

OREAT Appeal No.01/2024

17. 24.03.2025

Hearing of the appeal is taken up through hybrid mode.

2) We have already heard, Mr. Dev Das, learned counsel appearing for the appellant-promoter, Mr. K.C.Prusty, learned counsel appearing for the allottees-respondent nos.1 & 2 and Mr. P.P.Sahoo, learned counsel for respondent no.3-Authority.

3) The appellant-promoter (the respondent before the O.R.E.R.A) challenged the impugned order dt.17.08.2023 passed by the Odisha Real Estate Regulatory Authority, Bhubaneswar in Complaint Case No.413/2022 wherein the learned Authority held as follows :

"The case is allowed on contest against the respondents without cost.

1. The respondents are directed-

(i) To pay interest @ 9.70% per annum compounded quarterly on Rs.33,68,000/- payable from 1.5.2013 and on Rs.9,99,360/- payable from 19.2.2020 till 27.8.2020 i.e. the date of delivery of possession;

(ii) To refund an amount of Rs.4,38,000/- (escalated price) to the complainants.

2. The respondents are directed to comply the above directions within a period of two months from the date of this order failing which, the order shall be enforced as per law."

4) Learned counsel for the appellant during course of argument submitted that the order passed by the learned Authority in Complaint Case No. 413 of 2022 on 17.8.2023 is not sustainable under law and therefore, the order be set aside. It is the specific contention of the learned counsel for the appellant

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that the learned Authority committed an error in directing the promoter to pay interest for delay in completion of the project, even though, the promoter has no negligence on his part to discharge his obligations to the allottees in proper time. Further, the observation of the authority that the escalation charges of Rs.4,38,000/- as claimed by the promoter is not payable by the allottees due to the fact that the cost of the building is enhanced due to delay in completion of project by the promoter is not proper in the eye of law. Accordingly, the case has been advanced by the promoter which has been countered by the learned counsel for the respondents/allottees.

5) As it appears from the case record that the promoter floated a brochure for construction and sale of flats in the project namely "Jeevan Anand" at Khandagiri, Bhubaneswar in the year 2011. As per the brochure, the project was to be completed in the month of April, 2013. The respondents-allottees booked a three BHK flat with open parking and the basic price of the flat was fixed at Rs.36,50,000/- lakhs which does not include registration charges, stamp duty, electric meter and connection charges, service tax and any other tax imposed by the government and escalation charges over the basic price chargeable as per RBI wholesale price index for

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the commodities. The payment schedule by the promoter was also published in the brochure wherein 50% of the basic price i.e. Rs.18,25,000/- and the service tax total amounting Rs.18,72,000/- is to be paid as 1st instalment, 20% of the basic price i.e. Rs.7,30,000/- and the service tax total amounting to Rs.7,48,800/- is to be paid as 2nd instalment and 20% of the basic price i.e. Rs.7,30,000/- and the service tax total amounting Rs.7,48,800/- is to be paid as 3rd instalment. The 1st instalment was paid on 16.8.2011, 2nd instalment was paid on 16.2.2012 and the third instalment was paid in the month of February, 2013. The 4th and final instalment is to be paid with 10% of basic price i.e. Rs.3,65,000/- and GST, escalation price, maintenance charge and common services charges total amounting to Rs.9,99,360/-. After payment of the third instalment, no correspondence was made between the promoter and the allottees and the construction of the project was completely stalled. Both the parties admitted that through a letter dt. 12.12.2019, the promoter intimated the allottees to pay 10% of the basic price of Rs.3,65,000/- with escalation price of Rs.4,38,000/-, GST of Rs.96,360/- and Maintenance Charges of Rs.1,00,000/- towards the 4th and final instalment. The 4th instalment of Rs.9,99,360/- (total) was paid by the allottees on dt.

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19.02.2020 to which the promoter has also issued a money receipt. The possession of the flat was delivered on 27.08.2020, though conveyance deed was executed on 25.8.2020. The allottee took exception to pay the escalation price as escalation was charged for delay in completion of the building for about six years although 90% of the basic price was paid to the promoter as on February, 2013.

6) Learned counsel for the appellant-promoter submitted that such delay was caused due to some dispute between the executing agencies and the matter was referred to Hon'ble High Court of Bombay in one arbitration proceeding. However, after disposal of the legal proceedings, the promoter took up the construction and completed the project in the year 2019. There was no intentional delay in construction of the project and such delay cannot be attributed to the promoter as the circumstances which prevented to complete the project in time come under the concept of "force majeure". Accordingly, it is prayed that the promoter should not be burdened with the payment of interest to the allottees.

