj Kumar, R/o- N-102, Indra Smriti Enclave, South Chitragupta Nagar, Behind Gita Prasad Singh, High School, Kankarbagh, Patna-800020, Bihar, has filed a complaint petition on 10/06/2019, under Section 31 of the Real Estate (Regulation & Development) Act 2016 r/w Section 36 of the Bihar Real Estate (Regulation & Development) Rules 2017 against M/s Vasundhara Homes Pvt. Ltd office no-62, 6<sup>th</sup> Floor, Vasundhara Metro Mall, E. Boring Canal Road, Near-Rajapur Pool, Patna- 800001, a company incorporated under the companies Act 1956, having CIN U45201HR1993PTC083745 through their Managing Director Mrs Nalini Singh for not making the absolute sale deed in favor of complainant after repeated request made by him since December 2017.

**Case of the Complainant:-**

In the petition, complainant has stated that he has booked Flat no-306, “Vasundhara legrassia Mint” with the builder M/s Vasundhara Homes Pvt.Ltd at Nehru Nagar, Patna on 24/05/2014 by paying Rs.7 lakh 34 thousand by cheque. The Builder made an agreement for sale with the complainant on a non-judicial stamp of Rs.1000/- on 14.03.2015 after which he again paid to the builder Rs. 3 lakh 70 thousand as installment money by cheque when the builder agreed to proceed for the registration of the agreement for sale but never moved for that. Even before the agreement for sale, the builder started to ask for money which he could not pay and finally said & wrote to the builder on 20.06.2015 that the payment would be made by him only when builder show a latter of work order & NOC from commissioner, Patna Municipal Corporation as a case was pending in the vigilance court of Patna Municipal Corporation against the said builder. Complainant further stated that after repeated request, the builder did not proceed for the loan disbursement to him and as such his booked flat had not been furnished unlike, after flats in which around 25 persons are living either by getting possession latter or by way of getting absolute sale deed of his flat by the builder. This way the builder is harassing & torturing him since December 2017 by not stating the process of handing over the possession of

the flat to the complainant by putting him in a lurch & compelled him to live in a precarious condition in a rented flat. Presently the office staff of the builder says about the ban imposed in the absolute sale deed of the flats of the said project by registration department from September 2018 and thus the builder has deprived him from living in his booked flat right from March, 2018. Thus he requests for the absolute sale deed of the flat no 306 of “Vasundhara Legrassice Mint”, Nehru Nagar to him.

After filing of the aforesaid complaint, a notice was issued to the respondent M/s Vasundhara Homes Pvt.Ltd Through its Director Mrs. Nalini Singh dated-10/06/2019 for submitting his response till 31/07/2019.

### **Response of the Respondent Company:-**

The respondent company heaving did not give any response to the notice issued to him. According both the parties was directed to come for hearing in complaint case.

### **Hearing:-**

Hearings were held on 14/11/2019, 23/12/2019, 11/02/2020, 02/03/2020, 18/09/2020 & 29/09/2020. In course of hearing, the complainant was present personally to defend his case while the respondent company was represented by Mr. Jai Ram Singh (Advocate). On first date of hearing parties were agreed to companies & respondent also filed W.S.

In Course of hearing the Respondent Company was directed by the bench to produce before this court the receipt of completion certificate or allotment letter / sale deed which has been deposited to the competent Authority & approved map of the project.

On 11/02/2020, the Bench directed the respondent company to provide title related documents & also to inter into a fresh agreement for sale with the complainant, so that the complainant can apply for bank lone by 20<sup>th</sup> February, 2020.

On 02/03/2020, the Bench directed the complainant to pay the due consideration amount along with simple interest @ 6% per annum to the respondent company before registration of the ready to move flat in question.

On 18/09/2020, the Bench directed the learned council of the respondent to submit the evidence regarding the allottees living since 02/06/2016.

On 29/09/2020, Bench directed the complainant to pay 6% interest on remaining consideration amount from the date of possession of 2/3<sup>rd</sup> allottees

in the said apartment. Bench directed the respondent to submit copy of registry & possession letter in RERA office.

