

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

**Complaint Case No. RERA/78/2018 & RERA/79/2018**

**Mr. Shyam Kumar Agrawal .....Complainant**

**Vs**

**M/s Agrani Homes Pvt Ltd.....Respondent**

**&**

**Mrs Suparna Banerjee.....Complainant**

**Vs**

**M/s Agrani Homes Pvt Ltd.....Respondent**

**Present: For the Complainants:- In person**  
**For the Respondent:- Ms Manisha Singh, Advocate**

**04/02/2019**

**ORDER**

1. Mr Shyam Kumar Agrawal, a resident of Monika Apartment, Ambedkar Path, Khajapura, Patna and Mrs Suparna Banerjee, a resident of B.K. Dutta Lane, Opp New Jakkanpur, PO Jakkanpur, Patna have filed separate complaints under Section 31 of the Real Estate (Regulation & Development) Act, 2016 on 17/09/2018 against M/s Agrani Homes Pvt Ltd through their MD Mr Alok Kumar for refund of the deposits made by them in the project IOB Nagar, Sarari, Khagaul, Patna along with due interest. Since both complainants had submitted their complaints on the same date against the same company

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for the same project, it was decided to club them together and hear together.

2. Based on the complaints received, separate notices were issued to the respondent company to submit their response by 12/10/2018. The Respondent Company through their learned counsel Ms Manisha Singh, submitted similar response in both the cases to Authority. Accordingly, hearing was held on 21/12/2018.

### **Complaints of the Petitioners**

**3. Mr Shyam Kumar Agrawal:** In his petition Mr Agrawal has stated that he had booked a 3BHK flat having super built up area of 1300 sq ft on 3rd floor in Block-N of IOB Nagar, Sarai, Khagaul, Patna at the total consideration of Rs 17 lakhs plus applicable taxes.

4. In the Memorandum of Undertaking (MoU) signed by the developer and the complainant, the developer had committed to complete the construction of the said building within an estimated period of 36 months with a relaxation period of six months after approval of the map by PMC.

5. He has also stated that he had paid Rs 15,52,500/- through PNB Cheque No.956864 dated 02/07/2015 to the Respondent Company. As per payment schedule attached to the MoU, the final amount of Rs 2.00 lakhs plus applicable taxes was required to be paid at the time of possession of the said flat.

**6. Mrs Suparna Banerjee:** In her complaint Mrs Suparna Banerjee had stated that she and her husband Mr Arup kumar Banerjee had booked a 3BHK flat having super built area of 1300 sq ft on 2nd floor in Block-N

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of IOB Nagar, Sarai, Khagaul, Patna on total consideration of Rs 17 lakhs plus applicable taxes.

7. In the MoU signed by the developer and the complainant, the developer had committed to complete the construction of the said building within an estimated period of 36 months with a relaxation period of six months after approval of the map by PMC.

8. She has also stated that she had paid Rs 15,52,500/- through SBI and PNB Cheques dated 23/06/2015 to the Respondent Company. As per payment schedule attached to the MoU, the final amount of Rs 2.00 lakhs plus applicable taxes was required to be paid at the time of possession of the said flat.

9. Both the complainants have stated that they had been running from pillar to post and contacted the officials of the Respondent Company several times to know the status of the project but did not get any satisfactory answer from any one. They stated that there was no sign of any construction in the project.

**Response of the Respondent Company:**

10. In similar responses to both the notices, learned counsel of the Respondent Company Ms Manisha Singh stated that everything was disclosed to the complainants before they deposited the initial amount of booking. She further claimed that there were deficiencies in filing of the complaints. The complaints of the complainants have not been filed in Form-M as required under Rule 36(1) of the Real Estate (Regulation & Development) Act, 2017. As per MoU, the Apartment was to be handed over to the complainants within 36 months with a further grace period of

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six months after approval of the map by the competent authority. In addition, there was forced majeure clause also in the MoU. In both cases, the MoUs had been signed on 23<sup>rd</sup> August, 2015. She therefore claimed that the developer has still got time to complete the project. She informed that the fire clearance of Block-N has been received and building plan is under process for filing before the competent authority. She claimed that there was no delay in the construction as 42 months period after approval of the plan by the competent authority has not been completed. She claimed that the complainants were not illiterate persons that they did not understand the provisions of the MoU. She alleged that the complainants have filed their complaints because they think that they would get more rate of interest than what was available in the Bank FDs. Learned counsel for the Respondent Company submitted that if there was any violation of any rules or any provision of the Real Estate (Regulation & Development) Act, 2016, then only the jurisdiction of the Authority comes into play otherwise the complainant can take recourse of Section-88 of the Act because provisions of this Act is not in derogation of provisions of any other law time being in force.

