IN THE ODISHA REAL ESTATE APPELLATE TRIBUNAL AT BHUBANESWAR

OREAT Appeal No. 139/2023
(Arising out of C.C. No. 139 of 2022)

1)Mr. Pramath Nath Misra
2)Mrs. Kalyani Misra ...Appellants

-Versus-

1)Kriday Realty Private Limited
2)The Secretary, Odisha Real Estate Regulatory Authority, Bhubaneswar ...Respondents.

For the appellants : Mr. L.K.Maharana,advocate
For respondent no.1 : Mr. C.K.Mohanty, Advocate
For 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
28.08.2026

The appeal is taken up for final order.

2) Order dated 2.6.2023 passed by the Odisha Real Estate Regulatory Authority (hereinafter referred to as learned ORERA) in C.C. No.139 of 2022 is under challenge in this appeal. The appellants were the complainants, the respondent no.1 of the appeal was the only respondent and the respondent no.2 is the ORERA represented by its Secretary. Prayer has been made in the appeal to set aside the impugned order dated 2.6.2023 passed in C.C. No.139 of 2022 and to pass any other order (s)/direction (s) as deemed fit and proper.

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

IBC Laws | www.ibclaw.in

The appellants being the complainants filed the aforesaid complaint case before the learned ORERA on 25.4.2022 wherein it was submitted that on the application of the complainants they were allotted two 2 BHK flats on the 9th floor of Tower No.4 of the residential apartment project "ARIANA" at Sankarpur, Bhubaneswar, each having 911 square feet carpet area, on 4.4.2015. Consideration price for each of the flats was agreed to as Rs.68,91,600/-. The complainants claimed that during the period from 6.5.2015 to 6.11.2015 they had paid an amount of Rs.53,04,403/- for each of the flats. On 30.6.2017 when 95% of the consideration price had already been paid by the complainants, the respondent-promoter issued notices to the complainants offering possession of the flats with the intimation that having received the occupancy certificate, he was initiating the handing over process. In the said offer of possession, the respondent had put some conditions which were not in consonance with the terms and conditions of the agreement and one of those conditions was the respondent's demand for an amount of Rs. 3,70,137/- towards electricity, water and sewerage connection charges. The respondent also demanded an amount of Rs.94,009/- towards advance maintenance charges and Interest Free Security Deposit. Despite objecting to the aforesaid illegal demands the complainants still took over the possession of the flats on 25.8.2017. The respondent subsequently on 18.2.2019 intimated the complainants that a Sub-Lease Deed relating to the flats allotted to

them would be executed and they had to deposit the stamp duty and registration charges for such execution. The complainants however could not go ahead with the execution and registration of the proposed Sub-Lease Deed as the copy of the same was not provided to them. After receiving the first reminder for depositing the stamp duty and registration charges on 19.3.2019 the complainants sought for a copy of the draft Sub-Lease Deed, but the respondent only after issuing a second reminder on 13.11.2020 and refusal by the complainants to comply with the demand provided the draft Sub-Lease Deed to them on 13.2.2021. On receiving the draft Sub-Lease Deed the complainants found some discrepancies therein, such as: (i) carpet area was mentioned as 822 square feet instead of 911 square feet, (ii) under the garb of such sub-lease deed the respondent was trying to execute an agreement for accepting a future unknown and unascertained liability on the complainants, (iii)the actual maintenance charge was not mentioned and (iv) the respondent had already received Rs. 71,56,063/- as against the agreed consideration price of Rs.68,91,600/-. The discrepancies being objected to by the complainants on 19.8.2021 the respondent categorically denied the same vide e-mail dtd.21.8.2021. When the respondent remained adamant, the complainants on 8.9.2021 requested him for refund of the entire consideration money to them with 12% interest thereon. The respondent after remaining silent for five months sent a legal notice on 22.2.2022 calling upon the complainants

to execute and register the Sub-Lease Deed within 21 days and pay an amount of Rs. 25,000/- towards legal expenses. On 21.3.2022 the complainants replied that they shall not execute the Sub-Lease Deed unless the material changes are carried out therein. The complainants claimed that in view of the notice given by them they are not using the flats and are also not paying the maintenance charge. The complainants alleged that the respondent without removing the discrepancies in the draft sub lease deed is forcing them to execute the sublease deed, but the fact remains that the discrepancies if not addressed to may compel the complainants to agree to the demand of the respondent on the existing terms in future. The complainants made it clear that, the respondent being adamant in not agreeing to their reasonable request for correcting the inconsistent terms in the draft sub lease deed, they intend to withdraw from the project with refund of the consideration amount paid by them with interest. The complainants alleged that supply of electricity to their flat has been disconnected without giving statutory notice to them under the Electricity Act, 2003 which is illegal. The complainants further alleged that the respondent has illegally increased the maintenance charge and not handed over the maintenance of the common areas to the association of allottees. Further alleging that the respondent has violated sections 11 (4) and 17 of the Act, 2016 and has failed to abide by the terms and conditions of the allotment letter and agreement for which they are

