IN THE ODISHA REAL ESTATE APPELLATE TRIBUNAL AT BHUBANESWAR

OREAT Appeal No. 190/2024
(Arising out of A.O.C.C. No. 30 of 2024)

Sri Ram Krushna Panigrahi. **...Appellant**

-Versus-

1)The Secretary, Odisha State Housing Board, Bhubaneswar.
2)The Secretary, Odisha Real Estate Regulatory Authority, Bhubaneswar **...Respondents.**

Counsel for the appellant :Mr. D.M.Mishra, Advocate
Counsel for the respondent no.1:Mr. P.K.Dasmohapatra , Advocate
Counsel for the respondent no.2:Mr. B.Nayak, Advocate

CORAM :

Shri S.K.Rajguru, Judicial Member

Dr. B.K.Das, Tech./Admn. Member

O R D E R
31.08.2026

The appeal is taken up for final order.

2) Order dated 21.11.2024 passed by the learned Adjudicating Officer in A.O.C.C. No.30 of 2024 is under challenge in this appeal. The appellant was the complainant and the respondent no.1 of this appeal was the only respondent in the said complaint case. The respondent no.2 of this appeal is the Secretary, Odisha Real Estate Regulatory Authority. Prayer has been made in this appeal to set aside or modify the impugned order dated 21.11.2024 passed in A.O.C.C. No.30 of 2024 and to allow the reliefs prayed for in the said case and also any other order in the interest of justice and equity.

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

The appellant being the complainant filed the aforesaid complaint case before the learned Adjudicating Officer, ORERA on 1.7.2024 stating therein that the respondent published an advertisement for sale of 126 flats of HIG category in a multi-storied residential apartment complex at Dumduma, Bhubaneswar in the year 2015. The complainant booked a HIG flat in the said complex on 23.12.2015 depositing an amount of Rs.6,53,435/- vide demand draft. Allotment letter in respect of the Flat was issued to the complainant by the respondent vide letter no.15436 dtd.10.11.2016. The said allotment was subsequently confirmed vide letter dtd. 9.6.2016 which showed the date of handing over of possession of the flat as 31.12.2019. On the basis of lottery conducted on 29.6.2019, the respondent allotted Flat No.A-105, Type-II, together with parking space No.A-52 (basement) to the complaint. As per the brochure in respect of the project the cost of the flat allotted to the complainant was Ra.61,85,000/- besides service tax and GST. The respondent collected an amount of Rs.4,00,000/- towards parking space and Rs.18,000/- towards service tax. Subsequently, the aforesaid amount of Rs.4,00,000/- was adjusted in the last instalment payable by the complainant, but the amount of Rs.18,000/- taken towards service tax has however not been returned till date. The complainant claimed that he has paid all the instalments from the date of allotment till

18.10.2019. The complainant alleged that even after receiving the final amount from him on 18.10.2019, the respondent vide its letter no.9288 dtd. 8.12.2021 fixed the final cost of the flat allotted to him at Rs.62,55,000/- as against the earlier agreed cost of Rs.61,85,000/-. The complainant further alleged that the respondent vide the aforesaid letter dtd. 8.12.2021 arbitrarily demanded the differential cost of Rs.7,81,725/- which included the differential amount of final cost with GST, extra parking cost with GST, balance dues, differential GST, extra cost of first floor with GST, membership fees and maintenance charges in advance. The complainant alleged that even after receipt of final payment on 18.10.2019 and the aforesaid amount of Rs.7,81,725/- the respondent has still not given him possession of the flat allotted to him inspite of his repeated representations and e-mails. The complainant further alleged that being asked by the respondent to attend his office on 10.6.2022 at 10.30 AM when he went there the officials of the respondent forced him to put his signatures on some already drafted undertaking letters, affidavit and agreement for the purpose of advance possession of the flat allotted to him. As the complainant was in harassment with regard to delivery of the possession of the flat allotted to him, he was constrained to put his signatures in the above papers which included a one-sided agreement prepared by the respondent. After obtaining the signatures of the complainant, the officials of the respondent issued letter of possession in respect of the flat allotted to him on the

