

OREAT Appeal No.133/2022

29)11.07.2025

The appeal is taken up through hybrid mode.

2) We have already heard Mr. S.N.Das, learned counsel appearing for the appellant and Mr. K.C. Prusty, learned counsel appearing for the respondent.

3) The appellant being the Managing Director of M/s. Welcon Infrastructure Pvt. Ltd., the respondent in the Complaint Case No.133 of 2022, being aggrieved by the order dtd. 6.10.2022 has preferred this appeal praying inter alia for setting aside the impugned order dtd. 6.10.2022 passed in Complaint Case No.39 of 2022.

4) The brief facts leading to filing of the Complaint case by the respondent of this appeal is that the appellant is developing a project in the name and style "Natures Avenue" at Plot No.181/1723, Khata No.526/1519 of mouza-Mukundaprasad in the district of Khordha. The respondent-complainant was desirous of purchasing a duplex from the project. As per the agreement the consideration amount of Duplex No.6 was Rs. 55,00,000/-. The agreement was executed on 23.6.2018. In pursuance to the said agreement, the respondent-complainant used to make payment as per the payment schedule of the agreement. In order to adhere to the payment schedule, the respondent availed a loan from LIC Housing Finance Ltd. The LIC Housing Finance Ltd. sanctioned a loan amount of Rs.42,70,000/-. Clause-28 of the agreement dtd. 23.6.2018 inter alia stipulates that the first party undertakes to complete the unit in all respect and deliver possession thereof to the

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prospective purchasers upon receipt of construction cost in time as well as the land costs within a period of one year from the date of execution of the agreement. Therefore, the duplex house was to be completed on or before 23.6.2019 as per the terms of the agreement. According to the respondents the complainant has paid Rs.44,80,000/- on different dates including payments made by the LIC Housing Finance Ltd. Despite payment made by the respondent-complainant when the appellant could not complete the duplex, the respondent was constrained to file the complaint case No.39 of 2022 with the following prayers :

A)The Hon'ble Authority be pleased to direct the Respondents to delivery of possession of Duplex House No.06 under the Project 'Nature Avenues' situated in mouza-Mukundaprasad, Khata No.526/1519, sthitiban Plot No.181/3723 measuring an area 1597 sq. ft. built up area 2104 Sq. ft to the complainant.

B)And be pleased to direct the Respondents to pay interest over the deposit amount of Rs.44,80,000/- with interest @ 18% per annum compounding quarterly since the date of respective deposits till delivery of possession of the Duplex House.

C)And be pleased to direct the Respondents allow the complainant for pre-inspection of allotted flat prior to delivery of possession.

D)And be pleased to direct the Respondents to provide Occupancy Certificate and Completion Certificate to the complainant in respect of the Duplex House No.6 under the project 'Natures Avenue'.

E)And be pleased to direct the respondents to provide all the amenities as per the construction and sale agreement dtd. 23.6.2018.

F)And be pleased to direct the Respondents to pay house rent @ Rs.9000/- per month since July, 2019 till January, 2022 for a period of 21 months amounting to Rs.1,89,000/- and further house rent till actual delivery of possession of the Duplex House.

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G)And be pleased to direct the respondent to pay compensation of Rs.5,00,000/- towards the loss caused to her due to non-delivery of possession of the Duplex House in time towards payment interest over loan amount and Rs.2,00,000/- for mental agony and harassment and cost of litigation of Rs.20,000/- to the complainant.

H)And any other relief to which the complainant is entitled in the circumstances of the complaint.

5) The appellant being the respondent in Complaint Case No.39 of 2022 filed a reply to the said complaint challenging the maintainability of the said complaint apart from the plea of locus standi and lack of cause of action. The appellant in the show cause has inter alia submitted that the respondent-complainant is a wrong doer and deliberately violated the terms and conditions of agreement dtd. 23.6.2018 and subsequent mutual understanding dtd. 17.2.2020 with regard to payment of instalments. The appellant in the show cause reply submitted that two cheques i.e. one of Rs. 1,50,000/- and another of Rs. 1,00,000/- have not been credited into the account of the appellant-promoter. The appellant-promoter also submitted that as per the mutual understanding between the parties dtd. 17.2.2020 the outstanding dues of Rs.25,00,000/-. Further, it has been submitted that the complainant-respondent defaulted in payment of loan dues as a result of which the financier stopped releasing payment to the appellant-promoter. The appellant in the show cause also submitted that as per the subsequent agreement dtd.17.2.2020 it was mutually agreed that only after receipt of Rs. 5,00,000/- the outstanding dues, the balance remaining work will commence by the

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appellant-promoter. The agreement dtd. 17.2.2020 has been annexed as Annexure-A to the reply filed by the appellant-respondent before the learned Authority. Since the respondent-complainant failed to comply with her commitment the appellant-respondent issue notice to her on 7.5.2020 vide Annexure-B to the reply.

