

OREAT Appeal No.11/2021

53)16.05.2025

The appeal is taken up through hybrid mode.

2) We have already heard Mr. S.Mishra, learned counsel appearing for the appellant, Ms. A.Satapathy, learned counsel appearing for the respondent no.1 and Mr. S.S.Mohapatra, advocate appearing on behalf of Mr. P.S.Nayak, learned counsel for the respondent no.2-Authority.

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 appellants who were the complainants therein have filed this appeal against the respondent no.1 who was also the respondent in the said complaint case. Respondent no.2 is the learned Regulatory Authority who has passed the impugned order. Prayer has been made by the appellants 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 appellants as complainants filed the aforesaid complaint case stating that induced by the advertisement of the respondent-promoter (present respondent no.1) 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 a (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

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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 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 no.1 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-promoter 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

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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.

Pursuant to the summons issued by the learned Regulatory Authority, the respondent-promoter 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

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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, money for the common facilities, applicable taxes and interests for the default payments and the 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.

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- 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.
- 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 appellants has submitted that though the respondent no.1 had agreed for construction of the duplex house on a land of an area of 1850 square feet but while executing the Regd. Sale Deed dtd.17.12.2014, it mentioned the area of the

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alienated land therein as 1715 square feet, thereby reducing an area of 135 square feet from the land under the sale agreement dtd. 14.2.2014. Drawing attention of this Tribunal to the fact that there are omissions and mistakes apparent on the face of the record and asserting that the learned Regulatory Authority has committed gross illegality in passing the impugned order, the learned counsel for the appellants has made the prayer as mentioned earlier in paragraph-3.

6) On the other hand, the learned counsel for respondent no.1 has submitted that, the appeal is not maintainable for suppression of material facts, absence of cause of action and the appellants being not aggrieved persons under the RERA Act and hence is liable to be dismissed.

7) It is the appellants who only have relied on some documents in support of their claims and allegations in the complaint case. Annexure-1 is the copy of the Application Form which shows the appellants to have applied for the 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 respondent no.1 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 respondent no.1 had also undertaken to complete the building in all respect and make it fully habitable within the

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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 respondent no.1 had received from the appellant 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 respondent no.1 to have sold sub-plot no.42 of plot no.475/953 in Khata No.306/447 of Jadupur mouza, Bhubaneswar with an area of Ac.0.039 i.e. 1715 sq.ft. to the appellants 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 respondent no.1 by the appellants 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 respondent no.1 to complete the construction work within a period of eighteen months from the date of execution of the agreement.

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Annexure-6 is the copy of the e-mail correspondence dtd.25.4.2017 by the appellant no.1 to the respondent no.1 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 appellant no.1 had made a request to the respondent no.1 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 appellant no.1 to the respondent no.1 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 respondent no.1 to adjust the compensation payable against the balance consideration amount to be paid by the appellants.

Annexure-8 is the copy of the letter dtd. 15.11.2018 of the appellant no.1 to the respondent no.1 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 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 respondent no.1-promoter had asked the appellant no.1 to pay different amounts of the balance instalment.

The respondent no.1 in its written objection in the complaint case has put the blame on the appellants for not

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delivering the possession of the duplex house to them on the categorical allegation that though the entire work of their duplex has already been completed since months together, it is the appellants 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 respondent no.1 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 respondent no.1 was liable to deliver possession of the duplex house to the appellants 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 respondent no.1 had asked for an amount of Rs.1,70,000/- from the appellant 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.

From the above mentioned facts of Annexure-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

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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 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 of 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.

As mentioned earlier in paragraph-5, the appellants in this appeal have challenged the impugned order on the only ground that, the respondent no.1 having sold 1715 sq.ft. area of land to them vide the sale deed dt. 17.12.2014 and also having executed an agreement on the same day for construction of the duplex on the said area, has violated the earlier agreement dtd.14.2.2014 to sell the duplex house on a land area of 1850 sq. ft. and hence the impugned order of the Regulatory Authority holding the complainants to have consented to the reduction of area in the second agreement for the same consideration price and for that reason to have no ground to claim proportionate reduction of cost on account of decrease in the plot area, is illegal. However, as already mentioned earlier, no explanation has been offered as to what was the circumstance behind the reduction of 135 sq. ft. area

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from the initially agreed area of 1850 sq. feet of the duplex and how the appellants agreed to it for the same consideration price. May be to ensure their ownership at least over a land for an early construction of the duplex house after the earlier agreement failed to bring the desired result the appellants had entered into the sale transaction of the duplex land and construction agreement on 17.12.2014 agreeing to a land of lesser area than the earlier agreed one, but their agreeing to pay the same consideration price i.e. Rs.55,00,000/- for the duplex house in the agreement dated 17.12.2014 inspite of a reduction of 135 sq. feet in its land area when the sale agreement dtd. 14.02.2014 relating to the bigger area of land is stated to be a part of the construction agreement dtd. 17.12.2014, defies all logic and is certainly an unfair aspect of the agreement dated 17.12.2014. In the case of **Pioneer Urban Land & Infrastructure Vrs. Govindan Raghavan reported in 2019 SCC OnLine Sc-458**, the Hon'ble Apex Court have held that, "A term of a contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted line, on a contract framed by the builder. Xxx xxx xxx. The incorporation of one sided, unfair and unreasonable clauses in an agreement constitutes an unfair trade practice as per Section 2 (r) of the Consumer Protection Act, 1986. Xxx xxx xxx. The term of the construction agreement dated 17.12.2014 relating to the fixation of consideration price at Rs.55,00,000/- for the 1715 Sq. feet area appears to be unfair and unreasonable. Hence, the proportionate amount of the value of the reduced land is liable to be deducted from the balance consideration amount payable by the appellants to the respondent no.1.

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8. Thus, from the detailed discussions made in the preceding paragraph, we are of the considered opinion that, in view of the unfair fixation of the same consideration price in spite of a reduction of 135 sq. feet in the area of the duplex land sold to the appellants by the respondent no.1, the appellants are entitled to deduct the price of the said reduced area from the balance consideration amount payable by them to the respondent no.1.

In the result, the appeal is allowed on contest against the respondent no.1.

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 appellants and respondent no.1.

Justice P.Patnaik
Chairperson

Shri S.K.Rajguru
(Judicial Member)

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