

OREAT Appeal No.88/2021

42) 4.04.2025

The appeal is taken up through hybrid mode.

2) Heard Mr.N.Barik, learned counsel appearing for the appellant, Mr. S.K.Gajendra, learned counsel appearing for the respondent no.1 and Mr. S.S.Swain, advocate appearing on behalf of Mr. B.P.Tripathy, learned senior counsel for the respondent no.2-Authority.

3) The instant appeal has been preferred by the appellant challenging the impugned order dtd.22.01.2021 passed in Complaint Case No.215 of 2018, wherein the learned Authority has been pleased to pass the following orders :

“The case is allowed on contest against the respondent without cost. The respondent is directed to hand over possession of Flat No.202 (3 BHK) in the 2<sup>nd</sup> floor, “Srabani Lakeview” Apartment situated at Beherasahi, Unit-17, Nayapalli, Bhubaneswar completed in all respect as per agreement dated 5.04.2013 to the complainant on receiving the balance consideration amount of Rs.5,10,000/- (rupees five lakhs ten thousand).

The respondent is further directed to pay interest @ 10.5% per annum as per Rule 16 of Odisha Real Estate (Regulation & Development) Rule, 2017 on Rs.5,50,000/- from 5.4.2013 and on Rs.24,40,000/- (Rupees twenty four lakhs forty thousand) from 23.4.2013 till the date of actual delivery of possession of the Flat in favour of the complainant.”

Though the appellant has not challenged the entire portion of the impugned order, but he has preferred the appeal challenging the first part of the impugned order wherein the learned Authority has been pleased to direct the appellant to pay Rs.5,10,000/-. Apart from that the

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appellant has sought for a direction to the respondent to pay the litigation expenses of Rs.30,000/-.

4) The appellant being the complainant has filed the Complaint Case No.215 of 2018 on the ground that the complainant had purchased flat No.202, 3 BHK, 2<sup>nd</sup> Floor in Srabani Lake View Apartment situated at Beherasahi, Nayapalli, Bhubaneswar for consideration of Rs.35,00,000/- and an agreement to that effect has been executed on 5.04.2013 on payment of Rs.5,50,000/-. Further, the complainant had paid Rs. 24,40,000/- on 23.4.2013 and hence an amount of Rs. 29,90,000/- has been paid by the complainant to the respondent since April, 2013. As per the agreement the flat was to be handed over within 24 months from the date of execution of the agreement. Since the respondent despite several requests of the appellant failed to complete the project as per the agreement within the stipulated period, the appellant was constrained to file ICC No.2790/2017 in the Court of SDJM, Bhubaneswar who inter alia directed for investigation of the matter by the Naypalli police station. After registration of a case, a compromise was effected between the parties on 6.03.2018 and per the compromise the respondent agreed to hand over possession of the flat in question by 1<sup>st</sup> week of August, 2018 otherwise the respondent is to pay Rs.80,00,000/- to the appellant failing which the respondent/promoter will buy the unfurnished flat in question from the allottee @ Rs.88,00,000/- without any further claim. Since the respondent did not take any

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proactive step for settlement of the matter, the appellant was constrained to approach the learned Authority in Complaint Case No.215/2018 seeking the following reliefs:

i)To direct the respondent to give the possession of Flat No.202, 3 BHK flat in the 2<sup>nd</sup> floor of Sarbani Lake View Apartment,

ii)To pass an order for compensation for delay to complete the flat to the tune of Rs.14,40,000/-.

iii)And to pass any order/orders as the Hon'ble Court deems fit and proper.

5) The respondent filed the show cause reply in the complaint case challenging the maintainability of the complaint. In the show cause, it has been stated that the learned Authority may not interfere with the matter as dispute relates to the year 2013 when the sale deed has been executed in favour of the complainant, even the learned Authority was not established by then. Further it has been stated in the show cause that since the appellant has preferred a case u/s 420 IPC alongwith other offences against the present respondent and the said matter is subjudice before the SDJM, Bhubaneswar, the complaint petition was unwarranted and uncalled for and two parallel proceeding cannot run simultaneously. Accordingly, it is prayed to dismiss the complaint.

6) From the inter se pleadings of the parties, the following five issues have been framed for consideration by the learned Authority.

i)Whether the case is maintainable in law?

ii)Whether the complainant has cause of action to file this case?

iii)Whether the case is barred by limitation?

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iv)Whether the complainant has paid Rs.29,90,000/- as against the total consideration amount of Rs.35,00,000/- to the respondent for purchasing of Flat No.202 (3 BHK), 2<sup>nd</sup> Floor, Srabani Lake View Apartment situated at Beherasahi, Unit-17, Nayapalli, Bhubaneswar?

v)Whether the respondent is liable to hand over possession of the flat to the complainant and to pay compensation for the delay he has caused to complete the project and to hand over possession?

The learned Authority after discussing each of

the points has rendered the order dtd.20.1.2021 which is being assailed in the present instant appeal to the limited extent as has been mentioned in para-2.

