IN THE ODISHA REAL ESTATE APPELLATE TRIBUNAL AT BHUBANESWAR

OREAT Appeal No. 121/2023
(Arising out of A.O.C.C. No. 26 of 2022)

Bandita Singh.

...Appellant

-Versus-

M/s. Om Shree Infratech Pvt. Ltd. ...Respondent.

For the appellant : Mr.D.M.Mishra, Advocate

For the respondent : Mr. A.Mohanty, Advocate

CORAM :
Hon'ble Shri Justice P.Patnaik, Chairperson
Shri S.K.Rajguru, Judicial Member
Dr. B.K.Das, Tech./Admn. Member

O R D E R
4.5.2026

The appeal is taken up for final order.

2) The order dtd. 12.7.2023 passed by the learned Adjudicating Officer in A.O.C.C. No. 26 of 2022 is under challenge in this appeal. The appellant was the complainant and the respondent was also the respondent in the said complaint case. Prayer has been made by the appellant in the appeal to set aside or modify the impugned order dtd. 12.07.2023 passed by the learned Adjudicating Officer in the A.O.C.C. No.26 of 2022 and to allow the reliefs sought for by the appellant therein.

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3) Facts and circumstances leading to the filing of this appeal are as follows:-

The appellant filed the aforesaid complaint case before the Adjudicating Officer, ORERA on 16.11.2022 wherein she as the aggrieved complainant averred that the respondent-promoter approached her to develop her land under plot no.798/2150, an agricultural land and the adjacent plot no.798 at Andilo mouza under Balianta Tahasil of Khordha district for construction of a multi-storied apartment on the same. The respondent-promoter offered 41% share of the super built up area as per the approved plan to the complainant and the owner of plot no.798 and to keep himself the balance 59% share of it. After the complainant agreed to the proposal of the respondent, she executed an irrevocable General Power of Attorney on 6.6.2016 in favour of the respondent and both also executed an unregistered development agreement on the next day i.e. 7.6.2016. It was agreed that the multi-storied building shall be constructed as per the BDA approved plan and completed within 24 months from the date of approval of the plan. The respondent took the responsibility to prepare, submit, pursue and follow up the process of obtaining the building plan approved by the BDA and to bear all expenses. The complainant alleged that behind her back the respondent without obtaining approved plan from the BDA started construction of the building on her plot no.798/2150 and the adjacent plot no.798. The complainant claimed that as per the agreement she and the co-owner were entitled

to 5905.853 square feet towards their 41% share out of the total area and the respondent was entitled to the balance 59% i.e. 8498.667 square feet. It is alleged by the complainant that , before giving possession to her, the respondent executed sale deeds in favour of nine buyers (one flat per each of the buyers) with a total area of 9223 square feet. The complainant further alleged that the respondent by the aforesaid sale has exceeded his 59% share and though she is entitled to three flats i.e. Flats No.202, 203 and 204 with an area of 2952.926 square feet there has been a short fall of 236.266 square feet area in her share. The complainant further alleged that as per the information obtained by her from BDA under the RTI Act on 25.6.2019 no permission was granted by the BDA for construction of the building over her plot no.798/2150 and adjacent plot no.798. The complainant further alleged that as per the information obtained by her husband under the RTI Act from the office of the Panchyat Samiti, Balianta it was found that no correspondence relating to her and Kalyani Singh were available in respect of plots no.798/2150 and 798 respectively. The complainant also claimed to have obtained information through her husband under the RTI Act from the office of the Sub-Registrar, Balianta, Khordha that the Managing Director of the respondent-company had registered sale deeds in respect of his share of flats in the project to different customers in the year 2018 and 2019. The complainant after coming to know about the aforesaid irregularities filed C.C. 286/2019

