IN THE ODISHA REAL ESTATE APPELLATE TRIBUNAL AT BHUBANESWAR

OREAT Appeal No.95/2024

M/s.Pravat Ranjan Singh ... **Appellant**

-Versus-

Grand Bazar Developers LLP ... **Respondent**

For the appellant Mr.K.B.Panda, Senior Counsel
For respondent Mr.S.P.Mishra, Senior Counsel

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
12.06.2026

The appeal is taken up for final order.

2) Heard Mr.K.B.Panda, learned senior counsel appearing for the appellant and Mr.S.P.Mishra, learned senior counsel for respondent through virtual mode.

3) The appellant being aggrieved and dissatisfied with the impugned order dt.28.5.2024, passed by the Odisha Real Estate Regulatory Authority (in short the "Authority") in Complaint Case No.342 of 2023, has filed the instant appeal praying inter-alia for the following reliefs:

(i) To set aside the order of verbal cancellation of the flat booked by the appellant as can be ascertained from the reply filed by the respondents before the Authority;

(ii) Direct the respondents to immediately sign the necessary agreement with the appellant for the booked flat upon payment of the dues as per the construction linked payment plan.

(iii) To direct the respondents to complete the project and hand over the flat of the appellant so booked within a stipulated time.

(iv) To direct the respondents to extend all the required cooperation and support in respect of documentation for the booking done by the appellant.

(v) And pass such other order/s, direction/s as deemed fit and proper under the facts and circumstances of the case.

4) The factual matrix as disclosed in the Complaint Case is that the appellant being a complainant booked a flat bearing No.T4/R3/05/04 in the real estate project namely ***'GRAND BAZAR DEVELOPERS LLP',*** situated besides NH-16 in between Bhubaneswar and Cuttack. The appellant was given to understand that the respondent-builder has secured all the statutory permissions including clearance from RERA for the project. Believing the versions of the marketing agent of the respondents, the appellant booked the aforesaid flat by paying a sum of Rs.1,00,000/- on 13.11.2018 vide Cheque No.526047 of SBI and the appellant was also granted money receipt no.1333 dt.13.11.2018 for the said payment as evident from Annexure-1 to the complaint case. That, after booking, the appellant came to know from reliable sources that the respondents-company had not secured necessary clearance/approval for the project from RERA. Having contacted the office of the respondents at Bhubaneswar, the appellant was informed that all clearance from RERA would be secured within a fortnight and till such time the customers would not be asked to pay any further amount. The total consideration amount for the flat booked by the appellant was a sum of Rs.53,61,600/-. The complainant was surprised to receive a demand notice for payment of a sum of

Rs.13,47,632/- on 01.02.2019 to pay the amount within fifteen days. But till such time the respondent had not started the work of the building. The demand notice dt.1.2.2019 has been annexed as Annexure-2 to the complaint case. From the schedule of payment of the respondent, which was linked to the construction of the project, it can be seen that the respondents demanded 27% of the total amount and such demand was totally uncalled for. Copy of the payment schedule of the respondent has been annexed as Annexure-3. After receipt of the demand notice the appellant enquired about such demand notice and he was informed that such demand notice was issued inadvertently and the same was to be ignored. In January, 2022 the appellant received a message on his Whatsapp to pay 20% of the cost of the flat. As the complainant was out of the State till 15.12.2021, he could not make payment. After having arranged the money the appellant issued email dt.30.12.2021 to the respondent requesting to provide the bank details so that he could transfer the amount of Rs.10,25,936/- i.e. towards 20% of the flat of the cost. Copy of the email dt.30.12.2021 has been annexed as Annexure-4. That, the email sent by the appellant evoked no response of respondents. Again the appellant issued mail on 8.2.2022 referring to mail dt.30.12.2021 reiterating the same grievance vide Annexure-5. Since the email sent by the appellant fell on deaf ears the appellant was constrained to issue a letter on 6.2.2022 vide registered post.

