

**BEFORE ODISHA REAL ESTATE REGULATORY AUTHORITY
BHUBANESWAR**

Complaint Case No.227/2018

Simadree Pradhan,
D/o Sri Sushanta Kumar Pradhan,
C/o Sankarsan Pradhan,
At: Jholasahi, (New Colony),
P.O. Buxi Bazar, Cuttack-753001

....Complainant

Versus

1. M/s. Hi-tech Edifice(P) Ltd.,
Represented by its Managing Director
Plot No.103, Sahid Nagar,
Bhubaneswar -751007

2. Sri Tirupati Choudhury
S/o. Late Kunja Bihari Choudhury,
Managing Director,
Hi-Tech Edifice(P) Ltd.,
Plot No.111, Sahid Nagar,
Bhubaneswar.

....Respondents

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

ORDER Dated 02.05.2019



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

02. Briefly stated the Complainant's case is that on **31.1.2012** he entered into an Agreement for Sale with the Respondents for purchase of one "Flat No.2/C-2-01 in the 2nd floor of Block C/2 having an area of 700 sq.ft. in the project namely "Hi-tech Paradise" at Mouza-Nailo developed by the Respondents. The consideration money was fixed at Rs.**12,64,800/-** 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.**9,42,900/-**. The stipulated date for completion and delivery of the project including the grace period was **30.01.2015**, but the Respondents failed to deliver possession. On 27.09.2015, the Complainant sent a notice to the Respondents asking for refund. The respondent in his letter dtd.29.9.2015 stated that they were arranging funds from other sources

and would settle the dues of complainant after six months. The 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 but did not deliver. So as to complete the construction complainant further paid of Rs.3,10,000/- in the year,2017 with a hope to getting the possession of the flat. But behind his back the respondents 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.1,86,000/-. 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 in view of clause-38 of the agreement the dispute should have been referred to the arbitrator.

The Respondents have not disputed the fact of execution of the agreement 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 for refund of Rs.9,42,900/- as the same has already been spent in the construction of the flat and as per Agreement, they are entitled to deduct 10% of the deposit and no interest or compensation is payable in case of refund. 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 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 mis-joinder of party.



05. Clause-38 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 specialized 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.

06. As per agreement, the construction of the unit should have been completed by July, 2014 and 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 29.7.2017 she had paid Rs.8,82,900/- and under M.R.No.1675 she had paid Rs.60,000/- totalling to Rs.9,42,900/-. Since this money receipt does not contain any specific date, we are of the view that the payment under this money receipt should be deemed to have been made on 29.7.2017. The respondent has not adduced any material to discard those money receipts. We found no reason to disbelieve the claim of payment of Rs.9,42,900/-.

The Respondents have taken a plea that non-completion of construction was due to non-payment of dues by the Complainant. The Agreement dtd.31.1.2012 shows that the payment was construction linked. No document has been filed by the Respondents to show that at any point of 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. The letter dtd.29.9.2015 clearly shows that the work was not started till that date (29.9.15). For these reasons, the plea of non payment of dues by the complainant as the 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.

07. 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 as stipulated in clause-22 of the agreement. 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.

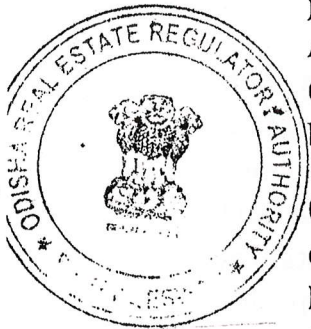
So far prayer for compensation, the same is within the jurisdiction of Adjudicating Officer as provided under Section-71 of the Act. This Authority cannot decide the question of compensation. The Complainant, if so likes, may file a separate petition for compensation before the Adjudicating Officer.

08. 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. 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 **31.1.2012** and by then the R.E (R&D) Act,2016 had not came 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 payment of Rs.9,42,900/- 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.50,000/- w.e.f.



23.1.2012, On Rs.1,36,000/- w.e.f. 25.1.2012, on Rs.1,30,000/- w.e.f. 17.3.2012, on Rs.2,00,000/- w.e.f. 8.4.2012 on Rs.1,16,900/- w.e.f. 30.4.2012, Rs.50,000/- w.e.f. dt.11.4.17, Rs.1,00,000/- dtd.24.4.2017, Rs.50,000 w.e.f. 11.5.2017, Rs.50,000/- w.e.f. 29.7.2017 & Rs.60,000/- vide MR No. 1675/-) till the date of refund.

2. Refund should be made within 45 days from the date of this order failing which the Complainant may take steps for realisation of the dues according to law.

sdf
Member-II
(Niranjan Sahu)

sdf
Member-I
(B.C.Mohapatra)

sdf
Chairperson
(A.K.Mohapatra)



List of documents relied upon the Complainant.

1. Copy of agreement dtd.31.1.2012.
2. Copy of Money receipt dtd. 23.1.12, 25.1.12, 17.3.12, 8.4.12, 30.4.12,11.4.17,24.4.17,11.5.17, 29.7.17, & MR No.1675.
3. Copy of letter dtd.27.9.15 & dtd.29.9.15
4. FIR dtd.23.5.16 before EOW.

List of documents relied upon the Respondents.

NIL

sdf
Member-II
(Niranjan Sahu)

sdf
Member-I
(B.C.Mohapatra)

sdf
Chairperson
(A.K.Mohapatra)

True Copy

sdf
Registrar *29/5/19*

Memo No. 6433(3) /ORERA Date 29/05/2019

Certified copy of order forwarded to the Complainant/
Respondent for information.

sdf
Registrar *29/5/19*

