

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

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Present:-

**Siddhanta Das, Chairperson.**

**Ramanath Panda, Member-II.**

**Complaint Case No. 269 of 2019**

Sanjukta Swain, aged about 60 years,

W/o Akhil Chandra Pradhan,

Flat No. 401, block-c, 4<sup>th</sup> floor,

Om Residency, Gandhimarg,

Hulurisingha, District-Angul

Pin- 759122.

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**Complainant.**

-Versus-

1. Om Developers & Builders Pvt.Ltd.

2. Shri Anand Kumar Agrawal,  
Managing Director,  
Om Developers & Builders Pvt.Ltd

At- Sankar Cinema Road,  
Near ICICI Bank, In front of  
Modi Collection, District-Angul,  
759122

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**Respondents**

Advocate for the Complainant .... P.Verma & Associates.

Advocate for the Respondents .... R.K.Maharana & Associates.

**ORDER**

**Dated 28.04.2021**

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

(i). to direct the respondents to obtain the occupancy certificate from the concerned development authority and provide the same to the complainant at the earliest;

(ii). to direct the respondents to stop construction work in the said Om Residency apartment complex, which is going on illegally, despite the expiry of permission for the same by the concerned development authority;

(iii) to direct the respondents to complete and provide the sewerage treatment plant in the apartment;

(iv). to direct the respondents to take appropriate steps for formation of a registered residents welfare society for the said apartment and hand over all the charges and functions of management and maintenance of the said apartment to the said registered society;

(v). to direct the respondents to supply the audited accounts of all the money received by them from the complainant and to give such detailed accounts to the newly formed registered society;

(vi). to direct the respondents to complete the work within a stipulated period of time failing which pass appropriate order cancelling the registration with this Hon'ble Authority;

(vii). to direct the respondents to pay adequate compensation to the complainant for committing breach of assurances and promises;

(viii). to direct the respondents to pay damage for mental and physical agony caused to the complainant by the illegal activities of the respondents as well as unnecessary harassment caused to her;

(ix). to direct the respondents to pay Rs. 30,000/- to the complainant towards litigation cost.

2. It is the case of the complainant that the respondent No.1 started a residential housing project namely "Om Residency" at Gandhimarg, Hularisingha, Angul. The complainant booked a 3BHK flat in the said apartment comprising an area of 1480 sqft on 02.08.2015. The respondents allotted flat No. 401 in Block-C of the project in favour of the complainant. The complainant paid the booking amount of Rs. 6,75,603/-. The respondents issued allotment letter on 24.11.2015. As per agreement dated 24.11.2015 the complainant agreed to purchase a flat for a consideration of Rs. 33,75,603/-. Subsequently the complainant paid Rs.27,00,000/- to the respondents. The complainant wanted to take possession of the flat and asked the respondents to provide the completion certificate. The respondents replied that they had applied for completion certificate and they will provide it as soon as it is made available. Therefore, the complainant agreed to take possession of the flat and accordingly took possession and continued to live there since 2015-16. Thereafter, the respondent no.2 demanded maintenance charges from the complainant. He should not demand the maintenance charges as the building is not complete and major constructions are being carried on in the project site. However, the respondents continued to collect maintenance charges from the complainant illegally and arbitrarily. The respondents are not taking any step to form a society and to hand over charge to the society. At the time of

purchase the respondents had received Rs. 25,000/- towards cost of formation of society. Rs. 20,000/- has been collected for annual maintenance charges. The amount was raised to Rs. 21,000/- for the 2<sup>nd</sup> and 3<sup>rd</sup> year. The respondent No.2 withdrew money meant for maintenance and is illegally utilizing the same. Now the respondents are undertaking to do further work in the project site without obtaining completion certificate. The respondent No.2 by influencing some of the members of the apartment obtained a bank account in the name of welfare society. There has been no audit of the said account. The sewerage treatment plant has not been installed. The complainant issued a notice to the respondents to address the grievances. The respondents replied to the said notice on 15.11.2018. In the said reply the respondents assured the complainant to complete the project and to complete the process of management of the society. But they failed to comply the assurances given to the complainant. Accordingly the complainant has come up with the present petition seeking the aforesaid reliefs.