11. She further submitted that even though the agreements between the allottees and the promoter was not yet registered, still it was a valid contract and the Authority may consider the various clauses of the agreement with regard to completion of the project, payment schedule, process of refund and charges of cancellation before passing any order because the allottees who have booked their apartments were not lay persons but they have checked the agreement document with open eyes.

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### Hearing

12. In course of hearing on 21/12/2018, the complainants themselves defended their cases while the Respondent Company was represented by the learned counsel Ms Manisha Singh.

13. In their submission, both the complainants reiterated their statements made in their complaints and stated that due to non-commencement of the project after passage of more than 3 years from the date of booking, they were forced to go for cancellation of their bookings.

14. Mr Agrawal stated that he has received a sum of Rs 2.00 lakh till date while the other three cheques of Rs 5.00 lakh given by the Respondent Company have bounced on account of insufficient funds.

15. Mrs Banerjee has stated that after her notice for cancellation, she has received Rs 3.5 lakh till date. The other two cheques of the respondent company for Rs 3.00 lakh have bounced due to insufficient funds. Both complainants claimed that the company and its officials were constantly giving new explanations and delaying the payment every time they visited them. Both of them claimed that they have visited the office of the Respondent Company several times but were given conflicting information. They stated that they were now mentally harassed, tortured and being bluffed every day. They were really worried about their deposits as several months have passed and their deposits have neither been returned nor the construction of the building has commenced.

16. Learned counsel of the Respondent Company confirmed that the work in Block-N of IOB Nagar has not yet commenced as the plan/map

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of the said project has not yet been submitted to the competent authority for approval. She however, committed that the respondent company would refund the principal amount at the earliest.

### **Issues for consideration**

17. There are no disputes on the matter of facts. Both Complainants and the Respondent Company have accepted that they entered into MoU for 3 BHK apartments in N Block of the IOB Nagar Project, Sarari, Danapur of the Developer. The Respondent Company has also accepted that both complainants have paid an identical amount Rs 15,52,500 in June- July 2015 for a 1300 super built up area Apartments in the N Block of the Project.

18. There were identical MoUs signed by the Respondent Company with both Complainants. As per MoU, the Developer was required to hand over the Apartments within 36 months (plus a grace period of 6 months) after approval of the map by the competent authority. However, the Developer has not yet submitted the map to the competent authority for approval. The contention of the learned counsel that the period of 42 months after the approval of map by the competent authority has not yet passed and hence complainants were not entitled to file their complainant, without any justifiable reasons was illogical and unreasonable. The Petitioners were not required to wait indefinitely for completion of the project, particularly, when they had paid more than 80 percent of the estimated cost of the Apartments as down payment at the initial stage itself, based on the commitment of the developer. Further, the Respondent Company has not given any cogent and justifiable reasons for such inordinate delay in filing the map for approval by the

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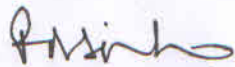
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competent authority. Moreover, whenever complainants approached the developer, they were not given any correct information. Thus both complainants were forced to withdraw from the project, which they appeared to be fully justified to do so. Even thereafter, the Respondent company did not refund the deposit amount to the complainants timely. Even many cheques given by the Respondent Company to both complainants have bounced on account of insufficient funds.

### Order

19. We therefore order the respondent company to pay the remaining amount of the deposit ( Mr Shyam Kumar Agarwal- Rs13,52,500/- Ms Suparna Banerjee -Rs 12,02,500/-) to the complainants along with interest at the MCLR of State Bank of India plus two percent from the date of deposit to the date of refund. Both complainants should also be paid an additional percent of interest on the amount of deposit from the date of deposit to the date of refund for the mental trauma and agony they suffered due to bouncing of cheques issued by the developers. All these payments should be made to both complainants within sixty days of issue of this order.

  
(R. B. Sinha) 4/2/2019  
Member  
Patna,

  
(Dr S. K. Sinha)  
Member

Dated the 4<sup>th</sup> February, 2019