5) After lapse about five years the appellant submitted his grievance in the customers grievance cell on 14.7.2023 and called upon the respondent to accept the necessary payment from him and settle the issue amicably, failing which he would take recourse to remedies available under the law as evident from Annexure-7. The appellant was verbally informed by the respondent that his allotment has been cancelled and non-acceptance of the offer of payment by the appellant is an act of high-handedness and arbitrariness. Since the respondent has violated the provisions of Real Estate

(Regulation & Development) Act, 2016 (hereinafter referred to as the "Act"), more particularly Section-3, 5 and Sec.-13 of the Act., the appellant having no other alternative efficacious remedy has filed the complaint case with the following prayer :

(i) Direct the respondents to immediately sign the necessary Agreement with the Complainant for the booked flat upon payment of the dues as per the construction linked payment plan.

(ii) To direct the respondents to complete the project and hand over the flat of the complainant so booked, within a stipulated time.

(iii) To declare the cancellation of allotment of the Complainant's booking as illegal and arbitrary.

(iv) To direct the respondents to extend all the required cooperation and support in respect of documentation for the booking done by the Complainant.

(v) And pass such other order/s, direction/s as deemed fit and proper under the facts and circumstances of the case.

6) Show cause has been filed by the respondent challenging the maintainability of the complaint case. In the show cause it has been inter-alia contended that the appellant with an oblique and malafide intention instituted the proceeding after five years of the initial transaction. The payment of Rs.1,00,000/- by the appellant is for the expression of interest towards booking of the unit bearing No.T4/R3/05/04 at GRAND AWAAS. The amount advanced by the appellant-complainant is not even the booking amount that should have been 10% of the consideration amount i.e. Rs.5,36,160/- (Rupees five lakh thirty six thousand one hundred and sixty) only. Thereafter, the appellant never showed any interest to pay the booking amount even after repeated follow ups by the marketing team. The appellant has also signed and accepted the terms and conditions, which is annexed as ***Annexure-A*** of the show cause and the application which was submitted by the appellant before the promoter is only request for allotment of a unit and does not create any right whatsoever or howsoever of the applicant against any units under the proposed project namely GRAND BAZAR. The Promoter-developer shall have every right not to accept the said application and also the right to allot/transfer the unit/s to any other person to which the applicant shall not raise any objection/obstruction whatsoever or any other person shall not claim under him. Therefore, it has been submitted that the promoter-developer at its sole discretion shall be entitled to accept or reject the application without assigning any reason whatsoever or howsoever prior to any notice. It has further been submitted that in case of rejection or non-acceptance of the application by the promoter/developer, in that case the applicant will be entitled to get back the application amount without interest. It is further submitted by the respondent that the appellant has defaulted due to non-payment as per the terms and conditions signed and accepted by him, because of which the unit blocked for him was cancelled and allotted to another individual. It has been further submitted that the appellant has not come to the court with clean hand and therefore, the complaint case is otherwise is liable to be rejected with exemplary cost.

7) The learned Authority after perusing the materials on record and hearing the learned counsel for the respective parties at length, passed the impugned order directing the respondent to refund Rs.1,00,000/- (Rupees one lakh) only along with interest @9.50% per annum with effect from 13.11.2018 till the actual date of refund and the learned Authority further directed that the refund should be made within a period of two months failing which the order shall be enforced as per law.

8) The appeal has been preferred assailing the impugned order on the following grounds:

(i) That the learned Authority having came to categorical finding that the respondents have violated Section-3 of the Act, but failed to address the issue of the Respondents having violated Sections, 5,13 and 18 of the Act.

(ii) That the learned Authority has come to a totally wrong finding that till the date of filing of the complaint, there was no communication between the parties in this regard, even though the appellant pursued the matter with the respondents, which can be disclosed from the records.

(iii) That the order of the learned Authority is erroneous to the extent that it failed to declare the Cancellation of Allotment of the Appellant's booking as illegal, arbitrary and further failed to direct the Respondents to sign the necessary agreement with the Appellant for allotment of the flat in question.

9) Mr.K.B.Panda, learned Senior Counsel for the appellant submitted with vehemence that the respondents issued the demand notice vide Annexure-2 dt.01.02.2019 i.e. before registration of the project in RERA, which is violative of Sections-3 & 4 of the Act. Learned Senior Counsel further submitted that despite initial payment of Rs.1,00,000/-, no cancellation of allotment has been made till filing of the appeal and the learned Senior Counsel for the appellant further submitted that the grounds stated in the show cause regarding cancellation of allotment amounts to gross impropriety and fraud.

