

**OREAT Appeal No.91 (T)/2020**

60)16.05.2025

The appeal is taken up through hybrid mode.

2) We have already heard Ms. A.Satapathy, learned counsel appearing for the appellant and Mr. J.Mohanty, learned counsel appearing for the respondent nos.1 and 2.

3) Aggrieved over the order dtd.24.2.2020 passed by the Odisha Real Estate Regulatory Authority, Bhubaneswar in Complaint Case No.151/2019, the appellant who was the respondent therein has filed this appeal against the respondents who were the complainants in the said complaint case. Prayer has been made by the appellant to set aside the impugned order dated 24.2.2020 in the interest of justice.

4) Facts and circumstances leading to the filing of this appeal are as follows :

On 17.8.2019 the present respondents as complainants filed the aforesaid complaint case stating that induced by the advertisement of the respondent-promoter (present appellant) for sale of duplex houses of the project "Keshari Plaza" Phase-II Housing Project at Jadupur, Bhubaneswar they applied for purchase of one of such houses. Accordingly, a sale agreement between the complainants and the respondent was executed and registered on 14.2.2014 as per which the complainants agreed to purchase the duplex house No.42 to be built up on an area of 1850 square feet (super built up area of 2000 square feet) for a consideration price of Rs.55,00,000/-. The respondent-promoter agreed to complete the project and make it fully functional and habitable within a period of 18 months from the date of the sale agreement and also to transfer the house to the complainants by execution and registration of sale deed within the said period. By 31.1.2019 the complainants had paid Rs.51,20,000/- to the respondent-promoter. It is alleged by

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the complainants that as there was no notable progress in the project work even after the stipulated period of 18 months they warned the respondent-promoter to take legal action and just to pacify them the respondent-promoter executed a sale deed transferring the ownership of the project land to the extent of Ac.0.039 i.e. 1715 square feet instead of the agreed 1850 square feet in their favour. The respondent-promoter also entered into a construction agreement with the complainants on 17.12.2014 undertaking to complete the construction work within a period of 18 months from the date of the said agreement but made the construction agreement a part of the original agreement for sale. It is alleged by the complainants that even after the construction agreement the respondent-promoter continued to avoid the completion of construction of the project thereby violating the agreement. Despite several correspondences by the complainants the respondent made no effort towards progress of the work. The complainants who had already paid about 90% of the cost of their property to the respondent-promoter were to pay only one instalment amounting to Rs.2,50,000/- at the time of delivery of possession, but being uncertain about the future of the project had no other alternative but to approach the Regulatory Authority with the complaint praying inter alia to direct the respondent to complete the project within 3 months, deliver its possession to the complainants as per the plan and size agreed in the sale agreement, pay them interest as per Section 18 of the Real Estate (Regulation & Development) Act, 2016 for the delay in completing the project, deduct the value of the reduced land area from the consideration amount and pay them compensation at the rate of Rs.8,000/- per month from 17.12.2014 till the date of delivery of possession of the house.

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Pursuant to the summons issued by the learned Regulatory Authority, the respondent appeared through its counsel on 16.9.2019 and filed show cause to the complaint petition on 5.11.2019 submitting that, the complaint is not maintainable for not impleading the promoter-company, which is a jurisdic person and also because complainants are not aggrieved persons under the Real Estate (Regulation & Development) Act, 2016. Denying the claim of the complainants that they are required to pay only one instalment amount of Rs.2,50,000/- to the respondent-promoter at the time of delivery of possession, the respondent-promoter has claimed that the sale agreement dated 14.2.2014 specifically provides that the purchaser is required to pay the total consideration amount before registration of the conveyance deed and delivery of possession of the duplex in question. However, the complainants have not yet paid the entire cost of the duplex. As regards the execution and registration of the sale deed and the construction agreement, both on 17.12.2014, the respondent-promoter has alleged that the same were done only on the insistence of the complainants who wanted the same only to avoid stamp duty and government fee. The respondent-promoter has asserted that, by not paying its legitimate claim i.e. the balance consideration money of the house, the complainants have prevented the respondent-promoter from discharging its obligation to complete the construction and giving them the possession of the house. Claiming that the entire work of the duplex of the complainants has been completed since months together and alleging that delay in delivering the possession of the duplex has occasioned only due to the failure of the complainants to perform their part of the contract i.e. non-payment of balance consideration money,

