

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

Present:-

Siddhanta Das, Chairperson.**Ramanath Panda, Member-II****Complaint Case No. 263 of 2019**

Bidyutprava Praharaj, aged about 76 years,
W/o Late Jatindra Mohan Praharaj,
At/P.O-Jogesh Nivas,
Vivekananda Marg,
Old Town, Bhubaneswar,
P.S- Lingaraj, District-Khurda.

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Complainant**-Versus-**

1. Purusottam Infratech Ptv. Ltd,
At Plot No.N-1/16, IRC Village,
Nayapalli, Bhubaneswar,
P.O/P.S-Nayapalli, District-Khurda,
Represented through its Managing Director
Udayakar Sahoo.
2. Udayakar Sahoo, aged about 42 years,
S/o Late Debendranath Sahoo,
At-Plot No-3/433, IRC Village,
Nayapalli, Bhubaneswar-15,
District-Khurda,

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Respondents

Advocate for the Complainant D.K.Parida & Associates.
For the Respondents None.

ORDER

Dated 22.02.2021

The complainant has filed this case U/s 31 of Real Estate (Regulation & Development) Act, 2016 against the respondents seeking the following reliefs:-

(i). Saddle the opposite parties/respondents with special and extra ordinary costs as deemed fit so as to deter them from adopting such malpractice in future,

(ii). Direct the opposite parties/respondents to give Rs.77,68,000/- + house rent Rs. 6,51,000/- in total Rs. 84,19,000/- the amount paid towards house rent and super built up area of the amount with prior, pendalite and future interest with 30% interest,

(iii) Award a compensation of Rs. 10,00,000/- to the complainant on account of mental agony, physical harassment and financial loss and legal expenses,

(iv). To pay Rs. 2,00,000/- only for litigation cost,

(v). Allow the cost of this complaint,

(vi). Pass such other order in favour of the complainant as deemed fit and proper ,

(vii). Hand over the flats No.103,402 and 403 along with three nos of garage ear-marked against the above flat to the complainant,

(viii). Direct the respondents to give physical possession, completion certificate and occupancy certificate to the complainant.

2. The case of the complainant is that she is the owner of plot No.356 under Khata No. 4213, Kisam-Patita, measuring an area of Ac.0.100 decimals of Mouza-Patrapada, District-Khurda. The respondents are the promoters and they were requested to develop the land and raise apartments for the purpose of sale. They requested the complainant to permit the respondents to develop the land and to make construction on a sharing basis at the ratio of 35% for owner and 65% for the developers. Then both parties agreed with the proposal and proceeded to execute an agreement on 28.06.2008 before the Notary Public, Bhubaneswar. The complainant also executed a General Power of Attorney on the same day before the Notary Public, Bhubaneswar in favour of the respondents to develop the land and to construct apartments thereon. The respondents only allotted 3 flats comprising an area of 3144 Sqft, the area of each flat being 1048 Sqft. As per BDA plan approval the total built up area is 29060 Sqft. Therefore the complainant should get 5086 Sqft which is 35 % of the total built up area. The respondents refused to allot any other flat in her favour or to pay the cost of the balance area which comes to 1942 Sqft (5086-3144). The flat has been sold @ Rs. 4000 per Sqft. Therefore the cost of 1942 Sqft comes to Rs. 77,68,000/-. Since the complainant is losing house rent and interest on the said amount she should be paid interest and also compensation and house rent as fixed by this Authority.

3. The respondents did not appear in spite of valid service of summons on them. Accordingly they were set exparte on 27.01.2020. Thereafter, the matter was heard in their absence.

4. The points for determination are as follows:-

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

- (ii) Whether the complainant has cause of action to file the case?
- (iii) Whether the agreement entered into between the parties on 28.06.2008 is valid and binding on both the parties ?
- (iv) Whether the complainant is entitled to get Rs. 77,68,000/- with interest as claimed in the complaint petition?.