10) That apart, learned Senior Counsel for the appellant submitted that the findings arrived at by the learned Authority are contradictory to each other and the unilateral cancellation as stated by the respondents is illegal and there has been gross violation of Sections-3,5, and 13 of the Act. During course of hearing, learned Senior Counsel for the appellant has referred to **2025 INSC 1110, the Hon'ble Apex Court has in paras-20,20.1 and 22 observed the following :**

20. *This Court has, in a catena of decisions, consistently held and reaffirmed that the Right to Shelter is an integral part of the right to life under Article 21 of the Constitution. This recognition casts a corresponding duty on the State to ensure access to adequate housing, particularly for weaker sections. Indeed, various welfare schemes such as the Pradhan Mantri Awas Yojana (PMAY) have been initiated by the Government to provide affordable housing.*

20.1. *A home is not merely a roof over one's head; it is a reflection of one's hopes and dreams – a safe space for a family, a refuge from the worries of the world. With India rapidly industrializing and the rural-to-urban mobility proceeding at lightening pace, the demand for housing has risen sharply.*

22. *Before parting, we observe that the right o housing is not merely a contractual entitlement but a facet of the fundamental right to life under Article 21. Genuine homebuyers represent the backbone of India's urban future, and their protection lies at the intersection of constitutional obligation and economic policy. Through these directions, this Court seeks to restore faith in the regulatory and insolvency framework, deter speculative misuse, and ensure that the "dream home" of India's citizens does not turn into a lifelong nightmare.*

The Hon'ble Apex Court in the above cited judgment at para-204 has further held, *"it would be thoroughly erroneous to treat home-buying as a mere commercial transaction, or worse, to reduce housing to the status of speculative instruments such as stocks, debentures, futures, or options through creative contractual devices. Housing is neither a luxury nor a commodity for speculation – it is a fundamental human need. The right to secure, peaceful, and timely possession of one's home is therefore a facet of the fundamental right to shelter enshrined under Article 21."*

11) Mr.S.P.Mishra, learned Senior Counsel for the respondent while countering the submissions of the learned senior counsel for the appellant, submitted vociferously that in order to understanding ***Section 3 of the Act, Section-23 of the Contract Act*** is to be referred to.

"***Section 23 : What considerations and objects are lawful, and what not –*** *The consideration or object of an agreement is lawful, unless –*

It is forbidden by law; or

is of such a nature that, if permitted, it would defeat the provisions of any law; or

Involves or implies injury to the person or property of another; or

The Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void."

According to the learned Senior Counsel, since the learned Senior Counsel for the respondent submits that the contract which is expressly and impliedly prohibited by a statute is violative of Section 23 of the Contract Act, the same cannot be enforced by the Court of Law.

12) In order to buttress his submission, learned Senior Counsel for the respondent has referred the following decisions :

1. (2022) 12 Supreme Court Cases 321, in the case of G.T.Girish Vs. Y.Subba Raju and Another;

2. (1977) 2 Supreme Court Cases 424, in the case of Mannalal Khetan and Others Vs. Kedar Nath Khetan and Others;

3. (2013) 5 Supreme Court Cases 470, in the case of Rajasthan State Industrial Development and Investment Corporation and Another Vs. Diamond & Gem Development Corporation Limited and Another.

Therefore, by referring to factual and legal aspects, learned senior counsel for the respondents submitted that the order impugned in the appeal is legally justified, warranting no interference.

13) On the basis of the inter se pleadings of the parties and the submissions of learned counsels for the respective parties "The seminal point that falls for determination- as to whether the learned Authority is justified in directing the appellant-promoter to refund Rs.1,00,000/- paid by the complainant along with interest @9.50% per annum with effect from 13.11.2018 till the actual date of refund when in similar circumstances of

SBI Employees, the respondent-company has entered into an Agreement for Sale?"

14) In order to delve into and dwell upon the issue it would be pertinent to know the factual matrix. Undisputedly the respondent no.1 pursuant to a brochure meant for SBI Employees Scheme at Grand Awaas paid a booking amount of Rs.1,00,000/- on 13.11.2018 which has been duly acknowledged by the appellant-promoter. The appellant also showed his interest by submitting his application in respect of Flat No.T4/R3/05/04, at Grand Awaas, though it has been disputed by the respondent. The complainant/appellant has filed the complaint before the ORERA u/s 31 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as "the Act, 2016).

