OREAT Appeal No.14/2023

31) 07.03.2025 The appeal is taken up through hybrid mode.

2) Already heard Mr. D.C.Dhal, learned counsel appearing for the appellant and Mr.P.K.Mishra, learned counsel appearing for the respondent.

3) Aggrieved over the order dated 27.09.2022 of the Odisha Real Estate Regulatory Authority, Bhubaneswar (hereinafter referred to as the learned Authority) passed in Complaint Case No.174 of 2021, the appellant has filed this appeal against the respondent praying to set aside the same in the interest of justice. The appellant was the respondent and the respondent was the complainant in the aforesaid complaint case.

4) The facts and circumstances of the case leading to the filing of the present appeal are as follows :

On 18.09.2021 the present respondent filed the aforesaid complaint case No.174/2021 against the present appellant before the learned Authority submitting that on 12.12.2011 the appellant came up with an advertisement to sell LIG, MIG and HIG categories of core houses under Baji Rout Integrated Social Housing Scheme at Mahisapat, Dhenkanal. The husband of the respondent applied for a LIG category of core house by paying the required application fee, processing fee and EMD of Rs.60,000/- (10% of the sale price) as demanded by the appellant on 9.1.2012. The provisional sale price of the house was fixed at Rs.5,95,000/-. The appellant provisionally allotted a LIG core house in favour of the applicant-husband of the respondent vide letter no.5167 dtd.17.4.2012. Subsequently, vide letter No.5124 dtd. 29.4.2013, the appellant asked the respondent's husband to pay the balance amount in six instalments by 30.9.2014 instead of eight instalments as mentioned earlier in the brochure

without intimating the stage wise time schedule of completion of the project work. The husband of the respondent still paid Rs.5,95,000/- during the time period as asked by the appellant. In the meantime, the respondent's husband passed away and on her application the appellant changed the allotment of the core house in question in her favour vide letter No.2861 dtd. 3.03.2018. On the basis of a lottery held by the appellant house No.L-25 was allotted to the respondent. As per the statement in the brochure the scheme was to be completed and the core houses were to be handed over to the allottees within 30 months from the date of allotment and accordingly considering the allotment of the house in question on 17.4.2012, it should have been handed over to the respondent by 16.10.2014. However, the appellant did not complete the project work within the schedule time inspite of several requests made by the respondent. It is further alleged by the respondent that inspite of not handing over the possession of the core house in question to her, the appellant vide letter no.13776 dtd. 3.12.2018 i.e. more than four years after the allotment suddenly intimated the respondent that the final sale price of the core house in question would be Rs.7,21,300/-. Apart from this, other additional charges like GST @ 12% on the balance cost amounting to Rs.15,156/-, Rs.38,532/- towards cost of 114 square feet excess plot area, Rs.72,130/- towards corner house charge and Rs.12,993/- towards GST were made. The appellant also demanded an additional amount of Rs.2,65,101/- towards the final sale price of the core house in question to be paid by 27.12.2018 without completing all the works specified in the brochure. According to the respondent, even if the cost of excess plot area and corner house charge are excluded the increase in the cost of the core house is Rs.1,41,456/- which is about 24% more than

the advertised provisional sale price. Subsequently, the appellant vide letter No.8479 dtd. 10.9.2019 revised the final sale price amount to Rs. 2,50,892/-, to be paid by 31.10.2019, by reducing the GST on balance cost and also reducing the rate of interest from the allottees from 16% to 10.45%. Again vide letter No.2622 dtd. 18.3.2020, the appellant revised the final sale price to Rs.2,51,208/- to be paid by 31.3.2020 which is 21.4% excess over the advertised provisional sale price. Subsequently, the appellant again asked the respondent to pay the aforesaid amount by 30.11.2020 vide letter no.6382 dtd. 2.11.2020 with a threat to impose default interest or cancel the allotment if the amount is not paid within time. It is further submitted by the respondent in the complaint petition that the appellant had cut a hill for the project probably due to faulty measurement of the entire area and improper site plan. The expensive hill cutting was not envisaged in the original scheme and is an additional expense and this is the reason for escalation of the sale price. The respondent has alleged that by not informing or seeking permission from her before altering the original scheme, the appellant has violated section 14 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as the RERA Act). It is further alleged that the hill cutting is also endangering the entire project as the steep sloped naked and exposed hill is prone to land slide during heavy rain and therefore such a life threatening construction should be adequately compensated by the appellant or strong protecting engineering construction should be made. It is further alleged by the respondent that the appellant has never updated its allottees including her about the progress of the project work violating section 11 (1) (d) and (e) of the RERA Act. It is further alleged that the appellant has misled the respondent as though the

