

**BEFORE ODISHA REAL ESTATE REGULATORY AUTHORITY,
BHUBANESWAR.**

Complaint Case No.03/2018

Seven Hills Flat Owners Association,
Flat No.3038, North Block,
Seven Hills Sands, Represented through,
Its Joint Secretary Sri Bijay Kumar Ray
At: 2/18, 2nd floor, MaaBarabhuj
Commercial Complex,
Khandagiri Chowk, Bhubaneswar,
Dist: Khurda

... Complainants

Vrs.

1. M/S. Seven Hills Estates Ltd.,
Represented through its Managing Director,
MuttaSankar, Srinibas
Plot No.351, SipaSarubali, Damodar Road,
Near Balia Panda, PO/Dist:puri.
2. Sri Mutta Sankar, Srinibas,
S/O Late M.K.D.N.V Prasad Rao,
At: Hill Patna, PO: Berhampur Town
M.D. of M/S. Seven Hills Estates Ltd.

... Respondents



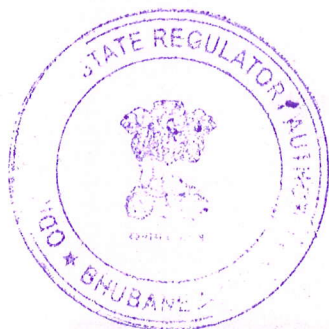
ORDER
Dated the 25th May 2019

This is a case for directing the Respondents for completion of entire construction of flats in all respect as per indenture agreement and hand over the flats along with registered sale deed.

- Briefly stated the case of the complainants (Seven Hills flat owners association) is that pursuing the advertisement floated by respondent-I company for various types of apartments in the project "Seven Hills Sands" being developed over plot no.347 & 351 of Khata no.-36 Mouza- SipaSarubali, Puri Sadar, the members of complainants' association entered into separate/individual indenture agreements for purchase of flats. Agreements were executed in between 2009-2013.
3. The complainants have further stated that as per agreement different time periods were set for different types of flats for handing over the possession of flats. However, the said time periods have expired since

2015 for all types of flats but the construction of the project has not been completed till date in all respects.

4. The complaints have further alleged that the respondents have executed about 400 sale deeds in favour of some allottees but possession as per assured and promised amenities have not been handed over to the allottees in these cases notwithstanding payment of full consideration amount. Moreover, the respondent-2 violating the norms of BDA converted the residential flats to Hotel and has leased out to another company in which the respondent-2 himself is the M.D. It is further alleged by the complainants that while allottees have been waiting for execution of sale deed and possession of respective flats, the respondent clandestinely selling half-constructed flats to others.
5. The secretary of the association had lodged a FIR with police (EOW) on 7.10.16. Based on this FIR, the respondent was arrested, and was released on bail later on by the Hon'ble High Court of Orissa. Intervening as a party in the bail petition case, the Association brought the state of affairs to the notice of the High Court. The case was then being monitored by the High Court directing the respondent to complete the project. Both the parties filed a joint affidavit wherein a detailed date-wise plan was drawn up for completion of the project. December 2018 was decided as the deadline for completion of the project in all respects including execution of conveyance deed and handing over possession. But the respondent did not do anything as per the plan.
6. The respondent appeared and filed preliminary objection challenging the case as not maintainable and proper court fees has not been paid. He has stated that as the complainant has intervened in the bail application no. 793/17 in the Hon'ble High Court of Orissa and prayed for same set of reliefs as have been asked for in the complaint petition before this Authority and the case is being monitored at the level of the High Court of Orissa the case is not maintainable in the forum of this Authority. Further, on the principle of election a party is entitled to approach either of the forums and in the view of the matter a party should not be prosecuted twice for the same cause of action.
7. Respondent has further averred that society was formed on 16.10.15 and prior to that 511 flats were handed over and work of 150 flats are pending and 68 of the flats are ready for possession. As the bail application case no. 793/17 is being monitored by the Hon'ble High Court of Orissa including the prayers of the complainant and the case is still open before the Hon'ble High Court for further hearing, this



Authority is restrained to take up the proceedings of the complaint case. The respondent has further averred that the association cannot be considered as a person as contemplated in the section-31 of the Act and hence no complaint can be filed by it. He has further contended that the members of the association will have different facts in respect of their cases and, therefore, are required to file complaint cases individually with requisite prescribed fees. That not being the case, the complaint case filed by the association has resulted payment of less fees and therefore the case should be dismissed not being accompanied with requisite fees. Above all the present Act which came into force w.e.f. 1.5.17 has only prospective operation. The respondent has denied all the allegations. In para-26 of his reply he has stated that the case may be disposed of on the basis of joint affidavit after curing the formalities.