same day i.e. 10.6.2022 and subsequently he took possession of the same. After taking possession of the flat the complainant however found that all the civil works, P.H and Electrical fittings in respect of it were quite substandard. The parking space was inadequate with a narrow driveway. There was seepage/leakage in almost all the walls of the flat due to inferior quality of materials used in the construction and fitting of very poor quality plumbing systems. The fittings of all the doors including the main wooden door and all other fittings and fixtures i.e. hardware materials like handles, hinges used in all the doors and windows and the electrical wirings/fittings were of inferior quality. The open drain and chamber having been placed just below the first floor flats without proper planning and approval from the competent authority, the drop line sewerage pipes fitted adjacent to the flat allotted to the complainant emits bad smell and produces loud noise causing much disturbance. The complainant further alleged that the respondent had neither completed nor showed any interest to complete any of the amenities mentioned in the brochure like the central lawn, children's play area, car wash bay, visitors' parking, ambulance parking, jogging track etc. despite a number of follow ups from the allottees. It was further alleged that the complainant was asked to pay an additional sum of Rs.50,000/- with GST towards the first floor charge. The complainant pointed out that even though possession of the flat was delivered to him on 10.6.2022 the respondent is silent about obtaining

occupancy certificate and no initiative has also been taken for execution and registration of the lease-cum-sale deed. With the aforesaid claims and allegations, the complainant inter alia prayed for compensation for contravention of the provisions u/secs. 12,14, 18 (1) (a) and 19 of the R.E. (R&D) Act, 2016 for the mis-representation made in the prospectus to deceive him, non-adherence to the sanctioned plan and project specifications by changing the quality of materials at the time of construction, changing the common areas without taking approval of 2/3rd of the allottees, contravention of section 18 (3) of the Act by failing to discharge the obligations under the Act in accordance with the terms and conditions of the agreement for sale, contravention of section 19 (1) of the Act for not providing information relating to the sanctioned plan, lay out plan along with specifications, deposit of GST, contravention of section 19 (2) of the Act for not providing stage-wise time schedule of completion of the project including the provision of water, sanitation, power supply and other amenities, compensation of Rs.7,00,000/- towards house rent for two years and six months of delay in handing over of the flat, compensation for illegally collecting the amount of Rs.7,81,725/-, compensation of Rs.20,00,000/- for faulty construction contravening the plan of BDA and mental agony, compensation of Rs.50,000/- towards cost of litigation, together with interest @18% on the total sale price for abnormal delay in handing over of the flat from

the scheduled date of handing over of possession till the date of order.

Pursuant to the notice issued by the learned Adjudicating Officer, the respondent appeared and submitted written show cause to the complaint through his counsel wherein it was claimed that there was no false and incorrect statement in the brochure which categorically reflected that the allottee shall not raise any objection for any rectification or compensation in respect of the allotted flat. The complainant at the time of taking advance possession of the allotted flat on 10.6.2022 had not raised objection regarding any loss. The complainant having taken possession of the flat allotted to him in complete shape and good condition with full satisfaction, is not entitled to allege contravention of the provision u/sec. 14 (3) of the Act. The respondent categorically explained that the brochure was published in respect of the multi-storied residential apartment complex at Dumduma, Phase-VII, Bhubaneswar with a proposed 518 units of different categories i.e. MIG, LIG and EWS in the year 2015 and it was specifically mentioned therein that the project period was 36 calendar months from the date of signing of work agreement. Accordingly, after signing of work agreement and registration of the project u/sec. 5 of the R.E. (R&D) Act, 2016, the respondent started the construction work in a phased manner and handed over the advance possession of the flat in question to the complainant on 10.6.2022. The respondent asserted that he had received the final cost as per Annexure-6 of the

complaint petition and no arbitrary demand was ever made as alleged by the complainant. It is further submitted by the respondent that the differential cost with extra percentage of GST charge was categorically mentioned in the letter dtd. 8.12.2021 to the complainant. Claiming that the flat in question was handed over with all the civil, electrical and carpentry fittings and fixtures in it in good condition, the respondent pointed out that the complainant has made all the allegations only after taking possession of the flat in good condition after expiry of the statutory period of one year. Reiterating his assertion that the complainant after taking possession of the flat allotted to him in good condition and after due diligence cannot raise the allegations made in the complaint after one year for the compensation prayed for by him and that the occupancy certificate has not been applied for due to lack of environmental clearance from the competent authority and non-completion of other blocks of the project, the respondent has challenged the maintainability of the complaint case and has prayed for its dismissal.