### **Issues of Consideration**

Whether the Complainant had paid the booking amount to the Promoter and agreement for sale Sale was registered or not. As per loan approval letter of the SBI bearing No.AGM/SPB/GVP/114 dated 03/06/2013 and loan approval letter LIC HFL bearing loan application no. 2110003418 there were first and eight condition respectably “ for a Registered Agreement for Sale with the person intending to purchase the flat out of bank finance”. The Complainant states that he has requested the Builder several times but the Builder never entered into registered agreement which was the perquisite for loan disbursement and there was a Vigilance Case pending against the said Promoter (Respondent) pertaining to same apartment in question. Due to these two reasons complainant was not inclined to pay the remaining amount to the respondent even though Complainant was always willing to pay the consideration amount but after final disposal of vigilance case. Though the Builder completed the project even after vigilance court stay allotted many flats to the allottees that were living without payment. The stand of the allottee for not giving further consideration amount due to above said two reasons was correct. For that Complainant had also approached the Municipal Commissioner vide Appeal No.128/14 dated 22/12/2014.

The Respondent in his reply and argument submitted that he informed the Complainant to take over the completed ready to move flat but the Complainant always asked for Occupancy/Completion Certificate before making any payment for said flat in question. In the meantime the Promoter asked for payment from the complainant but on the other hand did not cooperated in withdrawing money from the sanctioned loan by LIC Housing finance and arbitrarily cancelled the booking of the said flat in question. RERA disallowed such arbitrary cancellation and act done by the erring promoter but however, intention of the Promoter is not bad in this case because he has not allotted or sold the flat to any other person/party till date and he has been waiting for the outcome of this case.

Whether interest on the unpaid balance amount i.e. Rs 62, 15000 should be paid to the Promoter or not? In the meanwhile the Respondent has demanded balance consideration amount from the Complainant with interest at that time when the respondent has already registered allotted flats to many

allottees and they are living in their flats but without having Occupancy/Completion Certificate. Whether considering the intention of the Promoter and being always ready for acceptance of the said flat as per Section 19(7) the allottee should pay the interest on the remaining amount as the complainant himself admitted in his complaint petition that since 2017 around 25 allottees were living either by way of possession letter or by way of getting absolute sale deed of their flat from the respondent.

Whether the allottee (Complainant) always requested for supplementary fresh agreement for sale so that he can apply for the home loan and pay remaining amount to the Promoter within a fixed frame of time. Demand of the Complainant seems to be reasonable. That a loan was also sanctioned to the Complainant by LIC HFL as per letter dated 27/12/2019 but due to non-cooperation of the respondent promoter and also not providing some of the documents as per letter dated 09/01/2020 by the Builder, the loan could not be disbursed. Hence it proves that complainant was eager to pay the installment. But it is also admitted fact by the parties that the apartment in question was complete much before 1<sup>st</sup> May, 2017 and 2/3<sup>rd</sup> of the allottees were also living in the said apartment by way of possession letter and sale deed since September 2017. So, therefore respondent was justified to claim only reasonable interest on unpaid balance consideration.

**Order:**

After perusal of the record, documents and having gone through the rival arguments, it is therefore directed that cancellation of the allotment dated 11/06/2015 of flat no. 306, "*Vasundhara legrassia Mint apartment*" against Dr Pankaj Kumar was arbitrary and is declared as void and directed to be set aside.

It is further directed that the promoter/respondent shall cooperate with the Complainant (allottee) and enter into a fresh registered agreement for sale or supplementary agreement so that the complainant can get the loan approved and the respondent shall also cooperate with the complainant in getting the loan approved in time.

Further, complainant is directed to pay simple interest @ 6% per annum on the remaining consideration amount from 19/09/2017 (i.e. the date on which other 2/3<sup>rd</sup> allottees had got their sale deed executed in their favor and residing thereof) till final order of this case. However, the Complainant and

the Respondent may amicably negotiate for lowering the rate of interest on the balance amount as per Section 19 of the Act, 2016.

The Respondent/promoter is hereby directed to complete all the remaining works of the said flat as has been regularly requested by the Complainant. The Complainant should pay all the due consideration amount along with interest within a month from the date of sanction of loan.

**Sd/-**

**(S.K. Sinha)**  
Member  
RERA,Bihar