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money for the common facilities, applicable taxes and interests for the default payments and cost of the additional built up area, the respondent-promoter has prayed for dismissal of the complaint.

The learned Regulatory Authority on going through the pleadings of the parties and the documents filed only by the complainants and also hearing them on their respective pleas passed the impugned order as follows :

- i. The respondent is directed to complete the construction of the house and development of the common area of the project as per plan approved by BDA within 03 months from the date of receipt of this order.
- ii. Interest is held payable by the respondent to the complainants @ 10.5% per annum, compounded quarterly, on deposits of Rs.29,00,000/- with effect from 17.6.2016 till the date of actual delivery of the possession of the case house.
- iii. Similarly, interest is held payable to the complainants by the promoter, @ 10.5% per annum, compounded quarterly, on Rs. 7,00,000/- with effect from 14.09.2016, on Rs.3,00,000/- with effect from 7.02.2017, on Rs.2,00,000/- with effect from 28.7.2017, on Rs.2,00,000/- with effect from 13.12.2017 and on Rs.1,70,000/- with effect from 31.01.2019 till the date of actual delivery of the possession of the case house.
- iv. Interest is held payable by the complainants @ Rs.10.5% per annum, compounded quarterly, for the default period in respect of payment of instalments pointed out in the demand letters dated 26.08.2016, 13.04.2017, 2.11.2017, 11.11.2017, 29.9.2018 and 28.1.2019.
- v. The respondent is directed to first calculate the interest amount payable by him up to 31.1.2020 as per order at (ii) & (iii) above as well as interest payable by the complainants as per order at (iv) above.

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- vi. The respondent is directed to compute the balance amount, if any, payable by the complainants as per agreement after adjusting interest payable by the promoter upto 31.1.2020 as per order at (v) above and accordingly raise the demand, if any, to the complainants.
- vii. The complainants are directed to make the payment of balance amount, if any, as per order at (vi) above within 15 days of intimation by the respondent.
- viii. The respondent is directed to deliver the possession of the case house complete in all respect including development of common areas and facilities as per agreement latest within 15 days of completion of the project as per order at (i) above.
- ix. Interest payable by the promoter with effect from 01.02.2020 as per orders above shall be computed and payment settled within 15 days of delivery of possession of the case house.  
In case of failure of this order by either party, the party concerned may take appropriate action for enforcement of the order according law."

5) In the hearing of the appeal, the learned counsel for the appellant-promoter has contended that the learned Regulatory Authority has failed to appreciate that the construction of the house is linked to the payment of instalments and as the respondents have failed to make the payments as per the construction agreement, they are not entitled to get any equitable relief. It is further submitted that the respondents having made proportionate payment after completion of the construction, they are not entitled to get any interest on the money utilized in the construction of the house. It is further submitted that the construction of the house could not proceed only due to the non-payment of instalments by the respondents and therefore, they being the defaulters cannot be aggrieved persons under the RERA Act

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and also cannot be entitled to any relief for their own wrong. It is further submitted that the direction of the learned Regulatory Authority to the appellant to complete the construction of the house and the common areas within three months without any direction to the respondents to make proportionate payment as per the construction agreement is bad in law. Re-asserting the fact that the respondents having failed to perform their part of contract, are not entitled to enforce the construction agreement, the learned counsel for the appellant has termed the impugned order as illegal and erroneous and has made the prayer as mentioned earlier in paragraph-3.

