

**BEFORE ODISHA REAL ESTATE REGULATORY AUTHORITY
BHUBANESWAR**

Complaint Case No.60/2018

Mr.Subash Kumar Mishra
Qrs.No.B/1974,Nalco Nagar,
Nalco Nagar-759145,
Dist: Angul

(Represented by Sri R.R.Das, Advocate)

..... Complainant

Vrs.

Managing Director,
Orissa Homes Private Limited,
Plot No.175, Jatani Road,
Kuha -751002.

Dist: Khurda

(Represented by Sri S.Das, Advocate)

.... Respondent

ORDER Dated 16.03.2019

This is a case for refund of deposits alongwith interest and compensation.

2. Briefly stated, the Complainant's case is that on 30.03.2013, an agreement for sale was entered between M/S. Orissa Homes Private Limited represented by its Director and the Complainant for sale and purchase of flat No.117 & 118 in the first floor of Block -C in the project "**Anand Homes**" being developed by M/S. Orissa Homes Private Limited over plot No.187 & 189 in Khata No.377/51 & 377/48 respectively of village Kuha, PS:Airfield, Jatani Tahasil, Dist: Khurda. The consideration money was fixed at Rs.13,42,000/- plus Rs.50,000/- towards parking space totalling to Rs.13,92,000/-. A payment schedule was also incorporated in the agreement which was construction linked. It was stipulated in the agreement for sale that the flat would be completed in all respects within 18 months from 30.3.2013 and in the course of next 3 months the possession of flat would be handed over i.e. by 30.12.2014.

3. Complainant deposited different amounts on different dates totalling to Rs.7,04,215/- as on 09.01.2014. As construction was completely stopped sometime during 2014, complainant persistently pursued the matter with the Managing Director Sri Jagat Jiban Nayak for completion of the project and handover of the flat. Since project work did not progress an inch after 2014, the complainant asked for refund of the deposit along with interest sometime during 2015 i.e. after scheduled date of project handover. Hence, he has approached this Authority for aforesaid reliefs.

4. The Respondent appeared through advocate and filed a petition on 20.06.2018 challenging the maintainability of the case before ORERA in view of arbitration clause incorporated in the agreement. He also filed another petition on the same date for requisitioning records seized by the EOW of the Crime Branch of Odisha Police for reference at the time of preparing show cause. The records as per the list of the respondent advocate were requisitioned from the EOW which were produced for perusal of the respondent advocate on 31.07.2018. The show cause was filed by the respondent advocate on 12.12.2018.

5. In the show cause the respondent has raised the issue of jurisdiction of the Authority to entertain a matter for which an agreement was entered into between the parties much before RERA came into force. The show cause also avers that the agreement relied upon by the complainant is not true copy of the original agreement and alleges tampering or manipulation. The respondent has also challenged the payment schedule stated by the complainant. The respondent has pleaded that the delay in completion of the work cannot be attributed to him as because due to initiation of multiple legal proceedings by the customers against him, the construction of the project suffered.

Moreover the complainant had not paid the agreed amount in time. Show cause further adds that despite difficulties the respondent is eager to complete the project and hand over the flat to the complainant. On these grounds the Respondent has prayed to dismiss the case with cost.



6. The case was posted on 25.1.2018 for hearing. But the respondent advocate remained absent on that day, so the case was heard in the absence of the respondent advocate. The complainant while presenting his case reiterated his submission as mentioned in the complaint petition. In analysing the show cause of the respondent, we take up those issues one by one as follows:

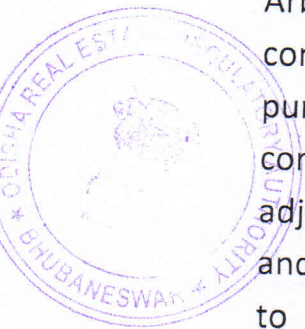
7. **Maintainability on account of Arbitration Clause:**

Clause-31 of the agreement provides for referring all disputes and differences between the parties to an Arbitrator to be appointed by the builder. One of the key objectives of enacting the R.E.(R&D) Act,2016 was to create a specialised body to provide for speedy dispute redressal. It is a settled position of law that a specific law regarding any specific subject matter has an overriding effect over any general law. In other words, the provision of a general statute must yield to those of a special one. The Arbitration Act so far as it relates to disputes between two parties to a contract is a general law and the said Act. was not enacted for the special purpose relating to disputes between real estate promoters and consumers whereas the R.E.(R&D) Act,2016 is enacted exclusively for the adjudication and resolution of disputes involving real estate promoters and allottees. That apart the R.E.(R&D) Act,2016 was enacted subsequent to enactment of the Arbitration and Conciliation Act,1996. It is well settled that " the later law overrides the previous law".

