

REAL ESTATE REGULATORY AUTHORITY, BIHAR

**Before the Full Bench of Mr. Naveen Verma, Hon'ble Chairman,
Mr. R.B. Sinha, Hon'ble Member & Mrs. Nupur Banerjee, Hon'ble Member**

Case No. CC/1126/2020, CC/11055/2020, CC/135/2021, CC/907/2020, CC/1335/2020, CC/1780/2020, CC/146/2021, CC/363/2021, CC/613/2019, CC/649/2019, CC/691/2019, CC/730/2019, CC/751/2019, CC/833/2019, CC/863/2020, CC/1009/2020, CC/1140/2020, CC/1539/2020, CC/1579/2020, CC/1615/2020, CC/1762/2020, CC/30/2021, CC/166/2021, CC/377/2021, CC/417/2019, CC/713/2019, CC/731/2019, CC/794/2019, CC/816/2019, CC/909/2020, CC/914/2020, CC/1068/2020, CC/1069/2020, CC/1077/2020, CC/1096/2020, CC/1097/2020, CC/1141/2020, CC/1261/2020, CC/1395/2020, CC/67/2021, CC/314/21, CC/368/2021, CC/369/2021, CC/692/2019 & CC/866/2019

Pranay Kumar/Santosh Kumar/Manoj Kumar/Rameshwar Nath Prasad/Arbind Prakash Ranjan/Sushil Kumar/Abhishek Kumar/Madan Kumar Srivastava/Dr Bhola Kumar Singh/Ashok Kumar Singh/Kunal Kumar/Neelam Pathak/Ravi Kant Das/Manju Devi/Anita Devi/Soni Kumari/Awadhesh Kumar Mishra/Urmila Gupta/Bandana kumara & Malti Sahay/Dr Vineet Sinha/Madhuri Kumari/Santosh Kumar & Mamta Chaudhary/Preeti Verma/Sugandha Jha/Abhishek Kumar/Dolly Singh/Sumit Ghosh/Rakesh Kumar Prasad/Kanahya Prasad Sinha/Nagendra Kumar/Mohammad Shahzeb/Md Saood Alam/Md Irshad Ahmad/Shyam Bihari Singh/Dharmaveer Singh/Alka Singh/Anita Kumari Verma/Shashikant Sinha/Rakesh Kumar/Siddheshwar Pathak/Anupam Shukla/Rubi Bala/Murari Prasad/Aman Kumar/Mala Sinha.....**Complainants**

Vs

M/s Agrani Homes Pvt Ltd.....**Respondent**

Present: For Complainant: In person
For Respondent: Mr Sanjay Singh, Advocate
Mr Alok Kumar, MD

15/06/2021 PROCEEDING THROUGH VIDEO CONFERENCING

Hearing taken up. The complainants are present. Mr Alok Kumar, MD of the respondent company is also present along with his learned counsel Mr Sanjay Singh.

The Authority observed that the respondent company has not been complying with its directions given on the previous dates of hearing. The list of projects showing the date of commencement has not been submitted. Audited statement of accounts project-wise; the assets and liabilities of the company project-wise; use of funds given by allottees and quarterly progress reports of the projects have not been submitted. Even the information of accounts given by the Director of the respondent Company was not signed by any director or authorized signatories.

The learned counsel for the respondent company submitted that preparation of audited accounts will take some time. The Authority made it clear that they were asking for audited accounts of previous years- 2018-19 & 2019-2020, not the current year.

The Authority grants one last opportunity to the respondent company to comply with the directions and submit the requisite documents within one week. The respondent company is also directed to give information on a duly sworn affidavit stating the financial years for which the audited accounts are not ready and by which period, they will submit the statutory financial statements of all Agrani group of companies before the Authority.

Hearing was taken up Block wise. Directions/ orders would be passed separately for each block.

I.O.B. Nagar, Block-G

Complainant Mr. Pranay Kumar submitted that he had made the payment in 2011 and urged the respondent Company to complete the works of Block G at the earliest.

Mrs Pallavi appeared on behalf of her husband Mr Santosh Kumar, who is in Armed Force and submitted that the construction in the flat, allotted to her, on 4th floor has been stopped and requested that the promoter may be directed to complete the apartment without any further delay.

Order

The respondent company is directed to submit, within a week, the plan of action, funds received from the allottees along with utilization thereof till date, availability of financial resources and date by when Block- G, IOB Nagar would be completed.

