

OREAT Appeal No.75/2023

24) 16.05.2025

The appeal is taken up through hybrid mode.

2) We have already heard Mr.S.K.Parida, learned counsel appearing for the appellant, Mr. B.Nayak, advocate appearing on behalf of Mr. P.S.Nayak, learned counsel for the respondent no.1-Regulatory Authority and Mr. D.Nanda, learned counsel appearing for the respondent no.2.

3) The appellant has challenged order dtd. 28.3.2023, passed by the Odisha Real Estate Regulatory Authority in Complaint Case No.143/2022 praying inter alia to set aside the said order and for direction to the respondent to pay a sum of Rs.2,59,000/- with 9.50% interest compound quarterly per annum from 16.4.2011 till the date of payment to the appellant. The appellant of the appeal was the complainant in the complaint case, the respondent no.2 of the appeal was the respondent in the complaint case and the respondent no.1 of the appeal was the learned Regulatory Authority who has passed the impugned order.

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

The respondent no.2 invited applications from the interested buyers for purchase of lands situated in mouza-Siula, Chaka, Matiapada, Ekchalia, Kairi under the project name 'Bhagya Nagar' Plotted Scheme, pursuant to which the appellant agreed to purchase eight plots i.e. Plot No.5537, 5538,5539,5540,5541,5542, 6172 and 6173 total measuring an area of 9600 sq. ft. The sale price of

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each plot was fixed at Rs.50,000/- with membership charges of Rs.250/-. As a token of booking amount, the appellant had deposited a sum of Rs.20,000/- on 20.3.2008 and Rs.30,000/- on 3.11.2008. Thereafter, agreements were executed between the respondent no.2 and the appellant on 16.3.2008 stipulating that the appellant has to pay Rs.700/- per month for each plot within 60 months and Rs.4000/- to be paid at the time of registration. In obedience to the said agreement, the appellant has deposited a sum of total Rs.2,59,000/- in phased manner from 20.3.2008 to 15.4.2011. On 4.8.2010 the respondent no.2-promoter informed the appellant to refund the deposited amount as the I.T. Department instructed the DSR Khordha not to make any registration or sale deed in respect of Bhagya Nagar Project. But the appellant failed to receive the amount which she had paid to the respondent as a result of which she filed the complaint case No. 142 of 2022 praying to direct the respondent-promoter to refund Rs.2,59,000/- with penal interest.

5) Objection to the complaint has been filed by the respondent inter alia stating therein that the appellant is the depositor in Bhagyanagar Project and she had booked eight plots and the sale price of each plot was fixed at Rs.50,000/-. But while the matter stood thus, the Director of respondent-promoter was taken into custody in a criminal case vide PS case No.11 dtd.23.12.2012 (Criminal Branch, EOW, Bhubaneswar) for the offences u/s 120-B,420,506,34 of IPC. The prayer for his bail was rejected by the SDJM, Bhubaneswar so also the Hon'ble

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High Court of Orissa. Lastly, the respondent-promoter was released on bail by the Hon'ble Apex Court on deposit of Rs.63,55,49,227/- which amount was subsequently transferred to the Designated Court at Cuttack. The appellant is also the informant in GR case No.473/2012 and CT case No.23/2015 pending before the court of Presiding Officer, OPID Court, Cuttack. The competent authority has already notified requesting the depositors to come forward with their claim to receive the payment. But the appellant instead of approaching the OPID Court has approached the learned Authority claiming Rs.2,59,000/- with penal interest. Hence, it is prayed to dismiss the complaint with cost.

6) From the pleadings of the parties, the learned Authority has framed the following five points for adjudication of the complaint:

i)Whether the case is maintainable in law?

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

iii)Whether the amount collected by the respondent in respect of five projects including the disputed project has been deposited before the Registry of the Hon'ble Supreme Court and transferred to OPID Court for distribution amongst the allottees?

iv)Whether the Respondent is liable to pay the amount to the complainant with interest?

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

After hearing both the parties at length and on perusal of the documents available with the case record,

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the learned Authority vide order dt. 28.3.2023 allowed the complaint on contest against the respondent but without cost. The respondent has been directed to pay a sum of Rs.2,59,000/- to the complainant with interest thereon @9.50% per annum payable from 16.4.2011 till the date of payment. The amount to be returned to the complainant by the OPID Court shall be adjusted.

