



REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR
6th Floor, Bihar State Construction Corporation Building, Shastri Nagar, Patna-800023

Dated 19th December 2018

Complaint Case No. RERA/CC/40/2018

Smt Ratna Sinha & Shri Anil Kumar Sinha,
West Lohanipur, Patna.....Complainants

Vs

M/s Agrani Homes Pvt Ltd through its
Managing Director Mr Alok KumarRespondent



Present: For the Complainants -Shri Anil Kumar Sinha, Complainant
For the Respondent -Mrs Manisha Singh, Advocate

19/12/2018

ORDER

1. Smt Ratna Sinha and Shri Anil Kumar Sinha, West Lohanipur, Patna-800003 have filed a complaint under Section 31 of the Real Estate (Regulation & Development) Act, 2016 on 26th July, 2018 against Shri Alok Kumar, CMD of M/s Agrani Homes Pvt Ltd, Patliputra Colony, Patna. In pursuance to the complaint, a notice was served on the respondent on 6th August 2018 to offer their comments within 30 days of receipt of the notice. As no response was received until the first week of October 2018 from the respondent, notice for personal hearing on 2nd November was issued on 11th October 2018. On the date of the first hearing, the respondent company was represented by Mr Shubham Kumar, Accountant, claimed that they had not received the earlier notice and therefore asked for adjournment for few days. Accordingly, the next date of hearing was fixed on 27th November 2018. After the personal hearing, a

Ratna Sinha
19/12/2018



Manisha Singh
19/12/2018



written brief was submitted by the Learned Counsel of respondent Company on 13th December 2018.

Case of the Complainants:

2. In their complaint, the Petitioners have stated that they had deposited a sum of Rs 14.60 lakh in June-November 2015 for allotment of a residential flat measuring 1300 sq ft in S Block of the real estate project "IOB Nagar", Sarari, near Danapur Rly Station, PO Khagaul Dist Patna but the company had neither made the allotment of the flat nor refunded the deposited amount even after several efforts made by the complainants.
3. The complainants claimed that in response to their letters dated 9th April 2018 and 9th May 2018, though the CMD of the company agreed to refund the deposited amount in the complainants' bank account vide their letter dated 23/05/2018, the money has not been transferred into their bank account till date of filing the application with RERA i.e. 26/07/2018.
4. Along with their complaint, the complainants have also submitted a copy of the Memorandum of Understanding (MoU) dated 02/11/2015 between M/s Agrani Homes Pvt Ltd and Smt Ratna Sinha & Shri Anil Kumar sinha for a 3-BHK flat on the 3rd Floor in Block-S in the project "IOB Nagar" for total consideration of Rs 17 lakh plus applicable service tax. The MoU confirmed that the complainants have made the payment of Rs 14.60 lakh including service tax. The developer had committed in the MOU that the construction of the said building would be completed within the estimated period of 36 months with a relaxation period of six months after approval/sanction of map by the PMC.
5. The Petitioners had claimed that even after two and half years of signing of MoU, the promoter has not provided any information regarding progress made in the construction of the building or allotment of the flat. When he visited IOB Nagar in May, 2018 he found that Block-S of the IOB Nagar has not even been started by the promoter. The complainants have said that they are senior citizens and their children are staying outside Patna and they have been spending a lot of money in hiring of a rented



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accommodation. They claimed that they have also been paying heavy rate of interest on the principle amount paid to the company and facing great financial difficulties. As a relief they have claimed that either the builder provide them a ready to move in 3-BHK apartment of 1300 sq ft in any other projects in adjoining areas or return the full amount of money deposited along with interest.

