

OREAT Appeal No.77/2024

15. 11.04.2025

Hearing of the appeal is taken up through hybrid mode.

2) Heard Mr. L.Sarangi, learned counsel appearing for the appellants-promoters, Mr. K.C.Prusty, learned counsel appearing for the allottees-respondent no.2 and Mr. B.Nayak, advocate appearing on behalf of Mr. P.S.Nayak, learned counsel for respondent no.1-Authority.

3) The appellants-promoters (the respondents before the O.R.E.R.A) challenged the impugned order dt.1.03.2023 passed by the Odisha Real Estate Regulatory Authority, Bhubaneswar in Complaint Case No.279/2022 wherein the learned Authority held as follows :

*"The case is allowed ex parte against the respondents without cost.*

*1. The respondents are directed-*

*(i) To pay interest @ 9.70% per annum compounded quarterly on Rs.19,09,800/- payable from 16.6.2011, on Rs.7,79,600/- payable from 29.2.2012, on Rs.7,83,484/- payable from 11.1.2013 till 9.7.2020 i.e. the date of delivery of possession.*

*(ii) To refund an amount of Rs.4,56,000/- (escalated price) to the complainant.*

*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) During the course of argument, learned counsel for the appellants submitted that the order passed by the learned Authority is not sustainable

(II)

under law and therefore, the order be set aside. It is the specific contention that the learned Authority erred in directing the promoters to pay interest for delay in completion of the project, even though, the promoters have no negligence on his part to discharge their obligations to the allottee in proper time. Further, the observation of the authority that the escalation charges of Rs.4,56,000/- as claimed by the promoters is not payable by the allottee due to the fact that the cost of the building is enhanced due to delay in completion of project by the promoters is not proper in the eye of law. Accordingly, the case has been advanced by the promoters 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 respondent-allottee booked a three BHK flat with covered parking and the basic price of the flat was fixed at Rs.38,00,000/- 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 the commodities. The payment schedule by the promoter was also published

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in the brochure wherein 50% of the basic price i.e. Rs.19,00,000/- and the service tax total amounting Rs.19,09,800/- is to be paid as 1<sup>st</sup> instalment, 20% of the basic price i.e. Rs.7,60,000/- and the service tax total amounting to Rs.7,79,600/- is to be paid as 2<sup>nd</sup> instalment and 20% of the basic price i.e. Rs.7,60,000/- and the service tax total amounting Rs.7,83,484/- is to be paid as 3<sup>rd</sup> instalment. The above three instalments were paid by the allottee respectively on dt. 16.6.2011, 29.2.2012 and 11.1.2013. The 4<sup>th</sup> and final instalment is to be paid with 10% of basic price i.e. Rs.3,80,000/- and GST, escalation price, maintenance charge and common services charges total amounting to Rs.10,36,320/-. After payment of the third instalment, no correspondence was made between the promoter and the allottee and the construction of the project was completely stalled. Only through a letter dt. 5.12.2019, the promoter intimated the allottee to pay basic price of Rs.3,80,000/- with escalation price of Rs.4,56,000/-, GST of Rs.1,00,320/- and Maintenance Charges of Rs.1,00,000/- towards the 4<sup>th</sup> and final instalment. On payment of the 4<sup>th</sup> instalment amount of Rs.10,36,320/- by the allottee, the possession of the flat was delivered on 9.07.2020. 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 January, 2013.

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6) Learned counsel for the appellants-promoters 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 allottee.

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 allottee. They have already paid 90% of the cost of the flat from their hard 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 allottee. 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 allottee in proper time. Accordingly, the

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authority held that the promoter is responsible for the cause of delay and therefore he is liable to pay interest to the allottee 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 allottee who withdrew from the project for any cause and therefore, the promoter is liable to pay interest from 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 appellants/promoter are liable to pay interest to the respondent/allottee on Rs.34,20,000/- from 1.5.2013 till 9.7.2020. 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

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the allottee. Accordingly, we direct the promoter shall pay simple interest @ 9.70% per annum to the allottee.

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 payment of escalated price by the allottee. Therefore, the Authority committed error in directing the promoter to refund an amount of Rs.4,56,000/- towards escalation price to the allottee. Hence, no amount is required to be refunded by the promoter to the allottee 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. Though it is submitted that the promoter had asked for 4<sup>th</sup> instalment on 5.12.2019 but no such letter has been filed by either of the parties to prove such demand.

(VII)

Further, both the parties are also silent about the date of payment of 4<sup>th</sup> instalment of Rs.10,36,320/- by the allottee to the promoter. The order of learned Authority is also silent in this regard, as such no interest be levied upon either of the parties on the payment of 4<sup>th</sup> instalment.

11) Accordingly, the impugned order dt. 1.03.2023 in Complaint Case No.279/2022 passed by the Odisha Real Estate Regulatory Authority, Bhubaneswar is set aside.

Hence, the promoters/appellants are directed to pay interest (simple) to the allottee/respondent @ 9.70% per annum on Rs.34,20,000/- from 1.5.2013 till 9.7.2020 i.e. the date of delivery of possession. The appellants are 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.

12) Accounts officer of this Tribunal is directed to calculate the liabilities of the promoter, which may be paid to the allottee 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)

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