

REAL ESTATE REGULATORY AUTHORITY, BIHAR
IN THE COURT OF Adjudicating OFFICER, RERA, BIHAR
 RERA/CC/ 622/2022
 RERA/AO/77/2022

Anil Kumar Gupta

.....Complainant

Vs

M/s Ness India Infrastructure Pvt. Ltd.

....Respondent

Project: Tiruvantpuram City

For the Complainant : Shri Shivendra Kumar Roy, Advocate.

For the Respondent/s : Shri Raushan &
 Shri Sahil Kumar, Advocates.

22/09/2025

ORDER

This case has been filed for grant of interest and compensation to the complainant in terms of proviso Section 18(1) of the Real Estate (Regulation and Development) Act, 2016 and Rule-17, 2017 for the period commencing from January 2017 to December, 2022 accumulated at Rs. 13,33,291.00 and also grant interest and compensation for current months @ 11.50% on Rs. 31.00 Lakhs commencing from January, 2023 i.e. Rs. 29,708.33/- per month and also grant accumulated rent of Rs. 4,80,000/-for the month commencing from January, 2017 to December, 2022 and also grant rent for the current months commencing from January 2023 @ 8000/- per month and for grant of any other relief/ reliefs as may deem fit and proper.

2. The facts of the case in short is that the developers company is engaged in the construction business and develops residential as well as commercial complexes and in the course of its usual business, the Developer-Company had conceptualized the development of a residential project namely "Tiruvantpuram City" at Vidyut Nagar, Danapur- Khagaul Road, Patna. The complainant had come to know about the aforesaid project through a brochure which was prepared for development of the project and invitation of offers from the prospective buyers. The brochure provided the details of the project and also the details of the payment and also stated that at the time of booking/ registration 30% of the sale consideration was to be paid and further 25% was

to be paid at the time of plinth work and subsequently, the remaining amount was to be paid at the advanced stage of construction. (Annexure-1).

The complainant being interested in the project, had booked 3-BHK Flat and had paid Rs. 14,00,000/- till 12.07.2013 and the same was well above the 30% of the consideration amount of Rs. 35,70,000/- which was required to be paid as per the Brochure for booking of a flat. Thereafter, a registered Agreement for sale dated 18.12.2013 was executed between the respondent company and the complainant. However, in the agreement for sale the amount required to be paid for booking was raised to 40%. In any event, the amount of Rs. 14lacs was almost 40% of the consideration amount (Annexure-2). The terms and conditions which was agreed by the parties regarding the flat details, the completion and handing over of the flat and the payments which were to be made by the complainant for the purchase of the flat was clearly spelt out in the Agreement Schedule-C of the Agreement for sale, the payments which were to be made by the complainant and which has already been made by the complainant have been clearly indicated. The next instalment which was fixed under the agreement was of 25% of the purchase consideration, which was to be paid at the time of Plinth work. As per Clause-12 of the agreement for sale, the project was to be completed till December, 2016 which a maximum grace period of six months, however, till the year 2020-2021 only certain part of the Plinth work was completed. After RERA Act came into force, the project was registered with RERA as required under law and with certain modifications a News Brochure was issued by the respondent company (Annexure-3).

As per Clause-12 of the agreement for sale, the construction was to be done up to December, 2016 with the further grace period of six months but till 2020 i.e. even after delay of more than 4 years from the Schedule date of completion, the plinth work of the Block in which the complainant has booked the flat had not been completed and the same would be apparent from the photographs of the concerned block of the project of the year 2020-2021 (Annexure-4).

The respondent company only made hollow assurances to the complainant and other similarly situated allottees of the concerned block on the development of the project and the deadlines given to the complainant and other similarly situated allottees had repeatedly been breached by the respondent company. The complainant desirous of availing a loan facility for the payment of the rest consideration amount had approached the L.I.C. Housing Finance Company and a loan of Rs. 25 Lakhs was sanctioned by the Finance company vide the sanction letter dated 12.11.2020 (Annexure-5). The aforesaid sanction letter dated 12.11.2020 was delivered to the complainant at his office address by the representative of the Developer Company and the Original of the Agreement for sale was taken by the same person. Thereafter, the complainant had suddenly received a message on 21.12.2020 at his cell-phone from Central Bank of India in which the complainant maintains a Saving Bank Account bearing S.B. A/c No. 3524879346, On due enquiry the complainant had come to know that without even informing the complainant, out of the sanctioned loan amount of Rs. 25 lacs, a sum of Rs. 17.00 Lakhs had been transferred by the Housing Finance company to the respondent Developer Company. The facts of illegal transfer of Rs. 17 lacs to the respondent Developer- company by the Finance Company from the loan account of the complainant led to issuance of a legal notice dated 04.01.2021 on behalf of the complainant in which the complainant had sought for taking of corrective measures by the Respondent Company and the Finance Company. A legal notice was given to respondent-company and he agreed in the legal notice itself that Rs. 8.50 lacs may at best be remitted at this stage to the respondent-company and hence, accordingly, the complainant had urged in the legal notice that the loan account may only be initiated for Rs. 8.50 Lacs and the remaining Rs. 8.50 Lacs may be returned by the respondent-company as there is no circumstance Rs. 17 Lacs was to be paid to the respondent-company (Annexure-6).