H Block:

The complainant Manoj Kumar (CC/135/2021) submitted that due to inordinate delay in completion of the project, he prefers to get refund of his deposited money of Rs 8,50,000 along with interest.

Mr. Santosh Kumar, learned Advocate stated that he is appearing for six complainants and he would be filing Vakalatnama on behalf of about 25 more complainants. He also mentioned that the order passed on 23.3.2021 has not been complied and no work has been taken up. He also submitted that this is a fit case for revocation of registration.

Mr Alok Kumar, Director of the respondent company submitted that after selling the unsold flats, he will be able to refund the money. He mentioned about order dated 23/03/2021 to enter into agreement with any other promoter and submitted that they are in contact with other promoter and discussions are going on to complete the project. There are 2-3 allottees who are ready to get the work done by any other promoter.

Mr Sanjay Singh, learned counsel for the respondent company submitted that there are 54 allottees, and the financial position in respect of this block is good because Rs.3.75 crores are due with the allottees. Rs 2.90 crore is required to complete the project. The amount due was contested by the association of allottees. The respondent company also submitted that there is one unit in H- Block lying unsold with the promoter.

Learned counsel for the respondent company submitted that the demand of audited accounts of H Block of IOB Nagar being run by the respondent

company may be delinked with K and L Blocks as there would be problem. He suggested that the Authority could fix a formula and sought direction in case of H Block and submitted that they would abide by it.

Order

The respondent is directed to submit on oath, within a week, the time line for resuming and completing the project, indicating clearly how they would be able to raise the financial resources for this purpose. The allottees are also directed to arrange for the balance amount due from them, if any, and submit to the Authority how they would wish to make payment of their dues so that further construction could commence.

I Block :

The complainant Arbind Prakash Ranjan (CC/1335/2020) submitted that he booked a flat in 2013 on a consideration amount of Rs 38.34 lakh and has already paid 90% of the consideration money but not yet got possession of the booked flat whereas construction upto 6th floor has been completed.

The complainant Sushil Kumar (CC/1780/2020) also submitted that he booked a flat in 2013 on a consideration amount of Rs 29 lakh and has already paid Rs 19.38 lakh i.e. 90% of the consideration money but not yet got possession of the booked flat and stated that casting upto 4th floor has been done.

The complainant Abhishek Kumar (CC/146/2021) also submitted that he booked a flat in 2012 on a consideration amount of Rs 19.40 lakh and has already paid Rs 13.58 lakh i.e. 70% of the consideration money and requested for refund of the deposited money along with interest.

The complainant Madan Kumar Srivastava (CC/363/2021) submitted that he has made full payment for the flat. Only about Rupees one lakh is due.

The complainant Rameshwar Nath Prasad (CC/907/2020) submitted that he booked a flat in 2012 which was to be completed in 2014 and made payment of Rs 25 lakh but neither the project has been completed nor his deposited money along with interest has been refunded.

Mr Abhishek, President of the Association of allottees submitted that construction work of the 6th floor is pending. The promoter is demanding money to complete the project.

Their learned counsel Mr B.K. Sinha submitted that he has filed representation on behalf of 48 flat owners two months ago and stated that they are ready to provide money to complete the project through any other agency/architect with RERA monitoring the work or an engineer of the respondent company. He further submitted that they will call a meeting of I Block allottees to find out how to get the project completed which requires Rs 4.5 crore. Rs 2.25 crore is due with the allottees and it is for the respondent company to specifically mention as to how they will arrange the remaining amount of Rs 2.25 crore.

Mr Alok Kumar, Director of the respondent company stated that Rs 3.25 crore is only required for completion of the project and he is ready to do it with the estimate finalized earlier. The Director of the respondent company submitted that adequate funds are available for the project, and that the allottees may be directed to pay the amount due to them. Director of the respondent company assured that fund in the project would be adequate if the allottees clear their dues and he is ready to complete the project, which the RERA can monitor.

Learned counsel of the respondent company submitted that they have filed petition to defreeze the bank account.

Some allottees submitted that they were is willing to pay upto 90% of the due, provided the promoter gives assurance that he will complete the project in a time-bound manner under supervision of RERA.

The Authority observed that in order to bridge the trust deficit between the allottees, a joint account for every block with the promoter and the Association could be considered for opening.

