

**BEFORE ODISHA REAL ESTATE REGULATORY AUTHORITY  
BHUBANESWAR**

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**Complaint Case No.247/2018.**

Smt. Himansubala Panigrahi,  
W/O Sri Sudarsan Panigrahi  
At: Flat No.A-1, Block-B,  
Rajdeep Apartment, Lane No.13,  
Soubhagyanagar, PO:Baramunda,  
Bhubaneswar-751003.

... Complainant

**VRS**

Mr.Dhanjaya Kumar Rai,  
Director, Ratnavati Developers (P) Ltd.  
Plot No. N-6/235, 1<sup>st</sup> Floor, IRC Village,  
Nayapalli, Bhubaneswar- 751015.

... Respondent

Advocate for the Complainant - Mr.D.Panda & Associates  
Advocate for the Respondent - Mr.B.Sarangi & Associates

**ORDER Dated 26.04.2019**

This is a case for directing the respondent to rectify the defects, to finish the remaining work of the flat, to obtain the Completion Certificate and Occupancy Certificate and to pay interest and compensation.

2. Briefly stated the case of the complainant is that in response to the advertisement of the respondent she applied for a flat bearing No.A-1 in the 1<sup>st</sup> floor at Block-B with super built up area of 1267 sft. in the project "RAJDEEP" developed by the respondent. On 15.9.2012 the respondent gave allotment letter and on that date an agreement was executed and it was stipulated to deliver the possession of the flat within 24 months. As per agreement, the consideration money was fixed at Rs.34,90,195/-. The complainant



has further averred that she availed a loan from Axis Bank. The complainant has stated that she has paid the full consideration of Rs.34,90,195/- by 1.6.2016.

3. It is further averred by the complainant that although by 10.1.2014 she had paid 95% of the consideration amount but only 40% work was done. On 1.7.2016 the respondent gave temporary/conditional possession letter although there was no lift nor there was provision of Genset so also other amenities were not provided. On 25.9.2016 when the complainant asked for the execution of Regd. Sale Deed and for delivery of possession the respondent replied to complete the same by November,2016. On 5.10.2016 the respondent executed one Regd. Sale Deed. On 14.9.2017 the respondent gave the covered car parking space but has not supplied the completion certificate and occupancy certificate in respect of the flat. In his letter dtd.27.7.2017 the respondent had agreed to complete the construction. The complainant has also alleged that though there was no plan approval for basement the respondent has constructed basement and is not making sand filling of the basement. There is leakage of sewerage pipe at several places. The respondent has not constructed the exit gate at Block-A and had reduced the width of the entry gate from 25' to 18'-6". The respondent has also not constructed another society room as per plan nor has developed 20% of the plantation area so also has not formed the society. Due to delay in completion of the flat the complainant had incurred loss of Rs.10,000/- Per Month by paying House rent. On these grounds the complainant has filed this case for the aforesaid reliefs.





4. The respondent appeared and filed written statement stating that the case is not maintainable and this authority has no jurisdiction because as per clause -44 of the agreement the dispute should have been referred to Arbitration. Respondent has also stated that though the agreement was executed on 15.9.2012 the completion of the construction was delayed due to late payment. The Regd. Sale Deed was executed on 5.10.2016. Prior to this, on 1.7.2016 possession was delivered to the complainant who has acknowledged under Annex-6 series that the work had been done properly and the project is an unregistered project. In his written statement he has stated that as per clause-27 of the agreement he is not liable to pay any interest in case of delay and as per clause-18 he is no way liable after delivery of possession so also as per clause-10 of the agreement he is at liberty to make deviation in construction. Respondent has also stated that as per clause-14 of the agreement the complainant could have taken back her money if she desired to cancel the booking but she has filed this case to harass the respondent. On these grounds the respondent has prayed for dismissal of this case.

5. Parties were heard. The Ld. Counsel for the parties reiterated the averments of their pleadings. After hearing the rival submission of the parties we think it proper to address the issues one after other as follows.

