



(70)

**ODISHA POLICE
ECONOMIC OFFENCES WING
BHUBANESWAR**

EOW CIRCULAR NO.01/2017

Sub: Investigation of cases against Real Estate Companies etc.

Large number of complaints of cheating by Real Estates Companies and builders are being received in EOW. Unfortunately, the existing resources at the disposal of EOW do not permit handling of such high volume of work load in an effective and qualitative manner. Hence, many such complaints are being transferred to districts with a request to register cases and investigate.

In order to ensure uniformity in the investigation and to facilitate collection of quality evidence, the following instructions are hereby issued which must be scrupulously followed by Investigating/Supervisory Officers during investigation of cases registered against proprietor/partner of Real Estate/builder firms :-

I. REGISTRATION AND INCORPORATION :-

- a. Registration of the Real Estate/builder firms/company with Registrar of Companies/Registrar of Societies, if any, may be verified.
- b. If registered under Companies Act, 1956, documents like Certificate of Incorporation, List of Directors, Form-32, Memorandum of Association & Articles of Association need to be obtained from the office of the Registrar of Companies in order to ascertain the details of registered office of the company, name & address of the

Directors, promoters, partners and the objectives of the company incorporated etc.

- c. If registered under Societies Act, verification should be made from the concerned District Registrar of Cooperative Societies/Registrar of Societies, Odisha, Bhubaneswar. The bye-laws of the Societies should also be verified and seized.
- d. In case of unincorporated bodies such as partnership firm, proprietary firms or individuals, their registration should be verified from the competent authority. The TIN number from the Commercial Tax Department should be collected to ascertain ownership. The returns filed against the TIN number may also be collected.
- e. PAN No. of the company/ firm/ individuals may be collected and the Income Tax returns filed against the PAN No. should be collected for scrutiny.

II. INVOLVEMENT OF ACCUSED PERSONS & OTHERS:-

- a. Involvement of Board of Directors/Partners/Proprietor in the commission of offence must be brought into record on the basis of oral and documentary evidence.
- b. Agents/Sales Officers/Sales Manager may be examined regarding various schemes of allotment of plots, flats etc. Their modus operandi and percentage of commission should also be ascertained.
- c. Details of all branch offices running under the banner of Real Estate Companies/firms may be ascertained.
- d. Names & address of the officials of the branches should be ascertained.

- 58
- e. Names of the Accountants and Chartered Accountants, if any, may be collected and they may be thoroughly examined regarding their knowledge of accounts, bank details, collection of public deposits from intending buyers etc.

III. VERIFICATION OF DOCUMENTS & SEIZURE :-

- a. Immediate search must be conducted in the official/ residential premises of the alleged company/ firm.
- b. Money receipts, agreements executed between the intending buyers and the company/proprietor of Real Estate firms etc. should be seized, verified and brought on record.
- c. The ROR pertaining to the land in question may be collected and verified from the office of concerned Tahasildar.
- d. Sale deed/Power of Attorney executed in favour of the Real Estate firm may be verified and collected from the concerned Sub-Registrar to ascertain about ownership of the land.
- e. In case the Real Estate firm has entered into an Agreement with the owner of the land to raise the project on a share basis, the documents of Agreement executed in this regard in original may be collected and the terms and conditions mentioned therein may be verified.
- f. The lay out plans in respect of constructions of flats/apartments of the project, approval of plan by the competent Development Authorities may be collected and verified.

- g. Clearance certificate issued by the Fire Officer in respect of the project building may be collected and verified.
- h. It may be ascertained if the builder/ real estate company had availed any loan from bank/ any financial institutions in respect of the project in question. The said loan file should be collected from bank/ financial institution and the documents examined. Legal opinion and valuation report in the loan file shall also be examined.
- i. Authorities concerned e.g. Registrar of Companies, Registrar of Cooperative Societies, District Sub-Registrars, Commercial Tax officials and Income Tax officials etc. should be examined to prove the documents available with them or issued by them. Their statement should also be recorded u/s 161 CrPC.
- j. Brochures, leaflets and advertisements inviting application from intending buyers should be seized and reflected in the CDs.
- k. Report in Form No. 1 submitted by the Financial Establishment (Real Estate firms/Builders) to the Collector/Superintendent of Police, as per Rule 9 (1) & 9 (3) of the Odisha Protection of Interest of Depositors (In Financial Establishment) Rule, 2013 must be seized and its contents verified.
- l. It may be verified if land was acquired by the Real Estate firms/builders prior to inviting applications from intending buyers and whether the land so acquired is adequate for allotment of land to all investors/buyers or not. This will prove the intention of the Real Estate firm.

