

OREAT Appeal No.89/2024

14. 11.7.2025

The appeal is taken up through hybrid mode.

2) Heard Mr.P.K.Dasmohapatra, learned counsel for the appellant and Mr.R.K.Swain, learned counsel for the respondent.

3) Being aggrieved and dissatisfied with the order dt.18.04.2024, passed by the learned Adjudicating Officer, Odisha Real Estate Regulatory Authority in AOCC No.3 of 2024, the instant appeal has been preferred praying inter-alia for setting aside the impugned order dt.18.4.2024 vide Annexure-A/1.

4) The respondent no.1 filed AOCC No.3/2024, before the Adjudicating Officer, Odisha Real Estate Regulatory Authority, U/s.31 read with Section 71 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called as "Act"), with the following prayer :

(1) *Award compensation for the contravention of provision u/s.12 of the Act for misrepresentation made in the prospectus to deceive the complaint.*

(2) *Order compensation u/s.14 of the Act for non-adherence to the sanctioned plans and project specifications by changing the quality of materials provided at the time of construction, changed the common area to a private space for handful of allottees at the promoter's sweet will without taking 2/3rd approvals of the allottees, defective sewerage system and other specifications and also to refund the differential cost of Rs.16,000/- along with interest @ 18% for charging it before handing over the premises.*

(3) *Give direction to pay compensation for violation of Sec.18(1)(a) of the Act for non-performing and delay in performing the work in accordance with the terms of the agreement.*

(4) *Issue an order of compensation against the respondent promoter for failing to discharge the obligations imposed under the Act and the rules and regulations made there-under in accordance with the terms and condition of*

(ii)

the agreement for sale which contravenes Sec.18(3) of the Act.

(5) Issue order of compensation for not giving any information relating to sanctioned plans, layout plans along with specifications approved by the competent Authority even after filing RTI application by the complainant.

(6) Issue an order of compensation for contravention of Sec.19(1) & (2) of the Act.

(7) Issue an order of compensation to the tune of Rs.2,50,000/- towards house rent for 28 months delay in handing over flat.

(8) Issue an order of compensation of Rs.2,00,000/- towards harassment, mental agony and inconvenience caused for the non-completion of work from the date of handover till date.

(9) Issue an order of compensation of Rs.10,000/- towards the cost of litigation.

(10) Direct the respondent to pay interest @18% on the total sales price for the abnormal delay in handing over the flat from the date of handing over in the letter till the date of order.

4) The factual matrix leading to filing of the present appeal is that the respondent instituted AOCC No.1 of 2024, before the ORERA U/s.31 read with Section 71 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called as "Act").

The case of the respondent, being the complainant before the learned Adjudicating Officer is that she is an allottee and the appellant is a promoter. The appellant has floated an advertisement for housing project of different categories in the name and style "SUDARSHAN ENCLAVE" to be constructed at Dumduma in the newspaper and invited applications from the interested customers. In the housing scheme the appellant had undertaken to provide the facilities as per the broucher/prospectus and also undertook to complete the project within 36 months from the date of execution of work and the

(iii)

likely date of handing over of the flat was 31.12.2019. Accordingly, the respondent had applied loan for the allotted LIG flat bearing Flat No.712. Vide letter No.7760 dt.26.08.2019, the appellant asked respondent to pay balance amount in full to be paid by 30.09.2019. Accordingly, the respondent had paid the aforesaid amount before due date. The appellant issued another letter to the respondent in Janunary,2022 demanding more cash towards the final cost to the tune of Rs.16,160/- and membership fees of Rs.8000/- and maintenance charge for one year amounting to Rs.9,600/- and a residuary balance Rs.393/-, which was communicated to her vide letter no.1238, dt.24.1.2022. In response to that letter, the respondent had fully complied with within due date. However, on 29.4.2022 there was delivery of advance possession and possession slip was issued in favour of the respondent i.e. after 64 months.

