

**BEFORE ODISHA REAL ESTATE REGULATORY AUTHORITY  
BHUBANESWAR**

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**Complaint Case No.59/2018**

Mr.Dharanidhar Garnaik

At:Rajkishore Pada,

PO/PS/Dist: Angul

At present:

3<sup>rd</sup> lane, Pragati Nagar,

PO:Kumanda, Dist:Angul-759123

(Represented by Sri R.R.Dash, Advocate)

..... Complainant

**Vrs.**

Managing Director,

Orissa Homes Private Limited,

Plot No.175, Jatani Road,

Kuha -751002.

Dist: Khurda

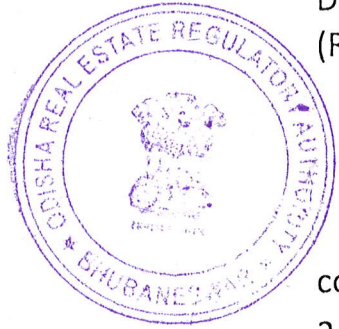
(Represented by Sri S.Das, Advocate)

.... Respondent

**ORDER    Dated 28.05.2019**

This is a case for refund of deposits alongwith interest and compensation.

2. Briefly stated, the Complainant's case is that on 7.5.2013, an agreement for sale was executed between M/S. Orissa Homes Private Limited represented by its Director and the Complainant for sale and purchase of flat No.5 & 6 in the fifth floor of Block -C in the project "**Anand Homes**" being developed by M/S. Orissa Homes Private Limited over plot No.187 & 189 in Khata No.377/51 & 377/48 respectively of village Kuha, PS:Airfield, Jatani Tahasil, Dist: Khurda. The consideration money was fixed at Rs.13,51,500/- plus Rs.75,000/- towards parking space totalling to Rs.14,26,500/-. A payment schedule was also incorporated in the agreement which was construction linked. It was stipulated in the agreement for sale that the flat would be completed in all respects within



18 months from 7.5.2013 and in the course of next 3 months the possession of flat would be handed over i.e. by 7.2.2015.

3. Complainant deposited different amounts on different dates totalling to Rs.10,00,975/- as on 17.1.2015. Complainant has also stated that one tripartite agreement was drawn among himself, the Respondent and the UCO Bank, Khandagiri Branch. As construction was completely stopped since the year 2014, complainant asked for refund of the deposit alongwith interest and compensation but the Respondent neither refunded the money nor handed over possession after completing the work. Complainant has further averred that the frame work structure constructed in 2012-14 has been structurally unsafe due to poor quality construction. On these grounds the Complainant has filed this case for aforesaid relief.

4. The Respondent appeared through advocate and filed a petition on 20.6.2018 challenging the maintainability of the case before ORERA in view of arbitration clause incorporated in the agreement. He also filed another petition on the same date for requisitioning records seized by the EOW of the Crime Branch of Odisha Police for reference at the time of preparing show cause. The records as per the list of the respondent advocate were requisitioned from the EOW which were produced for perusal of the respondent advocate on 31.07.2018. The show cause was filed by the respondent advocate on 12.12.2018.

5. In his show cause the respondent has raised the issue of jurisdiction of the Authority to entertain a matter for which an agreement was entered into between the parties much before RERA came into force. Moreover the case suffers from non-joinder of party such as UCO Bank, Khandagiri. The show cause also avers that the agreement relied upon by the complainant is not true copy of the original agreement and alleges tampering or manipulation. The respondent has also challenged the payment schedule stated by the complainant. The respondent has pleaded that the delay in completion of the work cannot be attributed to him as because due to initiation of multiple legal proceedings by the customers against him, the construction of the project suffered.



Moreover the complainant had not paid the agreed amount in time. Show cause further adds that despite difficulties the respondent is eager to complete the project and hand over the flat to the complainant. On these grounds the Respondent has prayed to dismiss the case with cost.

6. The case was posted on 25.1.2019 for hearing. But the respondent advocate remained absent on that day, so the case was heard in the absence of the respondent advocate. The complainant while presenting his case reiterated his submission as mentioned in the complaint petition. The learned Counsel for Complainant further submitted that the loan availed by the Complainant has been fully repaid and the loan account has been closed. In analysing the show cause of the respondent, we think following issues need to be discussed one by one to bring the case to a logical end.

7. **Maintainability on account of Arbitration Clause:**

Clause-31 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 specialised 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.

8. **Non-joinder of party :**

So far the plea of non-joinder of party such as UCO Bank, Khandagiri Branch, it is seen that the concerned Bank vide No Dues Certificate dated 28.1.2019 has confirmed that the loan account has been closed on 2.8.2018. In such view of the matter even though there is a tripartite agreement, the Bank is not a necessary party. Such contention is devoid of any merit.