Relevant sections of RERA Act are required to be referred to for better appreciation of the dispute. Section 13 of the Act, 2016 reads as follows :

> "No deposit or advance to be taken by promoter without first entering into agreement for sale.—(1) A promoter shall not accept a sum more than ten per cent. of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force."

Section 35 and 37 of the Act, 2016 envisages power of Authority to issue directions. Section 38 of the Act also refers to power to enforce application of promoter and allottee.

Further, where one party has by his true words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or affect legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective whether there is any preexisting relationship between the parties or not. Further, where there exist two parties, and one makes a promise to the other, with the intent of creating a legal relationship, and such promise is acted upon by the party to whom it is made, then the party making such promise would be bound by it and would not be allowed to renege on its word. The concept is founded upon the idea of equity, and it seeks to prevent the injustice that would be caused when persons making promises that are acted upon by others, refuse to honor their initial pledge. In the instant case the appellant being the prospective allottee by creating a legal relationship with the respondent has paid Rs.1,00,000/- towards booking amount of a flat No.T4/R3/05/04, which is clearly a promise to the appellant by the respondent.

The appellant having paid an amount of Rs.1,00,000/- towards booking of a flat of the project with specific number and the respondent having accepted the same, he is certainly an allottee u/sec. 2 (d) of the R.E. (R&D) Act, 2016. Section 13 (1) of the Act provides for acceptance of advance payment by the allottee to the promoter but subject to a maximum limit of ten percent of the cost of the apartment before executing and registering the sale agreement. This shows an implied obligation of the promoter to execute and register sale agreement with the allottee after he receives advance payment from him within the aforesaid limit towards booking/allotment of the flat. As per Section 11 (3) of the Act, the promoter at the time of the booking and issue of allotment letter shall be responsible to make available to the allottee informations such as, (a) sanctioned plans, lay out plans, along with specifications, approved by the competent authority, by display at a site or such other place as may be specified, and (b) stage wise time schedule of completion of the project, including the provisions for civic infrastructure like water, sanitation and electricity. This shows that the obligation of the promoter towards the allottee under the Act starts even prior to the execution of agreement for sale between them. As per Annexure-3 relied on by the respondent-promoter, he is found to have executed sale agreements with a number of customers, who like the respondent no.1 had also paid only the booking amount for specific flats of the project, even after 3 to 4 years from the date of booking.

The Real Estate (Regulation and Development) Act, 2016 has been enacted by the Parliament for establishment of Real estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector.

In the case in hand, the appellant being a SBI employee was allured to have a flat after being satisfied with the brochure, deposited Rs. 1,00,000/- which was duly acknowledged by the respondent-promoter. The fond hope of getting a flat has been shattered by the arbitrary and whimsical decision of the respondent-promoter in not entering into the agreement for sale when the respondent-promoter has entered into agreement for sale with similarly placed SBI employees. The arbitrary decisions strikes at the root of discrimination since the Hon'ble Apex Court in the case of ***Mansi Brar Fernandes vrs. Shubha Sharma and another at para-22 held as follows*** :

> "The right to housing is not merely a contractual entitlement but a facet of the fundamental right to life under Article 21. Genuine homebuyers represent the backbone of India's urban future, and their protection lies at the intersection of constitutional obligation and economic policy. Through these directions, this Court seeks to restore faith in the regulatory and insolvency framework, deter speculative misuse, and ensure that the "dream home" of India's citizens does not turn into a lifelong nightmare"

15) Section-54 of the Transfer of Property Act, read with the provisions of the Contract Act provides that any agreement/AFS per se does not create any interest over the property or transfers any right, title or interest of the property unless a conveyance deed is executed in furtherance to the AFS.