8. The complainant association filed objection stating that the respondent had filed one false affidavit before the Hon'ble High Court stating that he has applied to the Authority for registration of the project which is factually false. Moreover, there is no order from the Hon'ble High Court to drop the case or to stay further proceeding of this case. Rather in spite of order of the Hon'ble High Court the respondent did not attend the spot inspection twice. On the other hand he is threatening the complainant party.
9. It is important to note here that the Hon'ble High Court vide order dtd.25.3.19 in W.P.(C) No.6257/19 has directed this authority to dispose of this complaint case within a period of 60 days from the date of receipt of a certified copy of this order. The complainant filed the copy of that order on 2.4.19 and copy thereof was served on the respondent on 10.4.19 who took time till 16.4.19 for hearing. On that day both the parties were heard on the complaint petition as well as on ne petition dtd.23.2.19. During course of hearing counsel for the parties reiterated the averments which they had taken in the complaint petition and reply respectively. The respondent did not file any further reply to the complaint petition but confined his argument to the stand taken in his preliminary objection dtd.23.2.19.

The contention raised by the Ld. counsel for the respondents are addressed one after another as below:

a. Double jeopardy:

The Ld. counsel for the respondent submitted that one of the complainants instead of approaching this authority approached the



E.O.W. wing of police and investigation is going on and in the connected Bail application No.793/17 pending before the Hon'ble High Court, the parties have filed one joint affidavit and the said case is sub-judice. But the complainant association has again approached this authority while the criminal investigation is still pending. Hence this case is not maintainable. The counsel of the complainant vehemently objected to such contention, and submitted that investigation of the criminal case cannot be a bar for maintainability of this case.

Admittedly some of the members of the complainant association had filed one FIR on 7.10.16 before S.P. Economic Offence Wing, Bhubaneswar. It may be noted that RE(R&D) Act, 2016 had not come into force by that time. That an investigation of a criminal case basing on one FIR and the allegation of commission of some offences and a proceeding before Real Estate Regulatory Authority under RE(R&D) Act operate in different jurisdictional areas. The standard of proof, nature of evidence and the mode of enquiry in a criminal case and those in the proceeding under RERA Act are entirely different. There is no bar in the RE(R&D) Act, 2016 for such simultaneous proceeding. Significantly Section-88 of the RERA Act provides that the provision of this Act shall be in addition to, and not in derogation of the provision of any other law for the time being in force. In conclusion we hold that the contention of the respondent in regard to being subjected to double jeopardy is erroneous and hence not acceptable.

b. Doctrine of Election:

The learned advocate for the respondent argued that a petitioner is not at liberty to seek some of reliefs from one forum and same set of or other reliefs in another forum arising out of same set of cause of actions. He further added that it is well settled principle in the law, referred to as "Doctrine of Election" that a petitioner can approach one forum, if there are more than one available, to seek reliefs arising out of same set of cause of actions. He further contended that since some members of the Complainant-Association approached police the present case for same set of reliefs. We have held in the para-a above that simultaneous proceeding i.e. a criminal case for alleged commission of some offences and a proceeding before RERA are maintainable. Moreover, from the materials on record we find no conscious exercise of choice by the complainant association which would convey "election" of one remedy over another. Hence, we hold that the complainant association cannot be non-suited on the ground of filing of FIR before the police (EOW).

c. Payment of court fees:



The Ld. Counsel for respondent have further contended that the complainant Association have not paid proper court fees though it is representing a large body of flat owners. Section-31(1) of RERA Act. provides that anybody can file a complaint petition with the authority or the adjudicating officer for violation of the provision of the Act/Rule/Regulation. Explanation to the section provides that for the purpose of sub-section-31(1) "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force". The present case has been filed by Seven Hills Flat Owners Association represented through its Joint Secretary, which is a registered association. Application fees of Rs.1000/- has been paid by the complainant as per Regulation. Thus, in view of the explanation to section-31 of RE(R&D) Act, 2016 as quoted above the complainant association cannot be asked to pay court fees @ Rs.1000/- for each member to whom it represents. Hence such contention is also devoid of any force.

d. To what relief the Complainant Association is entitled?

