

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 476 OF 2017

1. TAPAS KUMAR MOHAPATRA & ORS.

.....Complainant(s)

Duplex No-164, Metro Satellite City Phase-I, Andilo, P.S.-Baliana,
BHUBANESWAR

2. DILIP KUMAR MISHRA

Duplex No-20, Metro Satellite City Phase-I, Andilo, P.S.-Baliana,
BHUBANESWAR

3. KHETRA MOHAN MISHRA

Duplex No-73, Metro Satellite City Phase-I, Andilo, P.S.-Baliana,
BHUBANESWAR

4. SAGAR KUMAR SATAPATHY

Duplex No-63, Metro Satellite City Phase-I, Andilo, P.S.-Baliana,
BHUBANESWAR

5. SAPAN DASH

Duplex No-24, Metro Satellite City Phase-I, Andilo, P.S.-Baliana,
BHUBANESWAR

6. ANGAD SASMAL

Duplex No-67, Metro Satellite City Phase-I, Andilo, P.S.-Baliana,

7. AYAS KUMAR DAS

Duplex No-115, Metro Satellite City Phase-I, Andilo, P.S.-Baliana,
BHUBANESWAR

8. SADASIBA TRIPATHY

Duplex No-142, Metro Satellite City Phase-I, Andilo, P.S.-Baliana,
BHUBANESWAR

9. PRAFULLA KUMAR ROY

Duplex No-21, Metro Satellite City Phase-I, Andilo, P.S.-Baliana,
BHUBANESWAR

10. JITENDRA KUMAR SAHU

Duplex No-6, Metro Satellite City Phase-I, Andilo, P.S.-Baliana,

BHUBANESWAR

11. DILLIP KUMAR JOSHI

Duplex No-117, Metro Satellite City Phase-I, Andilo, P.S.-Balianta,
BHUBANESWAR

12. SUDHANSU SEKHAR PATRA

Duplex No-19, Metro Satellite City Phase-I, Andilo, P.S.-Balianta,
BHUBANESWAR

13. MANJULA CHHETTY

Duplex No-102, Metro Satellite City Phase-I, Andilo, P.S.-Balianta,
BHUBANESWAR

14. LOKANATH BEHERA

Duplex No-169, Metro Satellite City Phase-I, Andilo, P.S.-Balianta,
BHUBANESWAR

15. SURENDRA KUMAR MISHRA

Duplex No-46 Metro Satellite City Phase-I, Andilo, P.S.-Balianta,
BHUBANESWAR

16. UMESH CHANDRA BARAL

Duplex No-165, Metro Satellite City Phase-I, Andilo, P.S.-Balianta,
BHUBANESWAR

17. SOUMYA RANJAN NAYAK

Duplex No-58, Metro Satellite City Phase-I, Andilo, P.S.-Balianta,
BHUBANESWAR

18. MADAN MOHAN MOHAPATRA

Duplex No-58, Metro Satellite City Phase-I, Andilo, P.S.-Balianta,
BHUBANESWAR

19. KESHAB MISHRA

Duplex No-12, Metro Satellite City Phase-I, Andilo, P.S.-Balianta,
BHUBANESWAR

Versus

1. M/S. METRO BUILDERS (ORISSA) PRIVATE LIMITED & ANR.

Office- Metro Riverview Sunshine Field (East)PS-Purighat, Town
CUTTACK
ODISHA

.....Opp.Party(s)

2. M/S FALCON REAL ESTATE PVT. LTD.
A/22, Cuttack Road, Falcon House, Bhubaneswar,
KHURDA
ODISHA

BEFORE:

**HON'BLE MR. JUSTICE RAM SURAT RAM MAURYA, PRESIDING MEMBER
HON'BLE BHARATKUMAR PANDYA, MEMBER**

FOR THE COMPLAINANT :

MR. SURESH TRIPATHY, ADVOCATE
MS. SHAILJA KULSHRESTHA, ADVOCATE

FOR THE OPP. PARTY :

MR. BHARAT SWAROOP SHARMA, ADVOCATE
MR. SUBHASHIS MISHRA, ADVOCATE

Dated : 04 January 2024

ORDER

(PER MR. JUSTICE RAM SURAT RAM (MAURYA), PRESIDING MEMBER)