16) From the conjoint reading of the aforesaid provisions of the Act, keeping in view the factual aspects, there is no room for any doubt or debate that in the instant case, the respondent-promoter has duly accepted the booking amount of Rs.1,00,000/- from the appellant which has been paid on 13.11.2018. The project in question has also got ORERA registration in the year 2019. Therefore from the documents referred to it is clear that the appellant steps into the shoes of an allottee or qualifies as an allottee. The respondent from his own admission at Annexure-3 admitted that similarly placed SBI employees who are at par with appellant had entered into an agreement with him in the year 2023 and 2024 i.e. after lapse of four years of payment of the booking amount. Though similarly placed SBI employees entered into agreement for sale and followed by delivery of possession of interior works, but the case of the appellant has not been duly considered as such the appellant being the complainant approached the learned Authority in Complaint Case No. 342 of 2023. Aptly put, what is sauce for the goose is the sauce for the gander meaning thereby if a particular decision or rule is acceptable for one person it should be equally be acceptable for another in a similar situation. Therefore, apparently the respondent has adopted a discriminatory attitude or double standard with regard to the similarly placed SBI employees so far entering into agreement for sale is concerned. Therefore, on that premises and on the anvil of principle of reasonableness and propriety, the direction of the learned Authority to the promoter not to enter into the agreement for sale with the appellant can be found fault with. Hence, in our considered opinion, the findings recorded by the learned Authority on 28.5.2024 in Complaint Case No.342 of 2023 being illegal and erroneous to warrants our interference.

In the present case, the respondent has claimed that the payment of Rs.1,00,000/- by the appellant was not a booking amount but a blocking amount towards expression of interest to block the unit No.T4/R3/05/04 of the project, but the acknowledgement receipt dt.13.11.2018 (Annexure-1 of the complaint) clearly shows that the amount has been received by the respondent towards booking of the aforesaid unit. It is the contention of the respondent that the booking amount should have been 10% of the consideration amount i.e. Rs.5,36,160/- and not Rs.1,00,000/-, which the appellant was never interested to pay in spite of repeated follow ups by the marketing team. However, Section-13(1) of the RERA Act provides that the aforesaid 10% of the total consideration amount could be taken by the promoter as a maximum limit before execution of the registered sale agreement. This indicates that less than 10% of the consideration amount can also be received before execution of the registered sale agreement. It is not the plea of the respondent that he had informed the appellant that he was going to execute a registered sale agreement with him on a specific date and therefore, he should pay 10% of the consideration amount to him before such agreement. Even the payment schedule (Annexure-3 of the complaint) shows that the allottee has to pay 27% of the total cost at the commencement of work, but it has not been made clear therein if by the time of commencement of work registered sale agreement would be executed or not. So, Annexure-3 also does not appear to be inconsonance with the provision of the RERA Act. Apart from these infirmities, it is also seen that Annexure-1 relied on by the respondent in the complaint case (Terms and Conditions) contains the conditions that the promoter/developer at its sole discretion shall be entitled to accept or reject the application without assigning any reason whatsoever or howsoever prior to any notice and shall have the right to allot/transfer unit/s to any other person to which the applicant shall not raise any objection. These are certainly arbitrary and one-sided clauses in the application for booking and indicative of unfair trade practice. In the present case, no default on the part of the appellant-allottee having been established and no notice of default having been issued by the respondent, the cancellation of the booking of the flat without any contractual power appears to be arbitrary and malafide. So the allotment/booking of the flat in question is required to be restored and agreement for sale shall be executed and registered by the appellant in favour of the respondent.

16) On the cumulative effect of facts, reasons and judicial pronouncements, we are of the considered view that the impugned order dtd.28.5.2024 passed in C.C. No. 342 of 2023 being legally unsustainable does not find favour of this Tribunal. Accordingly, we set aside the impugned order dt.28.5.2024, passed by the learned Authority in Complaint Case No.342/2023 and direct that the respondent shall execute the Agreement for Sale in favour of the appellant in respect of the Flat bearing No.T4/R3/05/04 at Grand Awaas at Phulnakhara, within a period of two months hence, failing which the order shall be enforced as per law.

17) Resultantly, the appeal stands allowed.

18) Send a copy of this order together with the record in Complaint Case No. 342 of 2023 to the learned ORERA for information. Also send a copy of this order each to the appellant and the respondent no.1.

Justice P.Patnaik
Chairperson

Shri S.K.Rajguru
(Judicial Member)

MP

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