5. The complainant has filed some documents which are considered as evidence on her behalf.

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

6. The copy of agreement is filed as Annexure-1. Para-5(b) of the agreement clearly states that the owner's share will be 35% of the super built up area and the proportionate share of the owner on the land on which the flat/unit to be constructed will be 35%. The balance 65% will be retained by the developers for the purpose of sale. Para-5 (d) of the agreement clearly states that at the time of allocation the 1st part will have full right to chose 50% of the built up area for allotment towards her share. Therefore it appears that the complainant has the right to chose 17.5% from out of 35% of the total built up area for allotment in her favour. The complainant has been allotted 3 flats= 3144 Sqft. Therefore, she has chosen the said flats for the purpose of allotment and accordingly Para-5(d) of the agreement is complied. The fact remains, the balance area of 1942 Sqft has not been allotted to her share. The respondents on 21.03.2014 sent allotment letter in favour of the complainant in respect of 3 flats i.e. flat No. 103 in the 1st floor (2BHK), Flat No. 402 and 403 in the 4th floor (both 2BHK). The super built up area of all the 3 flat is 1048 Sqft each. The letter is Annexed as Annexure-3 of the petition.

7. Now the question arises as to if the total built up area is 29060 Sqft. The complainant's case that as per approved building plan the total super built up area is 29060 Sqft. She has produced the copy of the approved plan. Since there is no denial from the side of the respondents, we accept the contents of the complaint petition on the basis of the approved plan so far it relates to the total super built up area of the project as 29060 Sqft. In that context, the complainant is entitled to get 1942 Sqft area more from the total area of construction. Cost of the flat is assessed at Rs. 4000 per Sqft. The land situates at Mouza-Patrapada in the town of Bhubaneswar. It comes under Bhubaneswar Development Authority. Therefore the cost @Rs.4000 Sqft for a flat does not appear to be excess or exorbitant. In that view of the matter we accept it.

8. The agreement was executed in June, 2008. No document is produced as to if the project is complete in all respect and completion certificate is obtained from the BDA. In absence of any material before us regarding completion of the project, we opine that this is an ongoing project and the respondents are required to obtain registration certificate from this Authority U/s 3 and 5 of the Real Estate (Regulation & Development) Act, 2016. Therefore the provision of the Act applies to the present project and accordingly the complainant has cause of action to maintain the case before this Authority U/s 31 of the Act. The case is thus maintainable in law.


9. The complainant is the owner of the land. She entered into an agreement with the respondents for developing her own land for the purpose of getting some flats towards her share. Therefore the owner in the instant situation may be considered as an allottee so far allotment of some flats in her favour is concerned. The consideration for alienation in favour of the complainant is the whole cost of the land she has given to the promoters for raising construction of apartment

for the purpose of sale. Therefore, the owner cannot be categorized as a developer as she has simply shared the land for the purpose of getting some developed structure towards her share as per agreement from out of total built up area. So we are of the opinion that the status of the complainant has to be considered as an allottee and not a co-promoter. The allotment letter was issued on 21.03.2014. There is no averment as to when the project was complete. The complainant is entitled to claim interest only from the date of completion of the project. Since the project is not complete as yet as observed by us, we are of the opinion that there is no scope for the Authority to allow interest on the claim amount from a particular day. Therefore, it is open to the complainant to ask for compensation and interest U/s 18 of the Act before the Adjudicating Officer on production of documents in that respect. Accordingly the complainant is only entitled to get Rs. 77,68,000/- as claimed in the complainant petition.

All the points are answered accordingly. Hence ordered:-

ORDER

The case is allowed exparte against the respondents without cost. The respondents are directed to pay a sum of Rs. 77,68,000/- (Rupees seventy seven lakhs sixty eight thousand) to the complainant within a period of two months failing which the complainant may enforce the order as per law.


Member-II
(Ramanath Panda)


Chairperson.
(Siddhanta Das).

List of documents relied upon by the complainant.

Copy of -

1. Agreement dated 28.06.2008
2. GPO irrevocable dated 28.06.2008.
3. Allotment of flat by the respondent dated 21.03.2014.
4. Letter correspondence complainant to respondent dated 24.07.2014, 01.10.2016, 19.10.2016 and 02.11.2016.
5. Letter from respondent to complainant dated 21.10.2016.
6. Plan approved by BDA vide letter No. 10328/BR/BDA, Bhubaneswar dated 17.07.2011 and other documents.+

List of documents relied upon by the respondents

Nil.

Sd/-
Member-II

(Ramanath Panda)

Sd/-
Chairperson.

(Siddhanta Das).

True copy

[Signature]
Registrar

Memo No. 518(3) /ORERA, date 24/02/2021

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

[Signature]
Registrar