6) On the other hand, the learned counsel for the respondents has submitted that though as per the construction agreement dtd. 17.12.2014 it is stipulated that the appellant shall complete the construction work within eighteen months from the date of agreement on payment for construction, the appellant did not give any intimation to the respondents with regard to the completion of the work within the stipulated period. The learned counsel for the respondents claimed that the appellant in spite of acknowledging an amount of Rs.36,00,000/- apart from cost of the alienated land from the respondents within the stipulated period did not start the construction work and therefore has no right to prefer this appeal challenging the order passed by the learned Regulatory Authority. Terming the appeal preferred by the appellant to be not maintainable in the eye of law, the learned counsel for the respondents has prayed to dismiss the same.

7) It is the respondents who only have relied on some documents in support of their claims and allegations in the complaint case. Anneuxre-1 is the copy of the Application Form which shows the respondents to have applied for the

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duplex No.42 with a super built up area of 2000 square feet in the project 'Keshari Plaza' near Dumduma, Jadupur, Bhubnaeswar for a consideration price of Rs.55,00,000/-.

Annexure-2 is the copy of the sale agreement dtd. 14.2.2014 between both the parties as per which the appellant had agreed to sell the duplex house no.42 in 'Keshari Plaza' Phase-II on a land of 2000 square feet super built up area with a land interest of 1850 square feet therein. It had also agreed to complete the construction work within a period of eighteen months from the date of the agreement. The appellant had also undertaken to complete the building in all respect and make it fully habitable within the stipulated period from the date of the agreement. Annexure-2 also shows that the consideration price of Rs.55,00,000/- had been agreed upon by both the parties.

Annexure-3 series are the money receipts which show that the appellant had received from the respondent no.1 an amount of Rs.16,00,000/- towards booking of the duplex no.42 vide cheque no.000027 dtd. 12.02.2014 and an amount of Rs.28,20,000/- (Rs.5,00,000/- vide cheque no. 000028 dtd. 20.2.2014, Rs.5,00,000/- vide cheque no.000029 dtd. 28.2.2014, Rs. 3,00,000/- vide cheque no.000042 dtd. 15.12.2014, Rs.7,00,000/- vide cheque no.000073 dtd. 15.09.2016, Rs.3,00,000/- vide cheque no.000034 dtd. 7.1.2017, Rs.2,00,000/- vide cheque no.000104 dt. 25.7.2017, Rs.1,50,000/- vide cheque no. 000119 dtd.13.12.2017 and Rs.1,70,000/- vide cheque no. 000152 dtd. 3.2.2019), all drawn on Andhra Bank, towards part payment in respect of the said duplex.

Copy of the sale deed dtd. 17.12.2014 (Annexure-4) shows the appellant to have sold sub-plot no.42 of Plot No.475/953 in Khata No.306/447 of Jadupur mouza,



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Bhubaneswar with an area of Ac.0.039 i.e. 1715 sq.ft. to the respondents for a consideration of an amount of Rs.8,97,000/-.

Copy of the agreement for construction dtd. 17.12.2014 (Annexure-5) shows the appointment of the appellant by the respondents as the agency to construct the duplex house bearing No.42 on sub Plot No.42 with a built up area of 2000 sq.ft. and land area of 1715 square feet for a consideration of Rs.55,00,000/- and the undertaking of the appellant to complete the construction work within a period of eighteen months from the date of execution of the agreement.

Annexure-6 is the copy of the e-mail correspondence dtd.25.4.2017 by the respondent no.1 to the appellant intimating it about his payment of an amount of Rs.3,00,000/- on 7.1.2017 towards completion of brick work. In the said correspondence, alleging that there was already a delay of 11 months in the completion of the project, the respondent no.1 had made a request to the appellant to resume the work of his duplex to enable him to pay the balance instalment amount.