well within their right to withdraw from the project, the complainants prayed before the learned ORERA for a direction to the respondent to refund the consideration amount for both the apartments (Rs.1,68,88,308/- in total) and the amount of Rs.3,70,137/- which was illegally collected towards electricity, water and sewerage connection, with interest, as per section 18 of the Act, 2016 and grant any other reliefs, as deemed fit and proper.

In response to the notice issued by the learned ORERA, the respondent-promoter appeared through his counsel on 28.6.2022 and filed his written show cause to the complaint on 30.8.2022.

The respondent in his written show cause to the complaint admitted the allotment of the two 2 BHK flats on the 9th floor of Tower No.4 of the project to the complainants for the agreed consideration price of Rs.68,91,600/-, but took the plea that the carpet area of 911 square feet mentioned in the allotment letter was equivalent to 1325 square feet saleable area. In this regard, the respondent explained that the carpet area reflected in the allotment letter was inclusive of balcony/ veranda area, but after carpet area was specifically defined in the RERA Act and balcony area was excluded from it there was reduction in the earlier area of 911 square feet. The respondent claimed that, the saleable areas of both the flats however remain same as they were at the time of allotment to the complainants. The consideration price reflected in the allotment letters

included only the basic sale price and preferential location charge which were clearly reflected in the cost sheet attached to the allotment letters duly communicated to the complainants. The cost sheet also reflected that applicable taxes, statutory charges, security deposit and other charges shall be payable by the allottee separately. The respondent claimed that pursuant to the allotment letter an agreement for Sub-Lease was executed and duly signed by the complainants and the respondent who agreed to the terms and conditions mentioned therein. It is further submitted that in the possession letter the complainants had categorically stated that they were satisfied with the areas of the flats, the amenities and the project. The respondent further submitted that the balance consideration amount was raised subsequent to the receipt of the occupancy certificate as per the agreed schedule. The respondent denied the allegation of the complainants that certain clauses in the possession letter were not in consonance with the terms and conditions of the agreement for the Sub-Lease. The respondent claimed that in the application form as well as in the agreement for Sub-Lease it is clearly mentioned that the electricity, water and sewerage connection charges, the advance maintenance charges and the Interest Free Security Deposit for providing maintenance services are separately payable by the allottees. The details of such additional charges have also been mentioned clearly in the offer of possession letter. The respondent further submitted that after receiving occupancy certificate in respect of the

project in the year 2017, he made communications to all the customers including the complainants for registration of the Sub-Lease Deed and subsequently after registration certificate in respect of the project was issued by the ORERA on 6.12.2018 they again made a written communication to the complainants on 18.2.2019 for registration of the Sub-Lease Deed. The respondent claimed that since the year 2017 he is regularly requesting the complainants for registration of the Sub-Lease Deed and inspite of several reminders sent by him from time to time the complainants remained silent. The respondent claimed that a draft Sub-Lease deed was provided by him to the complainants vide e-mail dtd. 13.2.2021 and therefore the complainants had simply slept over the matter for about six months till they raised objection to certain clauses of the draft Sub-Lease Deed on 17.8.2021. The respondent reiterated his claim that despite this reduction in the carpet area the saleable area which was reflected as 1325 square feet in every document remained the same even after the commencement of the RERA Act and therefore the physical area of the project was never changed and the structure also remains the same from the beginning. The respondent further claimed that the future unknown liability which the complainants apprehended was already there in the agreement for Sub-Lease and the complainants had agreed to this clause, still the said clause was amended in the draft Sub-Lease Deed as per the suggestion of the complainants. The respondent

