

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

Present:-

**Siddhanta Das, Chairperson.**

**Ramanath Panda, Member-II**

**Complaint Case No. 234 of 2019**

1. Mrs.Niharika Mohapatra,  
W/o Mr.Krishna Gopal Mohapatra  
At/P.O-P.S-Padmapur,  
District-Bargarh.

....

**Complainant**

-Versus-

Orissa Homes Pvt.Ltd,  
Represented by its Managing Director  
Mr.Jagat Jiban Nayak  
Plot No. 175, Jatani Road,  
At/P.O-Kuha,  
PIN CO- 751002.

...

**Respondent**

Advocate for the Complainant .... R.R.Dash& Associates.

Advocate for the Respondent .... None.

**ORDER**

**Dated 09.02.2021**

The complainant has filed this case U/s 31 of Real Estate (Regulation & Development) Act, 2016 against the



respondent praying to direct him to refund an amount of Rs.19,00,000/- with interest and compensation of Rs. 5,00,000/-.

2. It is the case of the complainant that she entered into an agreement with the respondent on 28.09.2010 vide Annexure-II to purchase one 3BHK Flat for a consideration of Rs. 24,82,000/-. The booking amount of Rs. 2,50,000/- was paid on 15.09.2010 vide cheque No.040918 dated 15.09.2010 of Allahabad Bank. The respondent is developing land bearing Plot No. 275(P) under KhataNo.285 of village Kuha for the purpose of constructing an apartment. The name of the project is "Royal Homes". As per agreement the complainant continued to pay the balance amount on different dates as per the details given in paragraph-H. The details of the payment made is quoted below:-

| Sl. No. | Money receipt No | Date     | Amount paid | Mode of payment | Cheque No. | Date     | Bank's name   | Date of credit |
|---------|------------------|----------|-------------|-----------------|------------|----------|---------------|----------------|
| 1       | 144              | 15.9.10  | 2,50,000    | cheque          | 040918     | 15.9.10  | Allhabad Bank | 18.9.10        |
|         |                  |          | 2,50,000    | cheque          | 872361     | 14.11.10 | SBI           | 15.11.10       |
| 2       | 610              | 4.4.12   | 3,50,000    | cheque          | 872364     | 3.4.12   | SBI           | 4.4.12         |
| 3       | 632              | 20.4.12  | 2,50,000    | cheque          | 053004     | 20.4.12  | Allhabad Bank | 21.4.12        |
| 4       | 830              | 18.11.13 | 5,00,000    | cheque          | 380198     | 18.11.13 | U.Co.         | 20.11.13       |
| 5       | 1026             | 10.6.17  | 100000      | cheque          | 194795     | 13.6.17  | U.Co          | 13.6.17        |
| 6       | 1030             | 12.8.17  | 2,00,000    | cheque          | 194800     | 18.8.17  | U.Co.         | 18.8.17        |

Even though substantial amount is paid, the respondent did not try to complete the project within the stipulated period. He discontinued the construction work from December, 2012. The project was to be completed within 18 months. The agreement was made on 28.09.2010. Therefore the stipulated date of completion of the project would be 28<sup>th</sup> March, 2012. The



intention of the respondent was to misappropriate the money received from the complainant. The complainant after knowing the ill intention of the respondent, sent a legal notice vide Annexure-III requesting the respondent to complete the project and to refund the money at an early date. The respondent has also not followed the structural design as per approval to be obtained from the competent authority. Since the respondent failed to provide the Flat within the stipulated time, the complainant has come up with this application claiming refund of money, interest thereon and compensation.

3. The respondent has been set exparte.

4. The following points are framed for adjudication in the present case:-

- (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 advanced Rs. 19,00,000/- to the respondent for the purpose of purchasing the Flat?
- (iv). Whether the complainant is entitled to take refund of the money already advanced to the respondent with interest?
- (v). Whether the complainant is entitled to compensation as claimed?

5. The documents filed by the complainant are considered as evidence on her behalf. No oral evidence has been adduced by the complainant.





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

6. Annexure-II is the agreement dated 28.09.2010. As appears from the contents of the agreement the respondent is undertaking construction of multistoried apartment under a project namely 'Royal Homes'. The building is being constructed on revenue Plot no. 175(P) under Khata No 285 in mouza-kuha in the District of Khurda. In the agreement payment of Rs, 2,50,000/- towards booking amount is acknowledged. A schedule of payment is given in the agreement. Such part payments are required to be made by the complainant at different stages of construction. The super built up area of the Flat booked by the complainant is 1460 Sqft. The total consideration amount is Rs. 24,82,000/-. The complainant had booked the Flat number 206 in the said project. Annexure-III is the legal notice sent to the respondent on 12.03.2019 requesting to refund the amount with interest. Annexure-4A to 4E are the money receipts granted by the respondent towards part payment Annexure-5A is the copy of statement relating to payment obtained from Allahabad Bank. Annexure-5B is the copy of the statement relating to payment to the respondent obtained from the State Bank of India. Annexure- 5C is the copy of statement indicating payment to respondent on 13.06.2017 through U.Co. Bank. The total payment made to the respondent as per the details provided in the complaint petition is established through the documents filed by the complainant as discussed above. The respondent did not appear and therefore here is no objection relating to such payment. So we are of the opinion that the complainant has paid a total amount of Rs,19,00,000/- to the respondent on different dates towards consideration amount of the Flat.

