

**IN THE COURT OF ADJUDICATING OFFICER,  
REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR, PATNA**

**RERA/CC/586/2019  
RERA/AO/151/2019**

Dr. Shailendra Kumar, s/o Late  
Sheo Shankar Singh. r/o 301,  
Arjuna Tower, Shivpuri, District-  
Patna, PIN-800023.

... Complainant

Versus

1. M/s Agrani Homes Pvt. Ltd.
2. Sri Alok Kumar, s/o Sri Padum  
Singh, Director, Agrani Homes  
Pvt, Ltd., M-3/9, S.K. Puri,  
Boring Road, District-Patna,  
PIN-800001.

Respondents

...

**Present:**

**Sri Ved Prakash  
Adjudicating Officer**

Appearance:

For Complainant : In Person

For Respondents : Mr. Ankit Kumar, Advocate

**ORDER**

14-01-2020

This complaint petition is filed by the complainant,  
Dr. Shailendra Kumar against the Respondent No.1,  
M/s Agrani Homes Pvt. Ltd. through its Director,

Respondent No.2, Sri Alok Kumar u/s 31 read with Section-71 of Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as the "Act, 2016") for refund of principal amount/consideration Rs.15,97,000/- along with accrued interest @ 18% per annum thereon. He has further sought relief for compensation for his mental and physical harassment.

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2. In nutshell, the case of the complainant is that the complainant, Dr. Shailendra Kumar approached to the Respondents for purchase of a flat and after talk the flat was finalised between the complainant, Dr. Shailendra Kumar and Respondent No.1, M/s Agrani Homes Pvt. Ltd. through its Director, Respondent No.2, Sri Alok Kumar. On basis of K.Y.C. dated 23-03-2014 both the parties entered into an M.O.U. on 30-06-2014 for sale/purchase of a flat on 2<sup>nd</sup> floor in Block-R of Building namely; "I.O.B. Nagar" at Sarari, Near Danapur Railway Station, P.O. Khagaul having area 1300 along with proportionate share in the land of the Building on consideration of Rs.18,04,075/- including Service Tax Rs.54,075/-. Both parties have also agreed that the construction of Building shall be completed in all respect within 36 months with grace period of 6

months, after approval of Map from P.M.C. The complainant met several times with the Respondents and their staffs regarding hand-over of the flat, but he came to know that the construction of the building has not started till October, 2017. Therefore, he has filed an application before the Respondents on 21-10-2017 to cancel his booking and refund of his principal amount with interest. Thereafter, he met the Respondents several times for refund of his paid amount, but they falsely assured that they will refund his principal amount, but till date they have not refunded his principal amount. Hence, the complainant has filed this complaint case with prayer for above reliefs.

3. On appearance, the Respondents have filed reply pleading *inter-alia* that they are ready to refund the principal amount of the complainant against cancellation of the flat in two or three instalments within 3 months and in light of above assurances, the case may be disposed of.
4. On basis of pleadings of parties and submissions of the complainant and learned lawyer for the Respondents, the following points are formulated to adjudicate this case:-

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- (1) Whether the complainant is entitled for refund of his principal amount along with compound interest @ 18%thereon against the Respondents?
- (2) Whether the complainant is entitled for compensation for his mental and physical harassment against the Respondents?
- (3) Whether the complainant is entitled for litigation cost against the Respondents.

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Point No. (1):

5. Admittedly, on 23-03-2014 one authorised signatory, Shikha Singh on behalf of the Respondents and the complainant, Dr. Shailendra Kumar executed K.Y.C. for sale/purchase of a flat in project "I.O.B. Nagar" of the Respondents, M/s Agrani Homes Pvt. Ltd. on consideration of Rs.18,04,075/- including Service Tax. Later, on 30-06-2014 the complainant, Dr. Shailendra Kumar and Respondents, M/s Agrani Homes Pvt. Ltd. through its Director, Respondent No.2, Sri Alok Kumar executed M.O.U. for sale/purchase of a flat on 2<sup>nd</sup> floor in Block-R of the project "I.O.B. Nagar" at Sarari, Near Danapur Railway Station, P.O.-Khagaul having area 1300 sq.ft. and one reserve car parking space on ground floor/basement as

also undivided share in the land of the said Oproject on consideration of Rs.18,04,075/- including Service Tax Rs.54,075/-. It is also admitted case that the complainant has paid Rs.15,97,000/- including Service Tax Rs.47,868/- through cheques. The complainant has also filed photo copies of cheques and three money receipts. The complainant has paid Rs.1,97,000/- on 18-05-2014, Rs.2,00,000/- on 23-03-2014, Rs.3,50,000/- on 18-04-2014, Cash Rs.5,00,000/- on 30-03-2014, Rs.3,50,000/- on 12-05-2014 to the Respondents. It is also admitted case that the final amount Rs.2,07,075/- including Service Tax shall be paid by vendee/purchaser to the Respondents at the time of delivery of possession of the flat.

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6. The complainant has stated that he came to know that construction of the building has not started till October, 2017, so he has filed a application to the Respondents for cancellation of booking of the flat and refund of his principal amount, as the flat could not be completed till his retirement in December, 2017. The complainant has filed photocopy of letter dated 21-10-2017, which supports that the complainant has requested for refund of his principal amount, as the flat construction has to start as yet.