advertisement was published to sell core houses of different categories but the project land being a lease hold one, the appellant has no right to sell it. It can only transfer it by sub-lease which is not a transfer of absolute right of ownership. The suppression of the mode of transfer of the property by the appellant i.e. sub-lease instead of transfer by sale is a violation of section 12 of the RERA Act according to the respondent. With the aforesaid claims and allegations, the respondent inter alia prayed before the learned Authority to completely waive off the enhanced final sale price, compensate her for incorrect statement in the brochure regarding sale of the core house in question, deduct the proportionate amount from the final sale price for the delay of six years, pay her 16% compound interest every month on the payment made by her for delay in handing over the possession of the core house, pay her compensation @ Rs.10,000/- per month towards monthly house rent for the entire delay period and pay her compensation for her mental agony and harassment due to the inordinate delay.

Pursuant to the issuance of summons by the learned Authority, the appellant appeared through his advocate on 18.10.2021 and filed his written show cause to the complaint on 15.02.2022 wherein it is submitted that, as per the brochure the plot area may vary as per the site condition and proportionate cost of the developed land will be charged for extra plot area beyond the standard plot size. For house built on corner plot, 10% extra charge above the sale price will be made. Statutory service taxes as applicable will be charged in addition to the sale price from the allottees and the same shall be payable along with instalments. The appellant is not liable to pay any interest in case of delay in construction due to the factors beyond his control. There will

be no interest on the earnest money deposited, which will be finally adjusted against the sale price after allotment. The allottee is required to deposit balance cost of the house as per the schedule of payment in the allotment letter. The allottee is liable to pay interest @ 16% per annum on the amount due for default in payment of instalments as per schedule. The allottee is free to withdraw in case of inordinate delay (four years from the date of allotment) by the appellant in giving possession and escalation of the unit cost beyond 25% of the price announced in the brochure. In such cases, full refund of the amount paid shall be made together with interest, except the non-refundable processing fee. Final sale price of the core house will be intimated to the allottee after completion of the project which shall be payable by him before taking possession. Minimum cost escalation is expected. If the construction of the core house is delayed for reasons of 'force majeure' which inter alia includes inordinate delay in approval of tenders, delay on account of non-availability of steel, cement or any other building materials, labour, water supply, electric power back up, slow down strike, dispute with construction agency employed by the appellant, civil commotion or war, criminal action, earthquake or any other act of God, delay in decision/clearance from statutory bodies or any notice, order, rule or notification of the government or any other public or competent authority or for any reason beyond the control of the appellant, the appellant will be entitled to a reasonable extension of time stipulated for delivery of possession of the property. It is further submitted that the respondent's husband was provisionally allotted the LIG core house in question for the provisional sale price of Rs.5,95,000/- on the condition that if the final cost of the house after completion exceeds the

provisional cost, the excess amount shall be paid by the allottee. It is further submitted that, after completion of the core house in question the appellant vide his letter no.13776/OSHB dtd. 3.12.2018 informed the respondent and her son about the final sale price of the house being fixed at Rs.7,21,300/- and requested her to pay the balance amount of Rs.2,65,101/- by 27.12.2018 to enable the execution of the lease deed in respect of the core house in question and handing over of its possession in her favour. The project being completed, occupancy certificate was issued on 17.7.2019 in respect of it and accordingly the appellant issued possession certificates to different allottees. It is further submitted that due to delay in approval of tender at government level, the field work was commenced in January-February, 2013. Execution of the work and completion of the scheme was delayed due to the steep mountainous/ hilly or rocky terrain throughout and execution of different extra items as per requirement at the site beyond the scheme provision such as RCC retaining wall, concrete road instead of black tap road due to steep gradient, R.R. masonry guard wall etc. The appellant challenged the maintainability of the complaint case for non-joinder of necessary party, non-applicability of the RERA Act to the project, non-violation of any of the obligations under sections 11 to 18 of the RERA Act and doctrine of election. Denying the various allegations of the respondent in the complaint and alleging that the respondent has failed to pay the balance sale price inspite of being called upon to do so and also claiming that the reliefs claimed by the respondent are not tenable under the provisions of the Act, the appellant has asserted that the complaint is without any cause of action in view of the completion of the project, issuance of occupancy certificate by the competent authority

and delivery of possession of the houses to the allottees and hence liable to be dismissed.

