

**REAL ESTATE REGULATORY AUTHORITY, BIHAR  
IN THE COURT OF ADJUDICATING OFFICER, RERA, BIHAR  
RERA/CC/1084/2021  
RERA/AO/307/2021**

Asha Verma ... Complainant

v/s

M/s Makan Developers India Pvt. Ltd. .... Respondent

PROJECT – ASHA KRISHNA APARTMENT

**05/11/2025**

**ORDER**

The complainant has filed this case for compensation of Rs. 15.00 lacs plus penal interest for the delay in construction as stipulated in the development agreement and also a further damage of Rs. 6509296 (Rs. Sixty five lacs nine thousand two hundred and ninety six only) with interest incurred by the complainant as the presumptive loss of Rental value on account of the non-handing over of the flats in the share of the complainant and any other relief or reliefs.

2. The complainant along with her brother-in-law entered into an agreement with the respondents who offered to build a multistoried residential building complex under a development agreement. The complainant and the respondent offered to construct building at their own costs for which the agreement dated 27.12.2012 duly registered on 28.12.2012 and it was agreed to be named as Asha Krishna Apartment. As per agreement the complainant was to be allotted a total of 50% constructed habitable area in the said project and it was developed as per agreement by the respondent. The respondent agreed to complete the entire project within a period of two years from the date of approval of the map by the Patna Municipal Corporation. Admittedly, the

respondents completed the project after much delay of more than four years on 31.12.2018. The respondents having not completed the building prior to coming into effect of the relevant provision of the Real Estate (Regulation and Development) Act, 2016 and the Real Estate (Regulation and Development) Rules, 2017. The Respondents applied for and it was registered with RERA Bihar with Project Registration No. BRERAP00325-2/276/R-366/2019.

Further it is relevant to point out that the First Appeal bearing F.A. No.235/1985 was pending with regard to the piece of land measuring 4.28 acres which also included the land purchased by the complainant and this was not informed to the complainant and the complainant was never made a party to the Appeal by the appellants and maintaining status quo was issued on 28.08.2014 when the complainant came to know about the pendency of the appeal and as per order of status quo the construction of work was stopped by the respondent at the instance of the local law enforcement authorities on 15.10.2014. The project was to be completed and hand over in two years to the complainant and stay/status quo order was granted merely four months prior to such period. The complainant did not leave the matter to perish and filed an interlocutory application in the pending First Appeal and got the order of status quo revoked by order dated 05.05.2016 by the Hon'ble High Court. Even after recall of the status quo order, the respondent did not complete the project on time. In terms of the development agreement the complainant is entitled to get damages of Rs. 3000/- per flat per month from the date of scheduled completion till the date of actual possession. The respondents have not handed over the possession of the flat allotted to the complainant. The complainant is suffering a continuous loss of

revenue which could have occurred as a rent from the flats. On an average market value, the complainant had to incur a minimum presumptive loss of altogether Rs. 6509296/- apart from the penal interest. The complainant is a very old lady suffering from various ailments is literally bedridden and the rental revenue earned from the timely possession of the flats in her share would have assisted her for a better treatment and living. Having left with no other option the complainant approached the Real Estate Regulatory Authority, Bihar, Patna for a direction upon the respondents to forthwith hand over the possession of the completed flats/ units allotted in her share and a direction for payment of damages and compensation. As per direction of the Authority, she filed a compensation case before the Adjudicating officer of RERA. Even after the order of the Authority the respondent has not handed over possession of the flat and an execution case is pending for the compliance.