3. The respondents have filed a written reply stating that the case is not maintainable in law. The complainant has no cause of action to file the case. The complainant applied for allotment of flat on 02.08.2015. Prior to the said date the complainant deposited Rs. 3,65,000/- on 15.07.2015. The project comprises of three Blocks, Block-A, B and C. Block B and C have been completed. Block-A has not yet been completed due to different reasons. Completion certificate for Block B and C has been obtained from registered Engineer of Talcher Angul Meramandali Development Authority (TAMDA) on 09.06.2015. The same was submitted to TAMDA on 19.03.2016 for issuance of occupancy certificate. The avements of Paragraph-5 are not admitted. On 20.01.2019 a meeting was held by the flat owners and Welfare Society comprising of 21 members has been formed. The respondent No.2 presented statement of accounts for the period from 2015-16 to December, 2018 in the said meeting

dated 20.01.2019. The Association unanimously accepted the same. The respondents cannot be held responsible for formation of a registered society. The office bearers of the society have framed rules to manage the affairs of the society. The respondents have obtained registration certificate from Odisha Real Estate Regulatory Authority vide Registration No. RP/01/2018/00164. The Authority has permitted to complete the project by 30.06.2021. The building plan is valid till 11.02.2021. The fire equipments are already installed. The son of the complainant Arpit Pradhan is in habit of showing high-handedness over the security guards and supervisor of the Company. The complainant has stopped paying maintenance fee to the society. As the complainant is not pulling on well with the office bearers of the society, she has intentionally filed this case against the respondents. The society has made an application to the Collector and District Magistrate, Angul on 05.02.2020 for taking action against son of the complainant. The complainant is not entitled to the relief claimed. The case is liable to be dismissed.

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

- (i). Whether the case is maintainable in law;
- (ii). Whether the complainant has cause of action to file the case?
- (iii). Whether the respondents are responsible for formation of a Welfare Society for management of the affairs of the apartment?
- (iv). Whether a society is already formed and the members of the society are managing the affairs of the apartment?
- (v). Whether the respondents are making construction in violation of the approved building plan?

(vi). Whether the respondents are responsible to install a sewerage treatment plant in the apartment?

(vii). Whether the complainant is entitled to the reliefs claimed?

5. The documents filed on behalf of the complainant are considered as evidence on her behalf. The documents filed by the respondents are considered as evidence on their behalf.

**Point No.1 and 2:-**

6. In Paragraph-7 of the written reply the respondents have categorically stated about completion of Block-B and C in the year, 2015. The respondents obtained certificate of the Registered Engineer of TAMDA relating to completion of the said Blocks on 09.06.2015 and made application to TAMDA on 19.03.2016 for issuance of occupancy certificate. In Paragraph-5 it is stated that Block-A has not been completed. Though application was made in the year 2016, the respondents have not yet obtained the occupancy/completion certificate from the competent authority. In Paragraph-12 the respondents have stated about obtaining registration from this authority for construction of Block-A. The building plan for completion of Block-A is valid till 11.02.2021. The Odisha Real Estate Regulatory Authority has permitted the respondents to complete the construction work of Block-A by 30.06.2021. The validity of the building plan is already over. The written statement has been filed on 21.02.2021. There is no averment in the written statement about completion of the Block-A within the stipulated time period. In Paragraph-15 it is admitted that Block-A has not been completed in all respect as yet. It appears from the written statement that registration was only obtained from this Authority relating to completion of Block-A of the project. Building plan was also granted for Block-A stating the validity period till

11.02.2021. Therefore, the work of other 2 phases though completed, no occupancy/completion certificate has been obtained. As per Section 3 of the Act the project is considered as an ongoing project because no occupancy certificate has been obtained as yet. Therefore, the respondents should have registered the project in respect of all the Blocks. The building plan approval is produced. It is mentioned in the said document that plan is approved for Block-A,B and C. Therefore, permission has not been obtained in phased manner. The registration from Real Estate Regulatory Authority has been obtained in respect of the whole project. Section 3(2)( C) explanation clearly states that

“ For the purpose of this Section, where the real estate project is to be developed in phases, every such phase shall be considered a standalone real estate project, and the promoter shall obtain registration under this Act for each phase separately”.

In the instant case though work has been made in different phases, still permission and sanction has been obtained for the whole project. Therefore, completion certificate has to be obtained for the entire project after the same is completed. Separate completion certificate for each phase is not permissible since building plan has been sanctioned for all the three phases at a time. Admittedly the project is not complete. Registration has been obtained. The time for completion of the project is already over as per building plan. But the completion time as per the permission granted by this Authority is still continuing. The promoter may obtain re-validated building plan till completion of the project and may obtain extension of registration from this Authority to complete the project. Therefore, it is not possible to say that the respondents have violated the building plan or the direction issued by this Authority in the registration certificate.

7. The only question is that the respondents should have obtained completion certificate/occupancy certificate before

permitting the flat owners to reside in Block-B and C. But the same has been done before the Act came into force. There is no dispute over the fact that the complainant has paid the amount and has taken possession of the flat. It is also not disputed that a number of the flat owners are residing in their respective flats. Since registration is already obtained, the provisions of the Act apply to the project. The complainant has therefore, a cause of action to file the case and that the case is maintainable in law.

These points are answered accordingly.