On the basis of the pleadings of the parties, the learned Authority framed points for adjudication and on hearing the parties through their respective counsels as well as going through the documents relied on by them passed the impugned order allowing the complaint case and directing the appellant to hand over the house to the respondent after executing a deed of lease-cum-sale deed in her favour and to pay her quarterly compound interest @ 9.50% per annum on the amount of Rs.5,95,000/- payable from 18.10.2014 to 17.7.2019 together with a further direction to comply with the orders within a period of two months making it clear that the order shall be enforced as per law in case the appellant fails to comply with the directions within the stipulated date.

5) During hearing of the appeal the learned counsel for the appellant has submitted that the learned Authority after observing the brochure to be the agreement between the parties should not have held that final sale price was not fixed earlier by the appellant as the brochure was made much prior to the enactment of the RERA Act stipulating that final sale price would be fixed after completion of the project. It is further submitted that the respondent having not proved any document to show that the difference between the final sale price and the provisional sale price is due to the lapse of the appellant, the learned Authority should not have held that it was due to the lapse of the appellant. It is further submitted that, the appellant having not promised to allot the core house in question in favour of the respondent at the provisional sale price, the learned Authority should not have held the provisional sale price to be the final sale price. It is further submitted that the learned Authority should not have waived

off the final sale price as the respondent has been allotted excess plot area of 114 square feet and a corner plot. It is further submitted that as according to the term of the brochure the final sale price was to be fixed after completion of the project and the project was not completed by the schedule date i.e. 18.10.2014, the learned Authority should not have come to the conclusion that final price should have been fixed before it. Accordingly, the acceptance of the final sale price as Rs.5,95,000/- on the ground of absence of positive evidence is erroneous when no assessment has been made about the final sale price as on 18.10.2014. It is further submitted that the provisions of the RERA Act being applicable to the project from the stage of registration and the project having been registered on 3.8.2019, the learned Authority should not have granted interest at the rate fixed in the Act from 18.10.2014. It is further submitted that though the appellant is not a bank or financial institution, but the learned Authority has failed to appreciate this while passing the impugned order awarding quarterly compound interest of 9.5.% per annum on the amount deposited by the respondent. It is further submitted that the learned Authority inspite of holding the brochure to be the agreement between the parties has failed to take note of the fact that as per the term of the brochure an allottee is free to withdraw in case of inordinate delay (four years from the date of allotment) by the appellant in giving possession and if escalation of the unit cost is beyond 25% of the price announced in the brochure. It is further submitted that though the amount paid by the respondent includes tax and the appellant has paid the tax amount to the government, but the learned Authority in the impugned order has made the appellant liable to pay compound interest to the respondent even on the amount

which he has paid to the government towards tax and this is quite illegal. With the aforesaid submissions, the learned counsel for the appellant has made the prayer as mentioned earlier in paragraph-3.

6) On the other hand, the learned counsel for the respondent has submitted that the appellant-promoter has not disputed the entitlement of the respondent-allottee to the possession of the property and has challenged only the impugned order on the aspects of additional cost and interest component and therefore has violated the order of learned Authority without just cause by not giving the possession of the property to the respondent. It is further submitted that the brochure which has been treated as an agreement between the parties has been drafted by the appellant as per his convenience. Drawing attention of this Tribunal to the term in the brochure that in case of delay in payment of instalment by the allottee interest @16% per annum shall be charged on him, the learned counsel for the respondent has pointed out that similar provision of compensation to the allottee in case of delay in providing possession of the house by the appellant-promoter due to his own fault is not contained therein. It is further submitted that delay in approval of tender and non-availability of building materials are well within the control of the appellant and are not reasons under 'force majeure' and therefore the learned Authority is right in observing that no specific valid reason has been given to justify the inordinate delay of five years. It is further submitted that the appellant having failed to prove that the escalation of the sale price of the core house was not due to the delay in completion of the project, the learned Authority is right in refusing the escalated sale price to the appellant. It is further submitted that though there is a delay of five years in