Order

The Full Bench of the Authority, after perusal of the submissions on behalf of the complainants and the respondent, takes note of the facts that the applications for extension of registration in respect of G, H and I Blocks are pending. The Authority observed that Blocks G, H, I and J are part of the same project. The Director of the respondent company submitted that they had applied for extension of registration. The Registration Wing is directed to place this matter together with the complaint cases on the next date of hearing so that a consolidated view can be taken.

The Authority directs that the Director of the respondent company would arrange a meeting with the Association of allottees of each block and attempt to arrive at a mutual agreement on the modalities for completion of the project .

Decision on the applications will be taken after the Director of the respondent Company is able to satisfy the Authority that they have arranged sufficient resources to resume work in the project in respect of Block G, H and I. The allottees are also required to inform the Authority stating clearly that the work could be done either by the promoter, through the association of allottees or by a third party.

The matter of Block G, H and I, along with the issue of extension of registration in respect of these blocks may be put up together on 29.6.2021.

K Block :

Dr Bholu Nath Singh (CC/613/2019) submitted that he made onetime payment of Rs 18 lakh in 2014. Since no work has been undertaken by the respondent company, he wants refund of his deposited money along with interest, if flat is not being constructed.

Mr Rakesh Verma (CC/691/2019) submitted that he paid Rs 15 lakh in 2015 and four other family members of his family have also deposited a total of Rs 57 lakhs and now wants to get refund of the deposited money. They have also come before the Authority (CC679; 691 and 692/2019). The promoter assured that he will refund the money in installments, but after the first installment of Rs 10 lakh nothing has been done by the promoter. The present complainant wants to take a refund of the amount deposited but submitted that an alternative flat may be given to one of his family members who have already filed cases. He also submitted that three flats are unsold and thus available with the promoter which could be considered.

Let the concerned complainant submit his case when it is listed for hearing.

Ms Neelam Pathak (CC/730/2019), a senior citizen, submitted that she made onetime payment of Rs 15.46 lakh in 2013 and now only Rs 1.37 lakh is due with her. Since work has not yet been started by the promoter she was earlier willing to forego the interest and would have been content with refund of the principal but since the promoter did not return her amount, she now wants refund with interest.

Mr Ravikant Das (CC/751/2019) submitted that he made onetime payment of Rs 18 lakh five years back but since work has not yet been started by the promoter, he wants refund along with interest.

Ms Soni Kumari (CC/1009/2020) submitted that she made onetime payment of Rs 15 lakh in September, 2015 but since work has not yet been started by the promoter she wants refund with interest.

Mr Awadhesh Kumar Mishra (CC/1140/2020), a senior citizen, submitted that he made onetime full payment of Rs 16.49 lakh in 2013 but since work has not yet been started by the promoter, he wants refund with compound interest.

Ms Urmila Gupta (CC/1539/2020) submitted that she made onetime payment of Rs 21 lakh in 2016 and now she wants refund with interest.

Dr Vineet Sinha (CC/1615/2020) submitted that MoU with the respondent company was signed in 2014 on a consideration amount of Rs 18 lakh and he paid Rs 16.49 lakh. Since the promoter has not done construction work, he wants refund with interest.

On behalf of Ms Madhuri Kumari (CC/1762/2020), it was submitted that she made onetime payment of Rs 13 lakh and she would like to take possession of her flat.

Mr Santosh Kumar (CC/30/2021) submitted that he made onetime payment of Rs 17 lakhs but since work has not yet been started by the promoter he wants refund with compound interest.

Ms Preeti Verma (CC/166/2021) submitted that she paid Rs 6 lakh out of Rs 24.35 lakh consideration money under the construction linked plan and now wants refund with interest.

Ms Sugandha Jha (CC/377/2021) submitted that she made onetime payment of Rs 10.50 lakh. Later she was shifted to IOB Nagar, Sampatchak and the builder demanded Rs 18 lakh. Since no work could be started by the promoter, she wants refund of her deposited money with interest.

Ms Mala Sinha (CC/866/2019), a senior citizen, submitted that she made onetime payment of Rs 12 lakh in 2013 and the construction was to be completed by June, 2016. Now she wants refund with interest.

Mr Saket Singh submitted that he was President of Association of allottees of K Block, with 40-45 members of the total 58 allottees, and around 60% of the allottees want flats. However, this was refuted by other allottees.

