

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

Present:-

**Siddhanta Das, Chairperson.****RamanathPanda, Member-II****Complaint Case No. 268 of 2019**

Pramod Chadra Das, son of Basudev Dash,  
Qr.No.B-192, Sector 18, Rourkella-3,  
District-Sundargarh, Odisha,  
PIN-769003.

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**Complainant**

Vrs.

Ajaya Kumar Chaudhury, Managing Director,  
Keshari Estate Pvt.Ltd,  
Keshari Talkies Complex, Unit- III,  
Bhubaneswar, P.S-Kharavela Nagar,  
Dist.Khurda-751001.

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**Respondent**

Advocate for the Complainant:... D.Dash &amp; Associates

Advocate for the Respondent:... A.K.Satpathy &amp; Associates.

**ORDER****Dated 15.01 2021**

The complainant has filed this case against the respondent seeking the following relief(s):-

1. The Hon'ble Authority may kindly be pleased to peruse the plaint and associated documents attached herewith, issue notice to the respondent and order for and urgent hearing of the case;
2. Hon'ble Authority may kindly be please to order for the urgent investigation and field investigation of the project in dispute under section 35 of Real Estate Regulatory and Development Act, 2016 (herein after mentioned as "The Act" for brevity for appropriate assessment;
3. Hon'ble Authority may kindly be pleased to take cognizance for the alleged misappropriation and diversification of the funds generated from this project in question under Section 35(1) read with 35(2) of the Act and pass appropriate order thereto in the interest of the allottee;
4. Since the complainant has paid 80% of the project cost loosing an opportunity cost of the same investment as the project has been delayed by more than 37 months from its original schedule of completion period.

Therefore it is prayed that Hon'ble Authority may kindly be pleased to make appropriate order to the respondent to compensate the complainant due to such delay in completing the project and handing over the scheduled property for the financial losses in the terms of interest incurred by complainant due to such delay in completing the project and handing over the scheduled property as per statutory provision laid down under Section 18 of the Act or any other law for the time being in force.

5. Hon'ble Authority may kindly be pleased to direct the respondent to complete the project within three months and also direct the respondent to deliver the scheduled property as per the agreed plan and size mentioned in the Agreement of sale removing all defects;

2. The complainant's case is that he entered into an agreement with the respondent on 31.03.2008 for purchasing a Duplex House in the project namely "Keshari Plaza" in Pokhariput area of Bhubaneswar, District Khurda. Annexure-1 is the said agreement. The respondent advertised the housing project by publishing a Brochure for sale of Duplex House having land area of 2000 sq.ft and super built up area 2300 sq.ft over Hal plot No 379 measuring Ac.0.37 decimals under Hal Khata No.306/401 of Mouza-Jadupur/Pokhariput. The consideration amount fixed as per agreement is Rs. 19,50,000/-. The complainant paid the total consideration amount of Rs. 19,50,000/- in the shape of Demand Draft



bearing No.025397/025396/025398 dated 29.03.2011 of Central Bank of India. Copy of the same is enclosed as Annexure-2. The complainant has also obtained money receipt bearing No. 44 dated 31.03.2008 vide Annexure-2A. As per agreement the respondent agreed to complete the house within 3 years and to make it functional and habitable. After lapse of 3 years, the promoter neither allotted the land nor executed a sale deed in favour of the complainant. The complainant did not see any progress in work. On 31.08.2013 the respondent gave a provisional allotment of Duplex house as per Annexure-3. On verification the complainant finds that there has been no progress of work even after seven months of allotment of Duplex House. The respondent thereafter apprehending legal action agreed to execute a sale deed in respect of the land on which the house is to be constructed vide Annexure-4. As the complainant felt that he was again cheated by the promoter, he issued a pleader notice to the respondent vide Annexure-5 on 26.01.2016 requesting the respondent to hand over possession of the Duplex House. In the pleader's notice the complainant demanded Rs. 20,00,000/- towards compensation. Subsequent to the said notice the respondent invited the complainant to enter into another agreement on 11.02.2016. Accordingly on 23.02.2016 vide Annexure-7 the respondent agreed to execute the agreement intending to construct the house within 14 months. In spite of that the respondent failed to complete the project and hand over possession the Duplex House in time. This is how the complainant was obliged to approach this Authority for appropriate reliefs.

3. The respondent on the other hand has filed a written statement stating that the case is not maintainable in law. The complainant has no cause of action to file the case. The averments of the complaint petition are not correct. The respondent has never admitted in the agreement that he will complete the house within 18 months from the date of agreement. After payment of the total consideration amount, as stipulated above, the liability of the purchaser in respect of the sale transaction stands discharged except the payment required for formation of a Society and for management and maintenance of the common area of the project. In order to escape stamp duty the complainant insisted upon the respondent to execute a sale deed on 25.03.2014 in respect of the land. Due to default of the complainant for execution of a construction agreement and change of specifications of the building delay has been caused. The approval of the project plan was delayed and was finally approved by the BDA in the year, 2013. The respondent allotted the sub divided plot A-3 on 31.08.2013 and then executed a sale deed on 25.03.2014. Without entering into an agreement with the respondent for construction work of the house after execution of the sale deed the complainant issued pleader's notice. There was no reason for the complainant to issue such notice without entering into a fresh agreement relating to construction. Therefore, the case is liable to be dismissed.

4. From the pleadings of both the parties, the following points arise for consideration:-

- (i). Whether the case is maintainable in law?



