

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

RERA/CC/ 164/2023

RERA/AO/15/2023

Jitendra kumar and Dharmendra Kumar .....Complainants

Vs

M/s Dev Hanumande Engcon ----- Respondent

Project: Divine Green

**25/11/2025**

**ORDER**

This case is filed for a direction to developer to pay Rs. 71,70,000/- ( as calculated up to 24.01.2023) in lieu of Clause-13 of the Development Agreement dated 16.02.2015 as compensation for delay along with other reliefs.

2. The complainants' case in brief is that the Developer- respondent failed to complete the building on/or before 15.08.2018 as agreed vide Clause 13 of the Development Agreement and further failed to give proper possession of Flat No. 2 & 3 at Fourth floor in Block-1 and Flat No. 1,3 & 7 at third floor in Block-2 (Total five flats) along with completion certificate and Occupancy Certificate on/before 15.08.2018. In case of failure, they were under obligation to pay Rs. 15,000/- per flat per month as late fine for the first one year of delay period and thereafter, Rs. 1000/- per flat per day as late fine but failed to pay the same. Further the Developer/ Respondent illegally allotted one of the Flats of the share Flat No. B-307 referred in Development agreement as (Flat No. 7 at third floor of Block-2)) to another person. Despite of repeated follow up, the developer failed to provide the due possession along with occupancy Certificate, therefore, the complainants have filed a case before the Authority praying therein for direction to the developer to complete the building in all respect as per the terms of the registered development agreement dated 16.02.2015 and further to obtain completion certificate/ occupancy certificate from the concern Authority after completion of the building in all respect and to file the said certificate before the RERA and also prayed for other reliefs before the Authority and the complainant has filed this case for direction to the respondent to pay Rs.71,70,000/- (as calculated up to 24.01.2023) in lieu of Clause-13 of the Development Agreement dated 16.02.2015 as compensation for delay along with other reliefs as prayed in para-5 of the complaint. The complainant

approached several times before the respondent for redressal of his grievance but they refused to redress the same. Apart from this the complainant also sent several mail and legal notice but they did not pay any heed to the same. Hence, this complaint.

3. A reply on behalf of the respondent/ promoter is filed stating therein that it is admitted that the respondent approached the complainants with an offer to develop their land and to construct a multi storied building over the land mentioned in development Agreement. The ratio of share in the said proposed building is 55.45 respectively to the land owner and the promoter, which was finalized at the time of execution of the aforesaid Development agreement. It is also admitted that the respondent is under obligation to complete the construction of the building within a period of three years excluding grace period of six months.

4. It is also admitted fact that as per development agreement, the promoter shall be liable to pay Landowner Rs. 15,000/- per flat per month for one year and Rs. 1000/- per day per flat for succeeding years. However, the RERA has no authority to enforce development agreement and the complainants may approach the competent Forum/ Civil Court. This complaint petition has been filed under section 18 of RERA Act, 2016 and the Authority may award compensation only at such rate as prescribed by the Rules and not in the terms of Damages Clause of the Agreement.

5. It is settled principle of law that where contract itself provides for liquidated damages the court may award to the party aggrieved only reasonable compensation not exceeding the amount stipulated in the contract. As per Section 72 of the RERA Act the quantum of compensation should be equivalent to the amount of disproportionate gain or unfair advantage or loss of amount caused as a result of default. The physical possession of flats has been handed over to the Allottees in the year 2019 and flat owners have been residing in the building since November, 2019. The promoter has already handed over the physical possession of the complainant's share of Flats on 13.10.2021 and further on 19.06.2022 supplied them possession certificate. The Authority itself has exempted a prayer for from liability due to Covid Pandemic this case is to be dismissed.

### **FINDING**

6. It is admitted fact that the complainant and the respondent entered into a development agreement and as per development agreement, the respondent is under obligation to complete construction of the building within a period of three years excluding the grace period of six months to be counted from the date of registration of the development agreement with P.M.C. It is also admitted fact in the agreement that if the promoter fails to handover the possession of the landowner's share of flat within the required prescribed period of three years and six months the promoter shall be liable to pay landlord as Rs. 15000/- per month for one year and 1000/- per day per flat from that succeeding years. As per respondent, the dispute has arisen that the Adjudicating Officer has no jurisdiction to hear this matter and complainant may approach the Civil Court for their grievances. It is admitted fact that a complaint case was filed before the RERA Authority and in that case the RERA Authority had directed on 06.06.2025 to comply the order. This order itself shows that the respondent had no grievance regarding jurisdiction of RERA Act, 2016 and moreover, if the matter is before the Adjudicating Officer within the provision of the RERA Act, 2016 and RERA Rules, 2017. The order of RERA dated 06.06.2025 has not been challenged as yet and as such it is final and respondent cannot take plea of one portion as maintainable and another portion is not maintainable. As such, in RERA Act, 2016 there is no any provision to ignore the facts and terms and conditions of any agreement. The Adjudicating Officer may change the reliefs if there is any agreement is made against the allottees. In the present case the complainant is not demanding beyond the agreement and as such it should be obligatory to the respondent.

7. As per Section 72 of RERA Act, the quantum of compensation should be equivalent to disproportionate loss of amount caused as a result of default.

8. Considering the aforesaid facts and circumstances, the complainants are entitled to get compensation as prescribed in the agreement of development. As per agreement delivery of possession of flats was to be done on or before 15.08.2018 in all respect but it was handed over on 19.06.2022. As such 15.08.2018 to 14.08.2019 i.e. 12 months for five flats is Rs. 9,00,000/- and from 15.08.2019 to 22.06.2022 i.e. 1043 days at the rate of Rs. 1000/- per day

for five flats is Rs 52,15,000/-. These amounts appear to be loss of complainant due to not getting the aforesaid flats within time.

9. The respondent is directed to pay the aforesaid amount plus interest calculated at the rate of marginal cost of fund based lending rates (MCLR) of the State Bank of India as applicable for three years plus 2% per month. The complainants are also entitled for litigation cost of Rs. 50,000/- and is also entitled for compensation of mental agony and harassment caused to him for which Rs. 1,00,000/- is also awarded.

10. The respondent is directed to pay the aforesaid amounts within 60 days from the date of issue of this order.

11. With the aforesaid observations and directions this case is disposed of.

Sd/-

**(Vinod Kumar Tiwari)**

Adjudicating Officer  
RERA, Bihar