

**BEFORE ODISHA REAL ESTATE REGULATORY AUTHORITY
BHUBANESWAR**

Complaint Case No.109/2018

Mrs. Bijayani Devi
W/O Mr.Gokul Chandra Dwibedi,
Lokanath Nagar,
Khandapada Road,
HDFC Bank Lane,
At/PO:/Dist: Nayagarh-752059

....Complainant

Versus

1. M/s. Hi-tech Edifice(P) Ltd.,
Represented by its Managing Director
Plot No.103, Sahid Nagar,
Bhubaneswar -751007
2. Sri TirupatiChoudhury
S/o. Late Kunja Bihari Choudhury,
Managing Director,
Hi-Tech Edifice(P) Ltd.,
Plot No.111, Sahid Nagar,
Bhubaneswar.

....Respondents

Adv.for Complainant : Mrs.B.Mohanty & Associates
Adv. For Respondent : Mr.K C Prusty & Associates.

ORDER Dated 16.04.2019

01. This is a case for refund of money with interest and compensation.

02. Briefly stated the Complainant's case is that on **31.01.2012**, he entered into an Agreement for Sale with the Respondents for purchase of one "Flat No.2/B-3-05 in the 2nd floor having an area of 665 sq.ft. in the project namely "Hi-tech Paradise" at Mouza-Nailo developed by the Respondents. The consideration money was fixed at Rs.**10,64,000/-** and the Respondents had undertaken to complete the unit in all respect and deliver possession within 30 months from the date of agreement upon receipt of apartment cost in time. As on the date of filing of the case, the Complainant had paid Rs.**7,98,500/-**. The stipulated date for

completion and delivery of the project including the grace period was **July,2014**, but the Respondents failed to deliver possession. On 26.10.2015 the Complainant sent a legal notice to the Respondents and after not getting suitable response from the Respondent she filed C.C. No.**376/15** before the District Consumer Dispute Redressal Forum, Puri which she withdrew on **11.06.2018**. Complainant has further stated that in a press meeting dtd. 24.5.2016 the Chairman and M.D. of Respondent company promised to deliver the house within 09 months without claiming further money but did not deliver. Rather they transferred the project with its majority rights to a 3rd party without consent of 2/3rd allottees. Moreover the Respondents have violated the provisions of Section-13 of the Act by receiving booking amount of Rs.1,72,500/-. On these grounds the Complainant has filed this case praying for refund of money with interest and compensation.

03. The Respondents filed written statement challenging the case as not maintainable for mis-joinder and non-joinder of party stating that though Mr.Tirupati Choudhury, the then M.D. has resigned from the Respondent Company, and the Complainant knowing this fact has impleaded him as Respondent No.2, but has not impleaded the present Director Mr. P.K. Mohanty. Moreover earlier complaint case No.376/15 filed by the Complainant was dismissed by the District Consumer Disputes Redressal Forum, Puri vide order dtd. 11.06.2018 and no liberty was given by the Consumer Forum to file the present case. Hence this Authority has no jurisdiction to entertain the complaint for the same cause of action. Moreover the last payment was made by the Complainant on **20.12.2012** and this case has been filed on **26.06.2018**. So it is barred by limitation.

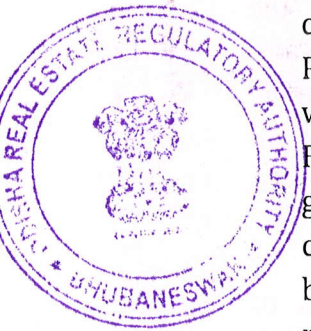
The Respondents have not disputed the fact of execution of the agreement and the fact of payment of Rs.**7,98,500/-** by the Complainant, but have specifically pleaded that non-delivery of possession of the flat was due to non-payment of dues by the Complainant as per Agreement. They have also stated that they have not committed any offence U/s 13 or 15 of RERA Act. Respondents have also stated that the Complainant is not entitled to refund of Rs.7,98,500/- as the same has already been spent in the construction of the flat and as per Agreement. The respondents are entitled to deduct

10% of the deposit and no interest or compensation is payable in case of refund. The Respondents have also prayed to direct the Complainant to pay the balance cost of the flat to them to complete the construction. On these grounds, the Respondents have prayed for dismissal of the case.

04. Parties were heard. Perused the materials on record. At the outset, let us examine the question of maintainability of the case on the ground of non-joinder and mis-joinder of parties. It is seen that Mr.Tirupati Choudhury who had signed on the Agreement for Sale has been impleaded as Respondent No.2 and the Respondent Company has been impleaded as Respondent No.1. The present Director Shri P.K.Mohanty who has signed on the written statement as Director of Respondent Company was not a signatory to the Agreement. In such fact & circumstance, the case is not bad for non-joinder or misjoinder of party.

The next contention of the Respondents is that vide order dtd.**11.06.2018** no leave or liberty was granted by the District Consumer Redressal Forum, Puri to the Complainant to file the present case, hence this case is not maintainable. On the other hand the Ld. counsel for complainant submitted that his prayer for withdrawal was allowed by the consumer Forum & thereafter he has filed the case. The copy of Order dtd.**11.06.018** of the District Consumer Redressal Forum, Puri in C.C. No.376/15 shows that the petition of the Complainant for withdrawal of that case was allowed by the District Consumer Redressal Forum, Puri. Although the said order does not have any mention about granting of any "leave" or "liberty" to the Complainant to file the present case, the said fact doesn't affect the maintainability of this case as because the Real Estate (Regulation & Development) Act, 2016 nowhere mandates to obtain any leave or liberty from the Consumer Forum to file a case before the Authority. So such contention is not acceptable.