The learned Adjudicating Officer after taking into account the pleadings of the parties, the documents filed by them in support of their respective pleadings and also on hearing them passed the impugned order directing the respondent to pay a compensation of Rs.2,00,000/- to the complainant within a period of 45 days from the date of the order, making it clear that in the event of failure to pay the amount of compensation within the stipulated

period, the amount shall carry an interest @9.50% per annum till realization. Liberty was given to the complainant to take steps for realization of the amount of compensation, if it still remains unpaid, by resorting to section 40 of the Act read with Rule 26 of the Odisha Real Estate (Regulation) Rules, 2017.

4) In the hearing of the appeal, the learned counsel for the appellant has submitted that the learned Adjudicating Officer has failed to assess the quantum of financial loss and mental agony suffered by the appellant due to the use of poor quality of materials, sub-standard workmanship and faulty design of the building as well as car parking space. It is further submitted that though the factual position was narrated in detail in the complaint petition and specific figures with regard to the loss suffered by the complainant were mentioned, the same have been ignored by the learned Adjudicating Officer. It is further submitted that the observation of the learned Adjudicating Officer that there is no specific pleading and calculation with regard to the factors under section 72 (a) to (c) of the Act, is erroneous and even if there is no pleading or calculation with regard to the aforesaid factors, the learned Adjudicating Officer should have adequately compensated the appellant u/sec. 72 (d) of the Act taking into account the number of defects and deficiencies as alleged in the complaint petition. Claiming that due to the faulty design and sub-standard workmanship the flat in question has lost its resale value, the learned counsel for the appellant has regretted the

fact that the amount of Rs.2,00,000/- towards compensation is grossly disproportionate to the financial loss and mental agony suffered by the appellant. Further claiming that the learned Adjudicating Officer has not gone into the merits of the claims of the complainant and has also not followed the principle of natural justice, the learned counsel for the appellant has made the prayer as mentioned earlier in paragraph-2.

5) On the other hand, the learned counsel for the respondent no.1 has though not filed the formal written show cause to the appeal memo, but has claimed that the appellant having been delivered possession of the flat allotted to him since 10.6.2022, is not entitled to any amount of compensation as contemplated u/sec. 18 (1) (a) of the Act and as such the complaint petition itself is not maintainable. Further contending that the appeal filed by the appellant for enhancement of the compensation amount is devoid of merit, the learned counsel for the respondent no.1 has prayed for its dismissal.

6) The circumstances under which a promoter is liable to pay compensation to the allottee is provided in sections 12,14,18 and 19 of the R.E. (R&D) Act, 2016. The liability to pay compensation by the promoter to the allottee is adjudged by the Adjudicating Officer u/sec. 71 of the Act. Section 72 of the Act provides for the factors to be taken into account by the Adjudicating Officer while adjudging the quantum of compensation.

The applicability of the R.E. (R&D) Act, 2016 to the project is not disputed by the respondent no1-

promoter. This is also evident from the fact that no completion certificate showing the project to have been completed prior to the date of commencement of the Act i.e.1.5.2017 has been produced. The unchallenged averment in the complaint petition that the project has been registered under the ORERA with registration No.RP/19/2018/00114 also leads to the conclusion that the project is under the fold of the Act, 2016.

As already mentioned in paragraph-3, the appellant-allottee in his complaint has alleged about delay in delivery of possession of the flat allotted to him by the respondent-promoter, sub-standard quality in the civil works relating to his flat project due to use of materials of inferior quality which according to him is evident from the seepage/leakage in almost all the walls of his flat, sub-standard PH & electrical fittings and plumbing systems, inferior quality fittings and fixtures in the doors and windows of the flat, improper open drain and chamber system, improper fittings of sewerage pipe, non-provision of the promised amenities as per the brochure and arbitrary charging of differential costs. According to the appellant, he is entitled to the compensation prayed for in his complaint for the failure of the respondent no.1-promoter to discharge his obligations u/secs.12, 14, 18 (1) (a) & (3) and 19 of the Act, 2016.

The respondent-promoter has countered the aforesaid claim of the appellant with the denial to any false or incorrect Statement by him in the brochure with the specific plea that at the time of taking possession of

his flat on 10.6.2022 the appellant had not raised any objection and so when there was no allegation by him regarding any loss and the flat was allotted to him in complete shape and good condition to his full satisfaction, he is not entitled now to the alleged contravention of the provision u/secs. 12 and 14 (3) of the Act. Denying to have made any arbitrary demand the respondent-promoter has made it clear that the differential cost with GST charge was clearly mentioned in the letter dtd. 8.12.2021 to the appellant.

