

**OREAT Appeal No.80/2024**

16) 07.07.2025

The appeal is taken up through hybrid mode.

2) Heard Mr.B.Subudhi, learned counsel appearing for the appellant through virtual mode, Mr.M.Agarwal, learned counsel appearing for the respondent nos.2 & 3 through virtual mode and Mr.B.Nayak, learned counsel for the respondent no.1-Authority.

3. Aggrieved over the order dated 26.02.2024 passed by the Odisha Real Estate Regulatory Authority (herein after referred to as the 'Regulatory Authority') in Complaint Case No.305 of 2023, the appellant, who was the sole respondent there in has filed this appeal praying to set aside the said order. The respondent no.1 of this appeal is the learned Regulatory Authority, who has passed the impugned order and the respondent nos.2 & 3 were the complainants in the aforesaid complaint case.

4. Facts and circumstances leading to the filing of the present appeal are as follows:-

The respondent nos.2 & 3 of the present appeal filed the aforesaid complaint case before the learned Regulatory Authority on 30.09.2023 submitting that they had entered into a Flat Buyer agreement with the appellant on 29.10.2014 for purchase of a flat in the project "Royal Habitat". The complainants claimed that as per the aforesaid agreement they were allotted Flat no.D-366 with a super built up area of 1415 sqft. at the 3<sup>rd</sup> floor of the

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Tower no.22 of the project having RERA registration no. MP/19/2018/00013. Out of an amount of Rs.38,02,125/- payable in total, the cost of the flat was Rs.35,60,625/-. The complainants have so far made a total payment of Rs.32,30,653/- which comes up to 91% of the total cost of the flat and the fact of payment has been acknowledged by the respondent-promoter vide its letter dated 29.04.2022. As per the Flat Buyer agreement the flat after completing construction was to be made ready for delivery of possession within 36 months from the commencement of the construction or 42 months from the date of Flat Buyer agreement, which ever was later, with a grace period of six months. So, on the higher side the flat should have been ready for delivery of possession by 28.10.2018. The complainants have alleged that despite this stipulation the respondent has still not handed over possession of the flat to them even though a period of 59 months has elapsed after the expiry of the stipulated period. The complainants have claimed that they have availed loan from the Union Bank of India for purchase of the flat in question and are paying interest on the same but the respondent has not even informed them an approximate time by which the flat will be ready for delivery of possession after obtaining occupancy certificate. It is further alleged by the complainants that after expiry of the stipulated period for delivery of possession of the flat as per the agreement they

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approached the respondent in his office to know about the delivery of their flat, but the agents of the respondent after making false promise to deliver the possession of the flat on multiple occasions have now communicated vide email that the dead line for delivery of the flat has been postponed to March, 2024. Alleging that the respondent is a habitual defaulter and on earlier occasions also it has been penalised under the RERA Act for not delivering the flats in time and drawing attention of the learned Regulatory Authority to the mental and financial harassment they are undergoing for being not able to get the possession of the flat house ever after nine years of booking the same, the complainants prayed to the learned Regulatory Authority to pass an order directing the respondent-promoter to deliver the possession of their flat with valid completion certificate and occupancy certificate, within a month from the date of the order, and to impose penalty on the respondent for violation of the Flat Buyer agreement and the RERA Act.

Pursuant to the summons issued by the learned Regulatory Authority, the respondent appeared through its counsel and filed a petition praying for time to file vakalatnama and show cause to the complaint on the next date. However, on the next date i.e 16.01.2024 the respondent was absent and also no steps was taken on its behalf. Accordingly, the learned Regulatory Authority set the respondent ex-parte and fixed the case for hearing on

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05.02.2024. On 05.02.2024 the case was finally heard from the learned counsel for the complainant and the impugned order was passed on 26.02.2024 as follows:-

(1) The respondent is directed to  
(i) execute a sale deed in respect of the flat No.D-366 in the 3<sup>rd</sup> Floor of the project "Royal Habitat" at Govindpur, Jatni Road, Bhubaneswar in favour of the complainants on receiving the balance consideration amount of Rs.5,71,472/- from them and handover possession of the flat within three months after obtaining occupancy certificate from the local authority, and

(ii) To pay interest @ 9.70% per annum on the amount of Rs.32,30,653/- from 28.10.2018 till the date of delivery of possession.

(2) The complainants are directed to pay the balance consideration amount of Rs.5,71,472/- to the respondent on the date of registration of the sale deed.

(3) The parties are directed to comply with the order as above, failing which the order shall be enforced as per law.