05. The Ld. Counsel for the Respondents further contended that the last payment was made by the Complainant on **20.12.2012** whereas the present case was filed in June 2018, and as such it is barred by limitation. On the contrary the Ld. Counsel for the Complainant countered it stating that the date of last payment i.e. **20.12.2012**, cannot be the starting point of limitation as no cause of action arose on



that date. In his legal notice dtd.19.10.2015 the Complainant had asked the Respondents for refund of money with interest and compensation. Under his letter dtd.**09.11.2015**, the Respondents stated that refund of money from their company was not possible. It is pertinent to note that on 15.12.2015, the Complainant had filed C.C. No.376/15 before Consumer Forum, Puri and after withdrawing the said case on 11.06.2018, filed the present case. Considering these facts and circumstance of the case it is held that the case is not barred by limitation.

06. As per agreement, the construction of the unit should have been completed by July, 2014 even including the grace period of six months it should have been completed by January,2015. The copy of money receipts filed by the Complainant shows that by 20.12.2012, the Complainant had paid Rs.**7,98,500/-** which is around **75%** of the total consideration. So commensurate with such payment, the construction should have been completed up to **75%** by that date. The Respondents have also admitted the fact of payment made by Complainant. In his legal notice dtd.19.10.2015, the Complainant had informed the Respondents that he had gone to the construction site in July,2013 and found nobody there and the construction work was already stopped. From the materials available on record, it emerges that the construction of the flat was not completed within the stipulated time as per the agreement, not did it progress commensurate with payments.



07. The Respondents have taken a plea that non-completion of construction was due to non-payment of dues by the Complainant. The Agreement dtd.**31.01.2012** shows that the payment was construction linked. No document has been filed by the Respondents to show that at any time before July,2014 they had asked the Complainant to make any payment informing him about the stage of completion of any mile stone of work. In the letter dtd.**09.11.2015** the Respondent had stated that in the meeting dtd.28.09.2015 and 18.10.2015 all the customers were requested to contribute Rs.30,000/- each towards the flat cost, but this letter as well as the so called meetings are much after expiry of the stipulated period of completion as per agreement, so the same is no-way helpful to the Respondents. For these reasons, the plea regarding cause of delay taken by the Respondents are not acceptable and they cannot

escape from their liability for not completing the construction of the unit within time as per Agreement.

08. Section-18 of Real Estate(Regulation & Development) Act, 2016 provide that if the construction is not completed within the due date, the allottee has right to withdraw from the project and claim for return of his payment along with interest and compensation. The Respondents have taken a plea that they are not liable to pay any interest, rather 10% of the payment was to be deducted in case of refund. In view of the express provisions of Section 18 of the Act, when the Respondents have failed to complete the construction and handover possession within stipulated time as per Agreement, they are liable to refund the money with interest at the rate as provided in Rule-16 of Odisha Real Estate (Regulation & Development) Rules, 2017.

So far prayer for compensation, the same is within the jurisdiction of Adjudicating Officer as provided under Section-71 of the Act. This Authority cannot decide the question of compensation. The Complainant, if so likes, may file a separate petition for compensation before Adjudicating Officer.

09. Complainant has alleged that the Respondents company had committed an offence punishable Under Section 15 of the Act as they have transferred majority rights of the project to a 3rd party namely Prafulla Kumar Mohanty without obtaining written consent of 2/3rd allottees. Absolutely no document has been filed by the Complainant to substantiate such allegation. The other allegation is that the Respondents had taken more than 10% of the total consideration amount before entering into an Agreement for Sale in violation of Section 13 of R.E. (R&D) Act,2016. The Agreement was executed on **31.01.2012** and by then the R.E (R&D) Act,2016 had not come into force. So Section 13 of the Act being a penal provision is not applicable in the case. As such we do not find any material to hold the Respondents guilty for violation of Section 13 or 15 of the RERA Act.

Hence Ordered.



ORDER

1. The Respondents are directed to refund the total payment of Rs.7,98,500/- made by the Complainant along with interest @ 10.5% per annum, compounded quarterly w.e.f. the respective dates of receipt of the amount by them i.e. on Rs.1.72.500/- w.e.f. 19.1.2012, on Rs.3,60,000/- w.e.f. 16.2.2012 & on Rs.2,66,000/- w.e.f. 20.12.2012 till the date of refund.
2. Refund should be made within 45 days from the date of receipt of this order failing which the Complainant may take steps for realisation of the dues according to law.

Sd/-
Member-II
(Niranjan Sahu)

Sd/-
Member-I
(B.C.Mohapatra)

Sd/-
Chairperson
(A.K.Mohapatra)

List of documents relied upon the Complainant.

1. Copy of agreement dtd.31.01.2012.
2. Copy of Money receipt dtd. 19.1.2012, 16.02.2012, 20.12.2012.
3. Photos showing cracking of roof using inferior quality of cement and incomplete building till 3.12.2015.
4. Copy of legal notice dtd.19.10.15.
5. Copy of order dtd.11.06.2018 of Consumer Forum in C.C. No.376/15.

List of documents relied upon the Respondents.

1. Copy of letter dtd.9.11.2015 of Respondent.
2. Copy of FIR dtd.23.5.2016.

Sd/-
Member-II
(Niranjan Sahu)

Sd/-
Member-I
(B.C.Mohapatra)

Sd/-
Chairperson
(A.K.Mohapatra)

True Copy

Registrar

Memo No. 622513/ORERA, Dtd. 14/05/2019

Copy forwarded to the Complainant/Respondent's for information and necessary action.

Registrar