before the learned Regulatory Authority and vide order dtd. 10.6.2022 the learned Regulatory Authority observed that "since the construction of the project is illegal, it is not possible on the part of the Authority to give a direction to the respondent no.1 to deliver possession of the reduced area in favour of the complainant. However, as the claim of compensation is to be adjudged by the Adjudicating Officer u/sec. 71 of the Act, the complainant may approach the said authority for appropriate reliefs." It is claimed by the complainant that on receiving allegation, the BDA also conducted an investigation and found the constructed building to be unauthorized being without any approved plan. The complainant has alleged that since the project is declared as illegal and unauthorized by the ORERA she will not get her legitimate share of three flats. With the aforesaid claims and allegations, the complainant prayed for a total compensation of Rs.1,76,80,000/-. (Rs.76,80,000/-for the loss of rent from June, 2016 to October, 2022 and Rs.1,00,00,000.- for mental harassment as well as agony due to filing of different cases in different forums and cost thereon).

Being noticed the respondent-promoter appeared through his counsel on 3.1.2023 and on 16.3.2023 filed his written show cause to the complaint wherein he took the plea that the complaint was not maintainable as the project was completed and completion certificate was also issued in respect of it before the commencement of the R.E. (R&D) Act, 2016. The

respondent further claimed that the complainant is a co-promoter as per the agreement and the GPA and as the disputes between her and the respondent are also pending before the Civil Court, District Court and High Court of Orissa, it will be difficult on the part of the Adjudicating Officer to decide who is at fault so as to adjudge compensation. It is further stated by the respondent that as plots no.798/2150 and 798 of which the complainant and Kalyani Singh are the owners were within the territorial jurisdiction of the Block and the owners had obtained the project approval from the BDO which is evident from the agreement itself, the respondent proceeded with the project. However, in the meantime since the land came within the purview of BDA on 31.8.2016, the respondent applied before the BDA for approval as per their rules and regulations. It is further claimed by the respondent that the complainant and Kalyani Singh had received a sum of Rs.17,70,000/- towards security from him. The respondent admitted the execution of the irrevocable General Power of Attorney dtd. 6.6.2016 and the unregistered agreement for construction of the building dtd. 7.6.2016 between him and the complainant. The respondent alleged that the complainant after raising various disputes against him unilaterally cancelled the irrevocable General Power of Attorney vide letter dtd. 21.7.2019. Being aggrieved the respondent immediately objected to the said cancellation before the Sub-Registrar, Balianta on 23.7.2019. It is further submitted by the respondent that challenging the

unilateral cancellation of the irrevocable General Power of Attorney by the complainant he instituted a suit (C.S. No.1370/2019) against her and Kalyani Singh in the Court of Civil Judge (Jr. Divn.), Bhubaneswar to declare the said unilateral cancellation illegal and in I.A. 1 of 2019 arising out of the said Suit, the learned Civil Judge (Jr. Divn.), Bhubaneswar after hearing the parties observed that the unilateral cancellation of the irrevocable General Power of Attorney was nonest in the eye of law. The said order of the Civil Judge (Jr. Divn.) being challenged by the complainant and Kalyani Singh before the District Judge, Khordha, Bhubaneswar in F.A.O. No. 142 of 2019, the impugned order was confirmed with partial modification vide order dtd. 9.12.2020. Assailing the said order of District Judge, the land owners have approached the Hon'ble High Court of Orissa in CMP No.5/2021 which is pending for adjudication. It is further alleged by the respondent that the complainant and Kalyani Singh though have not been allotted with any of the flats of the project as on date, but on 29.7.2020 and 1.8.2020 they along with the staffs of the Electricity Department entered upon the project land to provide electricity connection to flats no.102,103, 202,203, 401 and 404 claiming themselves to be the rightful owners of the same. Finding no other alternative, the respondent was compelled to file C.S. No.1170 of 2020 praying for permanent injunction and other reliefs. The respondent also filed an I.A. under Order 39, Rule 1 & 2 CPC for temporary injunction. The said I.A. having been rejected