Annexure-7 is the copy of the letter of the respondent no.1 to the appellant drawing its attention to its liability to pay compensation @ Rs.8000/- per month as per the construction agreement dtd. 17.12.2014 for the delay of 17 months in the completion of the project and requesting the appellant to adjust the compensation payable against the balance consideration amount to be paid by the respondents.

Annexure-8 is the copy of the letter dtd. 15.11.2018 of the respondent no.1 to the appellant reminding it again about the adjustment of the compensation against the balance consideration amount payable by him and his wife and requesting it to take early step for completion of the



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construction work of the duplex and to deliver its possession as early as possible.

Annexure-9 series are the copies of the letters of demand dt.26.8.2016, 13.4.2017, 2.11.2017, 11.11.2017, 29.9.2018 and 28.1.2019 wherein the appellant-promoter had asked the respondent no.1 to pay different amounts of the balance instalment.

From the above mentioned facts of Annexures-1,2,4 and 5, it is clear that two agreements between the parties were executed for the duplex house in question, the first one i.e. the agreement for sale on 14.02.2014 and the second one i.e. the construction agreement on 17.12.2014. It is also seen that in deviation to the first agreement dtd. 14.2.2014 wherein both the parties had agreed for transfer of the duplex house with the land on which it was to be constructed, they first entered into a sale transaction only in respect of the land vide the registered sale deed dtd. 17.12.2014 and then entered into the second agreement i.e. the construction agreement on the same day i.e. 17.12.2014. Deviation is also seen in respect of the area of the land (where on the duplex was to be constructed) in both the agreements as the same agreed to be 1850 square feet in the first agreement dtd. 14.2.2014 was reduced by 135 square feet i.e.1715 square feet in the second agreement dtd. 17.12.2014. No explanation is forthcoming as to under what circumstance there was a sale transaction for a land of area 1715 square feet instead of 1850 square feet and also an agreement for construction of the duplex on the land of reduced area for the same consideration price.

The appellant in its written objection in the complaint case has put the blame on the respondents for not delivering the possession of the duplex house to them on the categorical

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allegation that though the entire work of their duplex has already been completed since months together, it is the respondents who have failed to perform their part of contract by defaulting to make payments like the balance consideration amount of the duplex, payment in respect of common facilities and applicable taxes, interest for default in payments and cost of the additional built up area. However, the appellant has not filed the completion certificate in respect of the duplex in support of its claim. In absence of this document, the project cannot be held to have been completed. Apart from this, as per the construction agreement, the appellant was liable to deliver possession of the duplex house to the respondents within 18 months from the date of agreement i.e. by 16.6.2016, but the demand letter dtd.28.1.2019 (the latest correspondence in Annexure-9 series) shows that till 29.11.2018 only the flooring work of the duplex house had been completed. This correspondence further reveals that the appellant had asked for an amount of Rs.1,70,000/- from the respondent no.1 for the interest of the progress of the work. This makes it clear that the construction work of the duplex as on 28.1.2019 was still on and had not been completed. The project being not completed and no completion certificate having been issued in respect of it as on the date of commencement of the RERA Act i.e. 1.5.2017, the same certainly comes within its purview.

As regards the plea of the appellant that the delivery of possession of the duplex house has not been made only because the respondents have not made the payments towards the balance consideration money, the common facilities, applicable taxes, interest for default payments and cost of additional built up area, it is seen that it has not made clear as to what are the amounts payable towards common

