

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

Present:-

Siddhanta Das, Chairperson.

Ramanath Panda, Member-II

Complaint Case No. 126 of 2019

Mr.Dhananjaya Mishra,
House No.5, Jagannath Complex,
Phase 1, Kanan Vihar Phase-2,751024.

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Complainant

-Versus-

M/s Orissa Homes Pvt.Ltd,
Plot No. 175, At/P.O-Kuha,
Jatani Road, Near HP Petrol Pump,
Bhubaneswar-2,
Represented through Jagat Jiban Nayak
Plot No. VI-MIG-682,
Sudestra Bhavan, Saileshree Vihar,
Near PHD Water Tank, Bhubaneswar-751021.

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Respondent

For the Complainant

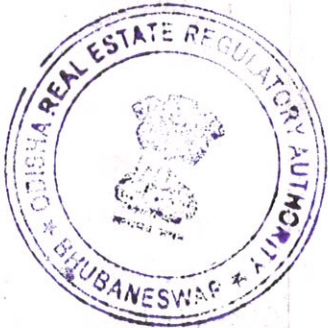
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Self

Advocate for the Respondent

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A.K.Das & Associates.



ORDER**Dated 12.03.2021**

The complainant has filed this case U/s 31 of Real Estate (Regulation & Development) Act, 2016 against the respondent praying to direct the respondent to refund Rs. 18,20,000/- with interest as applicable.

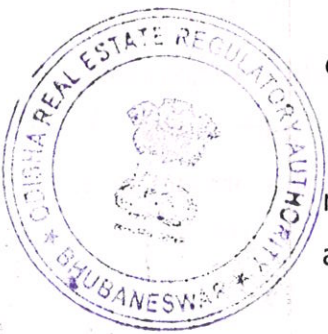
2. The case of the complainant is that he entered into an agreement with the respondent to purchase a flat in the project namely "Royal Homes" (3BHK). Accordingly the complainant paid Rs.10,000/- as advance payment vide Money receipt No. 701 dated 3rd August, 2012. Subsequently the complainant paid Rs. 4,10,000/- vide money receipt No. 702 dated 04.08.2012, Rs.70,000/- was paid vide Money Receipt No.703 dated 04.08.2012, Rs.50,000/- was paid vide Money Receipt No. 699 dated 30.07.2012, Rs. 20,000/- was paid vide Money Receipt No.686 dated 29.06.2012, Rs.9,80,000/- was paid vide Money Receipt No. 750 dated 10.12.2012, Rs.2,80,000/- was paid vide Money Receipt No. 817 dated 08.10.2013. Total Rs. 18,20,000/- was paid to the respondent by the complainant. In the year 2014 the complainant found that there has been no progress in construction work. The apartment was scheduled to be completed within 36 months i.e. August, 2015 and accordingly an agreement was executed on 14.08.2012. The agreed price for Sqft is 1850. Accordingly price of the 3BHK flat comes to Rs. 27,00,000/-. The parking cost as per agreement is Rs. 1,00,000/-. Therefore the total cost of the flat comes to Rs. 28,00,000/- The complainant ^{more after} ~~therefore~~ after continued to make payment. The total amount paid by the complainant is Rs. 18,20,000/-. As per agreement the project work was to be completed within 24 months from 14.08.2012. Subsequently the respondent stopped the construction and did not proceed with the work. Therefore the complainant wants to

withdraw from the project claiming refund of the money advanced with interest.

3. The respondent has filed show cause stating that the case is not maintainable in law. As per the agreement the complainant should make payment as per the payment schedule. After casting of roof the respondent demanded money, but the complainant did not make payment. Due to non-payment of installments by some persons the work could not progress. At this stage the complainant filed a complaint before EOW, Bhubaneswar and on the basis of that complaint EOW Case No. 2 of 2018 was registered and the respondent was arrested in that case. The copy of the F.I.R, Charge Sheet and other documents are filed as Annexure-1 series. The complainant has intentionally suppressed the material facts and therefore he had played fraud on Court. Since the case is continuing in OPID Court, there is no need for continuing this proceeding in this Court. Suppression of material fact amounts to playing fraud on Court and therefore the complaint 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 Rs. 18,20,000/- to the respondent and is entitled to get refund of the same with interest as applicable?
- (iv). Whether the respondent is liable to refund the amount received from the complainant with interest?
- (v) Whether the complainant is entitled to the reliefs claimed?



5. The documents filed by the complainant are considered as evidence on his behalf. Similarly the documents filed on behalf of the respondent are considered as evidence on his behalf.

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

6. The agreement was made on 14.08.2012. As per the agreement the respondent agreed to sell a 3BHK flat of the project developed by the promoter in plot No. 175/980 under Khata No.377/119 of village Kuha in the district of Khurda. As per agreement, the complainant has paid Rs. Rs.10,000/- as advance payment vide Money receipt No. 701 dated 3rd August, 2012. Subsequently the complainant paid Rs. 4,10,000/- vide money receipt No. 702 dated 04.08.2012, Rs.70,000/- was paid vide Money Receipt No.703 dated 04.08.2012, Rs.50,000/- was paid vide Money Receipt No. 699 dated 30.07.2012, Rs. 20,000/- was paid vide Money Receipt No.686 dated 29.06.2012, Rs.9,80,000/- was paid vide Money Receipt No. 750 dated 10.12.2012, Rs.2,80,000/- was paid vide Money Receipt No. 817 dated 08.10.2013. Total Rs. 18,20,000/- was paid to the respondent by the complainant. As per agreement the completed flat should have been handed over within 36 months from 14.08.2012 i.e end of August, 2015. Though substantial amount was paid, the respondent did not proceed with the work. Subsequently on the allegation made by the complainant the respondent was arrested in EOW Case No. 2 of 2018. Therefore till 2018 the parties were in touch with each other. Within this time the respondent received cash from the intending purchasers for the purpose of selling apartments to be constructed in the project site namely "Royal Homes". The Act came into force with effect from 01.05.2017. Though the project was started in the year, 2011, but could not be completed within the stipulated period. The project work was stopped after receiving substantial amount from different intending purchasers. This was intentional. On the date of filing of the case, the