by the Civil Judge (Jr. Divn.), Bhubaneswar vide order dtd. 12.10.2020, the respondent has filed FAO No.106/2020 before the District Judge, Khurdha, Bhubaneswar which is pending for adjudication. It is further alleged that in complete violation of the terms and conditions of the agreement dtd. 6.6.2016 the complainant and co-owner Kalyani Singh have forcibly occupied six out of the 16 flats since January, 2019. All the six flats have been given on rent and the complainant is taking the rent of those flats. Suppressing the aforesaid facts the complainant filed C.C. No.286/2019 on 21.12.2019. The maintainability of the said complaint case was challenged and even came up before this Tribunal. However, on remand C.C. No.286/2019 was dismissed vide order dtd. 10.6.2022. The appeal preferred by the complainant against the said dismissal is pending before this Tribunal for adjudication. It is categorically alleged by the respondent that the sum of Rs.17,70,000/- paid by him towards security deposit, which is still with the complainant and Kalyani Singh, is the main reason behind the dispute. As per the condition though the said security deposited was to be refunded to the respondent at the time of closing the project but the complainant and Kalyani Sngh wanted to grab the said money. The respondent has made it clear that as when the said money is refunded to him, he would leave the project. The respondent has made it clear that the approach road to the project being a canal embankment he has applied to the Department of Water Resources for NOC as per the

information of the BDA. As the NOC from the Water Resource Department is awaited the respondent has duly informed the complainant about the pending processes and it has been mutually decided by both of them that after necessary permission is obtained the complainant and respondent shall take necessary steps for regularization of the construction. It is alleged by the respondent that while the regularization work was in progress the complainant and the other land owner informed the BDA about the cancellation of the GPA dtd. 6.6.2016 and various litigations pending before different courts and also requested for demolition of the entire construction for being illegal. It is further submitted that he had applied to the ORERA for registration of the project and in the relevant Misc. Case no.243/2017 the Regulatory Authority vide order dtd. 23.11.2017 informed the respondent that he is permitted to submit the application for registration of the project in the prescribed format. Accordingly on 20.4.2018 the respondent re-submitted the application before the ORERA for registration but on 8.9.2021 the said application was rejected as the General Power of Attorney executed in favour of the respondent was cancelled by that time. The respondent has alleged that on the one hand the complainant has requested the BDA to demolish the building and on the other hand, she has sought for her share and its possession. BDA has refused to regularize the building only because of the information by the complainant that she has cancelled the irrevocable

General Power of Attorney and that civil suit relating to the project land is pending. The respondent has asserted that it is only because of the contradictory stand taken by the complainant, the learned Regulatory Authority has dismissed the complaint for which appeal has been filed before the Tribunal by the Complainant. The respondent has reiterated his claim that the complainant being a co-promoter cannot claim compensation and it is she who has stalled the process of regularization of the project for which the respondent had taken steps. As regards the alleged mental harassment/agony, the respondent has claimed that he being compelled to get involved in litigations before the Civil Court, District Court, Hon'ble High Court, ORERA, OREAT, GRF, Ombudsman and Executive Magistrate because of the illegal cancellation of the GPA by the complainant, is the worst sufferer. With the aforesaid submissions the respondent prayed for dismissal of the complaint.

The learned Adjudicating Officer after taking into account the pleadings of the parties, the documents filed by them in support of their respective pleas and also on hearing them at length dismissed the complaint case against the respondent vide the impugned order dtd. 12.7.2023 categorically observing that the complainant is not entitled to any compensation as prayed for.