completion of the project, but the appellant has not assessed as to what should have been the final price had the project been completed in time. So, the appellant has to suffer the consequence of his own wrong and the learned Authority is justified in fixing the provisional sale price mentioned in the brochure to be the final sale price of the core house. The learned counsel for the respondent has disclosed that the excess amount for corner plot having been already paid to the appellant as per the terms of the brochure, the same has nothing to do with the present dispute. Referring to the observation of Hon'ble Supreme Court of India in the case of M/s. Newtech Promoters & Developers Pvt. Ltd. Vrs. State of U.P. & others, the learned counsel for the respondent has submitted that the RERA Act having been held to be retroactive, the appellant is bound to fulfil his obligations under it. Such obligations accrues from the date of agreement and become enforceable as soon as the project is registered with the Authority as per the provisions of the Act and therefore, the contention of the appellant that the learned Authority should have granted interest at the rate fixed in the Act only from the date of registration of the project i.e. 3.8.2019 and not from 18.10.2014, is wholly erroneous. Justifying the order of the learned Authority regarding imposition of interest on the appellant, the learned counsel for the respondent has pointed out that the same is fully in accordance with the RERA Act and is also based on the principle of equity. With the aforesaid contentions, the learned counsel for the respondent has prayed for dismissal of the appeal.

7) Admittedly, the project namely Baji Rout Integrated Social Housing Scheme was launched in the year 2011 by publication of the brochure and inviting applications from

public for the core houses of different categories. The Project having not been completed and no completion certificate in respect of it having been issued by the competent authority as on 1.5.2017 i.e. the date of commencement of the RERA Act and also the fact that registration Certificate in respect of the project having been issued on 3.8.2019, clearly show that the project comes under the fold of the RERA Act. The view of the learned authority in the impugned order that the Act has application to the project is not disputed by the appellant.

The appellant is aggrieved over the fact that, though the learned Authority has held the brochure to be the agreement between the parties and the fact remains that the brochure was made much prior to the enactment of the RERA Act with the stipulation that the final price would be fixed after completion of the project, the learned Authority still held that final price should have been fixed before 18.10.2014 i.e. the expectation date of completion of the project. On perusal of the copy of the brochure (Annexure-1 in the complaint case), it is seen that clause (b) of the heading 'Other Details' provides that, "Final sale price of the houses will be intimated to the allottees after completion of the project, which shall be payable by them before taking possession. Minimum cost escalation is expected." The appellant first informed the respondent about the final sale price of the core house in question vide letter No.13776/OSHB dtd.3.12.2018. The copy of this correspondence (Annexure-6 of the complaint case) discloses that the amount of final price asked for was Rs.7,21,300/- i.e. an escalation of Rs.2,65,101/- above the provisional sale price. The amount was asked to be paid by 27.12.2018. Then subsequent correspondences were made by the appellant (Annexures-7 & 8 of the complaint case) to the

respondent revising the final sale price and the latest correspondence was the letter no.6342 dtd.2.11.2020 (Annexure-9 of the complaint case) wherein the escalated amount of the final sale price asked for was Rs.2,51,208/-.

As regards the fixation of final sale price by the appellant, the brochure except containing that "Minimum cost escalation is expected" is completely silent as to what would be amount of the said escalation and on which factors it is to be determined. Escalation cost should be clearly mentioned in the agreement between the allottee and the promoter, which should be reasonable and not arbitrary. The appellant has however not made it clear as to how the balance cost of Rs.2,51,208/- as per Annexure-9 has been determined and for which period the allottee had defaulted in payment of the provisional cost. No justification has been provided for imposing additional charges on the respondent ensuring that the cost escalation aligns with market conditions and the actual expenses incurred due to delays. No prior communication has been made by the appellant to the respondents about the changes in the cost structure ensuring that the respondents had adequate time to prepare for such additional expenses. So the basis on which the cost of the core house in question has been escalated by Rs.2,51,208/- in Annexure-9 has not been made clear by the appellant. That apart, by imposing escalated amount on the respondents inspite of itself delaying the completion of project, the appellant has demonstrated a whimsical attitude. The appellant having not specified the minimum cost escalation and the factors for its determination in the brochure and the escalated cost by the stipulated date of completion of project having not been made clear, the plea of the appellant that

escalated cost has been demanded from the respondent in accordance with the expressly provided terms of the brochure is not acceptable.

The appellant should understand that as per the terms of the brochure he was under the obligation to complete the project within 30 months from the date of allotment of the core house in question i.e. 18.10.2014. He could not complete the project by the stipulated date and it is also not known in absence of the completion certificate as to exactly when it was completed. The appellant as per the brochure should have intimated the respondent about the final price a reasonable time after 18.10.2014, but he having started intimating about it from 3.12.2018 has certainly violated the term. In this context, the observation of the learned Authority that the final price should have been fixed before 18.10.2014 is immaterial.