The appellant-respondent also further submitted that the complainant has deliberately violated her part of contractual obligation for making payment of the outstanding dues. Therefore, the appellant-promoter was not obliged to hand over the completed structure to the complainant. Further, it has been submitted that LIC Housing Finance Ltd. made advertisement in daily news paper 'The Sambad' on 5.12.2021 for legal action under the provision of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Enforcement) Act, 2002 and Security Interest (Enforcement) Act, 2002 as per Annexure-E. Further, it has been submitted that since the respondent-complainant did not adhere to the mutual understanding and her own commitment dtd. 17.2.2020 vide Annexure-A, the appellant-respondent was not in a position to commence further work and as such the claim of the complainant does not come within scope and ambit of Section 61 of the RERA Act. Accordingly, the appellant-promoter prayed for dismissal of the complaint.

6) From the pleadings of the parties, the learned Authority framed the following issues for adjudication :

i) Whether the case is maintainable in law?

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

iii)Whether the Complainant has paid Rs.44,80,000/- to the Respondents?

iv)Whether the Respondents are liable to handover possession of the Duplex to the Complainant on payment of balance consideration amount?

v)Whether the complainant is entitled to the reliefs claimed?

The learned Authority after going through the complaint case, show cause reply and various provisions of Act and Rules vide order dtd. 6.10.2022 has been pleased to pass the following orders :

“The case is allowed on contest against the Respondents without cost. The Respondents are directed-

1. (i) To complete the construction and handover possession of the house to the Complainant on receiving the balance consideration amount of Rs.12,20,000/-.
(ii) To pay interest @ 9.70% per annum compounded quarterly on the amount of Rs.42,80,000/- to the Complainant payable from 24.6.2019 till the date of delivery of possession.
2. (i) The Complainant is directed to pay Rs.12,20,000/- to the Respondents towards the balance consideration amount.
(ii) To pay interest @ 9.70% per annum compounded quarterly on the amount of Rs.12,20,000/- payable from 24.6.2019 till actual date of payment to the Respondents.
3. The parties are directed to comply the order as above within a period of two month failing which the same shall be enforced as per law.
- 7) The impugned order passed by the learned Authority dtd. 6.10.2022 in Complaint Case No.39 of 2022

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has been assailed by the appellant on the following grounds :

I)The appellant has assailed the impugned order passed by the learned Authority dtd. 6.10.2022 on the ground that the same is perverse and in contravention to Section 35 of the SARFAESI Act, 2002.

II)Further, the impugned order is assailed on the ground of patent illegality.

III)The appellant has challenged the order on the ground that the learned Authority ought not to have passed the direction to the appellant to hand over the duplex after completion to the respondent or to pay interest since the said house has already been attached by the LIC Housing Finance Ltd. under the provisions of SARFAESI Act, 2002.

IV)Since the SARFAESI Act, 2002 has got the overriding effect on other laws to the extent of power conferred on the authorities under the said Act, the RERA Authority lacks jurisdiction to direct the appellant to complete the construction and to hand over the house to the respondent.

V)The further ground of challenging the impugned order that the learned Authority ought to have borne in mind the fact that the respondent has defaulted in payment of balance dues as per the agreement under Annexure-1 and the later mutual understanding between parties dtd. 17.2.2020 vide Annexure-2.

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The learned counsel for the appellant in support of the aforesaid grounds vehemently submitted that the appellant can handover the unit to the respondent as is whereas basis subject to getting permission from the LIC Housing Finance Ltd provided that the respondent agrees to pay Rs. 36,63,912/- to the appellant as per the affidavit dtd. 4.3.2025 filed before this Tribunal. Learned counsel for the appellant further submitted that the respondent is a willful defaulter in making the payment of the outstanding dues to the appellant in accordance with the terms of the agreement and repayment of the instalment dues to the LIC Housing Finance Ltd. towards the loan availed by the respondent. Therefore, the observation of learned Authority is fraught with perversity and illegality. Learned counsel for the appellant further submitted that the impugned being illegal is unsustainable due to the statutory provisions under SARFAESI Act, 2002.