The respondents, in their written reply at para-26, have prayed to dispose of the case on the basis of the joint affidavit after curing the formalities. A joint affidavit was filed by both the parties before the Hon'ble High Court in Bail application under 793/17 wherein the respondent had agreed to complete all the works by 31.12.2018 and to register the flats after obtaining the RERA registration. The said deadline i.e. 31.12.2018 has since expired but the respondent has not till date completed the work. Further till date the respondent has not applied to this authority for registration of his project. On 12.4.2018 he had sought for permission to apply for registration and this authority vide order dtd.13.4.2018 in misc. case No.444/18 allowed the respondent to apply for registration within 30 days of receipt of the order subject to payment of penalty of Rs.50,000/-. The respondent till date has not deposited the penalty nor applied for registration. The work of the project has not yet been completed. In such circumstances the present case cannot be disposed of on the basis of the joint affidavit filed by the parties before the Hon'ble High Court. On other hands it is the duty of this authority to consider the reliefs claimed by the complainant according to the provisions of RERA Act.

The project being an ongoing project is mandatorily registerable with this authority. But the respondent has not yet got the project registered as required under RERA Act. Though the flats should have been completed by 2015 most of the flats have not yet been completed. The allegation of the complainant is that though the respondent has



executed some sale deeds in favour of some allottees but possession as per assured and promised amenities in accordance with the agreement has not been handed over to the allottees notwithstanding payment of full consideration amount. No material has been filed by the respondent to discard such allegation.

From the materials available on record and for the reasons discussed above we hold that the respondents have defaulted in handing over the flats with promised amenities within the stipulated date of completion which amounts to violation of Section-18 of the RE(R&D) Act, 2016.

Hence ordered.

ORDER

- i. The respondents are directed to get their project registered with the Odisha Real Estate Regulatory Authority immediately.
- ii. The respondents are directed to complete construction of the project with all promised amenities as per indenture agreement executed between them and the members of complainant association within a period of 3 months from the date of receipt of this order.
- iii. The respondents are directed to obtain Occupancy Certificate from the competent authority on completion of the project.
- iv. The respondents are further directed to execute sale deed, after obtaining occupancy certificate, in respect of the flats in favour of the allottees in whose favour registered sale deeds have not yet been executed.
- v. In view of above orders the petition, dtd.23.2.2019 filed by the Complainant to allow them to complete the project or for refund of the money with interest is rejected being infructuous.

This order should be complied by the respondents positively by 30.9.2019 failing which the complainant association may take proper action according to law for enforcement of this order.



Sd/-
Aniraj Kumar
Member-II

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

Sd/-
(A.K. Mahapatra)
Chairperson

List of documents relied upon by the Complainant:

Copy of:

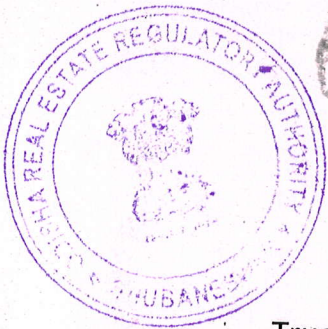
1. Certificate of society registration.
2. Advertisement
3. Sample copy of Indenture Agreement
4. Sale Deed dtd.28.12.2011

5. Lease Deed dtd.22.2.2013
6. F.I.R.
7. Joint Affidavit in BLAPL Case No.793/2017 filed before the Hon'ble Court.

List of documents relied upon by the Respondent:

Copy of:

1. Joint Affidavit in BLAPL Case No.793/2017 filed before the Hon'ble Court on 25.4.2018



Sd/-
(Niranjan Sahu)
Member-II

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

Sd/-
(A.K. Mohapatra)
Chairperson

True Copy

Sd/-
Registrar *29/5/19*

Memo No. 843512/ORERA Date 29/05/2019

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

Sd/-
Registrar *29/5/19*