Mr Alok Kumar, Director of the respondent company submitted that out of Rs 6.85 crore collected, they have refunded Rs 1.25 crore to the allottees and

the rest money was spent in purchase of land and its development. It was further submitted that his application for registration is pending.

Ms Anita Devi (CC/863/2020) submitted that she wants refund of her deposited money with interest.

Mr Manoj Kumar submitted that he has got refund of the principal amount of Rs 15.25 lakh as he had filed a FIR with police. He requested for payment of interest.

L Block :

Mr Kishore Kunal, learned counsel of Mohammad Shahzeb (CC/914/2020), Saood Alam (CC/1068/2020) and Md Irshad Ahmad (CC/1069/2020) submitted that they have paid 90% of the consideration amount which was taken by the promoter before entering into agreement. They want to land in lieu of their deposits along with interest and requested for permission of allotment of land by the respondent company. Md Saood Alam and Md Irshad Ahmad have made onetime payment of Rs 14 lakh in 2014 and Rs 12.70 lakh in 2018 respectively. They now want to be adjusted by the respondent company.

Mr Sumit Ghosh (CC/731/2019) submitted that out of consideration amount of Rs 16.8 lakh, he paid Rs 12 lakh in 2017, but only some earth digging has been done and hence now wants refund with interest.

Mr Rakesh Kumar Prasad (CC/794/2019) submitted that he paid Rs 15 lakh in 2013 and has got refund of his principal amount. Now he wants 9% interest from the respondent company. He stated that the promoter has diverted the funds deposited by them to some other state.

Mr Nagendra Kumar (CC/909/2020) submitted that he has paid Rs 6.11 lakh on 28/08/2019. Since no development work was done by the respondent company and there were large number of cases filed against him, he cancelled the booking within a month on 16/09/2019. He requested for refund with interest.

Mr Shyam Bihari Singh (CC/1077/2020) submitted that he made onetime payment of Rs 15.52 lakh and Rs 2.60 lakh was due with him. He now wants refund with interest.

Mr Dharamvir Singh (CC/1096/2020) submitted that he booked two flats in July, 2014 and made onetime payment of Rs 12 lakh for each flat. Thus in total, he has deposited Rs 24 lakh. He now wants refund with interest.

Ms Anita Kumari Verma (CC/1141/2020) submitted that she paid Rs 11 lakh in 2013. Now wants refund with interest.

Mr Rakesh Kumar (CC/1395/2020) submitted that he paid Rs 15 lakh in 2013 and wants refund with interest.

Mr Manoj Kumar Singh, learned counsel appearing on behalf of the complainants Ms Juhi Bala (CC/368/2021) and Mr Murari Prasad (CC/369/2021) submitted that Ms Juhi Bala booked the flat 308 on a consideration amount of Rs 17.52 lakh and now wants refund with interest. Like-wise Mr Murari Prasad booked two flats 401 and 606 on a consideration amount of Rs 17.52 lakh and Rs 18.65 lakh and paid Rs 36.11 lakh. Now he also wants refund with interest.

Ms Dolly Singh (CC/713/2019) submitted that she made onetime payment of Rs 15.46 lakh in 2013. She stated that she has filed petition dated 08/06/2021 for adjustment in other plot or flat, otherwise refund with interest.

Mr Alok Kumar, MD of the respondent company admitted that there are 160 flats in L Block out of which 69 flats of his share have been booked and Rs 7.72 crore had been collected. Thus, in sum the respondent company have taken Rs 14.57 crores from allottees for his share of flats in the Blocks K & L and have refunded Rs 3.02 crores till date. The Bench enquired from the Director of the respondent company whether they have kept the remaining funds of Rs 11.55 cores for the K & L Blocks in any separate bank accounts as no construction work has been done by the Respondent even after 10 years. The Director Mr Alok Kumar stated that the funds have been utilized for the purchase of land for

the projects Block K & L. He was however not clear as to how much funds have been used for purchase of executing development agreement with the land-owners. The application submitted for registration of the IOB Nagar K & L Block confirms that the land for the project has been taken from the land owners on the basis of development agreement executed with them. It is, therefore evident that the project funds for the Blocks K & L appears to have either been diverted to other projects or misappropriated.