7) Mr. N.Barik, learned counsel for the appellant during course of argument reiterating the facts mentioned in the complaint case submitted that an agreement dt. 5.4.2013 has been executed between the complainant and the respondent for purchase of flat no.202, 3 BHK, 2<sup>nd</sup> Floor, Srabani Lake View Apartment, Beherasahi, Nayapalli, Bhubaneswar for a consideration of Rs. 35,00,000/-. Out of the said amount, the complainant has paid Rs. 5,50,000/- on 5.4.2013 and Rs.24,40,000/- on 23.4.2013, on which date a sale deed was executed. Learned counsel for the appellant submitted as the flat in question was not handed over to the appellant within the 24 months, the appellant filed ICC No.2790/2017 before the learned SDJM, Bhubaneswar. As per the compromise, the respondent no.1/promoter has to hand over the flat in question to the appellant in the 1<sup>st</sup> week of August, 2018 on payment of Rs.5,50,000/- otherwise he has to pay Rs. 80,00,000/- to the complainant. In failure of the compromise, the

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appellant filed Complaint case No.215/2018 wherein the learned Authority has passed the impugned order on dt.22.1.2021 as mentioned in para-2. The appellant assailed the impugned order contending therein that the order dtd 22.1.2021 is ex facie illegal and palpably wrong on the ground that the learned Authority instead of setting off the amount has directed that the appellant to pay a sum of Rs.5,10,000/-. Learned counsel for the appellant further submitted that the impugned order suffers from patent illegality and is manifestly erroneous so far as the direction to the appellant to pay Rs.5,10,000/- is concerned. Learned counsel for the appellant further submits that apart from aforesaid reliefs, the appellant is entitled to litigation expenses of Rs.30,000/-.

8) Referring to the show cause, learned counsel for the respondent no.1 submits that the appeal is not maintainable as it is barred by limitation and the project in question is a completed project since 2013 i.e. before commencement of the RERA Act. It is further submitted that after several demands for instalments by respondent for payment of the balance consideration of Rs.5,10,000/-, the appellant did not pay the same till date. It is further submitted that the appellant has only paid Rs.24,40,000/- and the appellant has not paid Rs.5,50,000/- to the respondent no.1/promoter, the respondent no.1 issued the money receipt of the said amount. It is further submitted that the appellant has filed execution case No.18/2021 for compliance of the

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order dt.22.1.2021 passed in Complaint Case No.215 of 2018 where the respondent no.1 has already filed his show cause. Hence, it is prayed for dismissal of the appeal as the order of the learned Authority is just and proper on the part on which the appellant preferred this appeal and does not require any interference.

9) On perusal of the materials available on record, it is found that respondent no.1/promoter and the appellant entered into a sale agreement on dt.5.4.2013 wherein the appellant agreed to purchase Flat No.202 (3 BHK) in the 2<sup>nd</sup> floor, "Srabani Lakeview" Apartment situated at Beherasahi, Unit-17, Nayapalli, Bhubaneswar for a consideration of Rs.35,00,000/-, out of which Rs.5,50,000/- paid on 5.4.2013 and to that effect a money receipt has been issued by the respondent no.1/promoter in favour of the appellant with a condition to hand over the said flat within 24 months. Further, a sale deed was executed on 23.4.2013 in respect of the said flat by the respondent no.1 in favour of the appellant on receipt of further amount of Rs.24,40,000/-. On failure to hand over the flat in time, the matter was agitated in the Criminal court of law wherein another compromise has been effected, but of no avail. As a result of which the appellant was constrained to prefer a complaint before the learned Authority. It is the admitted fact by the both the parties that as per agreement dtd.5.04.2013, the flat no.202 is to be handed over to the allottee within the maximum schedule period of 24 months, which is evident from para-16 of the said agreement. The

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impugned order dt. 22.01.2021 is also clear that the hand-over of the flat has not been done till date. Hence, the averment of the respondent that the appellant is in peaceful possession of the flat since 2013 cast serious doubt in absence of delivery of possession of the same to him. As regards the applicability of the RERA Act, Section 3 (1) of it provides that application by the promoter for registration of the projects within three months from the commencement of the Act is necessary which are ongoing on the date of commencement of the Act. In the case of M/s. Newtech Promoters and Developers Pvt. Ltd. Vrs. State of U.P. and others decided on 11.11.2021, the Hon'ble Supreme Court of India has made it clear that, all ongoing projects that commenced prior to the Act and in respect to which completion certificate has not been issued are covered under this Act. No document i.e. completion certificate or occupancy certificate has been filed by the respondent no.1/promoter in respect of the project to support of his claim that the said project is a completed project before the commencement of the RERA Act w.e.f. 1.5.2017. Hence, the plea advanced by the respondent no.1 that the learned authority has no jurisdiction to entertain the appeal as the project is not coming within the ambit of RERA Act, cannot be sustained.