As regards the alleged delay in delivery of possession of the flat, the learned Adjudicating Officer in the impugned order dtd. 21.11.2024 has rejected the allegation of the appellant that the delay of more than two years in the delivery of possession of his flat was due to intentional lapse of the promoter. He held that the project work was affected due to Covid-19 pandemic as during the said period there was spread of this pandemic which continued till the end of the year 2021. Treating the situation arising out of the pandemic as *force majeure*, the learned Adjudicating Officer has categorically held that no liability can be attributed to the promoter because of delay in delivery of possession. The appellant has not challenged this finding of the learned Adjudicating Officer in the appeal. The copy of the brochure relating to the project shows that the project period is approximately 36 calendar months from the date of signing of the work agreement. It is not known when the work agreement in the respect of the project was signed. However, the

allotment letter dtd. 10.11.2016 shows that the likely date of handing over of possession was 31.12.2019. Also the payment schedule in the said allotment letter reveals that the agreed consideration price was to be paid in 8 instalments from 31.12.2016 to 31.12.2019. So when it is the known fact that Covid-19 pandemic began in March, 2020 and the stipulated dateline for handing over of possession was more than two months prior to that, the plea of the respondent no.1-promoter that delay in delivery of possession of the flat to the appellant was due to the Covid-19 pandemic, is not acceptable and the acceptance of such plea by the learned Adjudicating Officer is also erroneous. However, the fact still remains that the appellant-allottee instead of intending to withdraw from the project has accepted the delayed delivery of possession and therefore being already in possession of his flat since 10.6.2022 he is not entitled to any compensation as section 18 (1) makes it very clear that in case of the failure of the promoter to complete or his inability to give possession of an apartment in accordance with the terms of the agreement for sale or, duly completed by the dates specified therein, then the allottee who wishes to withdraw from the project is entitled to compensation with interest. So, even if the reason of spread of Covid-19 pandemic cited by the learned Adjudicating Officer in rejecting the prayer for compensation for delay in delivery of possession of the flat to the appellant is not correct, but the compensation prayed for is still not payable to the appellant, who has

accepted the possession of his flat, in view of the aforesaid express statutory provision.

So far as the defects and deficiencies in the project due to sub-standard civil work and electrical, PH and other fittings and fixtures as alleged in the complaint petition, the learned Adjudicating Officer is found to have gone through the copy of the inspection report submitted by the Enforcement Team of the ORERA which the appellant had filed in support of his allegations in the complaint. Going through the said inspection report dtd. 21.8.2024 submitted by Sri U.C.Pani, Enforcement Officer and Er. A.K.Mishra, Empanelled Engineer of the ORERA, it is found that, the inspecting team during their physical verification of the project on 16.8.2024 pursuant to the order dtd. 9.7.2024 had though found the basement parking space no.A-52 allotted to the appellant to be 5.60 meters in length and 2.95 meters in width, which according to them were upto the prescribed standard as per National Building Code of India, 2016, but the driveway to the said parking space according to them was very narrow due to which ingress and egress of four wheeler to and from the parking space was not feasible as noticed during trial in their presence. The inspecting team is of the opinion that for smooth ingress and egress of vehicles in a parking space a driveway with a minimum width of 5.00 meters instead of the existing 4.00 meters, is the absolute minimum requirement. The inspecting team has categorically mentioned in its report that, the width of driveway for two way manoeuvring shall be

minimum 6.00 meters. It is further categorically reported that lapses in the design and BDA approval of the parking plan was noticed. The report further reveals that, though the parking space A-52 has been constructed as per BDA approved drawing, standard norms have not been followed for driveway width design in the said drawing resulting in unsuitability of all the parking spaces in that driveway. The report makes it clear that, no parking issue was noticed in another driveway which had a width of more than 5.00 meters. It is further disclosed from the inspection report that seepage of water was noticed near dado in the guest bedroom and servant room and one patch of plaster damage at servant room was noticed. Common toilet wash basin waste pipe was found to be hanging without internal pipe connection. As regards the alleged water logging in the corridor, the inspecting team has mentioned in the report that water logging in front of the flat could not be ascertained, but timely closure of the window glasses can prevent entry of rain water into the corridor. The inspecting team found that, due to improper gradient of tiles, there was slow discharge and stagnation of water in the toilet of the servant room. It is specifically reported by the inspecting team that though the width of internal road as per the BDA approved drawing is 6.00 meters, but a cement concrete road of only 3.50 meter width has been constructed in contravention of the plan and cracks have been noticed in some stretches. The inspecting team has enclosed photographs to this effect.

