

OREAT Appeal No.29/2023

24. 19.3.2025

The appeal is taken up through hybrid mode.

2) Perused the pleadings of both the parties alongwith documents relied by them and the impugned order. Heard Mr.P.Sahu along with Mr.B.Subudhi, advocate appearing on behalf of Mr.T.S.Singh, learned counsel for the appellant-promoter, Mr.P.P.Sahu, learned counsel for the respondent-Authority and Mrs.A.Mohanty, learned counsel for respondent nos.2 & 3.

3) Being aggrieved and dissatisfied with the order dt.13.12.2022 passed by the learned Adjudicating Officer, Odisha Real Estate Regulatory Authority, Bhubaneswar in AOCC No.14 of 2021, the instant appeal has been preferred praying inter-alia for setting aside the impugned order dt.13.12.2022 under Annexure-3.

4) Brief facts leading to filing of the complaint by the respondent nos.2 & 3 is that the respondents entered into a flat-buyer agreement with the appellants for purchase of Flat No.D-318 in 3rd floor of Tower no.9 with super built-up area measuring 1415 sq.ft. in the project "Royal Habitat" situated at Govindpur, Jatni Road, Bhubaneswar. The cost of the flat is Rs.36,45,525/- and the respondent nos.2 & 3 paid Rs.34,87,740/- which is more than 90% of the total cost of the flat. As per the Flat-buyer agreement the construction and delivery of possession shall be made within 36 months from the commencement of construction or 42 months from the date of Flat-buyer agreement whichever is later with a grace period of six

(ii)

months. As such, the flat ought to have been delivered by 31.8.2019. Despite long lapse of 22 months since the flat was not completed and possession was not handed over, the respondents were facing financial strain because of loan of Rs.31,93,125/- taken from State Bank of India with 9.7% interest. Due to non-delivery of the flat the respondents were constrained to stay in a rented house and had to pay monthly home loan instalments, which led to mental and financial harassment of the respondent nos.2 & 3. The respondents, therefore, filed the complaint U/s.31 read with Section 71 of the Real Estate(Regulation and Development) Act, 2016 seeking for the following reliefs:-

- i) to pass an order of compensation against the respondents for financial, mental and physical losses suffered by the complainants in not receiving the flat in time including litigation expenses and the amount of money paid as rent by them from the date of estimated completion of the project till the date of disposal of the complaint;
- (ii) To impose penalty on the respondents for not updating the project status and other detail requirements as per Rule 15 of the Odisha RERA Rules, 2017 in the RERA Website and for all other lapses in registration of the Royal Habitat Project resulting in duping the home buyers;

(iii)

(iii) Pass any other orders/reliefs as deemed fit and proper in this case.

5) The appellant being the respondents filed show cause contending therein the non-maintainability of the complaint due to lack of cause of action. In the show cause the appellant denied the allegations levelled against him. The appellant admitted in the show cause regarding execution of the flat-buyer agreement and the payment of the amount as mentioned in the complaint. As per the show cause the flat in question was completed on 24.12.2018 as per the plan sanctioned by BDA and completion certificate has been issued by the empanelled technical persons on 29.12.2020 and thereafter occupancy certificate was applied for to the BDA. In the show cause it has been contended that the project in question got its registration bearing No.MP/19/2018/00013 which was valid from 23.11.2017 to 31.10.2020 and the RERA extended the project up to 23.2.2025 and the BDA issued revalidation of the project vide letter dt.23.2.2025. On obtaining revalidation certificate the appellant applied for occupancy certificate. Accordingly, on 19.8.2022 BDA issued part occupancy certificate in respect of Tower No.2,3,4,5 & 6 and thereafter the appellant applied for occupancy certificate in respect of Tower No.7,8 and 9 on 16.9.2022, which was pending before the BDA. Accordingly, it has been submitted in the show cause that no laches or negligence has been committed by the appellant. It has further been contended that prior to the complaint case, the

respondents filed Complaint Case No.158/2021 before the learned Authority in respect of flat in question and the said complaint has been disposed of vide order dt.14.9.2022 in favour of the respondents. Learned counsel for the appellant submitted that the appellant ought not to have been saddled with any compensation of any violation of Section 12,14,18 and 19 of the Act.