IV. FREEZING OF BANK ACCOUNTS/ASSETS/PROPERTIES :-

- a. Immediate steps should be taken to freeze the bank accounts as well as personal accounts of Board of Directors/ Proprietors/Partners of the Real Estate Company/firm. Intimation in this connection should be given to the Court having jurisdiction. Concerned Bank Officials should be examined to prove the account details and their statements recorded.
- b. Details of cash in hand and the list of immovable & movable properties/assets in the name of Directors/Proprietor/Partners in the shape of land, building, vehicle, bank balance etc. should be prepared on the basis of inventory made during search. Relevant documents in respect of the properties must be obtained by requisitioning Director, OeSL, Tahasildar, District Sub-Registrar, Development Authorities/ Municipal Authorities, RTOs and banks etc. The details of such immovable/ movable assets may be dealt in case record.
- c. Books of accounts/balance sheet/copies of Income Tax returns of the Real Estate firms/builders as well as of all the Directors/Partners may be obtained along with their personal Income Tax returns and verified.
- d. Details of donation/gifts and loans given to different individuals/ organisations/ institutions must be obtained and verified.

V. BENAMI PROPERTY OF THE ACCUSED PERSONS :-

- a. Movable and immovable properties acquired by accused persons/company/firm out of the proceeds of crime in which

accused persons are found to be ostensible owners may be taken into the ambit of investigation treating the same as prima facie exclusive properties of the accused persons.

- b. Documents/ papers in respect of movable and immovable properties recorded in the name of other persons and found in possession of accused person/company/ firm should be treated as Benami properties of the accused persons and the investigation must proceed ahead accordingly.
- c. The persons whose names are found recorded in documents of the properties available in custody/ possession of the accused persons/ company/firm shall be taken into the purview of investigation as associates/ accomplice of accused person, depending on evidence.

VI. MONEY TRAIL :-

- a. Bank accounts to which money is found to have been transferred from the bank accounts of accused persons/company/ firm, must be verified during investigation of the case.
- b. Other bank accounts used, for passing over of the money with a view to conceal the same must also be verified to ascertain the nature of money trail.
- c. All such bank accounts may be frozen and verified during investigation to establish culpability of other persons aiding and assisting accused persons/ company/firm.
- d. Even the bank accounts of the accused persons/ company/firm with zero balance need to be frozen, otherwise those accounts may be

64

used by accused persons for further transactions during investigation/ trial of the case.

VII. RESTRICTION ON FOREIGN TOURS OF ACCUSED PERSONS :-

- a. Passports of Directors/Proprietors/Partners of the Real Estate firms/companies, if available during search, may be taken possession of and Regional Passport Officer (RPO) may be immediately moved for impounding the passport to restrict the movement of accused persons beyond India.
- b. Regional Passport Officer, Bhubaneswar may be contacted and details of the passport be obtained, if passport has not been physically seized.
- c. Courts having Jurisdiction may be moved to impose restrictions on the accused persons on their foreign travel till the trial is over.
- d. Details of foreign trips by the accused persons with amount spent on such tours may be brought on record during investigation.
- e. Details of transactions under Foreign Exchange Management Act, 1999, if any, must be obtained from banks in which Financial Establishment is having its account as well as from RBI so as to ascertain diversion of funds.

VIII. STATEMENT OF WITNESSES :-

- a. Contents of seized documents like brochures, leaflets, money receipts, agreements, sale deeds etc. should be reflected in the statements of witnesses particularly intending buyers, recorded u/s 161 CrPC. Statements of witnesses should be document based.

- 63
- b. Assurance to the intending buyers regarding handing over possession of plots/flats with its terms and conditions, deviation of the agreement, default in repaying the deposited amount etc. should be incorporated in statements u/s 161 CrPC.
 - c. List of intending buyers for acquiring plots/flats, amount paid etc. be prepared for objecting bail of accused persons in the Court of Law.

IX. SUBMISSION OF PROPOSAL TO THE GOVT. FOR ISSUANCE OF AD INTERIM ATTACHMENT ORDER U/S 3 OF OPID ACT, 2011 :-

For preparing proposal to the Govt. for issuance of Ad Interim Order of Attachment of properties, a detailed check list has been prepared, which is attached. Superintendents of Police/Dy. Commissioners of Police shall ensure that each information/document, as mentioned in the check list is reflected correctly in the proposal and the same shall be forwarded by the Superintendents of Police/Dy. Commissioners of Police himself mentioning brief facts of the case. The proposal may be sent to Finance Dept. with a copy to EOW, Bhubaneswar. To maintain uniformity, the proposal may be prepared in the format annexed herewith.

X. SUBMISSION OF FINAL FORM :-


While submitting charge sheet, the Financial Establishment concerned (Real Estate Company/firm) represented by its Director/Partner must be cited as accused as corporate entity along with its Directors/ Partners in their individual capacity.

XI. APPLICABILITY OF LAW :-

Investigations should be made keeping in the mind the ingredients of Section 420/406/467/468/471/120-B IPC & Sec. 6 of Odisha Protection of Interests of Depositors (in Financial Establishments) Act, 2011, which generally are applicable in an offence against the owners/partners of Real Estate/builder firms.