The inspection report dtd. 21.8.2024 of the Enforcement Officer and Empanelled Engineer of the ORERA with regard to the above mentioned specific defects in the flat of the appellant, the driveway to his parking space and internal road of the project remain un-assailed as no evidence has been adduced by the respondent no.1 to rebut the same. Apart from this, admittedly occupancy certificate in respect of the project has so far not been obtained though possession of the flat has already been handed over. In **Samruddhi Cooperative Housing Society Ltd. Vrs. Mumbai Mahalaxmi Construction (P) Ltd. reported in (2022) 4 SCC 103**, it is held by the Hon'ble Supreme Court of India, that, "failure to obtain the requisite Occupancy Certificate constitutes deficiency in service, entitling consumers to seek compensation." A genuine home buyer is likely to undergo mental agony for being deprived of the occupancy certificate in respect of the project where he is in possession of his flat since a considerable length of time. The learned Adjudicating Officer has come to the finding that due to the narrow driveway the parking space is defective and hence the promoter having not followed the norms of the National Building Code of India, 2016 for the benefit of the allottees, cannot escape from his liability on the ground that the BDA has approved his plan. So far as seepage of water near dado in the guest bed room and servant room, hanging of common toilet wash basin waste pipe without internal pipe connection, stagnation of water in servant room toilet due to improper gradient of titles

and cracks in some stretches of the cement concrete internal road with a width of 3.50 meters against the approved width of 6.00 meters, the learned Adjudicating Officer has given the finding that the project being a newly constructed one, the aforesaid defects after a short span of time are likely to cause much inconvenience to the appellant in using his allotted flat. Finding the promoter to have not removed the aforesaid defects the learned Adjudicating Officer held him legally liable in accordance with section 18 of the Act and at the same time held the appellant entitled to compensation for the aforesaid lapses on the part of the promoter.

The appellant-allottee has challenged only the quantum of compensation on the ground of inadequacy contending that he has suffered irreparable loss due to defective design of the building and the car parking space on account of non-adherence to sanctioned plan and also due to use of poor quality materials and sub-standard workmanship by the respondent no.1-promoter as against the project specifications and informations contained in the prospectus. He has also prayed for refund of the differential cost with interest taken illegally from him. The appellant-allottee has however not substantiated his claim by adducing any evidence with regard to the amount of loss caused to him as a result of the aforesaid defect in the civil works of his flat and the driveway to his parking space. No evidence has been led to show loss sustained by the appellant due to payment of extra house rent for months and bank interest as alleged by him in the

complaint. The appellant has also not elaborated the other factors u/sec. 72 (d) of the Act which should have been taken into consideration by the learned Adjudicating Officer in awarding him a compensation of more than Rs.2,00,000/-. So in absence of evidence relating to any specific other factor and the actual loss suffered by the appellant due to the defective civil works and driveway of his parking space, the appellant has not been able to make out a case for enhancement of compensation as prayed for in this appeal. The relief of refund of the differential cost with interest and reliefs other than compensation u/secs. 12,14,18 and 19 are not in the domain of the adjudicating Officer to grant. The compensation of Rs.2,00,000/- awarded by the learned Adjudicating Officer appears to be just and reasonable taking into consideration the extent of defects and deficiencies relating to the flat of the appellant and the driveway to the parking space allotted to him, as found from the report dtd.21.8.2024 of the inspecting team of the ORERA.

7) In view of the discussions made in the preceding paragraph, we are of the opinion that the appellant-allottee is not entitled to any enhancement of the amount of compensation awarded in his favour vide the impugned order dtd. 21.11.2024 passed in AOCC No.30 of 2024 and accordingly the appeal being devoid of any merit stands dismissed on contest against the respondents.

Send a copy of this order alongwith the record in AOCC No.30 of 2024 to the Adjudicating Officer, ORERA for his information and necessary action. Also send a copy of this order, each to the appellant and the respondent no.1-promoter.

Shri S.K.Rajguru
(Judicial Member)

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