Considering the facts and circumstances of the case, the statutory provisions and well-settled legal position as narrated above, we are of the view that irrespective of the fact that there is an Arbitration Clause in the Agreement for sale, the present case is maintainable in this forum.

8. **Jurisdiction of the Authority:**

In the show cause of the respondent it has been argued that the agreement for sale was executed on 30.03.2013, much before the RERA came into force and therefore the said agreement cannot be a subject matter of adjudication before the Authority. The project is an ongoing project, and it was not completed nor completion/occupancy certificate was obtained from the competent Authority before 1.5.2017, when the Act came into force. The project is, therefore, registerable under the



R.E.(R&D) Act,2016. Hence we hold that even though the agreement was executed in 2013, this Authority has jurisdiction to try the case.

9. **Tampering of Agreement:**

It has been averred by the respondent in the written statement that the agreement for sale has been tampered with or manipulated and therefore cannot be relied upon. But no concrete instance of tampering or manipulation was brought to our notice nor the original agreement was submitted for the perusal of the Authority to verify the allegation. In the absence of any credible evidence we hold that the allegation of manipulation of the agreement is prima facie baseless and devoid of any force.

10. **Payment Schedule:**

The respondent has disputed the statement of payment schedule mentioned by the complainant in his petition through one-line statement that the payment schedule is not admitted. When the respondent was allowed to refer to his payment register now in the custody of EOW he should have filed specific instance of difference, but he has not done so. Further the respondent has also not challenged the copies of the money receipts submitted by the complainant in support of deposit of fund with the promoter. In view of the above we hold that the payment schedule is correct representation of deposit of funds by the complainant.

11. **To what relief complainant is entitled?.**

It is seen from the materials on records that the complainant has agitated the matter of refund of deposits after the expiry of the due date of delivery of possession of flat. When the case of the complainant is for withdrawal from the project, the averment of the respondent that he is eager to hand over the flat does not stay relevant in the context. From the materials on record it is seen that the complainant had paid Rs.7,04,215/- to the Respondent by 9.1.2014. Section 18 of the R.E.(R&D) Act, 2016 provides that if the promoter fails to complete or is unable to give possession of the apartment, plot or building as per Agreement and if the allottee wishes to withdraw from the project, the promoter is liable to return the amount received by him in respect of that apartment with interest at such rate as may be prescribed. Rule 16 of O.R.E. (R&D) Rules,2017 provides the rate of interest payable by the promoter or

allottee. In this case the Respondent has failed to deliver possession of the flat within time as per agreement. So he is at fault and liable to refund the payment made by the complainant with interest at the rate as provided under the Act and Rules as discussed above.

The matter of compensation is not within the jurisdiction of this Authority and hence no order can be passed on that account. However, the complainant, if so likes, may file the compensation case before the Adjudicating Officer of this Authority.

Hence it is ordered that:

ORDER

1. The Respondent is directed to refund the deposit of Rs.7,04,215/- made by the complainant as per payment schedule attached to the complaint petition alongwith interest at the rate of 10.50%, compounded quarterly, from their respective dates of deposits till date of payment.
2. In case of non-compliance of the order by the Respondent within 45 days from the date of receipt of this order the complainant may take appropriate action for enforcement of the order according to law.

Sd/-
Member-II

Sd/-
Member-I

Sd/-
Chairperson

Documents relied upon by the Complainant:

Copies of:

1. Agreement for sale of Apartment/Flat dated 30.03. 2013
2. Money Receipts with serial number from 842 to 848
3. Copy of Bank Statement dtd.4.4.2018

Documents relied upon by the Respondent:

NIL

Sd/-
Member-II

Sd/-
Member-I

Sd/-
Chairperson

True Copy

Registrar

[Signature]
16/3/19

Memo No. 5639(12) ORERA, Dated. 18/03/2019

Copy forwarded to the Complainant Subash Kumar Mishra and Respondent Managing Director, Orissa Homes Private Limited for information and necessary action.

Sayan S
Registrar 18/3/19