1. Heard Mr. Suresh Tripathy, Advocate, for the complainants and Mr. Bharat Swaroop Sharma, Advocate, for the opposite parties.
2. 42 flat buyers of the project "Metro Satellite City-I" have filed above complaint for directing the opposite parties to (i) construct sewage treatment plant for the project within stipulated period, or in alternative, refund the amount collected from the buyers to them with interest @12% per annum from the date of realization till the date of refund; (ii) construct club/auditorium building for the project within stipulated period, or in alternative refund, the amount collected from the buyers to them with interest @12% per annum from the date of realization till the date of refund; (iii) reimburse the costs incurred from the flat buyers of the project for deploying staff, machinery etc. for sewage management and dumping garbage; (iv) install the transformer and D.G. Set for the project within stipulated period, or in alternative, refund the amount collected from the buyers to them with interest @12% per annum from the date of realization till the date of refund; (v) provide medical dispensary for the project within stipulated period, or in alternative, refund the amount collected from the buyers to them with interest @12% per annum from the date of realization till the date of refund; (vi) construct swimming pool for the project within stipulated period, or in alternative, refund the amount collected from the buyers to them with interest @12% per annum from the date of realization till the date of refund; (vii) provide gymnasium for the project within stipulated period, or in alternative, refund the

amount collected from the buyers to them with interest @12% per annum from the date of realization till the date of refund; (viii) provide open space for the project within stipulated period, or in alternative, refund the amount collected from the buyers to them with interest @12% per annum from the date of realization till the date of refund; (ix) provide indoor game space for the project within stipulated period, or in alternative, refund the amount collected from the buyers to them with interest @12% per annum from the date of realization till the date of refund; (x) pay Rs.300000/-, to each of them, as compensation for mental agony and harassment; (xi) pay litigation costs; and (xii) any other relief which is deemed fit and proper in the facts and circumstance of the case.

The complainants filed IA/3083/2017 for grant of leave under Section 12(1)(c) of the Consumer Protection Act, 1986 to file the complaint in representative capacity, which was allowed on 10.08.2017.

3. The complainants stated that M/s. Metro Builders (Orissa) Private Limited (OP-1) and M/s. Falcon Real Estate Private Limited (OP- 2) were companies, registered under the Companies Act, 1956. OP-2 was the owner of the land of the project “Metro Satellite City-I”, situated at villages Rudrapur, Andilo and Naharkanta, Gram Panchayat Baliana, district Khurda and obtained Development Licence and Building Plan Approval, vide letter No.296 ei dated 16.12.2006, from Gram Panchayat Baliana for development and construction of the group housing project. OP-1 was a construction company and on the basis Development Agreement and General Power of Attorney dated 19.05.2009, executed by OP-2, OP-1 developed and constructed the buildings and other amenities of the project “Metro Satellite City-I”, which consists 158 duplexes. OP-1 widely advertised the project in August, 2009, giving lucrative promises such as dedicate to ‘elites’ with ‘modern facilities and essentials’, ‘individual telephone point’, ‘barbed wire fencing for complete security’, ‘round the clock water supply’, ‘one temple’, ‘gymnasium’, ‘indoor games space’ ‘medical dispensary’ etc. Believing upon the representation of OP-1, the complainants booked their respective flats in the year 2009 onward and deposited booking amount. OP-2 executed an agreement to sell of the land and proportionate area of the common land and OP-1 executed construction agreements in favour of the complainants of their respective flats in the year 2009 onward. The cost of the duplex was approximately Rs.30/- lacs. The complainants made payments as per demand of the OPs, who constructed the duplexes and delivered possession to the complainants in November, 2010 onward. At the time of offer of possession, the OPs realized from each buyers (i) Rs.35000/- for installation of transformer, & D.G. Set, (ii) Rs.35000/- for construction of sewage treatment plan, (iii) Rs.30000/- for construction of club/auditorium building, (iv) Rs.20000/- for maintenance and security. OP-1 collected (v) Rs.500000/- for medical dispensary, (vi) Rs.1500000/-, for swimming pool, (vii) Rs.1000000/-, for gymnasium, (viii) Rs.2000000/- for open space, (ix) Rs.2000000/- for indoor game space, collectively. The OPs were realizing Rs.600/- per month from each buyers as maintenance and security charges. The flat owners formed “Metro Satellite City Welfare Society” and applied for registration on 30.11.2011. Due to hurdle created by the OPs, its registration was delayed. Later on the OPs, vide letter dated 29.06.2012, informed that it would not be possible for them to provide maintenance and security w.e.f. 01.07.2012, in Rs.600/- per month. The OPs did not provide

electricity connection papers for the electricity supply for the use of common area. Due to which, Special Energy Police Station, Bhubaneswar registered C.T. Case No.5106 of 2013, under Section 135 of Electricity Act, 2003, against the President and Secretary of the society. The society gave legal notices to the OPs dated 10.01.2015 and 10.06.2015, for providing above amenities. The OPs, vide reply notice dated 07.07.2015 declined to provide the amenities. Then, this complaint was filed on 20.02.2017.