7. The construction has been discontinued from December, 2012. Therefore on the date the Act came into



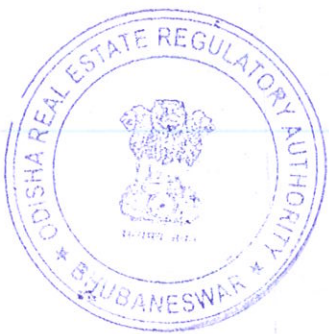
operation, the project was an ongoing project. Therefore the provisions of the Act apply to both the parties. The parties are guided by obligation that is cast on both promoter and allottee U/s 12 to 18 of the Act. So the case is maintainable in law and that the complainant has cause of action to file this case. We are also of the opinion that the complainant has paid Rs. 19,00,000/- to the respondent towards part payment of the consideration amount of the Flat agreed to be purchased by the complainant.

8. The complainant has claimed interest on the amount advanced to the respondent on different dates. Section 18 of the Act clearly states that the allottee is entitled to interest if he wishes to withdraw from the project due to discontinuance of the project by the promoter. The promoter is liable to pay interest as per Rule 16 of Odisha Real Estate (Regulation & Development) Rule, 2017. Rule 16 provides that the rate of interest payable by a promoter to the allottee or by an allottee to the promoter, as the case may be, shall be the State Bank of India highest marginal cost of Lending Rate plus two percent. We are told that the present rate of interest of State Bank of India is 8.5% . So the interest payable is  $8.5\% + 2\% = 10.5\%$  per annum. Such interest is payable on the amount from the dates the amounts are paid to the respondent till the amount is recovered from the respondent.

9. So far compensation is concerned; the same is exclusively cognizable by the Adjudicating Officer of this Authority U/s 71 of the Act. So the complainant is at liberty to file a separate case before the Adjudicating Officer claiming compensation.

In view of our discussion made above, we find that the complainant is entitled to the reliefs as per the following order.

These points are answered accordingly. Hence ordered:-





**ORDER**

The case is allowed exparte against the respondent without cost. The respondent is directed to pay a sum of Rs. 19,00,000/- (Rupees nineteen lakhs) to the complainant with interest @ 10.5% per annum compounded quarterly as per the following breakup:-

1.
  - (i). On Rs.2,50,000/- from 18.09.2010 till the date of actual payment,
  - (ii). On Rs.2,50,000/- from 15.11.2010 till the date of actual payment,
  - (iii). On Rs.3,50,000/-from 04.04.2012 till the date of actual payment,
  - (iv). On Rs.2,50,000/-from 21.04.2012 till the date of actual payment,
  - (v). On Rs.2,53,601/-from 20.03.2014 till the date of actual payment,
  - (vi). On Rs.5,00,000/-from 20.11.2013 till the date of actual payment.
  - (vii). On Rs.1,00,000/- from 13.06.2017 till the date of actual payment.
  - (viii). On Rs. 2,00,000/- from, 18.08.2017 till the date of actual payment.
2. The amount shall be paid with interest as per Paragraph 1 and 2 within a period of two months. From the date of order.



3. In case the respondent fails to make payment to the complainant, as directed above, the order may be enforced as per law.

*Sd/-*  
**Member-II**  
**(Ramanath Panda)**

*Sd/-*  
**Chairperson.**  
**(Siddhanta Das).**

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

1. Copy of money receipt Annexure-I
2. Copy of agreement-Annexure-II
3. Copy of letters of complainant to respondent- Annexure-III-a
4. Copy of legal notice to respondent by Advocate-Annexure-III-b
5. Copy of money receipt-Annexure-IV-a.
6. Copy of money receipt-Annexure-IV-b
7. Copy of money receipt-Annexure-IV-c
8. Copy of money receipt-Annexure-IV-d
9. Copy of money receipt-Annexure-IV-e
10. Copy of Bank statements of Allahabad-Annexure-V-a
11. Copy of Bank Statement of SBI-Annexure-V-b.
12. Copy of Bank statement of U.Co.Bank-Annexure-V-C
13. Copy of Aadhaar Card No.976023365853-Annexure-VI.

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

Nil.

*Sd/-*  
**Member-II**  
**(Ramanath Panda)**

*Sd/-*  
**Chairperson.**  
**(Siddhanta Das).**

True copy

*[Signature]*  
**Registrar**

Memo No. 439(2) /ORERA, date 11/02/2021

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

Jagat Jitendra Nayer  
 re.D. Omessa Homes (P) Ltd  
 A1. VIM 682, Subashree Nagar  
 PO. Chandana Sekhar Pur, Bhubaneswar  
 Dt Khurda

*[Signature]*  
**Registrar**  
**Registrar**  
 Odisha Real Estate Regulatory Authority