

**REAL ESTATE REGULATORY AUTHORITY, BIHAR
IN THE COURT OF ADJUDICATING OFFICER, RERA, BIHAR
RERA/CC/1234/2021**

RERA/AO/324/2021

Krishna Murti----- Complainant

v.

M/s Homesaaz Infrastructure Pvt. Ltd. -----Respondent

PROJECT : ATHARV NIWAS

19/01/2026

ORDER

Heard Shri Tanu Sagar, learned counsel for the complainant and Shri Sumit Kumar, learned counsel for the Respondent.

2. This case is filed to Award a compensation of Rs. 5,00,000/- towards mental harassment and agony, Rs. 50,000/- towards litigation cost and Legal fee and/or any other relief/s to which the complainant is entitled to.

3. The complainant's case in short is that on the basis of advertisement made by the respondent regarding the Project namely Atharv Niwas, the Complainant approached the respondent for purchase of a flat in the said building vide agreement dated 25.03.2012. There are 9 flats constructed in the building (Annexure-1). The respondent had agreed to sell a residential flat bearing Flat no. 302 on 3rd Floor along with one reserved car parking space and basic amenities, situated at Kothwan, Pargana Phulwafri Shariff, P.S. Khagaul, District-Patna Bihar built/ developed under the project namely Atharv Niwas planned by

Homesaaz Infrastructure Private Ltd. for total consideration amount of the said flat was fixed verbally as Rs. 25,50,000/- (Rupees Twenty-Five Lakh Fifty Thousand Only) and for the same he gave token amount of Rs. 1,00,000/- for booking the flat. After receiving said token amount, the respondent informed the complainant that the said flat has been allotted to the complainant and further communicated and directed the complainant that he has to deposit an amount of Rs. 5,25,000/- prior to signing of Agreement to Sale and then only the Agreement to Sale shall be executed regarding selling of the said flat. Accordingly, the complainant in good faith paid the amount of Rupees 3,00,000/- vide ICICI Bank Account of his wife namely Kumari Puja to the Respondent on 04.09.2017 through Net Banking and further an amount of Rs. 2,25,000/- has been withdrawn by the complainant on 06.09.2017 from his ICICI Bank Account out of which Rupees 2,00,000/- has been paid in cash by the complainant to the respondent on the same day i.e. 06.09.2017. The complainant has paid Rs. 6,00,000/- in total till date in lieu of purchasing the said flat (Annexure-3). The complainant has complied all terms and conditions prearranged by the Respondent as the complainant paid a total amount of Rs. 6,00,000/-, as and when demanded by the respondent and the same has been acknowledged and received by the Respondent. The complainant further demanded the respondent to execute the Agreement to sale in respect of the said flat but the respondent ignored the same on one pretext or the other with mala fide intention. The respondent verbally agreed to deliver the possession of the said flat by 31.12.2017, however, more than four years has been passed but till date he has not delivered the same. The respondent has neither given the possession nor given the interest

for causing delay of the same. The respondent communicated that he has already sold the said flat to another person(s). The respondent on one hand is not executing the Agreement to sale in respect of the said flat nor disclosing any bonafide reason for not executing the same on the other hand. The complainant subsequently acknowledged that the Respondent is not in position to deliver physical and peaceful possession of the said flat, consequently requested the Respondent to refund the amount paid to them in lieu of consideration amount of the said flat i.e. Rupees 6,00,000/- along with interest but the same has not been provided by the respondent till date. It has also been agreed between the Respondent and the Complainant verbally said that if the Respondent shall not hand over the possession of the said flat by 31.12.2017, then the respondent will return the whole amount paid by the Complainant with interest of 18% per annum. The complainant has invested his hard-earned money as well as savings in hope of getting a flat but due to deficiency in service and malpractice of the respondent, the complainant's whole dream has been shattered. None deliver of the possession of the said flat and illegal act of doing business of the Respondent has caused mental harassment and financial constraint to the complainant. The complainant was left with no other choice but to approach Rupaspur Police Station and lodged an F.I.R., whereas the same could not happen as the concerned S.H.O. of Rupaspur Police Station has not accepted the application of the complainant made in context of the instant matter (Annexure-4). The complainant has also filed a Consumer case vide Consumer Case No. 498 of 2018 before the Hon'ble District Consumer Dispute Redressal Forum at

Patna and the same is pending before it. Whereas the complainant is under process to withdraw the same.