7) The appellant being aggrieved and dissatisfied with the order dt. 28.3.2023 passed in Complaint Case No.143 of 2022 has filed the present appeal. The appellant admitted that the amount deposited by him with the promoter, is the part of the amount which the promoter deposited before the Hon'ble Supreme Court of India and subsequently transferred to the OPID Court, Cuttack. It is further submitted that the learned Authority erred in passing the order to pay simple interest @9.50% per annum and the interest should be compounded quarterly payable to the appellant. As the order has been passed directing the respondent-promoter to pay simple interest, the appellant shall suffer irreparable loss and injury and the appellant sustained heavy financial loss. It has been further submitted that in a similar cases that is complaint case No. 145/2020 and 152/2021, the learned Authority has awarded interest compounded quarterly, but in her case simple interest has been awarded. For which the appellant prayed for the relief as mentioned in paragraph-3.

8) The respondent no.2 in his counter submitted that the impugned order has also been challenged by him before the Hon'ble High Court of Orissa in W.P. (C)

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No.17528 of 223 wherein the present appellant appeared and contested the case. It is further submitted that the respondent no.1 in the said writ petition has sought for a declaration whether the customer whose money have already been deposited before the Hon'ble Apex Court pursuant to order dt. 20.12.2014 in various SLPs, can approach other forum unlike Consumer Forum and Real Estate Authority Bhubaneswar. The said writ petition was dismissed vide order dt. 11.7.2024 and the matter is now pending before the Hon'ble Apex Court in SLP (C) No. 25395 of 2024. It is also submitted that the present appellant had applied before the Competent Authority-cum-ADM Cuttack for refund of her amount vide application sl.no. 3190 to 3195 (BNL No.5537 to 5542). Hence, the promoter is neither to pay any principal or interest. Reiterating the averments made in the objection filed in the complaint case, the respondent no.2 submitted that he is no more liable for any refund to the listed customers who are the complainants before the OPID Court. Hence, it is prayed to dismiss the appeal.

9) Heard the learned counsels for the respective parties, perused the documents available on the case record and found that the present appeal has been preferred by the appellant assailing only the interest part that too it has been prayed to award 9.50% interest compounded quarterly instead of simple interest of 9.50% per annum on Rs.2,59,000/- which has been passed by the learned Authority in the impugned order. There is no dispute with regard to payment of Rs.2,59,000/- by the appellant to the respondent no.2. At

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no point of time, the respondent no.2 has controverted the payment of Rs.2,59,000/- from the appellant. The money receipts filed by the appellant also shows that she has paid the aforesaid amount to the respondent no.2 and the respondent no.2 has also issued money receipt to that effect proving the receipt of payment. The last payment was made on 15.4.2011 which is evident from Annexure-2 to the appeal.

So far as the payment of interest is concerned, Section 18 (1) (b) of the Real Estate (Regulation & Development) Act, 2016 provides that “due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available to return the amount received by him in respect of that apartment, plot, building as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.”

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

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allottee to the promoter, as the case may be, shall be the 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. Further, the appellant resorted to the order passed in Complaint Case No.145 of 2020 and 52 of 2021 wherein compound interest has been awarded in favour of the allottees. Though appeal No. 71 of 2021 and

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19 of 2022 were preferred against the order passed in Complaint case No. 145 of 2020 and 52 of 2021, but the said appeals were dismissed due to non-deposit of statutory amount. The award of compound interest which is de hors of rules, in those cases cannot be treated as precedent and any decision on that score cannot be cited as precedent in other cases, particularly when the higher forum has already discarded the decision of awarding of compound interest. 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, in the instant case, there is no reason to disagree to the order of the learned ORERA with regard to award of simple interest. We find the order passed by the learned Authority in respect of payment of interest i.e. @9.50% per annum is justified and legally tenable. No error has been committed by the learned Authority while delving into the matter and in passing the impugned order.

10) In view of the discussions made herein above, we do find the impugned order dt. 28.3.2023 passed by the learned Authority in Complaint Case No.143 of 2022 is neither patently illegal nor is manifestly erroneous to warrant our interference. Hence, we are inclined to direct the respondent to pay a sum of Rs.2,59,000/- to the complainant with interest thereon @ Rs.9.50% per annum payable from 16.4.2011 till the date of payment and therefore the amount to be returned to the complainant by the OPID Court shall be adjusted.



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Accordingly, we hold that the present appeal being devoid of any merit is liable to be dismissed. Accordingly, the appeal stands 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 as well as respondent no.2.

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