As regards the impugned direction of the learned Authority to the appellant to pay interest on the amount deposited by the respondent, it is seen that the brochure contains the clear term that the project is to be completed within 30 months from the date of allotment. The application for the core house in question having been invited in the year 2011 and allotment of the house having been made on 17.4.2012, the project should have been completed within 16.10.2014. However, as mentioned earlier, the exact date of completion of the project is not clear as no completion certificate from the competent authority has been produced. Annexure-C relied on by the appellant in the complaint case shows that the occupancy certificate in respect of the project has been issued on 17.7.2019 but the same also does not disclose the exact date of completion of the project. If the

Occupancy Certificate is taken into account, a delay of more than four years in completion of the project appears to have occasioned. The brochure contains the categorical term that no interest will be paid by the appellant in case of delay in construction due to factors beyond the control of the appellant. The heading 'Force Majeure' in the brochure provides that, if the construction of the house is delayed for the reasons of force majeure, the appellant shall be entitled to a reasonable extension of time stipulated for delivery of possession of the asset. "Force Majeure" has been stated to include inordinate delay in approval of tenders, delay on account of non- availability of steel, cement or any other building material/labour or water supply or electric power back-up or slow down strike or due to dispute with the construction agency employed by OSHB, civil commotion or war or criminal action or earth quake or any act of God, delay in certain decisions/clearances from statutory bodies or any notice, order, rule or notification of the government or any other public or competent Authority or for any other reason beyond the control of appellant. The inclusion of so many aspects in 'force majeure' exhibits an arbitrary interpretation of the term in the brochure by the appellant for its own advantage. The brochure contains a one sided term regarding the liability to pay default interest and this is against the respondent-allottee. As per this unilateral term, in case of any default by the allottee in payment of installment as per schedule, interest @16% on overdue amount will be levied for the defaulted period and the allotment may be cancelled for default in two consecutive installments. For the purpose of Section 6 of the RERA Act the expression "Force Majeure" shall mean a case of war, flood, drought, fire, cyclone, earth quake or any other calamity caused by nature affecting the

regular development of the real estate project. As the project is under the fold of the RERA Act, 'force majeure' for delay in its completion can only include the aforesaid circumstances as per Section 6, but not the other circumstances as included in the brochure by the sweet will of the appellant. Hence, the circumstances described in the brochure which are not consistent with Section 6 of the RERA Act cannot be taken into consideration. So, the plea of the appellant that delay in completion of the project is occasioned due to delay in approval of the tender at the level of government, the steep mountainous/hilly or rocky terrain through-out and execution of different extra items as per requirement at the site (beyond scheme provision) such as RCC retaining wall, concrete road instead of black top road (due to steep gradient), RR masonry guard wall etc., is not all acceptable. The inclusion of the term in the brochure that interest is only payable by the allottee in case of default in payment of installment but not in the event of delay in completion of the project by the appellant-promoter other than the circumstances under force majeure as per section 6 of the RERA Act clearly shows that the term is one sided. In the case of Pioneer Urban Land and Infrastructure Ltd. vrs. Govindan Raghavan reported in 2019 SCC online SC-458, the Hon'ble Apex Court have made it clear 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 a dotted line, on a contract framed by the builder." Xxx xxx xxx xxx xxx Incorporation of one sided clauses in an agreement constitutes an unfair trade practice as per Section 2 (r) of the Consumer Protection Act, 1986 since it adopts unfair methods or practices for the purpose of selling the flats by the Builder."

In the case of Bangalore Development Authority Vrs. Syndicate Bank reported in (2007) 6 SCC 711, the two Judge Bench of the Hon'ble Apex Court has held that, "when possession of the allotted plot/flat/house is not delivered within the specified time, the allottee is entitled to a refund of the amount paid, with reasonable interest thereon from the date of payment till the date of refund."

In the present case, the appellant has failed to fulfil its contractual obligation of completing the project and delivering the possession of core house to the respondent within the stipulated time in the brochure or within a reasonable time thereafter and hence is liable to pay interest u/s 18 (1) (b) of the RERA Act. Accordingly, the appellant shall pay interest to the respondent on her payment, for every month of delay after the expiry of the stipulated period for completion of the house i.e. 30 months from the date of allotment of the core house in question (17.4.2012), till the handing over of possession of the same, at the rate prescribed under Rule-16 of the Odisha Real Estate (Regulation and Development) Rules, 2017 i.e. State Bank of India highest Marginal Cost of Lending Rate plus two percent.