claimed that the complainants had entered into a separate maintenance and service agreement with the service provider company with regard to maintenance charges in the year 2017 at the time of taking over possession. The clause in the draft Sub-Lease Deed simply reflected about payment of maintenance charges for smooth flow of maintenance services to all the residence and to ensure timely payment charges in the greater interest of allottees. As regards the advance maintenance charges, Interest Free Security Deposit for maintenance services and electricity, water and sewerage charges, the respondent made it clear that these charges were clearly reflected in the application form, agreement for Sub-Lease, offer of possession letter and maintenance and service agreement, which were explicitly agreed by the complainants and were well within their knowledge and even at the time of taking possession the complainants had paid such dues without any objection. The respondent has claimed that the letter dtd. 8.9.2021 of the complainants for refund of the entire consideration amount with interest is not only illogical but also beyond the scope of law. It is quite surprising that after peacefully enjoying the property for about five years, the complainants are seeking for refund of the entire amount with interest. The respondent has further alleged that the complainants have avoided their legitimate responsibility to participate in the execution and registration of the Sub-Lease Deed on frivolous grounds. The respondent has denied the alleged disconnection of electricity supply to the flat of the

complainants for want of payment of electricity charges though it is a fact that the complainants have not cleared the outstanding dues towards CAM and other maintenance charges. The respondent made it clear that maintenance charges were levied in accordance with the already agreed terms and conditions laid down in the maintenance and service agreement duly executed by the complainants and moreover all the expenses incurred and charges collected were regularly audited by a certified chartered accountant and kept open in the CRM office within the premises of the project for inspection of the allottees with prior written information. With the aforesaid submissions and the assertion that the prayers made by the complainants are devoid of any merit and the complaint is not maintainable and also totally without any proper cause of action, the respondent prayed for its dismissal.

The learned ORERA on considering the pleadings of the parties, the documents filed by them in support of the same and also on hearing them passed the impugned order dtd. 2.6.2023 dismissing the complaint case as a whole.

4) In the hearing of the appeal the learned counsel for the appellants has submitted that the learned ORERA inspite of coming to the finding that a clause contrary to the spirit of the agreement was existing and the same was to be treated as redundant, still did not decide whether such a clause could be forced upon the appellants by the respondent no.1 or not. It is further

submitted that the learned ORERA failed to take note of the draft Lease Deed executed between the BDA and the Developer which provides in clause (C) that any Sub-Lease executed by the developer shall be in conformity with the terms of the principal lease. Clause 6 (i) of the draft Lease Deed also specifies that Sub-Lease Deed shall be executed in conformity with the terms of the principal lease and in the event of any conflict between sub lease and principal lease, the inconsistent terms of such lease shall stand modified to that extent. Even if no prayer was made to this effect, the learned ORERA could have passed an order modifying the draft sub-lease deed. It is further submitted that the learned ORERA has made an erroneous observation that the difference of Rs.2,64,463/- between the agreed consideration price per each flat and the actual amount received by the respondent no.1-promoter is a minimal one as the difference is of huge amount. It is further submitted that, section 11 (4) (f) read with section 17 of the R.E. (R&D) Act, 2016 puts an obligation on the promoter to execute a deed of conveyance and to handover the possession of the apartment to the allottee and common areas to the association of allottees. Thus, the possession of the flats in question cannot be said to be complete till the execution of deed of conveyance. It is further submitted that mere physical delivery of possession of flats in question does not take away the liability of the respondent no.1-promoter and the appellants are fully entitled to claim refund of the amount paid by them with interest as per section 18 (1) of the Act.

Further contending that the impugned order being cryptic, perverse and not considered in its proper perspective, the learned counsel for the appellants has made the prayer as mentioned earlier in paragraph-2.

5) On the other hand, the learned counsel for the respondent no.1-promoter has stuck to the pleas taken in the written show cause to the complaint. It is submitted that the respondent no.1-company has requested the appellants to execute the Sub-Lease Deed following due procedure time and again, but the appellants have avoided the said execution every time on flimsy grounds. The learned counsel for the respondent no.1 has claimed that no part of the draft Sub-Lease Deed is contrary to the principal lease deed or contravention of any statutory provision. It is further submitted that the carpet area of 911 square feet in the allotment letters is equivalent to 1325 square feet saleable area. Reiterating the plea taken in the written show to the complaint the learned counsel for the respondent no.1 submitted that the carpet area mentioned in the allotment letters was inclusive of balcony/ veranda area as the allotment letters were issued on 4.4.2015 i.e. during the pre-RERA period. There has been a normal reduction in the area from 911 square feet to 822 square feet after the commencement of the RERA Act as balcony area has been excluded from the carpet area as per its meaning under the Act. However, the saleable area remains the same i.e. 1325 square feet in the allotment letters as well as in the draft sub lease deed. The learned counsel for the respondent no.1 has pointed

out that the appellants themselves have admitted to have made payment subsequent to the demand note without any kind of objection or protest and even have signed the possession letters mentioning therein that they are satisfied with the area of the apartments, their amenities and the project. This indicates that had there been any contradiction or discrepancy in the allotment letters and the demand note, the appellants would have objected to it and would not have made the payment. With the aforesaid submissions and claiming that the appeal not only lacks merit but also the appellants have failed to demonstrate any valid ground or question of law to challenge the impugned order of the learned ORERA, the learned counsel for the respondent no.1 has prayed for dismissal of the appeal.