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7. The Respondents have applied for registration of Block-R of project "I.O.B. Nagar" in RERA, Bihar, whereon certain defects were found during verification of documents and on verification it was found that the Respondents have not filed approved Map of Block-R of the project "I.O.B. Nagar" and that is why on 26-12-2019 a letter No.RERA/PRO.REG-468/2018/1633 has been issued to Respondents by authorised signatory of RERA, Bihar to remove the defects till 20-01-2020. It appears that since Map of the project itself has not been approved from P.M.C. and RERA Registration has also not been obtained, so how construction of the project will start by the Respondents. It shows that here it is fault on part of the Respondents in not starting and completing the flat even after expiry of the stipulated period. The complainant cannot wait indefinite period for delivery of flat. Hence, the Respondents have to refund the principal amount without deduction.
8. The Respondents have detained the principal amount of the complainant without any progress of the project. They were/are also running their business and developing other projects in Patna and out of Patna as well. Thus, the Respondents are benefitted with the principal amount paid

by the complainant, without giving delivery of the flat to the complainant. Therefore, the Respondents have to pay interest on principal amount paid by the complainant.

9. The complainant has demanded compound interest @ 18% per annum on principal amount. At this juncture, I have to add that since the Respondents are running their business and developing projects in Patna and out of Patna, so levying 18% compound interest on principal amount paid by the complainant will cause financial burden on the Respondents and it will also adversely affect the interest of other consumers of the Respondents. Hence, it is reasonable to levy simple interest on principal amount of the complainant. It is also not out of place to mention that interest of 18% is much higher, hence, it has to be looked in light of provisions of Rules 17 and 18 of Bihar Real Estate (Regulation and Development) Rules, 2017, which says that 2% above M.C.L.R. of S.B.I. has to be paid on principal amount. Present M.C.L.R. of S.B.I. is about 8.20% for 3 years or more and if 2% is added it will come to 10.20%. Hence, the Respondents have to pay simple interest @ 10.20% on principal amount

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Rs.15,97,000/- paid by the complainant to the Respondents.

10. The date and amount of payment of principal amount by the complainant, date and amount of refund by the Respondents and interest payable by the Respondents to the complainant may be seen through the chart as under:-

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Date of payment by the complainant	Amount paid by the complainant Rs.	Date of refund by the Respondent	Amount of Refund by the Respondent Rs.	Amount of Interest Rs.
18-05-2014	1,97,000.00	14-01-2020	1,97,000.00	1,13,677.85
23-03-2014	2,00,000.00	14-01-2020	2,00,000.00	1,18,529.58
18-04-2014	3,50,000.00	14-01-2020	3,50,000.00	2,04,940.87
30-03-2014	5,00,000.00	14-01-2020	5,00,000.00	2,95,345.95
12-05-2014	3,50,000.00	14-01-2020	3,50,000.00	2,02,552.73
		TOTAL		9,35,046.98

On calculation of simple interest @ 10.20% per annum on principal amount Rs.15,97,000/- paid by the complainant to the Respondents on different occasions till date comes to Rs.9,35,046.98. Hence, the Respondents have to pay simple interest Rs.9,35,047/- till date along with principal amount Rs.15,97,000/- to the complainant. Accordingly, Point No.(1) is decided in positive in favour of the complainant and against the Respondents.



Point No.(2):

11. The complainant has claimed compensation of for his mental and physical harassment against the Respondents. As per Section 72 of the Act, 2016, the Respondents are benefitted by using the amount of Rs.15,97,000/- paid by the complainant in their business, without giving delivery of possession of the flat to the complainant. Now, the complainant will not get a flat of the same area in the same locality at the same rate, which was available to him in the year 2014. The present rate of flat in the same locality has not come on record from either side, but naturally, the rate of the flat would have gone high in comparison to the rate available in the year 2014. Out of total consideration Rs.18,04,075/-, the complainant has paid Rs.15,97,000/-, which is about 88.52% of the total consideration and the Respondents are still running the business of building construction. So, taking all situations in mind and the amount paid by the complainant, Dr. Shilendra Kumar Rs.2,00,000/- which is about 12.52% of the principal amount paid by the complainant, will be appropriate amount to be paid by the Respondents to the complainant as compensation for his mental and physical harassment.

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Accordingly, Point No.(2) is decided in positive in favour of the complainant and against the Respondents.

Point No.(3):

12. The complainant has repeatedly visited the office of the Respondents and consulted them as well as their staffs several times for refund of his principal amount, but neither the Respondents nor their staffs have given any attention towards his request till filing of the present complaint petition. The complainant would have incurred not less than Rs.20,000/- for conveyance to the office of the Respondents, conveyance to RERA Court, Court Fee, paper documentation, which must be paid by the Respondents to the complainant. Accordingly, I find and hold that the complainant is entitled with litigation cost of Rs.20,000/- against the Respondents. Hence, Point No.(3) is decided in positive in favour of the complainant and against the Respondents.

Therefore, the complaint case of the complainant is allowed on contest with litigation cost of Rs.20,000/- (Rupees twenty thousand only) against the Respondents. The Respondents are directed to refund the paid principal amount Rs.15,97,000/-, (Rupees fifteen lacs ninety seven

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thousand only) along with till date simple interest Rs.9,35,047/- (Rupees nine lacs thirty five thousand and forty seven only) @ 10.20% per annum. The Respondents are further directed to pay simple interest at the same rate 10.20% since tomorrow till refund of remaining principal amount. The Respondents are further directed to pay Rs.2,00,000/- (Rupees two lacs only) as compensation to the complainant for his mental and physical harassment. The Respondents are directed to comply the order within 60 (sixty) days, failing which the complainant may get enforced the same through process of the Court.

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Sd/-  
(Ved Prakash)  
Adjudicating Officer  
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