4) In the hearing of the appeal, the learned counsel for the appellant has submitted that the appellant was constrained to cancel the General Power of Attorney on 16.7.2019 as the respondent was developing

an unauthorized construction without any approved plan of the BDA and the OSD of the Court of BDA had ordered the respondent to stop the unauthorized construction on 12.1.2018 when the building was in S+2 stage. The learned Adjudicating Officer has however failed to appreciate the aforesaid facts. It is further submitted that the learned Adjudicating Officer has failed to take note of the fact that the respondent was illegally selling flats to the public without any approval in violation of the terms of the General Power of Attorney. It is pointed out by the learned counsel for the appellant that even though the learned Adjudicating Officer observed in the impugned order that the respondent was at fault in making the construction without obtaining the approved plan from the competent authority but has not gone into the merit of the claim of the appellant. It is further contended by the learned counsel for the appellant that when the matter is still sub-judice before the Hon'ble High Court of Orissa, the learned Adjudicating Officer has arrived at the finding that the appellant is at fault in cancelling the General Power of Attorney. Further, emphasizing on the fact that the learned Adjudicating Officer has failed to follow the principles of natural justice and equity in disposing of the compensation case by ignoring the fact that the appellant being a village lady was taking resort to multiple litigations spending lakhs of rupees over the years to get justice against the unscrupulous promoter, the appellant has made the prayer as mentioned earlier in paragraph-2.

5) On the other hand, the learned counsel for the respondent-promoter has submitted that the land owner had approached the promoter with the approval of the project obtained by them from the BDO. It is further submitted that the cancellation of the GPA by the appellant has been held to be illegal by the learned Civil Judge (Jr. Divn.), Bhubaneswar and the learned District Judge, Khordha and is now pending before the Hon'ble High Court and it is because of the unilateral cancellation of the GPA, approval from the BDA, grant of registration from the ORERA and other statutory clearances in respect of the project could not be obtained. It is further submitted that C.C. No.285 of 2019 and C.C. No.286 of 2019 filed by the land owners against the promoter for delivery of possession of their share in the building have been dismissed by the learned Regulatory Authority due to their plea that the construction was unauthorised and the dismissal orders have been confirmed by this Tribunal. The learned counsel for the respondent has claimed that, the appellant and the other land owner have forcibly occupied the flats since 2018-2019 and are getting rents by letting out the same and therefore they cannot claim compensation for loss of rents. Reiterating his stance that on being shown approval by the BDO the respondent-promoter invested a huge sum of money for the project and then applied for all statutory compliances including regularization of the project by the BDA and the registration of the project with the ORERA, but the same were stalled by the appellant and the co-owner and it is

due to the cancellation of the GPA the respondent could not proceed further in obtaining the aforesaid compliances, the learned counsel for the respondent has contended that pendency of the matter before the Hon'ble High Court of Orissa does not debar the learned Adjudicating Officer to pass the impugned order. The learned counsel for the respondent has claimed that it is the appellant who has made the respondent run from pillar to post by filing a number of litigations, whereas the respondent has not filed even a single case against them in any forum. In the process it is the respondent who has lost both time and money. It is categorically claimed by the counsel for the respondent that the appellant and Kalyani Singh being owners of the project land are co-promoters and therefore neither of them is entitled to file the complaint for compensation. Further claiming that the impugned order passed by the learned Adjudicating Officer after due application of mind is just and proper and need not warrant any interference, the learned counsel for the respondent has prayed for dismissal of the appeal.

6) The claim of the appellant with regard to the execution of the development agreement between her and the respondent-promoter on 7.6.2016 and the execution of the irrevocable General Power of Attorney by her in favour of the respondent, a day before the said agreement i.e. on 6.6.2016 with regard to her permitting the respondent to construct a multi-storied building on her land under plot no.798/2150 and plot no.798 of Kalyani

Singh with the condition of their getting 41% share and the respondent-promoter getting 59% share in the project, remain undisputed.

