

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

AO.CC NO.13/2019

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

Smt. Bhagya Laxmi Das  
W/o Mr Pradosh Kumar Das  
At Sindurapalli, P.S. Dharakote  
Dist-Ganjam  
At Present <sup>C-4</sup> Lingaraj Vihar  
P.O. Aerodrome Area,  
P.S. Airfield, Pokhariput  
Bhubaneswar-7610020 ... Complainant

Vrs

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

For the Complainant Mr Deepak Kumar Panda  
and associates

For the Respondent Mr Anil Kumar Satapathy  
and associates

Date of argument ... 17.03.2021

Date of final order ... 31.03.2021

## ORDER

Complainant has filed this case praying this forum to award compensation to the tune of Rs.7,70,000/- from the respondent apart from house rent @ Rs.15,000/- pm from 22.7.2019 till handing over of actual possession of the duplex house after completion of the same.

2. 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 village-Jadupur developed by the respondent. On 2.1.2010, the complainant and the respondent entered into an "Agreement for Sale" and the consideration amount of Rs.33,00,000/- (Thirty three lakh) was fixed for the duplex house and the complainant paid initial booking amount of Rs.10,00,000 (Rupees ten lakh). According to 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 2.1.2013. Since there was delay in completion of the project and as the complainant threatened for legal action, the respondent executed one registered sale deed on 21.11.2014, conveying ownership of sub plot No.26 for a consideration of Rs.9,20,000/- after receipt of an additional amount of Rs.4,60,000. It is alleged

that instead of 2000 sqft, the respondent cunningly sold 1735 sqft of land in the said sale deed.

3. It is averred that on 22.11.2014, another "Agreement for construction" was executed between the complainant and the respondent and such "agreement for construction" was part and parcel of the original document for sale dated 2.1.2010. In the agreement for construction, it was stipulated that the construction was to be completed within 18 months from the date of the second agreement i.e. by 22.05.2016. Several times the complainant asked the respondent to complete the construction but suddenly on 18.10.2015, the respondent handed over the project to a third party without her consent and asked the complainant to make payment to the third party. According to the complainant in between 11.12.2009 to 28.5.2016, she has paid in toto Rs.24,64,000/- to the respondent. Although several letters on different dates were written by the complainant to the respondent for completion of the project, the same was not done. The complainant has alleged that she has already paid 75% of the consideration money of the duplex house. As the respondent failed to complete the construction as per the agreement, she faced a lot of difficulties and was put to huge loss. On such grounds she has prayed for the above relief.

4. On appearance, the respondent filed his show cause (reply). In his show cause-cum-reply, the respondent has

challenged the case on grounds of maintainability, lack of cause of action, non-payment of the instalments by the complainant etc. He has admitted about execution of the first agreement for sale and has stated that such agreement for ~~w~~<sup>s</sup>ale was executed between them while the project was in conceptual stage. It is his saying that the construction was to be made as per plan approved by BDA and permission made by him before BDA at the time of approval shall be binding on the complainant. Approval of BDA was obtained on 25.11.2013 and such permission for construction was for 44 duplex units with one single boundary wall encircling the project area instead of each individual house with further stipulation of leaving more open space than the earlier plan in the project area. He has also admitted about execution of sale deed dated 21.11.2014, conveying ownership over the sub plot measuring 1735 sqft to the complainant. According to him the decrease in the area of the sub plot was due to stipulation of BDA to leave more open space. Also he has admitted about execution of agreement for construction dated 22.11.2014 wherein it was stipulated that the construction would be completed within 18 months from the date of the second agreement i.e. by 22.05.2016.

5. It is the saying of the respondent that M/s Vivekananda Land & Building Private Limited is his contractor and it is authorized to collect balance payment for and on his behalf

but for all practical purposes he himself was doing everything including receipt of payment. He has admitted about receipt of payment of Rs.24,64,000/- (Rupees twenty four lakhs sixty four thousand only) from the complainant. According to him, the construction was conditional against payment of installments by the complainant and as the complainant failed to deposit the installments in time as per agreement, construction work could not proceed further for which he himself is not responsible. In his reply the respondent has admitted about development of internal road, boundary wall, underground reservoir etc. According to him as per clause 5 and 6 of the agreement dated 2.1.2010 the complainant did not make payment.