6. **Maintainability:** The respondent has raised a plea that as per clause-44 of the agreement any dispute between the parties should have been referred to arbitration, so this case is not maintainable before this Authority. Moreover it is an unregistered project and



possession was delivered on 1.7.2016 and sale deed was executed on 5.10.2016 much before the Act came into force. So the case is not maintainable in this forum.

6(A). Let us take up the first contention regarding Arbitration. Clause-44 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". Such view finds support from the decision dtd. 4.8.17 of Madhya Pradesh RERA in the case of Praveen Kumar Nigam vrs SVS Buildcon Pvt. Ltd. It would be apposite to refer to relevant portion of Para 10 of that order which is extracted below:

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Para-10 - "Furthermore, we note that Sec.88 of the RERA Act states that the Act is in addition to, and not in derogation of the provisions of any other law for the time being in force. Exactly this point of law has been dealt with by the Hon'ble Supreme Court in National Seeds Corporation vs. M. Madhusudhan Reddy & Anr. (2012)2 SCC 506. After taking into consideration Section 8 of the





Arbitration Act and the provisions of the consumer Protection Act the court held that since the remedy available under the Consumer Protection Act was in addition to, and not in derogation of, the provisions of any other law for the time being in force, the complaint filed in the Consumer Forum would be maintainable despite there being an arbitration clause in the agreement to refer the dispute to an arbitrator."

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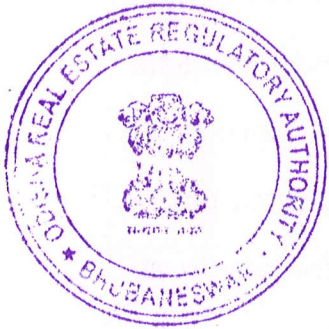
Considering the facts and circumstances of the case, the statutory provisions and well-settled legal position as narrated above, we are of the view that irrespective of the fact that there is an Arbitration Clause in the Agreement for sale, the present case is maintainable in this Forum."

6(B). So far the 2nd contention regarding applicability of the RE(R&D) Act,2016 it is an undisputed that the Act came into force w.e.f. 1.5.2017 and the agreement was executed on 15.9.2012 and possession of the flat was handed over on 1.7.2016 and Regd.Sale Deed was executed on 5.10.2016. There are a series of correspondences made between the parties regarding completion of pending works, regularisation of plan approval, formation of society etc. The present complainant with other allottees in their letter dtd.9.7.2017 addressed to the respondent had pointed out the short comings and pending works of the project. In his letter dt.27.7.2017 respondent had agreed to sort out the structural defect & other issues such as water logging in the basement, minor repair jobs including drive way, regularisation of deviation with BDA, completion of society room work, installation of transformer allocation of car parking etc. No completion certificate or occupancy certificate has yet been provided to the complainant. Above all according to section 14(3) of the RE(R&D) Act,2016 the



promoter is duty bound to rectify the structural defects or any other defect in the workmanship within 5 years from the date of delivery of possession. From these facts and circumstance of the case it can be safely held that the project is an ongoing project and in view of section 3 of the RE(R&D) Act,2016 it is compulsorily registerable with this authority. Hence, both the contentions of the Ld. Counsel for respondent are not acceptable and the case is maintainable in this forum.

7. **Delay in Delivery of Possession:** Respondent has not disputed the fact that in response to his advertisement the complainant had applied for a flat and allotment was made and agreement was executed on 15.9.2012 and as per agreement the construction should have been completed within 02 years i.e. by 14.09.2014. Respondent has also not disputed the fact that by 10.1.2014 the complainant had paid Rs.31,45,085/- As per Agreement, the complainant had to pay Rs.4,07,519/- on or before delivery of possession, so there was no default on the part of the complainant in making payments. Mere assertion in the written statement that construction was delayed due to late payment is not sufficient particularly where there is no material to show that respondent had ever issued any notice to the complainant intimating to take possession and demanding to make the last payment. On 1.7.2016 the respondent gave temporary/conditional possession vides Annex-5. The said letter shows that by then a few job relating to common area were pending and work of front block-1 was going in full swing and would be completed very soon. On that very





date vide Annex-6 the complainant had acknowledged that being present at the spot she took over physical possession in complete and finished condition upon her full satisfaction.