The status of the appellant in respect of the project has been claimed by the respondent to be a co-promoter on the ground that she is one of the owners of the project land. On this ground the respondent has also challenged the entitlement of the appellant to file the complaint case. In this regard, the learned Adjudicating Officer has held in the impugned order that, in a case where the land owner gets a definite share in the apartment in lieu of consideration amount of the land, he will be taken to be an allottee as he has to use the common areas of the apartment for occupation of his share. Referring to Sec. 31 (1) of the R.E. (R&D) Act, 2016, the learned Adjudicating Officer has held that, there is no stipulation in the provision that a promoter cannot maintain a case against another co-promoter. The complainant being an aggrieved person can maintain a case against the respondent. The respondent without rebutting the aforesaid reasoning of the learned Adjudicating Officer has again raised the issue relating to the maintainability of the complaint in this appeal, but has not substantiated his plea. As regards the entitlement to file a complaint under the R.E. (R&D) Act, Sec. 31 (1) provides that:

> "Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations

made there-under, against any promoter, allottee or real estate agent, as the case may be.

Explanation.—For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force."

The inclusions under the term "Person" are not confined only to the Explanation under Sec. 31 (1), as Sec. 2 (zg) of the Act also provides that, "Person" includes,-

(i) an individual;
(ii) a Hindu undivided family;
(iii) a company;
(iv) a firm under the Indian Partnership Act, 1932 (9 of 1932) or the Limited Liability Partnership Act, 2008 (6 of 2009), as the case may be;
(v) a competent authority;
(vi) an association of persons or a body of individuals whether incorporated or not;
(vii) a co-operative society registered under any law relating to co-operative societies;
(viii) any such other entity as the appropriate Government may, by notification, specify in this behalf;

Thus, a combined reading of Sec. 31 (1) and Sec. 2 (zg) of the Act shows that a land owner is not excluded from the meaning of a 'Person'. The appellant even if a co-owner of the land is aggrieved over the alleged loss due to non-delivery of her share of flats by the respondent and the consequential mental agony and therefore being an individual u/sec. 2 (zg) (*i*) is certainly entitled to file the complaint. She having not developed and constructed the project and there being no material showing sale of any flat of the project by her to any

person, she cannot be said to be a co-promoter of the project within the meaning of Sec. 2 (zk) of the Act.

The completion certificate in respect of the project having not been produced by the respondent-promoter showing the project to have been completed prior to 1.5.2017, the project is undoubtedly an ongoing one and hence comes under the scope of the R.E. (R&D) Act, 2016.

7) The learned Adjudicating Officer in dismissing the complaint case vide the impugned order dtd.12.7.2023 has come to the finding that, under Clause (VIII) (2) of the agreement it has been clearly mentioned that "Under any circumstance the First Party member shall not cancel irrevocable General Power of Attorney and this being the condition in the agreement, the complainant could not have unilaterally cancelled the irrevocable General Power of Attorney. The learned Adjudicating Officer further held that, if at all there was dispute relating to the said irrevocable General Power of Attorney, the complainant could have taken shelter in proper court of law for redressal of her grievance, but having unilaterally cancelled the irrevocable General Power of Attorney the complainant is at fault. The learned Adjudicating Officer also found from the documents available in the record that the respondent has constructed the apartment in question without approved plan from the competent authority and such construction being illegal and unauthorized he is also at fault. The learned Adjudicating Officer however came to the conclusion that despite both the parties are at fault, the

complainant being a wrong doer cannot claim compensation against the respondent, the other wrong doer. The learned Adjudicating Officer further came to the finding that the complainant being in possession of her share of flats cannot claim any house rent or cost thereof. It is further held by the learned Adjudicating Officer that the complainant having not furnished the details of the amount spent by her in each of the litigations, is also not entitled to any compensation towards her alleged mental agony and harassment due to different cases filed against her by the respondent in different forums.

As mentioned earlier the above findings of the learned Adjudicating Officer have been challenged by the appellant on the ground that her cancellation of the General Power of Attorney was due to the respondent's developing unauthorized construction without approved plan of the BDA and even at the S+2 stage of the building the OSD of BDA had ordered the respondent on 12.1.2018 to stop the unauthorized construction. The appellant has lamented over the fact that though the learned Adjudicating Officer found the respondent to be at fault for making illegal construction but still dismissed the complaint case mainly on the ground that the appellant having unilaterally cancelled the GPA in violation of the agreement dated 7.6.2016 was at fault and being a wrong doer cannot claim compensation against another wrong doer. So, the pertinent question to be decided in this appeal is, whether, the appellant will be disentitled to claim compensation u/sec. 71 of the Act for

the only reason that she has unilaterally cancelled the irrevocable General Power of Attorney executed by her in favour of the respondent-promoter on 6.6.2016 despite the fact that the latter had made construction of the building without approval of the competent authority?