9. **Jurisdiction of the Authority:**

In the show cause of the respondent it has been argued that the agreement for sale was executed on 7.5.2013, much before the RERA came into force and therefore the said agreement cannot be a subject matter of adjudication before the Authority. The project is an ongoing project, and it was not completed nor completion/occupancy certificate was obtained from the competent Authority before 1.5.2017, when the Act came into force. The project is, therefore, registerable under the R.E.(R&D) Act, 2016. Hence we hold that even though the agreement was executed in 2013, this Authority has jurisdiction to try the case.

10. **Tampering of Agreement:**

It has been averred by the respondent in the written statement that the agreement for sale has been tampered with or manipulated and therefore cannot be relied upon. But no concrete instance of tampering or manipulation was brought to our notice nor the original agreement was submitted for the perusal of the Authority to verify the allegation. In the absence of any credible evidence we hold that the allegation of manipulation of the agreement is prima facie baseless and devoid of any force.

11. **Payment Schedule:**

The respondent has disputed the statement of payment schedule mentioned by the complainant in his petition through one-line statement that the payment schedule is not admitted. When the respondent was allowed to refer to his payment register now in the custody of EOW he



should have filed specific instance of difference, but he has not done so. Further the respondent has also not challenged the copies of the money receipts submitted by the complainant in support of deposit of fund with the promoter. In view of the above we hold that the payment schedule is correct representation of deposit of funds by the complainant.

12. **To what relief complainant is entitled?**

As per agreement, the construction of flats should have been completed within 18 months of agreement dated 7.5.2013 and in course of next 3 months possession should have been handed over. Admission of the Respondent in his written statement that he eagerly wants to complete the project as soon as possible shows that the same was not completed within time i.e. 7.2.2015 as per agreement. The Complainant agitated the matter of refund of deposits after the expiry of the due date of delivery of possession of flat. When the case of the complainant is for withdrawal from the project, the averment of the respondent that he is eager to hand over the flat does not stay relevant in the context. From the materials on record it is seen that the complainant had paid Rs.10,00,975/- to the Respondent by 17.1.2015. Section 18 of the R.E.(R&D) Act, 2016 provides that if the promoter fails to complete or is unable to give possession of the apartment, plot or building as per Agreement and if the allottee wishes to withdraw from the project, the promoter is liable to return the amount received by him in respect of that apartment with interest at such rate as may be prescribed. Rule 16 of O.R.E. (R&D) Rules, 2017 provides the rate of interest payable by the promoter or allottee. In this case the Respondent has failed to deliver possession of the flat within time as per agreement. So he is at fault and liable to refund the payment made by the complainant with interest at the rate as provided under the Act and Rules as discussed above.

The matter of compensation is not within the jurisdiction of this Authority and hence no order can be passed on that account. However, the complainant, if so likes, may file the compensation case before the Adjudicating Officer of this Authority.

Hence it is ordered that:

**ORDER**

1. The Respondent is directed to refund the deposit of Rs.10,00,975/- made by the complainant as per payment schedule attached to the complaint petition alongwith interest at the rate of 10.50%,



compounded quarterly, from their respective dates of deposits till date of payment, as detailed below.

M.R.No.	Date	Amount
348	20.06.2011	10,000/-
420	24.07.2011	1,32,650/-
421	24.07.2011	1,42,700/-
784	12.07.2013	1,00,000/-
797	22.08.2013	2,56,000/-
828	13.11.2013	1,42,650/-
858	29.01.2014	1,42,650/-
1005	17.01.2015	71,325/-
Cash	07.05.2013	3,000/-
Total		10,00,975/-

2. In case of non-compliance of the order by the Respondent within 45 days from the date of receipt of this order the complainant may take appropriate action for enforcement of the order according to law.

*sdf*  
Member-II

*sdf*  
Member-I

*sdf*  
Chairperson

**Documents relied upon by the Complainant:**

Copies of:

1. Agreement for sale of Apartment/Flat dated 07.05. 2013
2. Tripartite Agreement dtd.12.8.2013
3. Money Receipts with serial number from 348, 420, 421, 784, 797, 828,858 &1005
4. Copy of Bank Statement dtd.7.4.2018
5. Loan Closure Certificate 28.1.2019

**Documents relied upon by the Respondent:**

NIL

*sdf*  
Member-II

*sdf*  
Member-I

*sdf*  
Chairperson

True Copy

*Registrar*  
Registrar 28/5/19

Memo No. 6436(2) /ORERA Date 29/05/2019

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

*Registrar*  
Registrar 28/5/19