6. In his reply, the respondent has alleged that as against his demand dated 24.2.2015 and 05.02.2016 the complainant made payments on 02.02.15 and 22.02.2016 respectively. On 15.08.16 he intimated the complainant about casting of the first floor roof slab and demanded the installment but the complainant made payment of Rs.2,68,000/- only on 23.8.16. It is also alleged by him that on 01.11.17, he asked the complainant for payment of Rs.1,00,000 (One lakh) but the respondent did not make such payment. According to him the delay was due to late approval of the plan by BDA and non-payment of instalments in time by the complainant. On such grounds, the respondent has prayed to reject the complaint petition.

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7. The question to be considered in this case is whether the complainant is entitled to any compensation and if so, what is the quantum thereof ?

8. In order to prove his case the complainant has adduced some documents as per list. The respondent has filed his written argument.

9. It is seen from the complaint petition of the complainant as well as the show cause (reply) of the respondent that they are throwing mud on each other for delay in completion of the project in question. The complainant alleges that deliberately the respondent-promoter did not take prompt action to complete the project and she apprehended that the respondent might have utilized funds obtained from the allottees of the project in question, in his other projects. In his show cause (reply) the respondent alleges that due to non-payment of instalments on the scheduled dates by the complainant, the construction work could not proceed further causing delay in completion of the project. Thus, it is seen that delay in completion of the project is due to default of both the parties.

10. Agreement for sale was made on 02.01.2010, agreement for construction was made on 22.11.2014, registered sale deed was executed on 21.11.2014 for the sub plot whose area was

1735 sqft which was sold by the respondent to the complainant.

The agreement for sale was executed on 2.1.2010 and it is stipulated in the said agreement that work shall be executed as per plan to be approved by the BDA and by then the project was in conceptual stage. Written argument of the respondent reveals that the application for approval of plan was filed at BDA on 13.12.2010 and such approval was accorded by the BDA vide their letter dated 12.4.2013. Thus, it is seen that about one year after execution of the agreement for sale dated 2.1.2010, application for approval of plan was filed at BDA and about 3 years there after approved plan was received by the respondent. It is seen that at a much later stage of the agreement for sale, application for approval by BDA was filed and it took about 3 years to obtain such approval from BDA. It is the duty of the respondent to promptly apply for plan approval by BDA soon after execution of the agreement dated 2.1.2010. Further, it is the duty of the respondent to see that approval is obtained at an early date. It appears from the record that no such promptitude has been shown by the respondent in applying for approval of the plan to BDA and obtaining the same from it at an early date instead of consuming long period. Therefore, the complainant must have suffered some amount of loss which entitles her to get compensation.

11. It is argued in the written notes of submission by the respondent that under clause 2 at page 7 of the agreement it is stipulated :

**"the assurances given, promises held out and undertakings offered by the venders/party before the planning member,BDA and/or any other authority/authorities in the matter of approval of the building plan and the conditions by the statutory authorities,shall be binding on the prospective purchasers."**

12. On going through such clause No.2 of the agreement for sale as well as other clauses, I find that some of them seem to be one sided favouring the promoter-respondent, which does not get sanction of law to exonerate him from paying compensation to the complainant. In this regard, law is well settled. The Hon'ble Apex Court in the case of Pioneer Urban Land and Infrastructure Limited versus Govinda Raghavan, in Civil Appeal No.12238/2018 and Pioneer Urban Land and Infrastructure Limited versus Gian Verma and another in Civil Appeal No.1677/2019 decided on 2.4.2019, have been pleased to hold that the agreement clause of the buyer which is wholly one sided, unfair and unreasonable cannot be relied on. In Neel Kamal Real Estate Infrastructure Private Ltd versus Union of India and others (WP No.2737/2017), the Hon'ble Bombay High Court have been pleased to express their concern over such type of one sided agreement of the buyers/developers with individual purchasers of apartments and have held in para 181 of their judgment as follows :

"Agreement entered into with individual purchasers were invariably one sided, standard format agreements prepared by the developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. individual purchasers have no scope or power to negotiate and power to accept these one sided clauses in the agreement for sale, which are in favour of the developers, cannot be relied on".