3. On behalf of the respondent a reply has been filed denying the contention of the complainant made in the complaint petition, which are contrary to the interest of the respondent except specifically admitted. The complaint is not maintainable either in fact or in law and barred by the law of limitation. As per the respondent, the brief fact is that the respondent entered into a development agreement dated 28.12.2012 with the complainant for the development of a real estate project in the name and style of Asha Krishna Apartment. The complainant has executed the Development agreement by suppressing the fact about existence of dispute and First Appeal bearing First Appeal No. 235 of 1985 over the project land. The respondent promoter after getting approval of the map dated 12.12.2012 from competent authority

and further submitted that as per the Development agreement the development of the project was to be completed within 2 years. The respondent- promoter started the development work over the project land but then to his utter shock the respondent came to know about the existence of First Appeal bearing no. 235/ 1985, over the project land and thereafter the construction work was stopped by the Digha Police Station in light of order dated 28.08.2016 passed by the Hon'ble Patna High Court in F.A. No. 235 of 2985. The development of the project was hindered due to the status quo order of the Hon'ble High Court. It is also pertinent to mention here that the project was registered with RERA as a non-completed project vide RERA registration no. BRERAP00325-2/276/R-366/2019, which clearly shows that the project was not completed before the enforcement of RERA Act. The respondent has already allotted the share of the complainant in light of the share distribution agreement dated 04.12.2017 and no grievance of the complainant survives. If there is any delay, it is because of fault on the part of the complainant. The complainant was well aware of the pendency of the First appeal and due to it the promoter has got irreparable loss. The present learned Adjudicating Officer has no obligation or bound to follow the outcome of the said case as the present Adjudicating Officer is independent body within the definition of the Authority as mentioned in section 21 of the RERA Act. The present complaint is the co-promoter within the meaning of RERA Act as well as Apartment ownership Act and has no right to claim any compensation under Section 18 and 72 of the RERA Act, 2016.

### **FINDING**

4. It is admitted that the project was to be completed before 31.12.2018. If there is any delay, the said delay up to some extent is due to pendency of the aforesaid order in the First Appeal. As per respondent, the complainant has failed to pay the GST amount on her share of flats to the respondent promoter till date. So the complainant has no right to claim any compensation. The respondent- promoter has already filed a maintainability petition on 09.12.2024. so on this ground it is to be dismissed as it is not maintainable.

5. After perusal of the complaint case and its reply and hearing both sides it appears that both the parties entered into an agreement. As per agreement the respondent did not hand over the concerned flats due to a case was filed before Hon'ble High Court only up to some extent. It also appears that to execute the order of Authority an execution case was filed but till date order was not complied. The ground was mentioned by the respondent that a flat under agreement was given to the complainant and he has not returned as yet so he has not complied the order of authority. It is admitted by both sides that regarding the flat which has been mentioned as given to the complainant is disputed and the matter is pending before the civil court. Non-compliance of order of Hon'ble RERA in case No. RERA/CC/13/2021 dated 10.09.2021 appears to show that the respondent has no regard to the order of the RERA Bench and he is trying to harass the complainant as that order is not challenged by the respondent and as such that order is final.

6. Considering the aforesaid facts and circumstances this case appears to be maintainable and he is entitled to get compensation.

7. From perusal of Annexure-6 the year and rent of the complainant appears to be justified and as such as per rent, the rent value is as follows:

Year 2016 (4 Months)	Rs.80000x 04=	Rs.03,20,000/-
Year 2017 (12 months)	Rs. 88,000x12=	Rs. 10,56,000/-
Year 2018 (12 months)	Rs. 96,800x 12=	Rs. 11,61,600/-
Year 2019 (12 months)	Rs. 106480x12=	Rs. 12,77,760/-
Year 2020 (12 months)	Rs. 117128x12=	Rs. 14,05,536/-
Year 2021 (10 months)	Rs. 128840x10=	Rs. 12,88,400/-
Total rent value		Rs. 65,09,296/-

The complainant is also entitled to get interest over rent. The respondent is directed to pay 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% from the date of booking till the date of handing over possession.

8. The complainant is also entitled for litigation expenses of Rs. 50,000/- and is also entitled for compensation for mental agony and harassment caused to him for which Rs. 50,000/- is also awarded. The respondent is directed to pay the aforesaid amounts within 60 days from the date of issue of this order.

9. With the aforesaid observation and directions, the case is disposed of.

Sd/-

**(Vinod Kumar Tiwari)**  
 Adjudicating Officer  
 RERA, Bihar