In the cases having nexus with real estate business, relevant definitions of "advertisement", "agreement for sale", "allottee" "apartment", "building", "company", "immovable properties", "interest", "prospectus", "real estate agent" and "real estate project" etc. as mentioned in Sec.2 of the Real Estate (Regulation & Development) Act, 2016 should be utilized by the Investigating Officers.

Investigating Officers are also advised to study the other useful provisions like "functions and duties of promoters" in Chapter-III and "rights and duties of allottee" in Chapter-IV of the Real Estate (Regulation & Development) Act, 2016 for proper investigation of such cases.


20/1/2017
(B.K.Sharma)

Special Director General of Police,
CID-Crime, Odisha.

Address: D-128, Museum Area, Bhubaneswar-14
Tele:0674-2311027, Fax:0674-2312129
e-mail:igpeow.odpol@gov.in

Memo No.

(46)
398 /EOW

Date 20/01/2017

Copy to

- All District SsP/Dy. Commissioners of Police, Bhubaneswar & Cuttack/SsRP, Rourkela & Cuttack/ SP CID CB, Cuttack
- Commissioner of Police, Bhubaneswar-Cuttack, Bhubaneswar/All Range IsGP/ Range DIsGP including IGP, Railways

for information and necessary action please.



20/1/2017

(B.K.Sharma)

Special Director General of Police,
CID- Crime Odisha.

Address: D-128, Museum Area, Bhubaneswar-14
Tele:0674-2311027, Fax:0674-2312129
e-mail:igpeow.odpol@gov.in

29

CHECKLIST FOR PROPOSAL FOR ATTACHMENT OF PROPERTIES OF ACCUSED FINANCIAL ESTABLISHMENT UNDER THE PROVISIONS OF SECTION 3 OF ODISHA PROTECTION OF INTERESTS OF DEPOSITORS (IN FINANCIAL ESTABLISHMENTS) ACT, 2011

1.	Name of the defaulting Financial Establishment (Real Estate Company/firm)
2.	Address of the Financial Establishment
3.	Details of other sister concern/branches of the Financial Establishment
4.	Address of sister concern/branches
5.	Name and residential address of accused Proprietors/Partners/MDs/Directors
6.	Total deposit collected by the Financial Establishment
7.	Number of complaints received from the investors/buyers against the Financial Establishment.
8.	Amount involved according to the complaints received so far.
9.	Police Station Case No. & Sec. of Law.
10.	Date of occurrence.
11.	Date of report.
12.	Whether the Real Estate firm/Builder has been registered with ROC/Registrar of Cooperative Society or proprietorship.
13.	Properties identified.
14.	Amount of cash recovered.
15.	Details of accounts of the accused persons held in various banks and details of accounts frozen such as FD/current deposit/saving deposit etc. which were held by the accused persons
16.	Details of movable properties purchased from and out of the deposits received from investors/buyers by the Real Estate Companies.
17.	Details of immovable properties purchased from and out of the deposits received from investors/buyers by the Real Estate Companies and misappropriated by the accused persons.
18.	Details of the immovable properties purchased in Benami names from and out of deposits received from the investors/buyers and misappropriated by the accused.
19.	Value of movable and immovable properties identified so far for attachment.
20.	Name of Mouza, Tahasil, Sub-Division, Police Station, District and State, Area of land of immovable properties.
21.	If the property available for attachment is not sufficient for repayment of the deposits, such other property of the said Financial Establishment/Promoter/ Partner/Manager of the Financial Establishment.
22.	Whether the accused persons had defrauded and cheated the investors.
23.	Whether the accused persons had defaulted the return of the investors' money.

24.	Whether any reasons that the said Financial Establishment is not likely to return the deposits and that the interest of depositors have to be protected.
25.	Stage of investigation of the case.

Superintendent of Police/Dy.
Commissioner of Police
District/UPD

FORMAT FOR SUBMISSION OF AD-INTERIM PROPOSAL

While forwarding the ad-interim proposal to the Govt., the gist of FIR, details of the company & its sister concern and fact revealed during investigation may be mentioned. The details of properties (immovable/ movable) may be submitted in tabular form in the proforma mentioned below:-

I. Details of immovable properties :-

Sl. No.	Name & address of the owner of the property	Description of property	District/ Tahasil/ Mouza/ Rev. Village where the property is located	Details of Land Schedule					Purchase of value of land available for attachment (in INR)	Supporting Documents
				Khata No.	Plot No.	Area in Acre	Area sold to investors/ depositors	Balance land available with the accused person/ accused company for attachment		
1	2	3	4	5	6	7	8	9	10	11

II. Details of Bank Accounts frozen :-

Sl. No.	Name of Bank/ Branch	Name of Account Holder	Account No. property is located	Amount Frozen	Supporting Documents
1	2	3	4	5	6

III. Details of any other movable properties :-

(details of vehicle/ cash/ gold and/or any other movable properties)

Sl. No.	Name & address of the owner of the property	Description of property	Value of the property	Supporting Documents
1	2	3	4	5