So far as the point raised by the learned counsel for the respondent that the appeal is barred by limitation, on perusal of the order sheet dtd.3.01.2022, it is found that a petition vide I.A. no.425/2021 has been

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filed by the appellant to condone the delay in filing the appeal on the ground that his family members were suffering from Covid-19 and the appellant was residing at Balasore for which he could not contact his counsel. This Tribunal vide order 3.01.2022 condoned the delay occasioned in filing the appeal and the said order has not ever been challenged by the respondent no.1. Hence, the plea of the respondent no.1/promoter that the appeal is barred by limitation is unacceptable.

So far as the plea of the respondent no.1 that he has received only Rs.24,40,000/- from the allottee and the promoter has not received Rs.5,50,000/- and on good faith he had issued the money receipt, the said plea does not sound good, as the money receipt No. 262 dt. 5.4.2013 (attached to the complaint case) clearly proves that an amount of Rs.5,50,000/- has been received from the appellant against SR Lake view Flat No.202. The contention of the appellant that he has paid the said amount on the date of agreement dt.5.4.2013 towards booking amount of the flat is also supported by the documentary evidence that the agreement executed between the parties. Schedule B to the agreement dt. 5.4.2013 attached to the complainant case clearly shows that the an amount of Rs.5,50,000/- has to be paid as booking amount at the time of agreement.

10) We have heard learned counsel for the respective parties and perused the documents and after having bestowed our anxious view to the rivalised submissions, we find that the present appellant



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preferred AOCC No.04 of 2023 for compensation wherein the learned Adjudicating Officer vide order dt. 3.10.2023 has granted Rs.5,00,000/- as compensation to be payable to the appellant by the respondent/promoter. There is no evidence on record that any appeal has been preferred against the said order and accordingly the said order has attained its finality. Apart from that the respondent no.1 though has challenged the impugned order dt. 21.1.2022 passed in Complaint Case No.215/2018 in OREAT Appeal No.12/2021 but after its dismissal for default on 18.02.2022, the appellant (respondent no.1 of this appeal) has not taken any step for restoration of the said appeal, presumable on the ground that for maintainability of the said appeal, the present respondent is supposed to deposit the statutory amount, which he has conveniently avoided to take any step to proceed in the said appeal. From the narration of factual aspects, it is crystal clear that the respondent no.1 on some pretext or other has tried to avoid handing over possession of the flat in question. This Tribunal does not appreciate such type of conduct of the promoter rather strongly deprecate the wrongful action of the respondent no.1/promoter. The appellant through this appeal has prayed to exempt him from payment of the balance consideration amount of Rs.5,10,000/- which has been directed to pay by the learned Authority in the impugned order, but the agreement dt. 5.04.2013 is clear that the second party agreed to pay Rs.35,00,000/- towards the full consideration amount of the flat in

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question. The learned Authority vide the impugned order has been pleased to direct the respondent to hand over possession of Flat in question as per agreement dated 5.04.2013 to the complainant on receiving the balance consideration amount of Rs.5,10,000/- (rupees five lakhs ten thousand). Further, the appellant has been awarded compensation of Rs.5,00,000/- to be paid by the promoter/respondent no.1 towards compensation in. AOCC No.04 of 2023 vide order dt. 3.10.2023 as the promoter deviated the terms of the agreement. Hence, the appellant ought to pay the balance consideration amount which is almost equivalent to the compensation amount awarded in his favour. There is no provision enshrined in the RERA Act to exempt the allottee from payment of the balance consideration amount as agreed upon. In order to get the delivery possession of the flat in question, the appellant has to pay the balance consideration amount as per the agreement so also as has been directed in the impugned order. The allottee cannot be escaped from his liability i.e. payment of the consideration amount. In this regard, the impugned order is also clear that due to the delay caused in handing over possession of the flat, the promoter is liable to pay interest on the amount paid by the allottee, for which the learned Authority also directed the respondent to pay interest @ 10.5% per annum as per Rule 16 of Odisha Real Estate (Regulation & Development) Rule, 2017 on Rs.5,50,000/- from 5.4.2013 and on Rs.24,40,000/- (Rupees twenty four lakhs forty

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thousand) from 23.4.2013 till the date of actual delivery of possession of the Flat in favour of the complainant. No error has been committed by the learned Authority while delving into the matter and in passing the impugned order.

11) In view of the discussions made herein above, we do found the impugned order dt. 22.1.2021 passed in Complaint Case No.215 of 2018 is neither patently illegal nor is manifestly erroneous to warrant our interference. But we are of the view that the direction to the respondent to hand over the possession of the flat No.202 (3 BHK) in the 2<sup>nd</sup> floor, 'Srabani Lakeview" Apartment, situated at Beherashai, Nayapalli, Bhubaneswar completed in all respect as per agreement dtd.5.4.2013 to the complainant on receiving the balance consideration amount of Rs.5,10,000/- is justified in the facts. Accordingly, we hold that the present appeal being devoid of any merit is liable to be dismissed. Accordingly, the appeal is dismissed.

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

Justice P.Patnaik  
Chairperson

Shri S.K.Rajguru  
(Judicial Member)

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

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