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facilities, applicable taxes and the cost of the additional built up area, which the respondents are liable to pay. So far as the alleged non-payment of instalment dues within the stipulated time, it is necessary to go through the payment schedule of the construction agreement dtd.17.12.2014. Schedule-II of this agreement shows that the respondents had already paid an amount of Rs.29,00,000/- till the registration of the land and were to pay only the balance amount of Rs. 26,00,000/- out of the total agreed consideration amount of Rs.55,00,000/-. It is specifically provided in the payment schedule that the respondents were liable to pay Rs.7,00,000/- each on completion of G.F roof slab, F.F. roof slab and T.F/Brick work, an amount of Rs.2,50,000/- on completion of flooring and plastering and an equal amount together with other expenses 7 days before taking possession. It is also categorically mentioned in the Note below the payment schedule on the last page of the construction agreement that the second party i.e. the appellant-promoter shall intimate the first party i.e. the respondents regarding the completion of stage of work and seek for instalment amount giving a notice to pay the instalment within 7 days from the date of intimation about the completion of different stages of work. However, the second party i.e the appellant has not furnished any material to show that he had intimated the first party i.e respondents within the stipulated period i.e. from 17.12.2014 to 16.6.2016 regarding the completion of any of the stages of the work and had sought for instalment amount from them giving notice to pay the instalment within seven days from the date of intimation about the completion of the particular stage of work. The entire correspondences under Annexure-9 series wherein the appellant had made demand for payment of different amounts from the respondent no.1

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from 26.8.2016 to 28.1.2019 are seen to have been made after the stipulated date line i.e. 16.6.2016. This clearly shows that the appellant had not even completed the first stage of the construction linked to the payment schedule i.e. the G.F roof slab work by 16.6.2016. The first correspondence under Annexure-9 shows that the amount of Rs.7,00,000/- towards completion of F.F. roof slab work was asked for vide copy of the letter dtd. 26.8.2016, but it is not mentioned as to when the said work was completed. Copy of the letter dtd. 13.4.2017 under Annexure-9 shows that brick work was completed since 9.2.2017 and an amount of Rs.4,00,000/- towards the same was asked for. Copy of the letter dtd. 2.11.2017 under Annexure-9 though shows the demand for an amount of Rs.2,00,000/- but the completion of the stage of work and its date have not been mentioned therein. Same defect is also found in the copy of the correspondence dtd.11.11.2017 under Annexure-9 wherein a demand of Rs.1,50,000/- was made. The copy of the correspondence dtd.28.1.2019 under Annexure-9 shows that the flooring work of the duplex house of the respondents was completed since 29.11.2018 and a demand for Rs.1,70,000/- towards the said work was made therein. On the other hand, as per Annexure-3 series the respondents are found to have paid an amount of Rs.15,20,000/- within the period from 14.9.2016 to 31.1.2019. So, this amount out of the balance amount of Rs.26,00,000/- to be paid by the respondents as per the construction agreement has been paid certainly after the stipulated time line for the construction of the duplex. The appellant has challenged the impugned order mainly on the ground that when the respondents themselves are at default to pay the balance consideration money, they are not entitled to any relief for the delay in delivery of possession. In this regard,

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term no.6 of the construction agreement dtd. 17.12.2014 reveals that, in the event the first party i.e. the respondents fails, neglects or defaults to pay the amount by the stipulated time as per the payment schedule, the second party i.e. the appellant shall not be bound to complete the unit on behalf of the first party and in such contingency the second party shall have the right to claim and the first party shall have to pay penal interest @18% per annum for the sum due alongwith the rest instalment amount in time to complete the unit. However, as discussed above, the appellant has not furnished any material to show that it had intimated the respondents regarding the completion of any of the stages of the work within the stipulated time period. Of course, the appellant had informed the respondent no.1 about the completion of the F.F roof slab on 26.8.2016, completion of brick work on 13.4.2017 and flooring work on 28.1.2019, but the same were definitely after the stipulated period for completion of construction. As disclosed from Annexure-3 series, the respondents had paid Rs.7,00,000/- on 14.9.2016 and this appears to be in response to the demand for the said amount vide correspondence dtd. 26.8.2016 under Annexure-9. The payment of Rs.3,00,000/- on 7.2.2017 and Rs.2,00,000/- on 28.7.2017 under Annexure-3 by the respondents appear to be in response to the demand for Rs.4,00,000/- towards completion of brick work made by the appellant vide correspondence dtd.13.4.2017 under Annexure-9. The payment of Rs.1,50,000/- by the respondents on 13.12.2017 under Annexure-3 appears to have been made in response to the demand for the said amount made by the appellant vide correspondence dtd.11.11.2017 under Annexure-9. The payment of Rs.1,70,000/- by the respondents on 31.1.2019 under Annexure-3 appears to have been made in response to the demand for the said amount made by the

