

**BEFORE ODISHA REAL ESTATE REGULATORY AUTHORITY  
BHUBANESWAR**

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**Complaint Case No.221/2018**

Mr. Subrat Sahoo,  
MCL Office, IB Velley,  
Computer Department,  
At:Gandhi Chowk, Brajarajnagar,  
Dist:Jharsuguda, Odisha,  
PIN-768216

.... Complainant

VRS.

Mr.Niranjan Rana,  
M.D., Maa Tarini Eastcon (P) Ltd.,  
69A, Saheed Nagar, Bhubaneswar,  
PIN : 751007

.... Respondent

Advocate for the Complainant – Self

Advocate for the Respondent – Sri B.B.Nanda & Associates.

**ORDER Dated 20.04.2019**

The Complainant has filed this case praying for refund of money with interest and compensation.

2. Briefly stated the case of the complainant is that he had booked one flat with built up area of 440 sft. bearing No.A-03 at 1<sup>st</sup> floor of "Saivilla Apartment" developed by the respondent. An agreement for sale was executed between the parties on dt.2.5.2013. The flat was likely to be completed within 24 month with grace period of six months. The total consideration of the apartment was Rs.7,00,000/-. Out of the same the complainant had paid Rs.6,30,000/- as on 27.12.2014. The flat was not completed in due time. Several times the complainant asked the respondent for refund of money. It is further alleged that on



5.9.2018 the respondent handed over some flats to other members of the society without complete construction as per agreement allowing some discount. The complainant was staying at Jharsuguda so he could not attend on 5.9.2018 but on the next date i.e. on 6.9.2018 when he approached the respondent to hand over the flat, he told that the game is over and asked him to pay the rest money and also refused to allow any discount and threatened to cancel the booking if the rest amount is not paid within 07 days. On these grounds the complainant has filed this case.

3. The respondent appeared and filed written statement that due to complaint made by some customers a case has been instituted against the M.D. and he has been prohibited from registration of land and building until further order. Respondent has also stated that some customers approached this authority through "Saivilla Apartment Owners Association" and the respondent handed over the flats to them after satisfactory completion of all remaining work, giving them the agreed discount. The present complainant was not a member of the association and he deliberately skipped the meeting.

4. The respondent denied the allegation that the construction work of the apartment is not as per specification. Moreover in spite of repeated reminders, the complainant did not deposit the balance amount and did not take possession. All the bank accounts of the respondent has been seized and so he is not in a position to refund the money and it is also not possible on his part to get the flat A-03 registered in the name of the complainant as the matter is sub-judice.





5. Parties were heard. Perused the materials on record. Considering the submission of the parties we shall address the issues one after another as follows:

6. **Delay:** Execution of agreement dtd.2.5.2013 is not disputed by the respondent. Clause-4 of the agreement provides that the flat was likely to be completed within 24 months with a grace period of 06 months from that date i.e. latest by 2.11.2015. Fact remains that possession of the flat has not yet been handed over to the complainant. The allegation of the complainant is that in between 1.5.2013 to 29.12.2014 he had paid Rs.6,30,000/- to the respondent which is 90% of the total consideration amount. The respondent has not disputed this allegation. The copy of the money receipts filed by the complainant also corroborate this fact. It is not the case of the respondent that construction of the flat was completed within the stipulated period or at least 90% of the construction commensurate to the payment made by the complainant was completed by the stipulated date i.e. 2.11.2015. In his affidavit dtd.26.12.2017 the respondent has admitted that he could not complete the construction of the apartment which was abnormally delayed. In that affidavit he had requested the customers to pay their dues after deducting 14% discount on the cost of the flats in place of interest. It shows that the project was not completed till 26.12.2017. In his e-mail dtd.15.7.2017 the complainant had asked the respondent for full refund of his money with 24% interest as soon as possible.

7. **Liability of the Respondent:** From the aforesaid discussion it emerges that the respondent has failed to



complete the construction with the due time as per the agreement. As provided under Section-18 of the RE(R&D) Act,2016 default on the part of promoter to complete the flat as per agreement for sale renders him liable to return the amount received by him with interest including compensation if the allottee wishes to withdraw from the project. So the respondent for his default to complete the project becomes liable to return the money with interest and compensation.

Offer of the respondent that he would hand over the flat after receiving balance payment from the complainant and getting a favourable order from the Hon'ble court to execute the sale deed needs no consideration as because the complainant has prayed for refund of his money with cost and compensation for non handing over of possession.

8. Considering the facts and circumstances of the case and for the reasons discussed above it is held that the respondent is liable to refund the amount received by him from the complainant on different dates as noted below alongwith interest as provided under ORE (R&D) Rules,2017.

<u>Date</u>	<u>Amount</u>
1.5.2013	Rs.1,05,000/-
11.6.2013	Rs. 95,000/-
10.8.2013	Rs. 50,000/-
10.8.2013	Rs. 50,000/-
29.12.2014	Rs.3,30,000/-

9. So far prayer for compensation it is held that adjudging compensation is not under the jurisdiction of this Authority but under the jurisdiction of the adjudicating officer. So the





complainant if he so likes may file a separate case before the adjudicating officer under section-79 of the Act.

Hence ordered:

### ORDER

- (i) The respondent is directed to refund the amount of Rs.6,30,000/- to the complainant with interest @ Rs.10.5% per annum compounded quarterly on the amount received on different dates as discussed at para-8 of this order till the date of actual refund
- (ii) The respondent is directed to deposit the amount in the loan account No.609243823 of the complainant maintained in HDFC bank and intimate the fact of deposit to the complainant within 07 days of deposit.
- (iii) On receipt of such intimation from the respondent the complainant is to obtain no dues/loan clearance certificate with other original documents if any lying with the bank and hand over the same to the respondent.
- (iv) The refund as per point no.(i) above shall be made within 10.6.2019.

In case of non compliance of the order by either party the aggrieved party may take appropriate action according to law for enforcement of the order.



Sd/-	Sd/-	Sd/-
Member-II	Member-I	Chairperson
(Niranjan Sahu)	(B.C.Mohapatra)	(A.K.Mohapatra)

### List of documents relied upon by the complainant

Copies of

1. Agreement for sale dt.2.5.2013

2. Money Receipt dt.1.5.2013, 11.6.2013, 10.8.2013(2), 29.12.2014
3. Demand draft dtd.27.12.2014
4. E-mail dtd.15.7.2017
5. Affidavit of respondent dtd.26.12.2017

**List of documents relied upon by the respondent**

NIL

Sd/-	Sd/-	Sd/-
Member-II	Member-I	Chairperson
(Niranjan Sahu)	(B.C.Mohapatra)	(A.K.Mohapatra)

True Copy



Registrar *Seyu* 14/5/19

Memo No. 622012/ORERA, Dtd. 14/05/2019

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

*Seyu*  
Registrar 14/5/19