

**OREAT Appeal No.78/2022**

26) 19.03.2025

The appeal is taken up through hybrid mode.

2) Already heard Mr. D.K.Panda, learned counsel appearing for the appellants and Mr.P.P.Sahoo, advocate appearing on behalf of Mr. B.P.Tripathy, learned senior counsel for the respondent no.2. Respondent no.1 has not made his appearance in the appeal inspite of being duly served upon the summons and has been set ex parte.

3) Aggrieved over the order dated 17.05.2022 passed by the Odisha Real Estate Regulatory Authority, Bhubaneswar (hereinafter referred to as the learned Authority) in Complaint Case No.259 of 2019, the appellants, who were the respondents in the said case have filed this appeal against the respondents. The respondent no.1 of this appeal was the complainant in the complaint case and the respondent no.2 is the learned Authority who has passed the impugned order. Prayer has been made in this appeal to set aside the impugned order dtd. 17.5.2022 and to enhance the amount payable by the respondent no.1 to the appellants towards balance consideration amount.

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

On 19.11.2019 the respondent no.1 as complainant filed the aforesaid complaint case against the present appellants submitting that the respondents no.2 and 3 had started a residential housing complex namely-'The Arundhati Vihar' at Jagasara, Po-Kaimatia, PS-Jatni, Dist-Khordha. The appellants no.2 and 3 induced the respondent no.1 to book a house in the aforesaid project assuring him that the project with all types of ultra modern facilities and high standard amenities required for a modern day living shall be made

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ready within a maximum period of 18 months. The respondent no.1 was also shown the approved plan of the project claimed to have been obtained from the appropriate authority and being induced by the offer made by the appellants, he on 16.10.2010 booked a simplex house with a total area of 2000 square feet including built up area of 1041 square feet to be built on sub plot no.577. The respondent no.1 paid an amount of Rs.2,15,000/- towards booking charge to the appellants vide cheque no.702947 dtd. 15.12.2010 and subsequently the appellants issued allotment letter in respect of the aforesaid simplex house to him on 9.2.2011. The consideration price for the simplex house was fixed at Rs.20,00,000/- . Some days thereafter the appellants on the plea of lesser tax burden on the respondent no.1 made him agree to the transfer of the aforesaid land and accordingly sale deed in respect of the sub plot no.577 was executed and registered in the name of the respondent no.1 on 18.2.2011. Later the appellants started construction of the simplex house of the respondent no.1, but the quality of construction materials and workmanship were substandard. Two years thereafter when the house was not completed and the respondent no.1 drew the attention of the appellants on a number of occasions to complete the house and to hand over the same to him, the appellants inspite assuring him to complete the house within a few weeks did not even start the construction of the house. After a period of about four years, the respondent no.1 came to know that the appellants had deliberately stopped the construction work of the residential project inspite of taking a total amount of Rs.13,00,000/- (booking charge and instalments) from him. On visit to the site the respondent no.1 found that the appellants had deliberately stopped the construction work

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without even initiating common amenities like the pucca black topped road from the main road to the house in question, the water supply units, electricity connections and boundary wall with gate around the project. Though the respondent no.1 asked the appellants to start construction of the house with the aforesaid common amenities and reminded them from time to time about the same, the appellants failed to carry out their promise due to their negligent attitude. The respondent no.1 was therefore compelled to issue a legal notice to the appellants on 12.8.2015 repeating his earlier request to start the construction of the residential project. Subsequently, vide e-mail dtd. 3.8.2019 the appellants intimated the respondent no.1 that the house will be handed over to him within seven days but the respondent no.1 asked them to refund back his amount given for the house in question. Subsequently, the respondent no.1 came to know that the appellants had sold him the land in question without even having the ownership right over the same and that the land can never be recorded in his name inspite of waiting for a long period like nine years. When the construction work of his house did not resume under the aforesaid circumstances and he was convinced that he was cheated by the appellants, the respondent no.1 had no other alternative but to institute the aforesaid complaint case praying inter alia to direct the appellants to refund back the entire amount of Rs.13,00,000/- taken from him and to pay interest on the said amount w.e.f. 13.12.2010 i.e. the day of payment of advance by the respondent no.1 and also compensation to him for committing breach of terms and conditions of the agreement by abandoning the project, to pay him an amount of Rs.2,00,000/- for his mental agony and

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harassment and also an amount of Rs.60,000/- towards litigation cost.