- (ii). Whether the complainant has cause of action to file the case?
- (iii). Whether the complainant has paid the entire consideration amount to the respondent and whether the respondent is negligent in pursuing the project work in time?
- (iv). Whether the respondent is liable to pay compensation for not completing the project work as per the terms of the agreement?
- (v). Whether the complainant is entitled to the reliefs claimed

5. The complainant has produced certain documents which are accepted in evidence. The respondent has not produced any document in support of his case. No oral evidence has been adduced by either party.

**Point Nos. (i), (ii), (iii) and (iv):-**

5. Annexure-1 is the agreement executed between the complainant and the respondent on 31.03.2008. It is agreed between the parties that the respondent will complete the construction work of the Duplex House within 3 years and execute a registered sale deed in respect of the said house. As it appears the project work could not be completed within the said period. In order to satisfy the complainant, the respondent executed a sale deed in respect of Ac.0.037 decimals of land on 25.03.2014 vide Annexure-4. Therefore, the respondent did not keep his promise for alienation of an area of 2000 sq.ft to the

complainant as per the terms of agreement. However, the complainant did not raise objection for not alienating 2000 sq.ft of land as promised in the agreement dated 31.03.2008. The built up area as agreed should be 2300 sq.ft. Since construction work is still in progress, it is not possible to say at this stage if the construction area of the Duplex house is 2300 sq.ft or not. On 23.02.2016 the parties entered into another agreement vide Annexure-7 for construction of the house. Therefore as per the 1<sup>st</sup> agreement, a Duplex house was to be sold comprising of an area of 2000 sq.ft and built up area of 2300 sq.ft. But subsequently both the parties entered into another agreement on 23.02.2016 for construction of a house on the land for which the sale deed was executed on 25.03.2014. The contention of the sale deed are all admitted by the parties and therefore both the parties are bound by the averments made in the sale deed dated 25.03.2014. Even in the instant case the complainant has not prayed for a relief directing the respondent to execute a sale deed in respect of the remaining area for which he has been paid. The total consideration amount of Rs.19,50,000/- has been paid vide Annexure-2 and 2A. This amount was paid for a house comprising built up area 2300 sq.ft and land area 2000 sq.ft. In absence of any claim by the complainant to get back the remaining area, it is not possible to come to a conclusion that the complainant has in fact any claim over the remaining area after execution of the sale deed. After execution of the sale deed the parties entered into another agreement on 23.02.2016 relating to construction of Duplex House. On perusal of the documents vide Annexure-6 and 7 we find that



Annexure-6 is a letter addressed to the complainant to come to office to sign the agreement on 15.02.2016. Annexure-7 is a declaration made by the Managing Director of the Company that as per discussion on 15.02.2016 the Company will execute work and complete plinth work within 3 months from 15.02.2016, structural work within 7 months from 15.02.2016 and finishing work within 14 months from 15.02.2016. So the actual agreement executed between the complainant and respondent relating to construction work is not produced by the complainant. As per Annexure-7 the final work was to be completed by 15.04.2017. In spite of the 2<sup>nd</sup> agreement the respondent failed to provide the house to the complainant. Since this is an ongoing project, it is incumbent on the part of the promoter to get the project registered U/s 3 and 5 of the Real Estate (Regulation & Development) Act, 2016. The provisions of the Act apply to both the parties since the project is incomplete. Therefore, the case is maintainable in law and that the complainant has cause of action to file the case. The respondent admits the receipt of the whole consideration amount and therefore he is duty bound to complete the house as soon as possible and to deliver possession of the same to the complainant. The respondent is also liable to compensate the complainant for the loss towards payment of interest on the amount paid to the respondent from the stipulated date of completion of the project. U/s 18 (i) proviso, the Authority may allow interest to be paid to the complainant by the promoter where an allottee does not intend to withdraw from the project at such a rate as may be prescribed. In the instant case the



complainant has already paid the consideration amount to the respondent and therefore, he is entitled to get interest from the stipulated date of completion of the project till actual delivery of possession of the house. So far interest is concerned, Rule 16 provides for awarding interest at the prevailing rate of State Bank of India + 2%. Hence the rate of interest i.e required to be paid to the complainant by the promoter is at 8.5 % + 2 % = 10.5% per annum. As already observed the respondent is found thoroughly negligent in not completing the project work in time for which he is liable to pay compensation to the complainant as per the provisions of law as contemplated in Section 12 to 18 of the Act. The complainant may claim compensation by filing a separate case before the Adjudicating Authority.

These points are answered accordingly.

**Point No. (v).**

6. In view of our discussion made above, the complainant is entitled to the reliefs as per the following order:-  
order.

This issue is answered accordingly. Hence ordered:-

**ORDER**

The complaint petition is allowed in part on contest against the respondent without cost. The respondent is directed to complete the Duplex House of the complainant as per the agreement within a period of two months. The respondent is

further directed to pay interest to the complainant @ 10.5% per annum compounded quarterly from the stipulated date of completion of the project i.e. 15.04.2017 on the amount of Rs. 19,50,000/- already paid to the respondent till actual delivery of possession of the house, failing which the complainant is at liberty to enforce the order as per law.

Sd/-  
**Member-II**

Sd/-  
**Chairperson.**

**List of documents relied upon by the complainant**

- a. Copy of Agreement for sale dated 31.03.2011
- b. Copy of Sale Deed
- c. Copy of Agreement for construction
- d. Copy of money receipt
- e. Provisional Allotment letter by the Respondent.
- f. Copy of letter by the complainant to the respondent.
- g. Copy of letter by the respondent to complainant.

**List of documents filed for the respondent.**

Nil.

Sd/-  
**Member-II**

Sd/-  
**Chairperson**

True copy

**Registrar**

Odisha Real Estate Regulatory Authority /ORERA, date 18/01/2021

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

**Registrar**