3. A reply notice dated 13.01.2021 was sent on behalf of the respondent-company where instead of acknowledging the wrong done to the company, the respondent-company made false claims that certain instalment was not deposited by the complainant on time and baseless and illegal demand of Rs.

18,69,540/- has been raised from the complainant and it has been further mentioned in the reply notice that in case the complainant fails to deposit the said amount of Rs. 18,69,540/-, then the respondent-company will proceed to terminate the agreement for sale and further claims for damages and charges would also be made against the complainant (Annexure-7).

4. So far as the L.I.C. Housing Finance is concerned, no response to the legal notice was issued by them and, accordingly, faced with a situation where the project was already miserably delayed and the finance company had also fraudulently transferred a sum of Rs. 17.00 Lakhs to the respondent company for which the installments were being charged from the complainant and further also the fact that the respondent-company was threatening to cancel the allotment to the complainant, the complainant had proceeded to file a Complaint Case No. CC/259/2021 before Real Estate Regulatory Authority, Bihar for redressal of his grievances.

5. On behalf of the respondent, reply was filed stating therein that the application filed by the complainant and the averments made in the application are hereby denied. The information given by the complainant in earlier proceedings and in the legal notice sent earlier to the respondent regarding the stage of construction of the building is false in totality; however, as a matter of fact, the aforesaid allegation/ assertion has been made without conducting any spot verification or ascertaining ground realities and thus, the entire basis of the matter at hand is devoid of any sanctity in the eyes of law as the same is clearly based on patently incorrect facts. The construction work in accordance with the schedule as appended to the agreement of sale dated 18.12.2013 has already been carried out and work pertaining to the plinth of the building within time as contained in Schedule-C of the agreement. The complainant at that relevant time was under an obligation to complete payment of 65% of the total consideration amount of Rs.35,70,000/-, which comes to Rs. 23,20,500/- but unfortunately an amount of Rs. 14,00,000/- only had been paid till 12.07.2013 and no further amount was paid in furtherance of the specific and categorical stipulations contained under the heading "mode of payment", as contained in Annexure-C of the agreement dated 18.12.2013.

6. The provisions contained in Clauses 4 & 5 of the agreement dated 18.12.2013 stipulates that the buyer would make timely payment of all amounts under the agreement and in the event where there was delay in making payment of the due amount, the builder was entitled to get the interest @20% per annum compounded every month on all amount which would become due and payable by buyer to the builder under the terms of the agreement in question to be calculated from the date of the amount in question became due. Clause-5 of the agreement dated 18.12.2023, which is no uncertain terms provides that if the buyer fails to clear dues along with the interest of 20% per annum within 30 days from the date of the amount in question became payable or the buyer committed default in making payment by due date, the agreement would be void and the builder will be entitled on his own motion to cancel and terminate the agreement in which event all right, title and interest of the buyer over the unit, in question would stand extinguished and the buyer would not have further title, right and interest over the same; furthermore, inter alia, Clause-5 prescribes that apart from the interest @ 20% per annum on all delayed payments, the builder would also be entitled to liquidated damages of 5% over the amount payable by the buyer to the builder on the date of termination of the agreement or 2% of the total consideration amount mentioned in Part-1 of the Schedule-C of the agreement whichever is higher. It is clear breach on the part of the complainant to adhere to the payment schedule which forms the part of the aforesaid agreement dated 18.12.2013 in terms of the provisions contained under clause 4 & 5 of the agreement, in question, amongst other things, the builder was clearly entitled to receive a payment to the tune of Rs. 26,49,514/- in lieu of remaining payment to be made by the complainant against 65% of the total payment that was required to be made at the time of plinth as per Schedule-C to the agreement, in question which included Rs. 9,20,000/- which was the principal amount due and further interest is to be given as per the agreement dated 18.12.2013.