**Point Nos (iii), (iv), (v), (vi) and (vii):-**

8. As already discussed completion is awaited. Therefore, before completion it is not possible for the respondents to obtain completion/occupancy certificate from the competent authority. However, in violation of Section 17 of the Act, possession was already handed over to the flat owners before the Act came into operation. The complainant denies the fact of formation of a society. But the respondents have categorically stated that society has already been formed and the society is managing the affairs of the apartment. The office bearers are collecting maintenance charges and are utilizing the same. The account slips for the financial year 2015-16, 2016-17, 2017-18 and 2018-19 are submitted. Whether the account has been audited or not is a fact to be gathered from the owners Welfare Society only. The Welfare Society is not a party to the case. Therefore, there is no scope to give a finding regarding the genuineness of the society already formed and functioning. It is the duty and responsibility of the promoter to enable formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable as per Section 11(e) of the Act. It is specifically stated that the association though formed, has not been registered. But the fact remains that the association is formed and is functioning. There are

office bearers of the association. They are maintaining the accounts. The account has been discussed in the meeting as stated by the respondents. After defence is disclosed, the complainant did not try to make the association a party to the case. The association should have been registered under local laws applicable. In case the same is not done, the respondents should enable for registration of the society as per the local laws and in that case all the flat owners should cooperate with the respondents.

9. The sewerage treatment plant has not been installed as appears from the pleadings of the parties. Since this is a condition of the Brochure and agreement made between the parties, the same should be installed before obtaining completion certificate for the project. A direction for obtaining completion certificate cannot be given as the respondents have the time limit in the registration certificate to complete the project. Only a direction for registration of the society and to install a sewerage treatment plant can be passed directing the respondents to provide the same before obtaining completion certificate for the project.

10. The dispute relating to compensation is a matter exclusively to be dealt with by the Adjudicating Officer U/s 71 of the Act. This Authority is not empowered to pass any order relating to compensation. In the circumstances the complainant is only entitled to the reliefs as per the following order.

These points are answered accordingly. Hence order:-

### **ORDER**

The case is allowed in part on contest against the respondents. The respondents are directed;

1. (i). to enable registration of the society already formed as per local laws applicable and to install a sewerage treatment plant in

the project area before obtaining completion certificate from the competent authority;

(ii). to take steps for registration of the society within a period of two months;

2. To comply with the aforesaid directions within the stipulated time failing which the order shall be enforced as per law.



**Member-II**

**(Ramanath Panda)**



**Chairperson.**

**(Siddhanta Das)**

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

Copy of:-

1. Brochure
2. Allotment letter dated 24.11.2015.
3. Agreement to sale executed on 24.11.2015.
4. Letter sent to Niroj Kumar Mishra on 17.02.2019 regarding the accounts statement of the society.
5. Letter sent to respondent No.2 on 20.02.2019.
6. Money receipt of Rs. 5,000/- dated 31.03.2017 issued by Om Residency Owner's Welfare Society.
7. Money receipt of Rs. 21,000/- dated 12.04.2017 issued by Om Residency Owner's Welfare Society.
8. Money receipt of Rs. 21,000/- dated 01.05.2018 issued by Om Residency Owner's Welfare Society.
9. Legal Notice to Respondent No.2 dated 06.11.2018.
10. Legal Notice by the Respondent No.2 dated 15.11.2018.
11. Photos of constructed building.

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

Copy of :-

1. Application dated 02.08.2015 of the complainant for booking 3 BHK flat.
2. Certificate of completion issued in favour of the respondents by Registered structural Engineer of TAMDA on 09.06.2015.

3. Certificate of completion submitted to TAMDA dated 19.03.2016.
4. Resolution of meeting dated 20.01.2019 of the flat owners of OM Residency along with signature of members.
5. Minutes dated 03.02.2019 of the meeting of committee members of Om Residency.
6. Minutes dated 03.03.2019 of the meeting of committee members of Om Residency.
7. Registration Certificate of Project issued in favour of Respondents by ORERA, Bhubaneswar.
8. Application dated 07.01.2020 of the respondents addressed to TAMDA for revalidation of building plan i.e Block- A (S+4) of OM Residency.
9. Permission granted in favour of respondents by TAMDA vide letter No. 159, TAMDA dated 11.02.2021.
10. E-Abhiyog notice issued to the respondents on the complaint of Arpit Pradhan on behalf of the complainant.
11. Application dated 05.02.2020 of the inhabitants of Om Residency addressed to the Collector and District Magistrate, Angul.

True Copy

*[Signature]*  
 Registrar  
 Odisha Real Estate Regulatory Authority

*[Signature]*  
 Member-II

(Ramanath Panda)

*[Signature]*  
 Chairperson.  
 (Siddhanta Das)

Memo No 1468 dt 29/04/2021  
 certified copy of order forwarded to the Complainant/  
 Respondents for information.

*[Signature]*  
 Registrar  
 Odisha Real Estate Regulatory Authority