Going through the unregistered agreement for construction of the multi-storied commercial-cum-residential building executed between the appellant and the respondent on 7.6.2016, it is found that both the parties had agreed that the respondent shall construct, build and erect a high-rise multi-storied commercial-cum-residential building on the land under Plot no.798/2150 of Khata no.616/923 of mouza Andilo belonging to the appellant in accordance with the plan approved/to be approved by the B.D.O/ Bhubaneswar Development Authority. CLAUSE-IV of the aforesaid agreement provides that, it shall be the responsibility of the promoter/Developer to prepare, submit, pursue and follow up the building plans for approval by the BDO/BDA and other agencies concerned. The GPA dated 6.6.2016 also shows the appellant to have executed it in favour of the respondent to prepare building plan for construction of apartments on the aforesaid property as per the approved plan of the BDA/Local Authority. CLAUSE-VI of the agreement dtd. 7.6.2016 obligates the Developer to commence the construction work as soon as possible after approval of the plan from B.D.O./Bhubaneswar Development Authority.

CLAUSE-VIII (MISCELLANEOUS) of the agreement makes it clear that, the Irrevocable General Power of Attorney is the part of the agreement dtd. 7.6.2016. This clause further provides that, under any circumstance, the First Party member (appellant) shall not cancel the Irrevocable General Power of Attorney. In case the First Party member does the same, the entire loss and damage caused to the Second Party (respondent) shall be paid/borne by the First Party member to the Second Party.

The cancellation of the General Power of Attorney, which the learned Adjudicating Officer has taken exception to, has been made by a deed of declaration dtd. 16.7.2019 wherein the executant-appellant has categorically declared that, as the attorney holder is violating the terms and conditions as laid down in the Power of Attorney and is involved in illegal activities and further she has also lost her confidence on him and does not want to be a party to the illegal activities she as the principal executes the deed of cancellation to cancel the registered General Power of Attorney and revoke the power of said Keshab Chandra Pradhan and declare that he is no more her attorney holder. The declaration of the appellant in the deed of cancellation supports her plea that due to the illegal construction made by the respondent on her land she had to cancel the GPA. The fact of unauthorized construction is evident from the Letter No. 12012/BDA dtd.1.5.2019 of the Bhubaneswar Development Authority wherein the respondent-promoter was intimated that in exercise of the power under sub-

section (3) of Section 16 of the ODA Act, 1982, permission to undertake development on plots No.798 and 798/2150 of Andilo mouza of Bhubaneswar Master Plan area was refused for his failing to submit the NOC from Water Resources Department for use of canal embankment for road purpose. Prior to this the BDA vide its Letter No. 4383 dtd.22.2.2017 had asked the respondent-promoter to submit NOC from the Water Resources Department since the approach road to the project was the Canal Embankment. The pleading of the respondent (show cause to the complaint) shows that he started construction basing upon the plan approval obtained by the complainant and Kalyani Singh from the BDO, but in the meantime since the land came within the purview of BDA on 31.8.2016, he applied before the BDA for approval as per their rules and regulations. So all the aforesaid facts make it clear that before cancellation of the General Power of Attorney on 16.7.2019, the permission applied for by the respondent for construction of the project was already rejected and therefore, the construction made by him was unauthorized. The claim of the respondent-promoter in his pleading that due to cancellation of the GPA and pendency of litigations in different forums his application for regularization of the construction was not considered by the BDA is though correct, but the appellant cannot be held responsible for the same. Even the commencement of construction by the respondent claimed to have been made on the basis of plan approval obtained from the BDO by the owners of

the land was illegal for the reason that no such approval has been produced by the respondent. Rather the copy of Letter dated 20.7.2019 of the office of the Balianta Block authenticated by the PIO of the said office makes it clear that there is no letter or plan approval in favour of Bandita Singh and Kalyani Singh in respect of plots No.798/2150 and 798. Accordingly, the sale of flats to intending buyers by the respondent-promoter were also illegal.