7. The specific terms of the agreement dated 18.12.2013, a legitimate demand was raised by the builder for being made payment of a part of total dues of Rs. 26,49,514/- as indicated above and accordingly, Rs. 17,00,000/-

had been transferred in the account of the builder and the remaining amount of Rs. 9,49,514/- as against 65% of the consideration that was to be paid by the complainant at the time of plinth in addition to other payments and in this manner, an amount of Rs. 18,69,514/- is still required to be paid in favour of the builder from the complainant against 65% of the consideration amount along with the interest that the complainant is liable to make payment in favour of the builder in furtherance of the provision contained under clause 4 of the agreement as aforesaid. The aforesaid amount of R. 18,69,514/- was calculated by the respondent at that relevant time and for that period when the reply to legal notice was submitted on behalf of the respondent. In addition to the aforesaid amount, as per the terms of the agreement, the builder is also entitled to claim liquidated damages as indicated under clause-5 of the agreement aforesaid in addition to exercising the option of cancellation and termination of agreement dated 18.12.2013.

8. By way of a reply to legal notice dated 13.01.2021 an amount of Rs. 18,69,514/- was claimed by the respondent company but the dues amount was not paid and the respondent filed a case bearing CC No. 259/2021 before the Authority which was disposed off by the learned Authority on 07.09.2022 by observing that at this stage no order can be passed, then the respondent by a letter dated 25.01.2023 terminated the agreement and cancelled the booking of the flat because due payment was not paid. The aforesaid letter has been sent which the booking of the flat was cancelled for the fault of the complainant no cause remains because for fresh cause of action another complaint bearing CC No,180/ 2033 has been filed by the complainant and unless the complaint is decided no occasion arises to file the present case for compensation. The time frame had been indicated under the agreement for completion of plan, etc. was sought to be strictly adhered to but on account of reasons beyond the control of the present respondent that the construction work could not be completed within the time frame on account of ban having been imposed on the ongoing construction of the multistoried buildings and apartments in the city of Patna and all over the State of Bihar on account of the orders having been passed by the Hon'ble Patna High Court in series of cases and also on account of scarcity of stone chips and sand due to change in policy of the government. There had

been no deliberate latches or shortcomings of the building in question and as such, the claim for award of compensation or interest in favour of the complainant in the present case is completely misconceived and devoid of any merit in the eyes of law. The respondent refers to the orders passed by the Hon'ble High Court in series of judgments pertaining to the matter of construction of apartment under the Bihar Municipal Act as well as with respect to the matter mining of sand within the State of Bihar on account of which there had been a complete ban on the ongoing construction of the apartments in the State of Bihar as also there was ban on supply of sand as well as stone chips for the purposes of carrying out the construction on account of which the time frame within which the construction of the buildings, in question had to be carried out could not be completed for which the respondent cannot be held responsible in any manner whatsoever in the eyes of law. By an order dated 10.05.2013 a Division Bench of the Hon'ble Patna High Court in C.W.J.C. No. 8152/2013, inter alia, had banned the construction, maintenance, finishing of buildings under construction within the State of Bihar and as such, on account of the aforesaid order dated 10.05.2013 having been passed in the said CWJC No. 8152/ 2013, no builder or developer within the territorial jurisdiction of State of Bihar could carry out the construction work and it was only after the order dated 23.06.2015 was passed by the Hon'ble Court in the said case by a Division Bench that the construction work of buildings was permitted.

9. In the meantime, on account of the complaint of illegal mining of sand and stone in the State of Bihar, one CWJC No. 17809/ 2015 was filed before the Hon'ble High Court and the same was subsequently converted into a Public Interest Litigation and as such on account of the orders passed by the Hon'ble High Court the supply of sand as well as stone remained suspended in the State of Bihar for a considerable period of time between 2015-18 and subsequently, while taking note of the orders passed by the Principal Secretary, Mining Department-cum-Mines Commissioner, Bihar, Patna and by an order dated 02/04/2018 passed by the Hon'ble High Court in the said writ petition that mining of sand and supply of stone chips could be restored and as such, for want of supply of sand and stone the work relating to construction of

the buildings in the State of Bihar could not be carried out. Pursuant to above events pandemic surfaced all over the world and lockdown was imposed by the Govt. of India as such the respondents had to stop the entire construction work at the site. The respondent company got extension by the learned Authority till September, 2022 but further extension was not granted by the Authority and as such the latest position remains that approval is at final stage in PMAA and PMAA had sent a letter dated 11.10.2023 for submitting documents relating to the environment clearance and since SELAA has not furnished the environmental clearance document it was not submitted and for this reason alone the approval of map by PMAA has not been approved by PMAA.

