

OREAT Appeal No.50/2024

12)17.03.2025

The appeal is taken up through hybrid mode.

2) Heard Mr.C.Ray, learned counsel appearing for the appellant and Mr. S.S.Swain, advocate appearing on behalf of Mr. B.P.Tripathy, learned senior counsel for the respondent no.3-Authority. Respondent nos.1 and 2 have been set ex parte for default in appearance inspite of due service of summons upon them.

3) The appellant-promoter has preferred this appeal challenging the order dtd. 1.07.2023 passed by the Odisha Real Estate Regulatory Authority, Bhubaneswar in Complaint Case No.226 of 2022. The appellant was the sole respondent in the said case.

4) Smt. Kusum Dhal and Lalatendu Dhal, being the legal heir of Late Dev Durlav Dhal had filed Complaint Case No. 226/2022 before the learned Authority inter alia praying therein to direct the developer to deliver the physical possession of 50% of the share, to take stringent action against the respondent-developer due to delay in delivery of possession of their share and further developer may be directed to pay interest @12% per annum. The case of the complainants is that late Durlav Dhal being the absolute land owner of Plot No.151 Ac.6300 feet of mouza-Chandrasekharapur, Tahasil-Bhubaneswar, Dist-Khurdha had executed an agreement on 24.1.2017 with the promoter-respondent for development of a residential apartment over the said land with 50% of share

(II)

allocation each. Thereafter, two further supplementary agreements were made on 29.9.2018 and 28.9.2018 to decide the share. As per the agreements the promoter is to get nine flats and the complainants are to get seven flats out of total 16 flats. The developer got the project registered before the ORERA vide Registration No.RP/19/2019/00273 in the name of 'KIRAN RESIDENCY'. During pendency of delivery of possession of flats in favour of the complainants, the land owner Dev Durlav Dhal died on 9.9.2020 leaving behind him the complainants as his legal heirs. Since the respondent-promoter delayed in handing over the landowner's share, the complainants were constrained to file the complaint before the learned Authority.

The respondent has filed their show cause reply admitting the fact of agreement between the parties and further submitted that as per the agreement the land owners are entitled to get 7 flats i.e. Flat Nos.103,104,201,203,301,303 and 403 whereas the promoter is entitled to get 9 flats i.e. Flat No.101,102,202,204,302,304, 401, 402 and 404. The absolute land owner had sold four flats i.e. Flat No.303,103,104 and 201 to meet the medical expenses, renovation & construction of his old house and for academic expenses of his son incurred by him. It is further admitted that the Flat No.301 has also been sold by the Dev Durlav Dhal and the remaining two flats i.e. Flat No.203 and 403 are ready to be delivered to the legal heirs. Hence, it is submitted that no delay has been

(III)

caused in delivery possession of the flat and accordingly prayed for dismissal of the complaint.

The learned Authority after hearing of the parties at length on 1.07.2023 disposed of the Complaint Case No.226 of 2022 directing the respondent to deliver possession of flats bearing No.301, 203 and 403 in favour of the complainants within a period of two months, failing which the order shall be enforced as per law.

5) The appellant-promoter has preferred the instant appeal being aggrieved and dissatisfied with the order dt. 1.7.2023 passed in the said Complaint Case No.226 of 2022. The specific plea of the appellant is that the late Dev Durlav Dhal has already sold flat no.301 of the 'KIRAN RESIDENCY' in favour of Ritu Jain Agrawal and Chetan Agrawal, but the learned Authority has erroneously held that the respondent has not mentioned the status of the 7<sup>th</sup> flat i.e. flat no.301. So, the complainants are entitled to take possession of three flats i.e. 301,203 and 403. The appellant has submitted that when the said flat i.e. flat no.301 has already been sold by the late Dev Durlav Dhal out of his share, further direction to hand over the said flat to the respondents-legal heirs of the late Dev Durlav Dhal is illegal and hence the order passed the learned Authority on dt. 1.7.2023 is liable to be set aside.