Pursuant to the summons issued to them, the appellants appeared in the complaint case through their counsel and filed their written show cause wherein they assailed the maintainability of the complaint case for being without any cause of action and merit. Maintainability of the complaint case was also challenged on the ground that the project had commenced in the year 2010 which is much prior to the coming into force of the RERA Act in the year 2017. The appellants have admitted the agreement for sale relating to the simplex house in question entered into between them and the respondent no.1 on 10.12.2010 and the payment of an amount of Rs.13,00,000/- including the booking charge of Rs.2,15,000/- by the respondent no.1 to them so far. They have also admitted the execution and registration of the sale deed in respect of the land in question i.e. sub plot no.577 with an area of 2000 square feet in favour of the respondent no.1, but according to them the date of execution and registration of the sale deed was made on 21.2.2011. The appellants have denied any objection of the respondent no.1 to the quality of the work at any point of time and have claimed that the release of the amount in their favour was only due to the satisfaction of respondent no.1 about the quality of work after his visit of the construction site. Asserting that there is absolutely no dispute between them and the respondent no.1 relating to the project, the appellants have claimed that only when the respondent no.1 did not pay the instalments and even did not respond to their repeated requests for payment of the same while construction work was in progress, they had no other alternative but to stop the

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construction work. The appellants have categorically claimed that they have completed the construction work of the simplex house in question upto roof level. It is further claimed by them that the agreed cost of the house is Rs.21,50,000/- and the respondent no.1 having so far paid an amount of Rs.13,00,000/- is liable to pay the balance amount of Rs.8,50,000/-. Further claiming that the respondent no.1 is enjoying peaceful possession over the land in question and also the construction thereon, the appellants have alleged that the respondent no.1 is playing foul to avoid the outstanding payment by filing the complaint case and hence he is liable to pay compensation to them for their physical, mental and financial sufferings. Suggesting the learned Authority to appoint an independent committee to visit the spot, enquire the matter and submit a report for kind perusal of the learned Authority, the appellants have submitted that they are ready to refund back the amount of Rs.13,00,000/- to the respondent no.1 if he will release the documents from the LIC Housing Finance Ltd. before whom the property has been mortgaged to avail loan for the construction work and also transfer back the land in question to them. With the aforesaid submissions, the appellants prayed for dismissal of the complaint case with imposition of costs.

Basing on the pleadings of the parties, the learned Authority framed four points for adjudication and after hearing the learned counsels for both the parties and going through the documents filed only by the respondent no.1 (complainant in the complaint case) passed the impugned order dtd.17.5.2022 directing the appellants (respondents in the complaint case) to complete the construction of the house in question within a period of two months, if the respondent no.1

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pays the balance consideration amount of Rs.7,00,000/- to them with a further direction to the parties to comply with the order making it clear that in the event of their failure, the same shall be enforced as per law.

5) In the hearing of the appeal, the learned counsel for the appellants have assailed the impugned order of the learned Authority contending that the complaint case is not at all maintainable as the project does not come under the purview of the RERA Act and also for want of cause of action. As regards the claim of non-applicability of the RERA Act, the learned counsel has drawn the attention of this Tribunal to the fact that the RERA Act came into force in the year 2016 and the ORERA Rules came into force in the year 2017 but the project has already commenced in the year 2010. It is further contended that the appellants have always complied their obligations but it is the respondent no.1 who has time and again failed to comply his commitment to pay the agreed consideration money in full inspite of repeated approaches by the appellants. Reasserting that they have never violated the terms and conditions of the sale agreement and have constructed the house in question upto roof level, the appellants have undertaken that they are ready and willing to complete the construction work of the house in question in the event of payment of the rest of the consideration money as per the present market rate which according to them is Rs.8,50,000/-. With the aforesaid submissions, the appellants have made the prayer as already mentioned in para-3.

6) The booking of the simplex house by the respondent no.1 on payment of Rs.2,15,000/- to the appellants vide cheque No.702947 dtd. 15.12.2010, the allotment of the said house by the appellants in favour of the

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respondent no.1 vide allotment letter dtd. 9.2.2011, the fixation of the consideration price of the house at Rs.20,00,000/, the sale of the project land by the appellants to the respondent no.1 vide registered sale deed dated 18.2.2011 and the payment of a total amount of Rs.13,00,000/- by the respondent no.1 so far to the appellants in respect of the house in question are all admitted facts between the appellants and the respondent no.1. As already mentioned earlier, the appellants have assailed the impugned order of the learned Authority mainly on two grounds, (i) the project having already commenced in the year 2010, the RERA Act, 2016 and the ORERA Rules, 2017 are not applicable to it and (ii) the complaint case is without any cause of action as the appellants have never failed in complying their obligations under the Act and it is only due to the failure of the respondent no.1 to pay the balance amount of the consideration price, the house in question has not been completed.

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. In the present case though the construction of the simplex house in question had started prior to the commencement of the RERA Act i.e. 1.5.2017, but the same



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having not been completed till date (as admitted by the appellants) the project is certainly an ongoing one on the date of commencement of the RERA Act and therefore under its fold. The appellants are under a misconception that the project having been commenced in the year 2010, the RERA Act, 2016 and the ORERA Rules, 2017 are not applicable to it.