Ld. Counsel for the complainant during course of argument submitted that though she had acknowledged the fact of taking delivery of possession but later on she detected the defects. May be there is any structural defects or the respondent had not provided all the promised amenities. But there are different questions and not relevant to the issue of delay in delivery of possession. Taking into consideration the acknowledgement of the complainant that she took physical delivery of possession on full satisfaction we are inclined to hold that possession was delivered on 1.7.2016. But as per agreement possession should have been delivered by 14.9.2014. So it is held that there was delay on the part of the Respondent to deliver possession in time as per agreement and the respondent is liable to pay interest to the complainant for the delay in delivery of possession in accordance with the section 18 of RERA.



8. **Liability of Respondent:** Clause-18 of the agreement exonerating the respondent from any liability for any defect after delivery of possession is contrary to the section -14(3) of the Act.. Likewise the clause-10 of the agreement empowering the promoter by giving free hand to make any deviation during construction is also inconsistent to Section-14(2) of the Act. Similarly Clause-27 of the agreement exonerating the respondent from his liability even in case of delayed delivery is also against the provisions of section-18

of RE(R&D) Act,2016. These clauses in the agreement are unfair, unreasonable and contrary to the provisions of the Act and taking shelter to those clauses the respondent cannot avoid his liability. The other contention of the respondent that as provided under clause-14 of the agreement the complainant could have taken back her money needs no consideration as because the possession has already been delivered since 1.7.2016.

After considering the materials on record and for the reasons discussed above it is ordered.

#### ORDER

- i. The respondent is directed to regularise the plan approval.
- ii. The respondent is directed to get his project registered with ORERA within one month of plan regularisation approval.
- iii. The respondent is directed to hand over completion certificate and occupancy certificate to the complainant.
- iv. The respondent is directed to comply the deficiencies and provide the amenities as per agreement.
- v. The respondent is also directed to pay interest @ 10.5% per annum compounded quarterly to the complainant on the sum of Rs.31,45,085/- w.e.f. 15.9.2014 till 1.7.2016 within 45 days of receipt of this order.

In case of non compliance of this order by the respondent the complainant may take appropriate action according to law for enforcement of the order.



Sd/-

Member-II  
(Niranjan Sahu)

Sd/-

Member-I  
(B.C.Mohapatra)

Sd/-

Chairperson  
(A.K.Mohapatra)



**Documents relied upon by the Complainant:**

Copies of:

1. Brochure
2. Application form
3. Agreement dtd.15.9.12
4. Money Receipts dtd.3.11.2009, 14.11.2009, 3.12.09, 5.12.09, 8.12.09, 10.11.12, 23.1.13, 22.2.13, 18.4.13, 21.1.16, 16.2.16, 25.2.16, 9.3.16, 12.4.16, 16.5.16 & 1.6.16
5. Bank Statement
6. Legal Notice dtd.25.9.16 & its reply dtd.28.9.16
7. Possession letter dtd.1.7.16
8. Regd. Sale Deed dtd.5.10.16
9. Allotment of Car parking space
10. Letter dtd.9.7.17 & reply dtd.27.7.17 & 29.8.17
11. Letter dtd.4.12.17 & 19.12.17

**Documents relied upon by the Respondent:**Copies of

1. G.P.A. dtd.9.3.09
2. Joint Venture Agreement dtd.27.2.09
3. B.D.A.plan dtd.30.8.12
4. Agreement dtd.15.9.12
5. Possession letter
6. Acknowledgement of complainant
7. Regd.Sale Deed dtd.5.10.16
8. Challon for Occupancy certificate

Sd/-

Member-II  
(Niranjan Sahu)

Sd/-

Member-I  
(B.C.Mohapatra)

Sd/-

Chairperson  
(A.K.Mohapatra)

True Copy

Registrar

Memo No. 6223(2) ORERA, Dtd. 14/05/2019

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

Registrar



*[Signature]*  
Registrar