7) Learned Authority while discussing the circumstances of the case has observed that delay of more than six years in completion of the project is certainly prejudicial to the allottees. They have already paid 90% of the cost of the flat from their hard

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earned money and relied on the promoter for providing the flat as per the promise in the brochure. Any dispute between the executing agency and the promoter cannot be attributed to the fault of the allottees. Such cause of delay is also not covered under the concept of "force majeure" as disturbance in construction of the project is not the act of God. Such delay could have been avoided by the promoter in order to provide the flats to the allottees in proper time. Accordingly, the authority held that the promoter is responsible for the cause of delay and therefore he is liable to pay interest to the allottees in accordance with provisions of Section 18 (1) (b) of the Real Estate (Regulation & Development) Act, 2016 which is justified.

8) As per Section 18 (1) (b) when the promoter delivered possession to the allottee causing delay and the allottee did not withdraw from the project, the promoter is liable to pay interest on the amount received from the allottee for every month of delay till the handing over of possession at such rate as may be prescribed. Learned Authority although granted interest in favour of the allottee, but erred in directing the promoter to pay interest as per para 1(i) of the ordering portion which is applicable to the allottees who withdrew from the project for any cause and therefore, the promoter is liable to pay interest from

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the date of receipt of the amount. Therefore, the promoter is liable to pay interest on the basic price of the flat from the date of proposed date of delivery as per the brochure till the date of actual delivery. Hence, the appellant/promoter is liable to pay interest to the respondents/allottees on Rs.32,85,000/- from 1.5.2013 till 27.8.2020. Further, the learned Authority has directed the promoter to pay interest 9.70% per annum compounded quarterly, which is not legally sustainable. The Act does not prescribe anywhere to levy compound interest either on the promoter or on the allottees. Accordingly, we direct the promoter shall pay simple interest @ 9.70% per annum to the allottees.

9) As regards the escalation charges, as per the brochure, it is stated that the escalation charges shall be based upon the wholesale price index as published in the Reserve Bank of India bulletin and the enhanced valuation of the flat has been calculated till April, 2013 when the project was likely to be completed. Therefore, it cannot be said that the escalated price is to be paid for seven years delay in completion of project. The brochure being accepted by both the parties, the terms therein have been acted upon and hence the brochure has been accepted as agreement. Therefore, both the parties are obliged to comply all the terms and conditions including

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payment of escalated price by the allottees. Therefore, the Authority committed error in directing the promoter to refund an amount of Rs.4,38,000/- towards escalation price to the allottees. Hence, no amount is required to be returned by the promoter to the allottees which he has received towards escalation charges.

10) As regards the liability of the allottee, Section 19 (7) of the Real Estate (Regulation & Development) Act, 2016 prescribes that the allottee shall be liable to pay interest for any delay in payment instalments towards the amount charges by the promoter. It is admitted by the parties that the respondents-allottees were intimated vide letter dt. 12.12.2019 to pay the 4th instalment amounting to Rs. 9,99,3600/- which includes maintenance charge, GST and escalation price. The promoter issued a money receipt dt.19.2.2020 vide No.128 under Annexure-5 to the record of the authority which shows that the said amount has been paid by the allottees through cheques on dt. 19.2.2020 , but the delivery of the flat was given on 27.8.2020. The demand letter of the promoter towards the 4th instalment has not been filed either of the parties. Hence, it is clear that the promoter has delayed in handing over the possession of the flat by executing the sale deed. The sale deed also reveals that it was executed on 25.08.2020.

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Hence, the promoter is liable to pay interest @ 9.70% per annum to the allottees on Rs. 3,65,000/- from 19.2.2020 to 27.8.2020.

11) Accordingly, the impugned order dt. 17.08.2023 in Complaint Case No.413/2022 passed by the Odisha Real Estate Regulatory Authority, Bhubaneswar is set aside.

Hence, the promoter/appellant is directed to pay interest to the allottees/respondents @ 9.70% per annum on Rs.32,85,000/- payable from 1.5.2013 and on Rs. 3,65,000/- payable from 19.2.2020 till 27.8.2020 i.e. the date of delivery of possession. The appellant is directed to comply the above directions within a period of two months from the date of this order.

With the above findings, the appeal is disposed of on contest. Pending I.A. is disposed of accordingly.

12) Accounts officer of this Tribunal is directed to calculate the liabilities of the promoter, which may be paid to the allottees from the statutory amount deposited by the promoter after expiry of appeal period. The rest amount, if any, be refunded to the appellant alongwith accrued interest on proper identification.

Records of the learned Authority be returned forthwith.

Justice P.Patnaik
Chairperson

Shri S.K.Rajguru
(Judicial Member)