6) On the basis of the inter-se pleadings, issues were framed for determination of the case and after analysing the factual and legal aspects coupled with the provisions of the Act, learned Adjudicating Officer has been pleased to direct the appellant to pay compensation of Rs.60,00,000/- (Rupees sixty lakhs), which is impugned in this present appeal.

7) Learned counsel for the appellant has assailed the impugned order being palpable wrong, illegal and not in consonance with Section 71 of the Real Estate (Regulation and Development) Act, 2016 read with Section 38 and 39 of the Real Estate (Regulation and Development) Rules, 2017. Learned counsel for the appellants further submitted that the learned Adjudicating Officer has not taken into consideration the order passed by the learned Authority in Complaint Case No.158/2021 on the self-same prayer. Learned counsel for the appellant further submitted that the learned Adjudicating Officer has erred in ignoring recitals contained in Clause-21 of sub-clause 21.5 of flat-buyer agreement for sale, which stipulates the procedure for taking possession of the flat. In the instant case the appellant has neither failed to complete project in

time nor has caused any delay in handing over possession of the flat to respondent nos.2 and 3. But the delay has been occasioned only to obtain the occupancy certificate from the BDA due to factors beyond the control of the appellant. Learned counsel for the appellant further submitted that the learned Adjudicating Officer has failed to take note of the fact that total consideration amount of the flat is Rs.34,87,740/- and inspite of completion of the flat with completion certificate, the appellants has been saddled with payment of Rs.60,00,000/- as compensation which is grossly disproportionate and excessive. Learned counsel for the appellant further submitted that the learned Adjudicating Officer while adjudicating compensation and has over-looked the fundamental principle of awarding compensation and has proceeded on misplaced conjectures, leading to miscarriage of justice.

8) Learned counsel for the appellant further submitted that the impugned order ought to be set aside as it is exorbitant, disproportionate, arbitrary, excessive and bereft of any legal or factual justification. During course of hearing, learned counsel for the appellant has referred to the following decisions wherein the principles of determining a just and fair compensation based on material on record have been observed :

(i) The Divisional Controller, Ksrtc vs. Mahadeva Shetty and Anr., 2003 (7) SCC 197, relevant at para no.15;

(ii) Appeal No.30 of 2021 dt.22.10.2021, in the matter of M/s.Ozone Projects Private Limited v. C.Venugopal and Anr., before the Tamil Nadu Real Estate Appellate Tribunal, relevant at para no.14, 15 and 16;

(iii) Appeal No.50 of 2020 dt.21.06.2021, in the matter of M/s.K.G.Foundation (Pvt) Ltd., represented by its Chairman and MD Mr.Kishre Kumar Gokaldas v. J.Rajashekhar & Anr., before the Tamil Nadu Real Estate Appellate Tribunal, relevant at para no.17, 18 and 19;

(iv) Appeal No.65 of 2019 dt.01.07.2019, in the matter of Estate Officer, PUDA Complex v. Real Estate Regulatory Authority, Punjab, through its Adjudicating Officer & Anr., before the Real Estate Appellate Tribunal, Punjab, SAS Nagar (Mohali) relevant at page 7.

9) Learned counsel for the respondents has referred paragraph-13 of the judgment in the case of M/s.Newtech Promoters and Developers vs The State of Uttar Pradesh, wherein the Hon'ble Apex Court has been pleased to hold that the buyer borrows money to pay for a house and simultaneously plays the role of a financier and this puts the buyer in a very vulnerable position, the weakest stakeholder with a high financial exposure. This is exactly the situation in the present case.

10) As against the submissions of the learned counsel for the appellant, learned counsel for the respondents vociferously submitted that the learned Adjudicating Officer being fully alive to the financial

and mental stress faced by the respondents has awarded the quantum of compensation. The learned counsel for the respondents further submitted that the learned Adjudicating Officer by taking recourse of Section – 72 of the Real Estate (Regulation and Development) Act, 2016 decided the quantum of compensation, keeping in view the harassment faced by the respondent nos.2 & 3 at the hands of the appellant.