About the construction dispute between the parties, the complaint petition reveals that after execution and registration of the sale deed relating to the land of the simplex house i.e. sub plot no.577 in favour of the respondent no.1, the appellants started construction of his simplex house, but two years thereafter when the house was not completed the respondent no.1 drew the attention of the appellants on a number of occasions to complete the house and to hand over the same to him. The complaint petition further reveals that inspite of payment of a substantial amount like Rs.13,00,000/- by the respondent no.1, the appellants had not even constructed the access road between the house in question and the main road and had not provided other amenities like water supply unit, electricity connections and boundary wall with gate around the project. The copy of the construction agreement dtd. 16.12.2010 between the parties reveals that, as per term no.7 contained in it, if for any reason, the purchaser neglects, defaults or fails to pay any of the amounts like Rs.5,00,000/- towards land cost, Rs.11,37,000/- towards construction cost and Rs.1,48,000/- towards development cost to the company within the stipulated time then the company will not be bound to undertake further development/ construction work of the house and shall have the right to claim and the purchaser shall be bound to forthwith pay to the company the full amount due alongwith penal interest thereon



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@12% (twelve percent) per annum. Term no.8 of the construction agreement provides that the company undertakes to expeditiously and efficiently carry out the development and construction work of the project (subject to timely payment by the purchaser) and complete the said house in all respect in conformity with the sanctioned building plan and architectural specifications and fit for occupation/habitation within a period of 18 months from the date of approval of the building plan unless prevented by reasons beyond the control of the company. In the present case the appellants have not taken the plea that due to reasons beyond the control of the company like civil commotion, riot, war, imposition of restriction/ban by government or other competent authority, non-availability of building materials, electricity or water supply, earth quake, act of God, force majeure or any unforeseen circumstances, the company was unable to complete the construction of the simplex house in question. They have categorically alleged that it is the respondent no.1- purchaser who has neglected to pay the company the balance consideration amount inspite of their repeated approaches and this is the only reason for the delay in completing the house in question. However, the appellants have not produced a single document to show that the respondent no.1 has defaulted in further payment after the payment of Rs.13,00,000/- inspite of their repeated approach to him in this regard. The complaint petition shows that an amount of Rs.13,00,000/- in total was paid to the appellants by 22.08.2012. There is no payment schedule either in the sale agreement or in the construction agreement and the appellants have not shown as to what extent the construction of the simplex house in question was completed as on

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22.8.2012. They have not provided any material to show that they had made construction upto a particular level which required further payment in addition to the amount of Rs.13,00,000/- already paid by 22.08.2012. As a normal principle, payment should be construction-linked, but as against the allegation of respondent no.1 with regard to inordinate delay in construction, the appellants have not been able to establish that their demand for the balance consideration money from the respondent no.1 was justified for being commensurate with the extent of construction they have made.

So, the appellants having failed to establish that the respondent no.1 has been negligent in payment of the balance consideration money inspite of their repeated approaches to him and that is the only reason for non-completion of the simplex house in question, we are of the considered opinion that they are liable to complete the construction work, which according to them is completed upto roof level. On the other hand, the respondent no.1 has though admitted in his complaint petition that the appellants had started construction work of the house after execution and registration of the sale deed relating to the land of the house in his favour on 18.2.2011, but has not made it clear as to what extent the house is constructed. The complaint petition only reveals his allegation relating to non-completion of access road between the house in question and the main road and amenities like water supply, electricity connection and boundary wall gate, but in absence of payment schedule it is also not established that considering the stage of construction the respondent no.1 was not required to pay any amount after the last payment made by him on 22.8.2012 till the institution

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of the complaint case. The agreed consideration price as per the sale agreement dtd.16.12.2010 is Rs.20,00,000/- and not Rs.21,50,000/- as claimed by the appellant in their show cause to the complaint petition and therefore the respondent no.1 has to pay the balance consideration amount of Rs.7,00,000/- to the appellants for completion of construction and to obtain the possession of the house. Under the facts and circumstances of the case, the learned Authority is right in directing the appellants to complete the construction of the house in question within two months, if the respondent no.1 pays the balance consideration amount of Rs.7,00,000/- to them. The appellants being not able to establish the negligence of the respondent no.1 in payment of instalments of consideration amount is not entitled to their demand for the excess amount of Rs.1,50,000/-.

7) In view of the entire discussions made in the preceding paragraph, the appeal is without any merit and accordingly stands dismissed against the respondents.

Apart from uploading this order in the official website of the OREAT, today itself, office is directed to send an authentic copy of this order alongwith the record of the complaint case to the respondent no.2- Authority for information and necessary action. Also send a copy of this order each to the appellants and the respondent no.1.

Justice P.Patnaik  
Chairperson

Shri S.K.Rajguru  
(Judicial Member)