5. In the hearing of the appeal the learned counsel for the appellant has submitted that the learned Regulatory Authority has not taken into consideration the fact that ORERA had already allowed the extension of the registration of the project on acknowledging that the delay in completion of the project was neither intentional nor due to the negligence on the part of the appellant. It is further submitted that a through perusal of Sub-Clause 21.1 of the Flat Buyer agreement makes it clear that the

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appellant is no way responsible for the delay in completion of the project and delivery of the possession of the flat in question to the respondent nos.2 and 3. It is further submitted that the direction of the learned Regulatory Authority to the appellant in the impugned order to pay interest @ 9.70% on the amount of Rs.32,30,653/- without considering the rebuttal of the appellant is bad in the eye of law. The learned counsel for the appellant has drawn the attention of this Tribunal to the fact that it was only due to circumstances beyond the control of the appellant, its pleader could not appear on the date of hearing of the complaint case and therefore, the case was heard ex-parte leading to the passing of the impugned order. The learned counsel for the appellant has asserted that as non-appearance of the appellant was not intentional, the case having been heard ex-parte, the appellant could not present anything in his defence and the appellant being deprived of sufficient opportunity to be present for the hearing, certainly there has been a violation of the principle of natural justice. Reiterating its claim that the project "Royal Habitat" was given extension of registration by the ORERA from 01.05.2021 to 30.04.2022 but the said fact could not be brought to the notice of the learned Regulatory Authority, the learned counsel for the appellant has claimed that the complaint case therefore has not been properly adjudicated. With the aforesaid submissions, the

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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 nos.2 & 3 has submitted that no material has been placed on record to show the circumstance for which the pleader of the appellant could not file the counter to the complaint petition and attend the hearing before the learned Regulatory Authority. Reiterating the claim of the respondent nos.2 and 3 i.e the complainants in complaint petition that the parties were bound by the terms and conditions of the agreement for sale dated 29.10.2014 in accordance to which the flat was to be constructed and delivered by 28.10.2018, the learned counsel for the respondent nos.2 & 3 has asserted that the construction of the project is incomplete till date and no occupancy certificate having been issued in respect of the project, the RERA registration certificate is irrelevant to the non-completion of construction of the project. The completion of construction was to be in accordance with the terms of the agreement for sale but that has not been complied with. The learned counsel for the respondent nos.2 & 3 has accordingly prayed for dismissal of the appeal terming the same as without merit.

7. The claim of the respondent nos.2 & 3 in the complaint petition that on the basis of their Flat Buyer agreement with the appellant-promoter on 29.10.2014 they were allotted Flat no.D-366 with a

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super built up area 1415 sqft. at the 3<sup>rd</sup> floor in the Tower no.22 of the project "ROYAL HABITAT", Gobindpur, Jatni Road, Bhubaneswar for a total amount of Rs.38,02,125/- including the flat cost of Rs.35,60,625/-, that they have so far paid an amount of Rs.32,30,653/-, that the flat was required to be completed and delivered in possession within 48 months from the date of the Flat Buyer agreement and that the appellant-promoter has failed to complete the construction of the flat and deliver its possession to the respondent nos.2 & 3 even after 59 months from the expiry of the stipulated period for completion, have found support from the copy of the Flat Buyer agreement dated 29.10.2014, copies of the acknowledgement of the appellant-promoter with regard to its receipt of payments and the copy of the letter dated 11.05.2022 of the respondent nos.2 & 3 to the appellant informing it about the collateral financial losses due to inordinate delay in handing over the flat in question with a request to compensate them. As already mentioned earlier, the appellant-promoter having not filed any written show cause to the complaint petition in spite of appearing before the learned Regulatory Authority through its counsel and having not contested the proceeding, the aforesaid facts remain unchallenged.

There is no dispute between the parties over the fact that the project is still not completed and therefore, is covered under the RERA Act. As

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mentioned earlier in paragraph-5, the appellant-promoter has assailed the impugned order mainly on two grounds, (i) having not been given sufficient opportunity to present its defence in the proceedings of the Complaint Case, principle of natural justice has been violated, and (ii) ORERA had already allowed extension of the project from 1.5.2021 to 30.4.2022 acknowledging the fact that the delay in completion of the project was neither intentional nor due to any negligence on the part of the appellant and as this fact could not be brought to the notice of the learned Regulatory Authority, the complaint case could not be properly adjudicated upon.