6) The applicability of the R.E. (R&D) Act, 2016 to the project is not disputed by the respondent no.1 and also no completion certificate in respect of the project showing it to have been completed before 1.5.2017 has been produced. The project is therefore held to be an ongoing one on the date of commencement of the Act and accordingly under its fold.

7) As regards the delay in execution and registration of the Sub-Lease Deed, the appellants have submitted that as a result of such delay they could not transfer, gift or alienate their flats despite having paid the entire consideration amount. The reason for delay in execution and registration of the Sub-Lease Deed has been attributed to the arbitrary inclusion of certain

clauses by the respondent no.1 in the said Deed which were contrary to the terms in the allotment letters. As per the complaint petition, the said inconsistent terms are as follows :

i)As against the carpet area of 911 square feet in the allotment letters, the same mentioned in the draft Sub-Lease Deed was 822 square feet.

ii) Under the garb of the Sub-Lease Deed the respondent no.1-promoter was trying to impose a future unknown and unascertained liability on the appellants.

iii)Actual maintenance charges was not mentioned.

iv)Though the total consideration price per flat was agreed to at Rs.68,91,600/-, but the respondent no.1-promoter had already received a sum of Rs.71,56,063/-.

With regard to the alleged inconsistency in the carpet area, it is not disputed that in the allotment letters dtd. 4.4.2015 in respect of the flats in question, the carpet area of each flat was shown to be 911 square feet with a further mentioning that such carpet area was equivalent to 1325 square feet saleable area. The explanation of respondent no.1 to the carpet area being mentioned as 822 square feet in the draft Sub-Lease Deed is that, such reduction in area was obvious in view of the fact that the allotment letters were issued in pre-RERA period during which carpet area included the balcony/verandah, but after commencement of the RERA Act, balcony/verandah of the apartment having been excluded from the carpet area, the area came down from 911 square feet to 822

square feet. Nevertheless, the total saleable area which as per the allotment letters dtd. 4.4.2015 was 1325 square feet per each flat has remained the same even after the RERA Act came into force. So, the appellants are not loser by any extent of the agreed area of each of their flats.

The Bhubaneswar Development Authority (Planning and Building Standards) Regulations, 2008 was framed in exercise of the powers conferred by Section 124 of the Odisha Development Authorities Act, 1982. The regulations extended to the whole area within the jurisdiction of Bhubaneswar Development Authority and came into force on 15.12.2008 i.e. the date of their publication in the Odisha Gazette. Regulation 2 (25) (A) which was inserted on 31.10.2013 provides the meaning of 'Carpet area'. As per this regulation, 'Carpet area' means the net usable floor area of an house, excluding the area covered by the walls and common area. So, at the time of issuance of allotment letters dtd. 4.4.2015 in respect of the flats in question the term "Carpet area" was there with the aforesaid meaning. The R.E. (R&D) Act, 2016 came into force w.e.f. 1.5.2017 and as per Section 2 (k), 'carpet area' means the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment. The explanation to section 2 (k) of the Act, 2016 makes it further clear that, the expression "exclusive balcony or verandah area" means the area of the balcony

or verandah, as the case may be, which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee, and 'exclusive open terrace area' means the area of open terrace which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee. Thus the 'carpet area' under Regulation 2 (25) (A) of the BDA Regulations, 2008 has no such broader meaning as in the R.E. (R&D) Act, 2016 and it is not clear if exclusive balcony/verandah area and exclusive open terrace area are excluded from the net usable floor area or not. So the contention of the respondent no.1 that, as per the definition of 'carpet area' in the R.E. (R&D) Act, 2016, the earlier carpet area came down from 911 square feet to 822 square feet on deducting the area of the balcony/verandah, sounds reasonable.