6) On perusal of the case record, the materials available on the case record and after hearing the counsels for the appellant as well as respondent no.3-Authority, it is found that the appellant has entered into a

(IV)

development agreement with the land owner-Dev Durlav Dhal for development of the property over an of 6300 sq. ft over plot No.151 of mouza-Chandrasekharapur. In view of the agreements made between the parties, the promoter has taken registration certificate from the Authority vide Registration No.RP/10/2019/00273 in the name of "Kiran Residency". It is agreed between the parties that out of the total 16 flats, the promoter is entitled to get nine flats i.e. Flat No.101,102,202, 204, 302,304, 401, 402 and 404 and the land owners are entitled to get seven flats i.e. Flat Nos.103,104,201,203,301,303 and 403. There is no dispute that the respondent had already sold flat nos. No.303,103,104 and 201 and it is also the admitted facts that two flats i.e. Flat No.203 and 403 are ready for delivery of possession in favour of the land owners. Now the question remains to be determined as to whether the appellant is liable to hand over possession of the flat no. 301 including the flat nos.203 and 403 in favour of the land owners. The learned Authority in the impugned order at para-7 (page-6) has observed that the respondent(appellant in the present appeal) has not mentioned the status of the 7<sup>th</sup> flat i.e. flat no.301 and hence the land-owners are entitled to take possession of the said flat including flat nos.203 and 403. Controverting such observation, learned counsel for the appellant submitted that the flat no.301 has already been sold away by late Dev Durlav Dhal, the land owner in favour of Ritu Jain Agrawal and Chetan Agrawal.

(V)

Learned counsel for the appellant further submitted after disposal of the complaint case No. 226 of 2022 on 1.7.2023, the appellant has filed an application u/s 39 of the Real Estate (Regulation & Development) Act, 2016 for rectification of the said order due to the fact that the learned Authority has directed for handing over possession of flat no.301 in favour of the land owners which had already been sold away by late Dev Durlav Dhal. But the said application of the appellant has been rejected by the learned authority on 27<sup>th</sup> February, 2024.

7) On perusal of the complaint case record, it is found that the complainants in their complaint at para-7 (page-3) have specifically mentioned that late Shri Dev Durlav Dhal has registered a flat viz. Flat No.301 from his allotted shares of flats to Ritu Jain Agrawal and Chetan Agrawal on 13<sup>th</sup> July, 2020. The promoter-respondent in their show cause reply at para-1 also submitted that the Sri Dev Durlav Dhal has sold away flat No.301. Such fact is also admitted by the complainant in para-5 of the rejoinder filed by the complainant. Further, the promoter has relied on sale deed dt.13.7.2020 (available in the complaint case) which reveals that the Sri Dev Durlav Dhal has executed a registered sale deed in favour of Ritu Jain Agrawal and Chetan Agrawal on in respect of two BHK Flat No.301. Hence, it is crystal clear that late Sri Dev Durlav Dhal has already executed a registered sale deed in respect of Flat No.301 on 13.7.2020. Hence, the observation of the learned Authority on 1.7.2023 passed in Complaint Case No.226 of 2022 that the

(VI)

respondent has not mentioned the status of the 7<sup>th</sup> flat i.e. flat no.301 is erroneous and contrary to admitted facts, particularly when the respondent (appellant in the present appeal) has already taken the stand in the counter mentioned the fact that Sri Dev Durlav Dhal has sold away Flat No.301. Furthermore, the respondent-land owners in their complaint as well as rejoinder have also admitted the stand that Sri Dev Durlav Dhal has sold away Flat No.301 which also supported by documentary evidence i.e. registered sale deed dt. 13.7.2020. However, the observation of the learned authority in respect of delivering possession of flat nos.203 and 403 is not in dispute as during course of hearing learned counsel for the appellant has fairly submitted that the appellant has no objection to make the delivery of possession of flat no.203 and 403 in favour of respondent nos.1 and 2.

8) It appears from the impugned order that learned Authority while delving into the factual aspects has inadvertently lost sight of the factum of sale of Flat No.301 on 13.7.2020 which has resulted in an erroneous finding which in the interest of justice requires to be rectified and modified.

9) In view of the discussions made in the preceding paragraphs, we direct the appellant to deliver possession of the flats bearing No.203 and 403 in favour of the respondent nos.1 and 2 within a period of two months hence.

(VII)

With the aforesaid modification, the appeal is disposed of.

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.

Justice P.Patnaik  
Chairperson

Shri S.K.Rajguru  
(Judicial Member)

Td