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appellant vide correspondence dtd. 28.1.2019 under Annexure-9. It is therefore quite clear that, whenever demand for payment of instalments have been made by the appellant, the respondents have paid the same within a reasonable time. So, the appellant itself having not intimated the respondents regarding the completion of any of the stages of the work as per payment schedule of the construction agreement within the stipulated period and also having not at all intimated about the completion of the ground floor roof slab work and plastering work at any time till the filing of the complaint case and the respondents having paid the amounts claimed in the demand letters under Annexure-9 within a reasonable time, it cannot be said that the respondents have failed to perform their part of contract by defaulting to make payments as per the construction agreement and hence are responsible for the delay in delivery of possession of their duplex by the appellant. The liability of the first party i.e. the respondents as per term no.6 of the construction agreement depends upon the liability of the second party i.e. the appellant as per the Note below the payment schedule and when the appellant has not discharged its liability, he is not entitled to claim the benefit under term no.6 of the construction agreement.

In view of the above findings, we are of the opinion that the learned Regulatory Authority has erroneously come to the conclusion that, there has been some delay on the part of the respondents (complainants) in making payment of instalments as revealed from the demand letters dtd.26.8.2016,13.4.2017, 2.11.2017, 11.11.2017,29.9.2018 and 28.4.2019 and accordingly the complainants are liable to pay interest to the promoter for the default period. Accordingly, the direction under sl. no.iv and that regarding calculation of interest payable by the complainants under sl.

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no.v of the operating portion of the impugned order dt. 24.2.2020 are hereby set aside.

The appellant having failed to complete the construction of the duplex and also unable to give its possession in accordance with the terms of the construction agreement dated 17.12.2014, of which the sale agreement dated 14.2.2014 is a part, by the date specified therein, shall be liable to pay interest to the respondents. As the respondents have not intended to withdraw from the project, they are entitled to be paid by the appellant, interest at the prescribed rate for every month of delay, till the handing over the possession of the duplex, in accordance with the proviso to Section 18 (1) (b) of the RERA Act.

It is seen that directions have been made to the appellant to pay compound interest on the deposits to the respondents in sl. no.ii and iii of the operating portion of the impugned order. However, as per Rule 16 of the Odisha Real Estate (Regulation & Development) Rules, 2017, the rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest Marginal Cost of Lending Rate plus two percent. No where payment of compound interest has been prescribed to either of the parties. So, the order with regard to payment of compound interest is modified to that of simple interest and the rate of interest payable shall be as per the aforesaid Rule as on the date of the impugned order.

8. Thus, from the discussions made in the preceding paragraph, we are of the considered opinion that, the directions of the learned Authority regarding delivery of possession of the duplex house by the appellant to the respondents and its liability to pay them interest on their



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payments for the delay in said delivery of possession suffer from no illegality and are therefore confirmed.

In the result, the appeal being devoid of any merit stands dismissed on contest against the respondents with the above modifications.

Accounts officer is directed to calculate the liability of the appellant-promoter in view of the above order and refund the amount to the respondents out of the statutory amount deposited by the appellant-promoter on proper application and identification. Balance amount, if any, be returned to the appellant.

Send an authentic copy of this order alongwith the record of the complaint case to the learned Regulatory Authority for information and necessary action. Also send a copy of this order each to the appellant and the respondents.

Justice P.Patnaik  
Chairperson

Shri S.K.Rajguru  
(Judicial Member)

Dr.B.K.Das  
(Tech./Admn. Member)

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