After taking possession of the said flat, the respondent came to know that the allotted flat is of substandard in which the floor of the building was not properly plastered. She further came to know that the compound wall of the EWS side is still not completed leading to total insecurity and unsafe to settle inside the premises. The other allottees had also drawn the attention of the appellant about the aforesaid latches but the appellant did not pay any heed. The approach road was also not free from encumbrances and the covered car parking for MIG allottees were not adequate. Without obtaining the

consent of 2/3rd of the allottees, the appellant has converted the central lawn and children's play area into parking area. She also came to know that the appellant has sold the common area meant for children and senior citizens of all flat owners in the campus for the 2nd time to be used as parking area. There is also no STP for sewerage which causes overflow of dirty water and there is no mechanized sewerage treatment plant, as promised by the appellant.

It is alleged by the respondent that the appellant had grossly violated the function u/s.11(1) (d) of the Act by not updating quarterly list of approvals taken and the approvals which were pending after commencement certificate. It is alleged that without obtaining valid occupancy certificate from the competent authority, the possession of the flats were given to the allottees, which contravenes clause 11(3) (b) of the Real Estate (Regulation & Development) Act, 2016. It is further alleged that the promoter did not facilitate the allottees for formation of Residents' Welfare Association being violative of Section 11(e) of the said Act. It is also alleged by the respondent that the appellant failed to provide uninterrupted maintenance and essential services like water and elevator even after taking adequate fees for the whole year U/s.11(d) of the Act. The appellant also failed to execute a registered conveyance deed of the apartment in favour of the complainant/appellant along with the undivided proportionate title in the common area to the association of the allottees

U/s.11(f) read with Sec.17 of the Act. It is therefore claimed by the respondent that the appellant should compensate for the damages caused by false and deceiving statements on the face of the prospectus which contravenes Sec.12, 14, 18 and 19 of the Act.

5) The appellant being the respondent before the learned Authority, filed his show cause, denying the averments made by the complainant. It is the plea of the appellant that in the possession slip and the inventory list of fittings, it is found that the complainant has put her signature on this documents and that she has mentioned that the fittings and fixtures on the date of taking possession is in complete stage and in good condition. Therefore, the appellant pleaded that the complainant has filed this case against the appellant on the basis of the evasive grounds and hence prayed for dismissal of the case.

6) The learned Adjudicating Officer in AOCC No.3/2024 after going through the case record, has been pleased to direct for payment of compensation of Rs.5,00,000/- (Rupees five lakhs) to the complainant/respondent within a period of 45 days from the date of order, failing which the amount shall carry interest @9.50% per annum till total realization. It has further been directed that if the above amount is not paid to the complainant within the aforesaid period the complainant is at liberty to take steps for realization of the said amount by resorting to Sec.40 of the Act read with Rule 29 of the Odisha Real Estate (Regulation & Development) Rules, 2017.

7) The appellant has assailed the impugned order on the ground that the same is palpably illegal, perverse and unsustainable in the eyes of law, since the learned Adjudicating Officer has travelled beyond its jurisdiction. Another ground of appeal is that the learned Adjudicating Officer has not determined the compensation for interest in terms of Section 71 read with Sec.72 of the Act, with regard to quantum of compensation. Further ground of the appeal is that the association of the allottees or other members are not on record and no permission has been obtained as provided under Order 1 Rule 8 of the CPC for filing the complaint.

8) Learned counsel for the appellant during course of hearing has vehemently submitted that the association of allottees are entitled to claim compensation in support of any inconvenience caused to the common area and the complainant-respondent in an individual capacity is not entitled to claim any lump sum amount towards such common facilities and that too on the basis of any calculation of such lump sum amount without placing any evidence/material on record.

Learned counsel for the appellant further submits that the respondent-allottee did not intend to withdraw from the project as per Sec.18 of the Act nor the respondent has filed any complaint U/s.31 of the Act for the delay caused by the appellant till handing over of the possession of the flat. Therefore, according to the learned counsel for the appellant, once the possession is handed over by the promoter to the

allottee, the allottee-respondent cannot demand interest for the delayed possession. Learned counsel for the appellant further submitted that the impugned order is assailable on the ground that the respondent-complainant has failed to demonstrate any violation of the provisions of Sec.12,14,18 and 19 of the Act. Moreover, the quantum of compensation as awarded by the learned Adjudicating Officer, is not based on any quantifiable data. Therefore, the impugned order being legally unsustainable, is liable to be set aside. Learned counsel for the appellant further submitted that the sufferance of mental agony, financial loss and harassment meted out to the respondent is nothing but to derive unjust financial benefits from the appellant which amounts to unjust enrichment.