8) In view of the discussions made in the preceding paragraph, the contention of the appellant that he had assigned good and sufficient cause for the delay in completion of the project is not acceptable and the learned Authority is right to observe that there is no specific evidence about the reason that prevented the appellant from executing the work. The allotment of the core house having been made on 17.4.2012 and the completion of the same could not be made within the stipulated date i.e. 16.10.2014, the lapse of the appellant is apparent on the face of the record in absence of reasons beyond his control and therefore fixing the final sale price more than six years after the stipulated date is certainly

unreasonable. The brochure being accepted as the agreement between the parties and the provisional sale price per unit of the LIG category core house being clearly mentioned in the brochure, the learned Authority has rightly held the provisional sale price to be the final sale price, particularly when the appellant has not been able to justify the escalated price. The appellant has not produced any evidence with regard to allotment of excess area of 114 sq. feet to the respondent so as to claim that the escalated price is justified. The contents of the appellant that the project being registered on 3.8.2019, the learned Authority should not have granted interest at the rate fixed in the Act from 17.10.2014 is misconceived. The project being an ongoing one on the date of commencement of the RERA Act and accordingly under its fold, the interest payable on the deposit of the allottee shall be governed under the proviso to section 18 (1) (b) of the Act read with Rule 16 of the ORERA Rules, 2017. In the case of Imperia Structures Limited Vrs. Anil Patni & Another reported in (2020) 10 SCC-783, the Hon'ble Apex Court has made it clear that, "period of delay/expiry of period for completion of the project has to be reckoned in terms of the builder-buyer agreement and not the registration of the project." Of course the impugned order to pay compound interest on the deposit amount is not correct as Rule 16 of the ORERA Rules, 2017 provides that interest payable u/sec. 18 (1) (b) shall be the State Bank of India highest Marginal Cost of Lending Rate plus two percent and this rule does not convey the meaning of interest to be compound interest. The permissible interest rate is however payable from 17.10.2014 i.e. the day after the expiry of the stipulated date for completion of the core house in question as per the brochure till the date of its actual delivery. The further contention of the appellant that it is not a

bank or financial institution so as to be asked to pay interest at the bank rate, is also misconceived because the project is governed under the RERA Act and the appellant being a promoter under section 2 (zk) and constructing houses for price paid by the allottees, has to pay the prescribed rate of interest as per the ORERA Rules, 2017 as mentioned above. The further contention of the appellant that the respondent could have withdrawn herself from the project for the inordinate delay (4 years from the date of allotment) as per the term of the brochure under the heading 'Refund/ Withdrawn/ Cancellation' {clause (c)} instead of praying for delivery of possession of the house, is also not acceptable in view of the fact that, the respondent-allottee has the option to choose either of the two reliefs under section 18 (1) (b) of the RERA Act i.e. to stay in the project and to ask for interest on the deposited amount till the date of actual delivery of the asset or to withdraw from it and ask for refund of the deposited amount together with interest. The contention of the appellant that out of the amount deposited by the respondent, tax has been paid to the government and therefore he is not liable to pay interest on the entire deposited amount, is also not acceptable in view of the fact that the liability of the appellant to pay tax to the government in respect of the project is immaterial and irrelevant to the right of the respondent to claim possession of the core house in question and interest on her deposited amount.

9) We are therefore of the considered opinion that the challenge made by the promoter to the impugned order on the grounds mentioned in the appeal memo except the nature of interest and the period for which interest shall be awarded to the respondent by the learned Authority, is without merit and accordingly the appeal is allowed in part on contest against

the respondent. The impugned order dated 27.9.2022 directing the appellant to hand over the house in question to the respondent has been carried out by the appellant during pendency of the appeal i.e. on 13.8.2023 as disclosed from the order sheet dated 13.9.2023 of this appeal. The appellant shall execute the conveyance deed in respect of the house in favour of the respondent and register under the relevant law with the competent authority.

Accounts officer of this Tribunal is directed to calculate the interest payable by the appellant-promoter at the rate prescribed under Rule 16 of the ORERA Rules, 2017 for the period from 17.10.2014 to 13.8.2023. The same shall be paid to the respondent-allottee from the statutory amount deposited by the appellant-promoter after expiry of the appeal period. The rest amount, if any, be refunded to the appellant alongwith accrued interest on proper identification.

Send back the record of the complaint case with an authentic copy of this order to the learned Authority for information and necessary action. Also send a copy of this order to each of the parties.

Justice P.Patnaik
Chairperson

Shri S.K.Rajguru
(Judicial Member)

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