13. The next question is what is the compensation to be awarded to the Complainant ?

14. No guidelines have yet been fixed either by the Hon'ble Apex Court or any other High Court including our own High Court for awarding compensation under Orissa Real Estate (Regulation & Development) Act, since the statute is a new one. ORERA Act 2016 itself does not stipulate clearly under what heads compensation is to be awarded against developer-promoter/buyer or real estate agent for their violation of the provisions of sections 12, 14, 18, 19 of the Act. Only section 72 of the Act lays down some factors to be taken into consideration by the Adjudicating Officer while determining compensation or interest. For better understanding, section 72 of the Act is reproduced below :-

"While adjudging 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 <sup>loss</sup> ~~low~~ caused as 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."

15. Neither in the complaint petition nor during the proceeding the complainant has shown the amount of disproportionate gain or unfair advantage made as a result of the developer-promoter respondent. It has also not been quantified by the complainant. So, no amount of compensation can be granted under section 72(a) of the Act. Similarly, the complainant has not shown the amount of loss caused to him as a result of the default of the promoter-respondent. So, no amount of compensation can be awarded to him under section 72(b). At best the complainant would get compensation under section 72(d) of the Act.

16. Nowhere the Odisha Real Estate (Regulation & Development) Authority Act stipulates in clear terms that monthly house rent of a prospective <sup>w</sup> buyer is to be reimbursed by the developer-promoter. So the complainant is not entitled to get any house rent @ 15,000/- per month far less to speak of the total amount of Rs.5,70,000/- and further house rent till handing over of the actual possession of the completed project to him.

17. Considering the facts and circumstances of the case, I feel that compensation of Rs.50,000/- would be the appropriate compensation to be awarded to the complainant. Hence ordered :

ORDER

18. The case of the complainant is allowed in part on contest against the respondent-promoters. The respondent-promoters are directed to pay a compensation of Rs.50,000/- (Rupees fifty thousand) to the complainant within one month from today failing which the respondent-promoter shall pay 10.35% interest per annum on the said amount to the complainant till actual realization of the amount ~~to him~~.

Pronounced in the open forum this the 31<sup>st</sup> day of March 2021 in presence of both the parties.

Sd/-  
Adjudicating Officer

Dictated and corrected by me.

Sd/-  
Adjudicating Officer

List of documents relied on by the Complainant

Sl.No	Name of the document
1	Copy of the irrevocable agreement for sale
2	Copy of the application fees receipt of Rs.2,00,000
3	Copy of the details of payments made towards initial payment and booking/receipt of initial booking amount of Rs.8,00,000
4	Receipt of payment made against the demand notes through LIC HFL Rs.3,68,000, Rs.2,68,000, loan statement of LIC HFL from loan account No.210400002705 to the account of the respondent vide No.911020044192850
5	Copy of the demand notes 1/2J
6	Irrevocable Sale deed of the scheduled property A
7	Agreement for construction
8	Agreement between Respondent and third party/intimation letters thereto
9	BDA sanction approval
10	Letter of correspondence among the complainant and the promoter
11	Photocopy of the judgement and order passed by the Hon'ble ORERA in CC No.20/2018,dtd.4.4.2019

List of documents relied on by the Respondent

NIL

Sd/-  
Adjudicating Officer

Memo No 1113(2) dt - 05/04/2021

Copy forwarded to the Complainant/Respondent for information.

*[Signature]*  
Adjudicating Officer  
05.04.2021

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