9) Learned counsel for the respondent on the other hand, has vociferously submitted that the appellant is guilty of criminal breach of trust and cheating as the respondent fell into trap of deception on good faith. Learned counsel for the respondent further submitted that genesis of the case arose in the year 2015 when the respondent applied for LIG flat from Phase-VII Project at Dumduma in the name and style of M/s.Sudarshan Enclave and paid full consideration amount of Rs.15,86,000/- outrightly partly from lifetime saving and partly incurring loan with hefty interest from the bank. The project was supposed to be completed on 31.12.2019. Finally, the agreement was executed by the appellant in May, 2022 superscribing "Advance Possession" connotation with a view to complete the pending

works shortly. The possession was done amidst protest, agitation, picketing, dharanas, media coverage etc.

Learned counsel for the respondent further submitted that the promoter-appellant took date after dates but could not fulfill the promises. The project is still ongoing without ORERA and BDA extension approval. The appellant neither provided the basic amenities for living nor met the specifications endorsed through brochure. Most of the amenities were defective and half-cooked and rest were denied. Learned counsel for the respondent, therefore, submits that since there was violation of agreement, the respondent was compelled to approach the learned Adjudicating Officer for a suitable compensation by invoking Sec.6, 12, 14, 18 and 19 of the Real Estate (Regulation & Development) Act, 2016. Learned counsel for the respondent further submitted that while awarding quantum of compensation learned Authority has taken note of the factors as narrated U/s.72 of the Act.

10) So far as adjudging the compensation is concerned, under Section-71 of the Real Estate (Regulation & Development) Act, 2016, the Adjudicating Officer is to adjudge the compensation which are covered U/s.12,14,18 and section 19 of the Act. On perusal of both the provisions, it is quite clear that the power exercised by the Authority and the Adjudicating Officer are quite distinct, well-defined and clearly delineated. There is no over-lapping of power exercised by the Authority and by the

Adjudicating Officer and as per Section-71 of the Act, the Adjudicating Officer is empowered only to grant compensation. Therefore, grant of compensation is the exclusive jurisdiction of the Adjudicating Officer not the Authority. The aforesaid provisions have already been highlighted in the landmark judgment of the Hon'ble Apex Court in the Case of Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P. and Ors etc.(Civil Appeal Nos.6750/2021 and batch of cases), reported in 2021 SCC online SC 1044.

11) On the cumulative effect of the facts, reasons and judicial pronouncement and taking into account the gamut, conspectus and intricate issues involved, this Tribunal finds that the penalty awarded by the learned Authority appears to be quite exorbitant and disproportionate and not commensurate with the suffering and harassment faced by the respondent and therefore is hit by doctrine of proportionality.

12) Accordingly, we hold that the penalty of Rs.3,00,000/- instead of Rs.5,00,000/- would be just, adequate and commensurate to meet the ends of justice. Hence, the impugned order dt.18.04.2024 in AOCC No.3 of 2024, passed by the learned Adjudicating Officer, Odisha Real Estate Regulatory Authority, Bhubaneswar is modified to the aforesaid extent and the appeal is allowed in part.

13) The appellant is accordingly directed to deposit the penalty amount of Rs.3,00,000/- (Rupees three lakhs) before the ORERA and on submission of

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the acknowledgement receipt before this Tribunal, he shall be refunded back the statutory amount deposited by him together with the accrued interest thereon, on proper application and identification.

With the above orders, the appeal is disposed of.

Connected Miscellaneous applications are closed.

The records of the learned Authority be returned back forthwith.

Justice P.Patnaik
Chairperson

Shri S.K.Rajguru
(Judicial Member)

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

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