10. It is admitted fact that the agreement for sale was executed between the complainant and the respondent on 12.07.2013 and as per agreement 40% of the total consideration money was to be paid by the complainant to the respondent. The consideration money was Rs. 35,17,000/- and as per pleading and registered agreement of sale deed, Rs. 14 lacs was given before registration. As per paragraph-12 of the agreement for sale, the said building was to be completed by December, 2016 with a grace period of six months, but till date construction of said building has not been completed.

11. The respondent has pleaded in his written statement that he had terminated and cancelled booking of flat due to non-payment of dues by letter dated 25.01.2023. There is no denial of respondent that the plinth work is not completed. As per Schedule-C of the agreement of sale, the complainant was to be bound to pay 40% of the total amount and that was already given to the respondent before registration of the agreement. As per respondent 25% of the total amount was to be given by the complainant after plinth work, but the respondent has not brought any evidence that he has completed the plinth work. As such the complainant has already paid 40% of the total consideration money even though no work was completed.

12. The complainant has pleaded in his written statement that he had to pay 35% more amount i.e. 65% amount that is Rs. 9,49,514/- for further construction. It is admitted fact that the complainant has taken loan

from L.I.C. Housing Finance Company and a loan of Rs. 25.00 lacs was sanctioned by the Finance Company by the sanction letter dated 12.11.2020. It is pertinent to mention here that the respondent took Rs. 17.00 lacs from loan amount of Rs. 25.00 lacs without the knowledge of the complainant in collusion with the respondent Bank for which he sent a legal notice to the respondent company and the Finance Company. The respondent agreed in the legal notice itself that Rs. 8.50 lacs may at best be remitted at this stage to the respondent company and hence the complainant had urged in the legal notice that the loan account may only be initiated for Rs. 8.50 lacs and the remaining Rs. 8.50 lacs may be returned by the respondent- company as there is no circumstance that Rs. 17 lacs was to be paid to the respondent-company (Annexure-6). But in reply the respondent claims that the complainant has failed to deposit the amount of Rs. 18,69, 540/- and further claims for damages and charges. So far claim of respondent is concerned, it is baseless and moreover it cannot be considered in this case at this stage.

13. It is pertinent to mention here that the complainant of this case has filed a case against the respondent of this case in RERA, Bihar for other reliefs in which RERA Authority has held that the respondent has not completed his work as per the timeline stipulated in the registered agreement for sale dated 18.12.2013. The Authority has also observed that the cancellation letter dated 25.01.2013 issued by the respondent is after litigation initiated by the complainant. It is also held that it is admitted fact that out of total consideration of Rs. 35,70,000/- the complainant had paid Rs. 14,00,000/- at the time of executing the agreement and Rs. 17 lacs was disbursed to the respondent's account on 12.11.2020, hence total amount paid to the respondent was Rs. 31.00 lacs, which is almost more than 95%. As mentioned in Schedule-C of the agreement, 5% will be paid to the respondent at the time of possession but the situation that as on date project was incomplete. Therefore, the Authority held that the aforesaid cancellation letter dated 25.01.2023 issued to the complainant is not in accordance with section 11(5) of the RERA Act, 2016 as well as with the agreement dated 18.12.2013. Hence, treating the cancellation letter dated 25.01.2023 issued by the respondent as arbitrary and in violation of section

11(5) of the RERA Act, 2016. This order is still in existence and it has already been decided by the RERA that cancellation of allotment is illegal and as such the complainant is to be compensated.

14. It is further mentioned that he has not completed construction work due to order of the Hon'ble High Court in several cases and also circumstance which was not in his hand which delayed the matter, does not appear to be proper as there is no wrong made by the complainant and as such these grounds are not sufficient to not to compensate the claim. Complainant has already been harassed and got multiple loss and as such he is to be compensated in the interest of justice.

15. Considering the facts and circumstances of the case:

- (i) the respondent is liable to pay compensation to the complainant of Rs. 14.00 lacs from January 2017 up till date with interest of 9.5% plus 2% extra e.g. 11.5%.
- (ii) The respondent is liable to pay compensation to the complainant of Rs. 17,00,000/- from December 2020 up till date with interest of 9.5% plus 2% extra e.g. 11.5%.
- (iii) The complainant is also entitled for relief for grant of rent from January 2017 @ 8000/- per month as such, the respondent is directed to pay rent from January, 2017 till date @ Rs. 8000/- per month.
- (iv) The complainant has also to be compensated for mental Agony of Rs. 50,000/- and also
- (v) legal expenditure of Rs. One lakh. The respondent is directed to comply the order within two months from the date of order.

(Vinod Kumar Tiwari)
Adjudicating Officer