Written Brief of the Respondent Company:

6. In their written brief, the learned counsel Mrs Manisha Singh admitted that the complainants had booked a flat on 10/06/2015 and a MoU was signed with them in which the flat was to be handed over within 36 months with a grace period of six months after approval of the competent authority. She also admitted that there was delay in construction of the block but stated that there were genuine reasons for that like stoppage of work of approval of map in the entire State of Bihar between December, 2012 to December, 2014. Order dated 19/06/2016 of the Eastern Zone Green Tribunal stopping the extraction of sand from the river bed of the State which was vacated only in December, 2017, Hon'ble Patna High Court's injunction in CWJC No.17809/2015 etc. She further stated that the Government of Bihar promulgated the Bihar Building Byelaws, 2014 which also delayed the work. She also claimed that as per MoU, if the booking was cancelled earlier, the complainants would have to bear the cancellation charge @ 5% and if any delay happens in returning back of the money to the complainant, interest would be payable from the date of cancellation. She claimed that since the complainants had withdrawn from the project at a very early stage, they were not entitled to any interest.

Personal Hearing on 2nd November and 27th November 2018

7. On the date of first hearing, the complainant was present himself and the respondent company was represented by Mr Shubham Kumar, Accountant of the company who sought adjournment which was allowed and the next date of hearing was fixed on 27/11/2018. On 27/11/2018 the respondent company was represented by the Learned Advocate Mrs Manisha Singh



Manisha
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Shubham
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and she admitted that due to reasons beyond control of the company, no progress has been made in Block-S of IOB Nagar even till date.

8. The complainant stated that he was a senior citizen and living alone in Patna after retirement as children were working outside the State. He said that the respondent company did not inform him any reasons for the inordinate delay in completion of the Project. It was only when he visited the site in April/May 2018, he found that no work had been done in the S Block of the Project. He stated that he should be refunded the principle amount paid by him along with interest at the rate of 18 percent per anum.
9. Mrs Manisha Singh, learned counsel for the respondent requested the Authority to consider the circumstances and allow the complainant interest at the rate prescribed under the Bihar Real Estate (Regulation & Development) Act, 2017.



Order:

10. There is no dispute on the facts of the case. The respondent company has admitted that Smt Ratna Sinha and Shri Anil Kumar Sinha had booked a flat on 10/06/2015 and paid Rs 14.6 lakh (about 85 percent of the total estimated cost) in installments between June –November 2015 for a 3-BHK flat of 1300 sq ft in S-Block of IOB Nagar. The flat was to be completed within 36 months with a further grace period of six months after approval of the map by the competent authority. In her response the learned counsel of the respondent company gave several alibis for the delay but has not stated whether the plan/map of the Project has even been submitted to the Competant authority for approval. It would therefore appear that the project did not take off at all since the beginning. However, the company did neither inform the petitioners about the reasons for the inordinate delay, nor refunded the principle amount deposited with the company which was 85% of the total cost of the apartment. We are therefore of the view that the Respondent Company had made the booking and taken 85% of the project cost as advance prematurely without any preparation for the project. Even the preliminary formalities like fire clearance, submission of maps for approval etc have not been completed

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even after three and half years of the booking. We therefore order the company to refund the principal amount to the complainants without any further delay as complainants have withdrawn from the project due to inordinate delay in commencement of construction work.


11. As regard to the interest, while the complainant claimed interest @ 18% on deposit made from the date of deposit to the date of refund, the respondent company requested the Authority to order for interest at the prescribed rate in the Rules and should be restricted for the period from the date of request for cancellation of the flat to the date of refund. We do not find any logic to support the contention of the respondent company. The company has enjoyed the benefits of the deposit for over three and half years while they have not processed the application for approval of the map and fire clearance etc during this period. The complainant has suffered badly and he is a senior citizen requiring compassion. We however, feel that it would not be possible for us to accept the request of the complainant to pay him the interest @ 18 %. We therefore, order for payment of interest at the rate of 12 percent per annum compounded quarterly on the principal amount deposited from the dates of deposit to the date of refund.

The full amount of the principal along with the interest should be refunded to the complainants within sixty days of issue of this order.




(R. B. Sinha) 19/12/2018
Member




(Dr S. K. Sinha) 19.12.2018
Member