As regards the alleged violation of principle of natural justice, it is seen from the complaint case record that on 07.12.2023, the appellant-promoter after appearing through its counsel filed a petition praying for time to file show cause on the next date. Accordingly, time was allowed fixing the case to 16.01.2024 for filing of vakalatnama and show cause, but on that day though the counsel for the respondent nos.2 & 3 was present, the appellant was absent and also no steps were taken on its behalf. The learned Regulatory Authority adjourned the case to 05.02.2024 for hearing after setting the appellant-promoter ex-parte, but on 05.02.2024 when hearing of the case was taken up the appellant still did not appear and accordingly, after conclusion of hearing on that day impugned order was passed on 26.02.2024.



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So considering the fact that there were two sufficient adjournments in the case after the appearance of the appellant-promoter and it was the appellant-promoter, who had remained totally non-responsive on those two occasions, the learned Regulatory Authority can not be blamed for hearing the case ex-parte and proceeding to pass the impugned final order. Even after remaining absent on 16.01.2024, the appellant-promoter could have participated in the proceeding on 05.02.2024 by praying to set aside the ex parte order passed against it and making a prayer to file its show cause to the complaint but by remaining absent after appearing on 07.12.2023 till the passing of the impugned order on 26.02.2024, the appellant-promoter has certainly exhibited a totally careless attitude towards an adjudication proceeding before a lawful authority. The appellant has not made it clear what were the circumstances beyond its control for which the counsel engaged by it could not appear before the learned Regulatory Authority on the date of hearing of the Complaint Case. No prudent person would support the contention of the appellant that in spite of its absence and non-taking of steps on two days after its appearance the learned Regulatory Authority should have further adjourned the case and waited for the appellant to participate in the hearing. So, under the aforesaid particular circumstances, by deciding the complaint case in absence of the

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appellant, the learned Regulatory Authority has not violated the principle of natural justice in any manner.

Coming to the plea of the appellant with regard to extension of the registration granted by the ORERA to the project, we are of the opinion that the extension of the present project by ORERA from 01.05.2021 to 30.04.2022 is no way an excuse to the failure of the appellant-promoter to complete the construction of the project by 28.10.2018 as per the term of the Flat Buyer agreement dated 29.10.2014. Under Section 18(1) (b) of the RERA Act, if the promoter fails to complete or is unable to give possession of an apartment, plot or building in accordance with the terms of agreement for sale, he shall be liable to pay the allottee, where the allottee does not intend to withdraw from the project, interest for every month of delay, till the handing over of the possession at the prescribed date. In the instant case, from the facts in the complaint petition supported by documents, it is established that the appellant-promoter after agreeing to complete the project within 48 months from the date of the Flat Buyer agreement has failed to complete the project and give possession of the flat in question to the respondent nos.2 & 3 within the stipulated time and therefore, the respondent nos.2 & 3 having not intended to withdraw from the project, are entitled to be paid interest for every month of delay by the appellant-promoter till the handing over of the

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possession of the flat at the SBI Marginal Cost of Lending Rate plus two percent. The contention of the appellant that the extension of the registration of the project from 01.05.2021 to 30.04.2022 vide order dated 16.07.2021 of the ORERA is an acknowledgement of the fact that the appellant is not negligent in completing the project by 28.10.2018 is misconceived as the appellant-promoter's liability under Section 18 (1) (b) of the Act for failure to complete the project within the stipulated period is no way relevant to the registration of the project or its extension. Our view finds support from the decision of the **Hon'ble Supreme Court of India in the case of Imperia Structures Ltd. Versus Anil Patni and Another reported in 2020 ( 10 ) SCC- 783**, wherein it has been observed that, "the period of delay/expiry of period of completion of the project has to be reckoned in terms of builder-buyer agreement and not the registration of the project. Hence, date till which registration of the project might be valid, is irrelevant to invoke remedies under Section 18 or Section 18 proviso."

8. In view of the discussions made in the preceding paragraph, the appeal filed by the promoter is found to be without any merit and accordingly, stands dismissed on contest against the respondents. The impugned order dated 26.02.2024 of the learned Regulatory Authority in Complaint Case No.305 of 2023 is hereby confirmed.

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Send an authentic copy of this order alongwith the record of the complaint case to the learned Regulatory Authority for information and necessary action. Also send a copy of the impugned order each to the appellant-promoter and the respondent nos.2 & 3.

Justice P.Patnaik  
Chairperson

Shri S.K.Rajguru  
(Judicial Member)

(Dr. B.K.Das)  
(Tech./Admn. Member)

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