Order (in respect of IOB Nagar, K & L Blocks)

The Authority observes that the respondent company has a huge liability, spread over many years, with a number of allottees being senior citizens. The question of adjustment has to be seen not only as a choice of the complainant, but also factor the fact that other complainants have made payments much earlier with a number of them being senior citizens.

The Full Bench, working as authority directs the respondent company to submit a list of allottees, from whom how much money has been collected date wise, and how such cases are proposed to be adjusted/refunded along with sources of financial resources. The respondent promoter is also directed to submit a table plan showing number of allottees in each block of IOB Nagar, with the amount of money already paid by them, amount of money required to be paid by them, percentage of construction works completed as well as total amount of money to be obtained after selling the unsold flats of the promoter's share at the present market price .

- Secretary RERA is also directed to obtain the details of audited financial statements for the period 2018-19 & 2019-2020, if filed by the respondent company before UP RERA, as the company is registered as a promoter in UP as well.

Various matters have been heard against the respondent company since the last three years and the Bench has given a number of directions to Mr Alok Kumar Director of the respondent company regarding refund of money to the

complainants. An overwhelming majority of the complainants have come before the Authority for refund with interest, with one of them just within a month of booking. The Authority directs the respondent to submit a definite proposal/Plan for refund of the amount paid as well as for construction of flats in respect of K & L Block within one week of the order.

In exercise of the powers conferred under section 37 of the RERA Act, the Full Bench functioning as Authority, directs the respondent company to submit list of his share of unsold flats or flats held by Directors of the Company or by their close relatives in all completed/incomplete projects of the various Agrani group of companies. The Authority directs Mr Alok Kumar, Director of the respondent company to file an affidavit on the ownership of land on which K & L Blocks are to be constructed along with the copy of the registered sale deed or development agreement with the land-owner, as some complainants alleged that some of these lands are actually owned by the respondent.

The respondent company has failed to provide the audited statement of accounts for the last two financial years as prescribed under the Companies Act to the Authority despite having been given many opportunities to do so. The audited balance sheet would have given the correct information about the assets and liabilities, project wise. Director of the respondent company has failed to explain how the funds collected from the allottees of Blocks K and L have been used because the Company does not have resources either to give the refunds or start the construction. It is clear that the money deposited by these home buyers have been diverted elsewhere.

In terms of powers conferred under Sec 35(1) of the RERA Act read with Rule 24 (1) (a) of the Bihar RERA Rules, the Full Bench functioning as Authority directs the promoter – the respondent company to submit the following documents within two weeks from the date of order:

- i) Bank statements showing the entire trail of transactions from the date of receipt of money from allottees since 2010 or date of

incorporation of the respondent company, whichever is earlier along with their linkage with the audited annual accounts of the companies;

- ii) Affidavits showing details of all assets, physical or financial, acquired by the Directors (Past/Present) of the company and their close relatives, either in individual capacity or as partners or Directors in various companies, year wise starting from 2010;
- iii) Income tax returns of all individuals mentioned in ii) above, year wise starting from 2010;
- iv) Details of salary drawn by the Directors and officers and the source of such operating surplus, year wise;
- v) Agenda papers and minutes of all meetings of the board of directors of all companies in which large transactions of Rs 5.00 lakh or more with Directors/related parties were either reported or approved;
- vi) Copies of financial statements for the FY 2018-19 & 2019-2020 filed before UP RERA and to Registrar of Companies.

The Authority, using powers under Section 35(1) directs Secretary RERA to process the appointment of a multi-disciplinary team consisting of a senior retired police officer preferably from CBI/ED/EOW/SFIO, a firm having forensic auditor and a senior bank officer with experience of audit to make a thorough inquiry into the affairs of the respondent company so that the financial trail of the money received from the allottees since inception of the Respondent company get established.

As the Promoter/ Respondent Company has significant real estate business in Varanasi and Lucknow since 2015 apparently after diversion of the projects funds collected in Bihar since the inception of the company in 2011, the Secretary may also request the DGP,

Bihar to direct the proposed SIT to be constituted, to look into the affairs of the Agrani group of companies and their directors (Past/Present) as the learned counsel of the Promoter has claimed before the Bench that the promoter can not come to Bihar as several FIRs have been lodged against him.

The complaints regarding K & L Block may be listed along with the application for registration of this project on 29.6.2021.

Sd/-

R.B. Sinha
Member

Sd/-

Nupur Chatterjee
Member

Sd/-

Naveen Verma
Chairman