4. On behalf of the respondent, a notes of argument have been filed stating therein that the present case is not maintainable either in law or on fact. The aforesaid project in question is a pre RERA completed project. The present respondent never promised or assured to sell a residential flat to the complainant bearing Flat No. 302 on 3rd floor along with one reserved car parking space and basic amenities in the said apartment and in this regard no agreement or allotment had been made in favour of the present complainant. The complainant alleging that the Respondent has taken Rs.6,00,000/- as token amount for booking of the said flat is completely false and fabricated and the further relied upon case voucher of the aforesaid amount dated 043.07.2017, The said cash voucher cannot be considered as allotment letter or agreement with respect to aforesaid flat and does not fall under the ambit of Rule 8 of the RERA Rules, 2017. As a matter of fact this transaction is nothing but a refund of excess commission taken by him from some allottee as he was previously working as a Real Estate Agent. The allegation made in the complaint petition by the complainant is vague, concocted and fabricated. Furthermore, it is pertinent to mention here that no allotment had been made in favour of the complainant in terms of section 2(a) of the Act, 2016 read with Rule 8 of the RERA Rules, 2017. The present complaint nowhere falls under the category of the allottee as there is no Agreement or Allotment Letter put on record by the present complainant in his claim. Further no such allotment or agreement for sale had been made. As a matter of fact, a parallel case is pending before the Hon'ble Consumer Forum, Patna and the Complainant has himself

admitted this fact in para 4(z) and para 7 of his own Form N that the instant case in question is not maintainable before the consumer Forum, as the alleged project in question is pre RERA project which is also not registered with the Authority. The complainant is neither an allottee nor a landowner, nor a promoter and so he has no locus standi to file any complaint before the Authority.

5. On the basis of present case the Bench of the Chairman has initiated a suo motu case against the respondent, bearing case no. RERA/SM/589/2023. In the said case the Chairman of the Authority has pleased to drop the prosecution against the alleged promoter of the project in question and finding the said case not maintainable under section 3 of the RERA Act, vide order dated 20.03.2025. The case for compensation is not maintainable as the respondent company has not entered into any agreement for sale or issued any allotment letter for any flat in alleged project in question and as such the complainant is not an allottee and the case is not maintainable under section 18 of the RERA Act, 2016. The aforesaid same view has also been taken up by the Hon'ble Supreme Court under para 54 of *Newtech Promoters and Developers Builder vs. State of U.P.*, civil Appeal No. 6745/2021 wherein the Hon'ble Apex Court has held that the Authority has no jurisdiction over unregistered project and the authority has only jurisdiction over ongoing project as on enforcement of RERA Act, 2016.

6. The respondent has filed a list of documents dated 10.08.2023 annexing the order sheet dated 18.05.2023 passed in REAT Appeal No. 13/2023 Completion Certificate dated 15.11.2015 and judgement of *Anmol Homes Pvt. Ltd. Versus the Patna Municipal Corporation* and further on 13.03.2015, the

respondent has filed another list of documents annexing Completion Certificate dated 11.11.2015. No compensation may be awarded to the complainant as the complainant has no valid booking letter or allotment letter and Agreement for sale and in want of these documents it is very difficult to decide the quantum of compensation in favour of complainant. The Authority/ A.O. has no jurisdiction to invoke Section 18 of the RERA Act 2016 in want of RERA Registration of the Project in question and in want of Agreement for sale between the parties. The present complaint case has no merit and is fit to be dismissed with cost to the complainant.

7. After perusal of the record, it appears that the concerned respondent is not registered under RERA Act, 2016. As per RERA Act and also order of 18.05.2023 in REAT Appeal No. 13/2023, the Appellate Authority had held that the Authority has no jurisdiction to entertain any complaint filed by the allottee specifically relating to unregistered project, in particular projects not eligible for registration. In such situation the Authority is not available to consumer rather appropriate forum would be consumer Court or Civil Court for seeking compensation and damages including return of principal amount with interest. Moreover, it is admitted fact that the complainant has filed a case before the Consumer Forum for the same relief and as per complainant he is in process and case has been withdrawn from the consumer forum, whereas as per respondent this case is pending in the court of Consumer Forum. The Complainant has neither brought any chit of paper or evidence that he has withdrawn the case from the Consumer Forum nor he is entitled to withdraw the case from Consumer Forum as this case comes into the purview of Consumer Forum not in purview of RERA Act. So far agreement of sale is

concerned, that is neither registered document nor written. Whole fact of agreement is verbal as per complainant and on this fact also this case is not sustainable in the eye of law. As per complainant, he has paid some amount in cash and some by Net Banking transaction. The transaction in cash is neither provable nor it can be considered if such type of agreement is made.

8. Considering the aforesaid facts and circumstances of the case, this case is not able to sustain and is liable to be dismissed.

Sd/-

(Vinod Kumar Tiwari)
Adjudicating Officer
RERA, Bihar