

IN THE COURT OF THE ADJUDICATING OFFICER
ODISHA REAL ESTATE REGULATORY AUTHORITY,
A-1 BLOCK, 3RD FLOOR, TOSHALI BHAWAN, BHUBANESWAR

AO.CC NO.11/2019

Present : Shri Gyan Ranjan Mohanty, LL.B.
Adjudicating Officer, ORERA,
Bhubaneswar

Mr Saroj Kumar Panda, Flat No.# 101
Bhagawat Villa, Gada Sahi, Near Nayapalli BRIT Colony
PS Nayapalli, Bhubaneswar 2 ... Complainant

Vrs

Mr Ajaya Kumar Choudhury
Managing Director M/s Keshari Estates Pvt.Ltd.
At 98 Kharvela Nagar, Near Keshari Talkies
Unit III, Bhubaneswar, PIN 751001 ... Respondent

For the Complainant	...	Mr Deepak Kumar Panda & Associates
For the Respondent	...	Mr Anil Kumar Satapathy & Associates
Date of argument	...	17.03.2021
Date of final order	...	24.03.2021

ORDER

Complainant has filed this case praying this forum to inspect the project site and for compensation due to financial loss incurred by him in view of causing delay in completion of the project and handing over possession of the same to him by the respondent.

1. The case of the complainant, in short, is that the respondent floated an advertisement and being induced the complainant applied for a duplex house to be constructed over an area of

2000 sqft with super built up area of 2000 sqft in the real estate project "**Keshari Plaza**" in Pokhariput area in mouza Jadupur. On 3.6.2010 the complainant entered into an "**Agreement for Sale**" with the respondent wherein the consideration amount was fixed at Rs.37,00,000/- (Thirty seven lakhs) and the complainant paid Rs.8,00,000/- (Eight lakhs) towards the initial booking amount as per clause 4 of the agreement for sale. The date of completion of the house was within 3 years from the date of agreement i.e. by 3.6.2013. On 23.5.2013, the respondent sent a provisional allotment letter mentioning sub plot No.34 and demanded further payment of Rs.2,00,000/- (Two lakhs). Due to delay in completion of the project, the respondent on 29.11.2014 executed one registered sale deed and conveyed ownership of sub plot No.34 for a consideration of Rs.9,20,000/-. But instead of 2000 sqft, the respondent sold 1742 sqft of land in the sale deed. On 29.11.2014 "An agreement for construction" was also executed between the parties, describing the same as extension of the original agreement and in the second agreement it was stipulated that the construction was to be completed within 18 months i.e. by 29.05.2016 and it was undertaken that in case of delay, the respondent would compensate the complainant by paying Rs.8000/- (Eight thousand) per month as rent. Although several times the respondent was asked to complete the construction, he avoided. On 18.10.2015, without consent of the allottees, the respondent handed over the project to a 3rd party and asked the allottees to make payment to such 3rd party. In between 26.5.2010 to 06.01.2017 the complainant in toto paid Rs.28,36,000/- (Twenty eight lakhs thirty six thousand) to the respondent. Several letters were written to the respondent for completion of the project but no progress was made proportionate to the installment paid. As the respondent failed to complete the project and hand over it's possession, the complainant approached the Real Estate Regulatory Authority vide Complaint Case No.16/2018 and obtained an order in his favour on 04.04.2019.



2. In the present complaint, the complainant has claimed Rs.5,70,000/-(Five lakhs seventy thousand) towards house rent for 38 months beginning from 29.05.2016 to 28.07.2019 @ Rs.15,000/-p.m. Further he has also claimed house rent at the same rate from 29.08.2019 till handing over of the possession of the completed house with all amenities. He has also claimed additional compensation of Rs.2,00,000/-(Two lakhs) for repetitive default of the respondent in meeting the dead line to complete the project in time and for causing mental and financial harassment.

3. In his reply, the respondent has challenged this proceeding on several grounds such as maintainability, non-joinder of the company M/s Keshari Estates Pvt. Ltd, lack of cause of action, jurisdiction of this authority etc. It is his submission that the agreement for sale dated 3.6.2010 was entered into by the parties while the project was in conceptual stage and the agreement was to be followed with another agreement after approval by the appropriate authority. According to the respondent, the construction was to be made as per plan approved by BDA and the promises made by it before the BDA at the time of approval would be binding on the allottee. He has admitted about issue of provisional allotment letter dated 23.05.2013 and demanding further payment of Rs.2,00,000/-(Two lakhs). BDA approval was obtained on 25.01.2013 and accordingly, permission for construction of duplex units with other things were to be made in the project area.

He has admitted about execution of sale deed on 29.11.2014 conveying ownership over the sub plot No.34 measuring 1742 sqft to the complainant. According to the respondent, the decrease in the area of the sub plot was due to stipulation of BDA to leave more open space in the agreement for construction dated 29.11.2014. Completion period was 18 months from the second agreement i.e. by 28.05.2016.

4. According to the respondent M/s Vivekananda Construction Pvt.Ltd is their work contractor who was authorized to collect balance payment for and on their behalf but for all practical

purposes, he himself was doing everything including receipt of payments. He has admitted about payment of Rs.27,36,000/- (Twenty seven lakhs thirty six thousand) by the complainant and according to him the construction work was conditional against payment of installment by the complainant and as he failed to deposit the installments in time, construction could not proceed further for which he is not responsible and on the other hand it is the complainant who is responsible. The respondent has alleged that as against their demand dated 05.02.2016, the complainant made payments on 01.09.2016 and 06.01.2017. On 13.12.2017, the respondent intimated the complainant about completion of first floor roof but the complainant made the payment on 6.1.2017. He has also stated to have intimated the complainant on 24.09.2017 about completion of brick work and demanded payment of installment but no such payment was made by the complainant. According to the respondent, the delay was due to late approval by the BDA and non-payment of installments by the complainant in due time. On such averments, it is prayed to dismiss the complaint petition.