So when the respondent has first committed breach of the agreement dtd. 7.6.2016 by making unauthorised construction and to undo the illegality committed by the respondent, the appellant had to cancel the Irrevocable General Power of Attorney, which is a part of the agreement dtd. 7.6.2016, she cannot be said to be at fault. The respondent-promoter having failed to obtain the necessary permission u/sec. 16 (3) of the ODA Act for construction of the project, the development agreement dtd. 7.6.2016 had become voidable for breach of contract and accordingly the Irrevocable General Power of Attorney being a part of it is also voidable. In the General Power of Attorney dtd.6.6.2016 it is mentioned that it is irrevocable inasmuch as it is coupled with interest and therefore in normal circumstance the proper course for the principal to cancel it would have been to issue a legal notice to the agent to terminate the development agreement and then move the court of law, but in the present case the respondent-promoter having breached the essential term of the development agreement by unauthorized

construction of the project and violation of statutory law by transfer of flats to others, the very foundation of the agency on the basis of the General Power of Attorney has been vitiated by illegality. Irrevocable General Power of Attorney does not mean that it shall be absolute in all circumstances as it cannot protect the illegal acts of the agent. In our considered opinion any Irrevocable General Power of Attorney can be cancelled, if the agent commits serious breach of its terms and acts against the interest of the principal as in such case the agency becomes unlawful.

8) For the discussions made in the preceding paragraph, we are of the opinion that, the learned Adjudicating Officer's holding the complainant at fault for cancelling the GPA as well as his finding that being a wrong-doer the complainant cannot claim compensation against the respondent, the other wrong-doer, are erroneous and accordingly set aside. The respondent-promoter having developed the project on the land of the complainant and Kalyani Singh without the sanctioned plan, layout plan and specifications as approved by the competent authority, has certainly failed to discharge the obligation imposed on him under Sec. 14 (1) of the R.E. (R&D) Act. As the entire structure is illegal, it may be demolished by the concerned authority at any time and neither of the parties is entitled to any part of it. The respondent shall therefore be liable to pay compensation to the appellant u/sec. 18 (3) of the Act.

The appellant is not entitled to her claim of compensation of Rs.76,80,000/- for the loss of rent as the structure on her land being illegal she cannot get the flats of her share in it. She has also not challenged the learned Adjudicating Officer's finding that, she is in forcible possession of her share of flats.

As regards the prayer for compensation towards mental agony due to filing of cases by the respondent in different forums and the expenses incurred by her in those cases, the appellant has not challenged the finding of the learned Adjudicating Officer that, in absence of any material relating to the details of expenses incurred by her, no amount can be awarded in her favour.

The finding of the learned Adjudicating Officer that the complainant and the other land owner have still retained the security amount of Rs.17,70,000/- received by them from the respondent, remains un-assailed. We are of the opinion that, the appellant's retaining that half of this amount will meet her entitlement to the compensation for the respondent's unauthorized construction on her land. Accordingly, the appellant is awarded the half of the security amount of Rs.17,70,000/- i.e. Rs. 8,85,000/- towards compensation for the failure of the respondent to discharge his obligation u/sec. 14 (1) of the Act, as aforesaid.

With the above orders, the appeal is accordingly disposed of on contest against the respondent.

Send a copy of this order together with the record in AOCC 26 of 2022 to the learned Adjudicating Officer of ORERA for information. Also send a copy of this order each to the appellant and the respondent.

Shri Justice P.Patnaik
Chairperson

Shri S.K.Rajguru
(Judicial Member)

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

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