

**BEFORE ODISHA REAL ESTATE REGULATORY AUTHORITY  
BHUBANESWAR**

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**Complaint Case No.225/2018**

Mr. Tusar Ranjan Sahoo  
At: Banaipat, College Road,  
PO: Town, P.S: Sadar, Keonjhar  
PIN-758001.

**....Complainant**

**versus**

1. M/s Hi-Tech Edifice (P) Ltd.  
Plot No.A/103, Sahid Nagar,  
Bhubaneswar-751007, Dt.Kurda  
represented by its Director,  
Sri Prafulla Kumar Mohanty, S/o H.K.Mohanty
2. Sri Tirupati Choudhury,  
S/o Late Kunja Bihari Choudhury,  
Managing Director,  
Hi-Tech Edifice (P) Ltd,  
Plot No.111, Sahid Nagar, Bhubaneswar.

**....Respondents**

Advocate for the complainant : Shri S.Mohanty & Associates.  
Advocate for the Respondents.: Shri K.C.Prusty

**ORDER      Dated 24.08.2020**

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

01. Briefly stated the Complainant's case is that on 19/08/2011, he entered into an Agreement for Sale with the Respondent company for purchase of one Flat No.1/B-3-02, Block B-3, in 1<sup>st</sup> Floor having area of 665 sq.ft. in the project "Hi-Tech Paradise" in mouza-Nailo developed by



the Respondents. The consideration money was fixed at Rs.9,31,000/- and the Respondents had undertaken to complete the unit in all respect and deliver possession within 30 months with further grace period of 6 months from the date of Agreement. As on 29.09.2012 the Complainant had paid Rs.6,05,650/-. Stipulated date for completion and delivery of possession was 18/02/2014, but the Respondents failed to deliver possession. Hence the Complainant has filed the case praying for refund of money with interest and compensation.

02. In spite service of notice, the Respondent No.2 did not appear so he was set ex-parte. The Respondent No.1 filed written statement, challenging the case as not maintainable for non-joinder of the present Director Prafulla Kumar Mohanty. The Respondent No.1 while admitting the fact of execution of the Agreement stated that in spite of repeated request the Complainant did not pay the balance dues, but has filed this case to refund with interest and other dues which he is not entitled to.

03. The Respondent No.1 further stated that, due to involvement of the officials of the Respondent Company in criminal cases, they were detained in jail custody and all their accounts were seized and they were not permitted to transact any financial business and for their release on bail, they had to deposit Rs.63.55 crores as per order of Apex Court and in such peculiar & compelling circumstances, construction of the project could not be completed in time, which was neither deliberate nor wilful, but due to paucity of funds. Since money deposited by the Complainant has been spent on the Flat and 80% of its work has been completed, the refund of money at this moment is very difficult. The Respondent No.1 has stated to complete the construction and to handover the flat within three months. On these grounds Respondent No.1 has prayed for dismissal of the case.

04. The respondent No.1 has further stated that the complaint is not maintainable as because earlier one complaint was filed by the complainant before the District Consumer Disputes Redressal Forum, Puri,



Odisha vide C.C. No.342/2015 and the said complaint has already been dismissed on 14.8.2018 as being withdrawn. So there is no further scope for the complainant to file this complaint before this Authority for the self same cause of action.

05. Parties were heard. Perused the materials on record. In his objection the Respondent No.1 has stated that the Managing Director of the Company Sri Tirupati Choudhury has resigned from Hi-Tech Edifice Pvt. Ltd for which his name has already been deleted as Managing Director of the Company as per certificate issued by the Registrar of Companies, Cuttack and that the same is within the knowledge of the complainant and inspite of that the complainant has filed a complaint in the name of Sri Tirupati Choudhury as Managing Director which is not maintainable for mis-joinder of the party and liable to be dismissed. However in the consolidated plaint filed by the complainant on 6.11.2019, the complainant has impleaded the company as Respondent No.1 through its Director Sri P.K. Mohanty so also the then Managing Director of the Company who had signed on the agreement has been impleaded as Respondent No.2. As such the objection of the Respondent does not hold good.

06. As per Agreement, even excluding the grace period, the construction should have been completed by February, 2014. By Feb.,2014, Complainant had already paid Rs.6,05,650/- which is about 72% of the total consideration. So commensurate with such payment, the construction should have been completed upto 72%. In that eventuality, even if, the officials of the Respondents were released on bail in February,2014, then also, they could have completed the construction within the extended grace period i.e. by August,2014. But although 4½ years have elapsed since the date of release of Director Tirupati Choudhury and others from jail custody, the construction work has not been completed. No document has been filed by the Respondents to show



that, 72% work of the flat was completed by February, 2014 or to show that the Respondent company was informing the Complainant from time to time about the stage of construction. The photographs filed by the Complainant also shows that, the construction has not been completed till date. As such from the materials available on record it emerges that, the flat was not completed within the stipulated time as per Agreement. The ground for delay taken by the Respondent No.1 is not acceptable and the Respondent No.1 cannot escape from his liability for not completing the unit in time as per Agreement. On a combined reading of the Agreement for Sale, the money receipts filed by the Complainant and from the Bank statement it is seen that in total the Complainant had paid Rs.6,05,650/- to the Respondent company.

07. Section 18 of the R.E (R&D) Act,2016 provides that, if the construction is not completed in due date, the allottee has a right to withdraw from the project and claim for return of his payments with interest and compensation. In such view of the matter the plea of the Respondent No.1 that he would complete the construction and handover the possession of the Flat cannot be taken into consideration as the Complainant has not prayed to take possession of the house. Hence the Respondent No.1 is liable to refund the amount with interest @ as provided under Rule 16 of O.R.E. (R&D) 2017.

08. So far the prayer for compensation, this aspect is within the jurisdiction of Adjudicating Officer, as provided under Section 71 of the Act. This Authority cannot pass any order regarding compensation. The Complainant, if so likes, may file separate petition for compensation before the Adjudicating Officer.

Hence ordered.



ORDER

1. The Respondent is directed to refund the payment of Rs.6,05,650/- made by the Complainant along with interest @10.50% per annum compounded quarterly w.e.f. the dates of respective payments till date of refund i.e. Rs.74,000 on 17.8.2011, Rs.66,000/- on 19.8.2011, Rs.93,250/- on 19.9.2011, Rs.1,39,650/- on 4.1.2012 and Rs.2,32,750/- on 27.9.2012.
2. The refund shall be made within 45 days from the date of this order failing which the Complainant may take steps for implementation of this order according to law.

Sd/-  
Member-II  
(Niranjan Sahu)

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

Sd/-  
Chairperson  
(S. Das)

List of documents relied upon by the Complainant.

1. Copy of Agreement for Sale dt.19.8.2011.
2. Copy of Money receipts dtd.17.08.11, 19.08.11, 19.9.11(2)
3. Copy of order sheet dtd.14.08.2018 of District Consumer Dispute Redressal Forum, Puri in C.C. No.342/15.
4. Photographs of the project (3 sheets)
5. Copy of Tripartite Agreement
6. Copy of Bank Statement of HDFC Bank
7. Copy of FIR dtd.23.5.2016

List of documents relied upon by Respondent

- NIL -

Sd/-  
Member-II  
(Niranjan Sahu)

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

Sd/-  
Chairperson  
(S. Das)

True Copy

*Seitun*  
Registrar  
Odisha Real Estate Regulatory Authority

Memo No. 1562(3), Dated 31/08/2020

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

*Seyu*  
Registrar 31/8/20