5. The sole point for determination in this case is :
 - (i) Whether the complainant is entitled to any compensation and if so, what is the quantum thereof ?
6. It appears from the counter filed by the respondent and the documents filed by the complainant that in the year 2010, the respondent applied to BDA for approval of the plan and the plan was approved in March, 2013. Thus, it appears that the approval of the plan by BDA took about 3 years which is a quite long time. It is the duty of the respondent to see that the plan is approved at an early date. Record shows that this matter was not attended to by the respondent with promptitude for which he is liable and not the complainant. Of course there has been delayed installment payment by the complainant to the respondent and this thing has not been seriously objected to by the complainant. As such, delay in completion of the duplex in question can not only be attributed to the respondent and on the other hand both are

- responsible for delay in completion of the duplex house as well as handing over it's possession to the complainant.
7. Due to delayed approval of the plan, the complainant must have suffered from some mental agony for which he is liable to get compensation from the respondent.
 8. The next question is, what would be the quantum of compensation ?
 9. No guidelines have yet been framed either by the Honourable Apex Court or by any other High Court including our own High Court for awarding compensation under the ORERA Act. The ORERA Act itself also does not stipulate clearly under what heads compensation is to be awarded either to the defaulting promoter or buyer or the real estate agent, as the case may be, for their violation of provisions of the Odisha Real Estate (Regulation & Development) Authority Act. Only section 72 of the Act specifies some factors to be taken into consideration by the Adjudicating Officer while adjudging compensation. It would be profitable to quote Section 72 of the Act.

Section 72 of the ORERA Act reads as follows :

- "While adjudicating the quantum of compensation or interest, as the case may be under section 71, the adjudicating officer shall have due regard to the following factors, namely :-
- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
 - (b) the amount of loss caused as a result of the default;
 - (c) the repetitive nature of the default;
 - (d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice."

So far as section 72(a) is concerned, the complainant has failed Point out disproportionate gain or unfair advantage made by Respondent as a result of the default. As regards section 72(b) the complainant has not substantiated the amount of loss caused to him as a result of the default by the respondent. The

case of the complainant-petitioner would at best under the category of section 72(d). Considering the length of time consumed by the respondent in obtaining approval from BDA, mental agony of the complainant etc. I am of the opinion that award of compensation of Rs.25,000/- (Rupees twenty five thousand only) to the complainant would be the adequate compensation in his favour.

10. As regards prayer of the complainant for project site inspection, this forum lacks jurisdiction to grant such prayer. Hence ordered :

ORDER

The case of the complainant is allowed in part on contest against the respondent promoter. The respondent-promoter is directed to pay a compensation of Rs.25,000/- (Rupees twenty five thousand only) to the complainant within two months from today, failing which the respondent-promoter shall pay 10.35% interest per annum on the said amount to the complainant till the date of actual realization. In case of failure of the respondent, the complainant is at liberty to enforce the order as per provisions of Section 40(1) of the Odisha Real Estate (Regulation & Development) Act read with Rule 26(1) Of the Odisha Real Estate (Regulation & Development) Rules 2017.

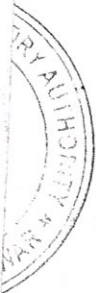

Adjudicating Officer

24.03.2021

Dictated and corrected by me


Adjudicating Officer

24.03.2021



List of documents relied on by the Complainant

Sl.No	Name of the document
1	Copy of the Sale Agreement
2	Copy of the application form
3	Application form acknowledgement
4	Copy of the ICICI bank cheque number 002109 dt.26.5.2010 towards initial booking amount Rs.8,00,000
5	Copy of the allotment letter with payment schedule
6	Copy of the sale deed
7	Agreement for construction
8	Agreement dtd 18.10.2015 between M/s Keshari Estate Pvt.Ltd and Vivekananda Land & Building Pvt.Ltd.
9	Copy of Regd.post letter AD to the Promoter/Respondent dt.13.2.2016
10	Copy of registered post letter to promoter/respondent dt.16.8.2016
11	Copy of speed post letter to Promoter/ Respondent dtd 17.10.2017
12	Copy of speed post letter to Promoter/ Respondent dt.20.11.2017
13	Speed post letter to Promoter/Respondent dt.20.01.2018
14	SBI cheque No.948638 dt.29.11.2014, for Rs.2,00,000
15	ICICI Bank cheque No.598842 ,dt.10.12.2014 for Rs.5,40,000
16	SBI cheque No.948648 dtd 27.08.2016 for Rs.4,32,000
17	SBI cheque No.948647, dtd.01.09.2016 for Rs.4,32,000
18	SBI cheque No.948650, dtd.06.01.2017 for Rs.4,32,000
19	Copy of Hon'ble ORERA order dated 4.4.2019 in the CC No.16/2018

List of documents relied on by the Promoter/Respondent

Nil



Self - 24.03.2021
Adjudicating Officer

No 1059(2)

Dated - 25/03/2021

Copy of final order forwarded to the Complainant/Respondent for information

Registrar

Odisha Real Estate Regulatory Authority