project was still continuing as it was not completed as per the terms of the agreement. So this can be treated as an ongoing project. The project comes within the purview of Section 3 of the Real Estate (Regulation & Development) Act, 2016. The respondent is required to obtain registration certificate from this Authority. The respondent was not applied for the same. So he is liable to pay penalty U/s 59 of the Act. The office may initiate a proceeding if not initiated earlier on the basis of the findings of the Authority in this case. The provisions of the Act apply to all ongoing projects which were not completed as on 01.05.2017 when the Act came into force in the State of Odisha. As the provisions of the Act apply, the case is maintainable and the complainant has cause of action to file this case.

7. So far payments are concerned; there has been no denial from the side of the respondent. The respondent did not take part in the hearing though he has filed a written statement along with documents. He has only filed copies of F.I.R, seizure list etc in the Criminal Case instituted against him on the basis of the complaint filed by this complainant. Therefore the payments being supported by money receipts, we accept the same and find that the respondent has received a total amount of Rs. 18,20,000/- as against the consideration amount of Rs. 27,00,000/-.

8. Section 18 of the Real Estate (Regulation & Development) Act, 2016 stipulates that if the promoter fails to complete or is unable to give possession of an apartment, plot or building-

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein;

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed on this behalf including compensation in the matter as provided under this Act. In the instant case the respondent could not proceed with the work in spite of substantial payments are made. His plea that payments were not made as per payment schedule, is not acceptable in absence of any material placed before this Authority. Therefore in our opinion the complainant is justified in taking a decision to withdraw from the project and thereby claiming refund of the money with interest. The rate of interest payable on the amount to be refunded is specifically mentioned in rule 16 of the Odisha Real Estate (Regulation & Development) Rule, 2017. The rate of interest payable by the promoter to the allottee shall be the State Bank of India highest Marginal Cost of Lending Rate plus two per cent. Presently the rate of interest as argued by learned counsel for the complainant is 8.5% on home loans. 2% more is applicable as per Rule 16 of the Odisha Real Estate (Regulation ~~++++++&~~ Development) Rule, 2017. In that view of the matter the complainant is entitled to get refund of Rs 18,22,000/- with interest @ 10.5% per annum compounded quarterly payable from the date of advance till the date of refund.

All the points are answered accordingly. Hence ordered:-

ORDER

The case is allowed on contest against the respondent without cost. The respondent is directed :-

1. (i). To pay Rs. 10,000/- with interest @ 10.5% per annum compounded quarterly payable from 03.08.2012 till the date of realization;

(ii). To pay Rs. 4,10,000/- with interest @ 10.5% per annum compounded quarterly payable from 04.08.2012 till the date of realization,

(iii). To pay Rs.70,000/- with interest @ 10.5% per annum compounded quarterly payable from 04.08.2012 till the date of realization,

(iv). To pay Rs. 50,000/- with interest @ 10.5% per annum compounded quarterly payable from 30.07.2012,

(v). To pay Rs. 20,000/- with interest @ 10.5% per annum compounded quarterly payable from 29.06.2012,

(vi). To pay Rs. 9,80,000/- with interest @ 10.5% per annum compounded quarterly payable from 10.12.2012,

(vii). To pay Rs. 2,80,000/- with interest @ 10.5% per annum compounded quarterly payable from 08.10.2013.

2. The respondent is directed to make the aforesaid payment with interest within a period of two months from the date of this order.

In case the respondent fails to make payment as directed above, the complainant is at liberty to enforce the order as per law.

del
12.3.2017
Member-II
(Ramanath Panda)

del
Chairperson
(Siddhanta Das)

List of documents relied upon by the complainant

1. Xerox copy of agreement of sale of Flat/apartment.
2. Xerox copy of Money Receipt No. 817 dated 08.10.2013
3. Xerox copy of Money Receipt No 750 dated 10.12.12.
4. Xerox copy of Money Receipt No 702 dated 04.08.2012
5. Xerox copy of Money Receipt No 699 dated 30.07.2012
6. Xerox copy of Money Receipt No 703 dated 04.08.2012
7. Xerox copy of Money Receipt No 686 dated 29.06.2012
8. Xerox copy of Money Receipt No 701 dated 03.08.2012
9. Xerox copy of Cheque of Uco Bank dated 30.09.2013

List of documents relied upon by the respondent

1. Xerox copy of F.I.R No.02 dated 30.01.2018.
2. Xerox copy of Final Form

del.
12.3.2021
Member-II

(Ramanath Panda)

del.
Chairperson
(Siddhanta Das)

TRUE COPY

Rammm
16/3/2021
Registrar
Odisha Real Estate Regulatory Authority

887(2) 16.9.21
No

*Copy of Ared order forwarded to the
Complainant / Respondent for information*

Rammm
16/3/2021
Registrar
Odisha Real Estate Regulatory Authority