8) The show cause reply has been filed by the respondent reiterating the grounds taken in the complaint case. Learned counsel for the respondent by referring to the impugned order has submitted that the learned Authority has rightly passed the order which does not warrant any interference by this Tribunal.

9) From the conspectus of the facts as delineated, much emphasis has been laid down by the learned counsel for the appellant with regard to the overriding effect of the SARFAESI Act over the RERA Act.

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It would be apposite to refer the decision of the Hon'ble Apex Court to set the matter at rest the controversy with regard to the provisions of the two Acts. The project in question being still not a completed one is definitely under the fold of the RERA Act. It is the categorical plea of the appellant that in view of section 35 of the SARFAESI Act, 2002, the Act will override the provisions of the RERA Act, 2016. In this regard, in their order dated 14.12.2021 the Hon'ble High Court of Rajasthan in the case of Union Bank of India Vrs. Rajasthan Real Estate Regulatory Authority and others wherein it has referred to the settled law in the decision of Hon'ble Supreme Court of India in the case of Bikram Chatterji and Others versus Union of India and Others reported in (2019) 19 SCC-161 that, in the event of conflict between the RERA Act and the SARFAESI Act, the provisions contained in the RERA Act would prevail. Hence, it is no more res interga that the RERA Act would prevail over the SARFAESI Act.

10) In the case at hand, the learned Authority in the impugned order has directed to the appellant as well as respondent to pay interest @ 9.7% per annum compounded quarterly.

Further, Section 16 of the Odisha Real Estate (Regulation & Development) Rules, 2017 provides interest payable by promoter and allottee. The rate of interest payable by the promoter to the allot or by the allottee to the promoter, as the case may be, shall be the

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State Bank of India highest Marginal Cost of Lending Rate plus two per cent.

The Act does not prescribe anywhere to levy compound interest either on the promoter or on the allottee. The rate of interest to be paid by the promoter in case of delay in delivery of the flat or land is envisaged under Rule 16 of the Odisha Real Estate (Regulation & Development) Rules, 2017. In the case of M/S Suneja Towers Private Limited vs Anita Merchant on 18.4.2023 the Hon'ble Apex Court in Civil Appeal Nos.2892-2894 of 2023 (arising out of SLP (Civil) nos.8163-8165 of 2022) has been pleased to hold in para 27.3 of the said judgement that "we would hasten to observe that the respondent is being allowed to retain the sum of money already received by her only because of peculiar circumstances of this case and else, this relaxation for the respondent is in no manner to be read as approval of the orders impugned or approval of the proposition of awarding compound interest in these matters. As said and iterated hereinbefore, such a proposition of awarding compound interest in these matters by the Fora exercising jurisdiction under the Act of 1986 stands disapproved."

In the said case, the Hon'ble Apex Court disapproved the award of compound interest in favour of the respondent. In various appeals this Tribunal has also discarded the order of compound interest awarded by the learned Authority in favour of the allottees and direction has been given for payment of simple interest. Hence, the order passed by the learned Authority at

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page 10 ordering portion at para-1(ii) and 2(ii) directing both the parties to pay compound interest is not tenable in the eye of law and accordingly instead of compound interest, it is directed that both parties are liable to pay simple interest. Except the above infirmity in the impugned order, no error has been committed by the learned Authority while delving into the matter and in passing the impugned order.

11) On perusal of the appeal memo, show cause reply, rejoinder and after hearing the learned counsel for respective parties, it is found that the payment by the respondents to the tune of Rs. 42,80,000/- out of the total amount of Rs.55,00,000/- stands substantiated by the documents with regard to payment of money. So, there is absolutely no dispute that the respondent is liable to pay the balance amount of Rs.12,20,000/- towards balance consideration money.

Therefore, on the cumulative effect of the facts, reasons and judicial pronouncements, we are inclined to observe that the impugned order dt. 6.10.2022 passed by the learned Authority does not suffer from any patent illegality nor is manifestly erroneous to warrant our interference except the fact that the award of compound interest is to be converted to simple interest. In the ordering portion of the impugned order at para 1 (ii) and 2 (ii), the word 'compounded quarterly' be deleted, as both the parties are liable to pay simple interest.

With the above modifications, the appeal stands disposed of.

Send an authentic copy of this order alongwith the record of the complaint case to the learned Authority for

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information and necessary action. Also send a copy of this order to the appellant as well as respondent.

Justice P.Patnaik
Chairperson

Shri S.K.Rajguru
(Judicial Member)

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

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