4. M/s. Metro Builders (Orissa) Private Limited (OP-1) filed its written reply on 15.02.2018. The OPs were developing township over 23.394 Decs land at villages Rudrapur, Andilo and Naharkanta, Gram Panchayat Baliana, district Khurda, in phase-wise. In first phase, "Metro Satellite City-I", consisting 158 duplexes was developed and possession was handed over to the allottees in the year 2010-2011. At the time of taking possession, the allottees executed Indemnity Bond, admitting that all amenities and facilities as mentioned the brochure and the agreement were provided to them. OP-1 provided all the amenities as mentioned in the brochure and the agreement. After taking possession, the complainants started creating hindrances in further development. Some of the flat buyers filed criminal complaint before Commissioner of Police, Bhubaneswar, on which, FIR has been registered against the OPs. Assistant Commissioner of Police investigated the matter and found that electricity transformer, sewage line, badminton coach etc. were completed. He submitted his report dated 24.08.2015, for closer of the case. Due to deliberate harassment, OP1 filed Civil Suit No.325 of 2012 and Civil Suit No.1170 of 2016. By way of counter blast, present complaint has been filed, concealing the material facts. Under the agreement and indemnity bold, OP1 has to provide maintenance and security services, for which Rs.800/- per month was required to be paid by the flat buyers. But the complainants stopped payment. These persons also started misbehaving with the staff including ladies staff of maintenance and security services, for which, criminal case was registered against them. The complainants have taken possession in the year 2010-2011, after executing indemnity bond, the complaint filed on 20.02.2017 is long barred by limitation as provided under Section 24-A of the Consumer Protection Act, 1986. Dipil Mishra, Tapas Kumar Mohapatra and Sanat Kumar Mohanty were found, taking and using electricity in unauthorised manner, for which, C.T. Case No.5106 of 2013, under Section 135 of Electricity Act, 2003 was lodged against them by the officer of electricity department.

5. The complainants filed Rejoinder Reply, Affidavits of Evidence of the complainants and documentary evidence. Opposite party-1 filed Affidavit of Evidence of Duryodhan Pradhan. Both the parties have filed their written arguments.

6. We have considered the arguments of the counsel for the parties and examined the record. OP-1 stated that the complainants had taken possession in the year 2010-2011, after executing indemnity bond. The complaint was filed on 20.02.2017 as such it is long barred by limitation as provided under Section 24-A of the Consumer Protection Act, 1986. The OP relied upon judgment of Supreme Court in **State Bank of India Vs. B.S. Agriculture, (2009) 5 SCC 121**. Judgment of Delhi High Court in CM Appl No.8073 of 2022 **M/s. Rakman Industries Limited Vs. M/s. Sumaja Electro Infra Private Limited** (decided on 09.11.2022),

The complaint has been filed for the common amenities i.e. sewage treatment plant, club/auditorium building, electricity transformer and D.G. set for power back up, medical dispensary, swimming pool, gymnasium, open space, indoor game space. OP-1 committed to provide the amenities in the brochure and agreement for sale agreed. So long as OP-1 does not deny to provide the amenities, limitation for filing the complaint does not start running. Cause of action is continuing cause of action and arises day by day as held by Supreme Court in **Lata Construction Vs. Rameshchandra Ramaniklal Shah, (2000) 1 SCC 586, Meerut Development Authority Vs. M.K. Gupta, IV (2012) C.P.J. 12 (SC)** and **Samrudhi Co-operative Housing Society Ltd. Vs. Mumbai Mahalaxmi Construction Pvt. Ltd., A.I.R. 2022 SC 428**. The complaint is not barred by limitation as provided under the Consumer Protection Act, 1986.

7. The complainants have stated that the OPs realized from each buyers (i) Rs.35000/- for installation of transformer, & D.G. Set, (ii) Rs.35000/- for construction of sewage treatment plan, (iii) Rs.30000/- for construction of club/auditorium building, (iv) Rs.20000/- for maintenance and security and collectively realized (v) Rs.500000/- for medical dispensary, (vi) Rs.1500000/-, for swimming pool, (vii) Rs.1000000/-, for gymnasium, (viii) Rs.2000000/- for open space, (ix) Rs.2000000/- for indoor game space collectively. The OP-1 does not dispute above fact. Supreme Court in **Wg. Cadr. Arifur Rehman Khan Vs. DLF Southern Home Pvt. Ltd. (2020) 16 SCC 512** held that the builder is bound to provide the amenities and facilities as promised in the brochure and the agreement. OP-1 along with written arguments, filed the photos of (i) Temple. (ii) Electricity Transformer D.G. Set power back up, (iii) Indoor games and badminton court, (iv) gymnasium, (v) Water supply pipeline (vi) Sewage treatment plant, (vii) Security house & service, (viii) Green area and garden, (ix) Medical dispensary (x) club/auditorium building. Still swimming pool has not been constructed.

O R D E R

In view of the aforesaid discussions, the complaint is partly allowed with cost of Rs.200000/-. Opposite Party-1 is directed to construct swimming pool within three months from the date of this judgment and pay interest @6% per annum on the amount collectively realized for construction of swimming pool, from the date of realization till the date of construction of swimming pool in habitable condition.

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RAM SURAT RAM MAURYA
PRESIDING MEMBER

BHARATKUMAR PANDYA
MEMBER