11) On perusal of the appeal, showcause, objection and after hearing the learned counsels for the respective parties, the seminal issue which hinges for determination is as to whether the order passed by the learned Adjudicating Officer suffers from any illegality due to exorbitant/dis-proportionate award of compensation.

12) In order to dwell upon the question of compensation it would be pertinent to refer to Section 72 of the Real Estate (Regulation and Development) Act, 2016.

72. Factors to be taken into account by the adjudicating officer : While adjudging the quantum of compensation or interest, as the case may be, under section 71, the adjudicating officer shall have due regard to the following factors, namely:-

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused as a result of the default;

(c) the repetitive nature of the default;

(d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.

This provision enables the Adjudicating Officer to have due regard to all the points while deciding the quantum of compensation. Indisputably delay has been occasioned in obtaining occupancy certificate whereby respondent nos.2 & 3 have faced serious financial and mental stress driving them to invoke Section 31 read with Section-71 of the Act for award of compensation. As per Section-72 of the Act while awarding compensation, the factors stated above are to be considered. In the case in hand, the flat in question was completed on 24.12.2018 as per the sanctioned plan by BDA and completion certificate was issued and the appellant applied for occupancy certificate to BDA on 29.12.2018 and the project got its registration valid from 23.11.2017 to 31.10.2020. Thereafter, it was extended up to 23.2.2025. In the meantime BDA issued revalidation of the project vide letter no.7182, dt.23.2.2022 and on 19.8.2022 part occupancy was issued by BDA in respect of Tower No.2,3,4,5 & 6. Thereafter, the appellant applied for occupancy certificate in respect of Tower Nos.7,9 & 10 on 16.09.2022. Failure on the part of the appellant to give possession is violative of Section 11(4)(a) of the Act. Accordingly, Complaint Case No.158/2021 filed by respondents has been disposed of in favour of the respondents. The learned Adjudicating Officer in para-12 of the impugned order has made certain

observations which are unwarranted, outrageous and not germane to the present case.

13) The Hon'ble Apex Court in the case of 2003, Vol.7, SCC 197 in the case of The Divisional Controller, Ksrtc vs. Mahadeva Shetty and Anr., has propounded the basic principle for awarding compensation in an illuminating, lucid and succinct manner which is extracted here-in-below.

"It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. Bodily injury is nothing but a deprivation which entitles the claimant to damages. The quantum of damages fixed should be in accordance with the injury. An injury may bring about many consequences like loss of earning capacity, loss of mental pleasure and many such consequential losses. A person becomes entitled to damages for mental and physical loss, his or her life may have been shortened or that he or she cannot enjoy life, which has been curtailed because of physical handicap. The normal expectation of life is impaired. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be "just" and it cannot be a bonanza; not a source of profit but the same should not be a pittance. The courts and tribunals have a compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal

consideration. Though by use of expression “which appears to it to be just”, a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression “just” denotes equitability, fairness and reasonableness, and non-arbitrariness. If it is not so, it cannot be just.”

14) The Hon’ble Apex Court while fixing compensation has held that compensation ought not to be a windfall and not a source of profit and the compensation awarded ought to be commensurate with sufferings/harassment meted out to the home-buyers.

15) On the cumulative effect of the facts, reasons and judicial pronouncement and taking into account the gamut, conspectus and intricate issues involved, this Tribunal finds that the compensation awarded by the learned Adjudicating Officer appears to be quite exorbitant and disproportionate and not commensurate with the sufferings, harassment faced by the respondents nor in consonance with Section 72 of the Real Estate (Regulation & Development) Act, 2016 and therefore is hit by doctrine of proportionality.

16) Accordingly, we hold that the compensation of Rs.30,00,000/- instead of Rs.60,00,000/- would be just, adequate and commensurate to meet the ends of justice. Hence, the impugned order dt.13.12.2022 in AOCC No.14 of 2021, passed by the learned Adjudicating Officer, Odisha Real Estate Regulatory

Authority, Bhubaneswar is modified to the aforesaid extent and the appeal is allowed in part.

With the above orders, the appeal is disposed of.

Connected Miscellaneous applications are closed.

The records of the learned Authority be returned back forthwith.

Justice P.Patnaik
Chairperson

Shri S.K.Rajguru
(Judicial Member)

mp