8) The allegation of the appellants in their complaint petition that, under the garb of Sub-Lease Deed, the respondent no.1 was trying to execute an agreement for accepting a future unknown and un-ascertained liability, is devoid of substantiation as the future unknown and unascertained liability has not been made clear. In this regard, the explanation of the respondent no.1 in his written show cause to the complaint is that, this liability was already there in the agreement for Sub-Lease between him and the appellants. The respondent no.1 has however claimed that, for better clarification he in the subsequent amended draft Sub-Lease Deed had modified the said clause as suggested by

the appellants. The appellants have disputed this claim of respondent no.1 denying any such modification. The contention of the appellants is that clause (C) of the draft Lease Deed between the BDA and the Developer provides for conformity of the sub lease with the Principal Lease and it is specifically mentioned in the draft Lease Deed that in the event of any conflict between the Sub Lease and Principal Lease with regard to any term than the inconsistent term in the Sub Lease shall stand modified to that extent. Clause P of the draft sub-lease deed provides that, the sub-lessee(s) shall strictly abide by the terms and conditions of the principal lease and any non-compliance there of shall amount to breach of the present sub lease deed. It is also not disputed between the parties that the terms of the Sub-Lease Deed must remain consistent with those in the Principal Lease and therefore it is clear that, even if the modification as claimed by respondent no.1 has not been actually carried out then also it is deemed that any term of the draft Sub Lease Deed not in consonance with that in the Principal Lease Deed will not be binding upon the appellants.

9) The claim of the appellants that the maintenance charges, which should be as per actual, was not specifically mentioned in the draft Sub Lease Deed, is found to be correct. The plea of the respondent no.1 in this regard is that a separate maintenance and service agreement was entered into between the appellants and the respondent no.1 and the said agreement provides for maintenance charges to which the appellants had agreed

at the time of taking possession of their flats in the year 2017. The clause in the draft Sub Lease Deed simply reflects about the payment of maintenance charges for smooth flow of the maintenance service to all the residents and to ensure timely payment of the maintenance charges for the greater interest of the allottees. Annexure-R/2 relied on by the respondent no.1 is the agreement to sub lease executed between the appellants and the respondent no.1 on 20.4.2015. Clause 6.1 of the said agreement which provides for (Payment of Maintenance Charges" clearly reveals that, the SUB-LESSEE(s) shall pay, as on when demanded, the maintenance charges including security deposit for providing, maintaining and up-keeping the said complex/ project and other deposits and charges for the various services therein, as may be determined by KRIDAY REALTY or the Maintenance Agency by TATA HOUSING and/or KRIDAY REALTY appointed for this purpose, as the case may be. The appointment of the maintenance agency will be at the sole discretion of TATA HOUSING and/or KRIDAY REALTY and the SUB-LESSEE (s) shall abide by the decision of KRIDAY REALTY and effect the payment in accordance with the said Agreement. However, Annexure-C1 to the written agreement for sub-lease dtd. 20.4.2015 clearly provides that the amount of maintenance charges as per clause 6.1 was "As Per Actuals". "Maintenance Amount As per Actuals" means the allottee will pay the actual expenses incurred for maintaining the project, rather than a fixed maintenance amount. This being found absent in the draft

Sub Lease Deed, the grievance of the appellants about non-mentioning of actual maintenance charges in the draft Sub Lease Deed is justified.

10) Now coming to the receipt of an amount of Rs.71,56,063/- by the respondent no.1 from the appellants per each of the flats against the agreed consideration price of Rs.68,91,600/- is not disputed by the respondent no.1. In this regard, the plea of the respondent no.1 is that the agreed price of Rs.68,91,600/- included only the basic sale price, floor raising charges and club membership charges, whereas the balance amount out of Rs. 71,56,063/- i.e. Rs. 2,64,463/- was charged towards advance maintenance charges, interest free security deposit for maintenance services and electricity, water, sewerage charges etc. These charges were reflected in the application form, agreement for sub-lease, offer of possession letter, and maintenance and service agreement, which were explicitly agreed to by the appellants and so were well within their knowledge. The respondent no.1 has made the specific claim that at the time of taking possession the appellants had already paid such dues without objection. The explanation of the respondent no.1 with regard to the differential amount of Rs.2,64,463/- finds support from the cost sheet attached to the agreements to Sub-Lease dtd.20.4.2015. Clause N of the said agreement dtd. 20.4.2015 shows that basic sale price of Rs. 66,09,100/-, preferential location charges of Rs.66,250/- and floor rise charge of Rs.66,250/- together with club house membership charges

Rs.1,50,000/- comprise the amount of Rs.68,91,600/-. As the appellants are also liable to pay additional charges towards advance maintenance charges, interest free security deposit for maintenance services and charges towards electricity, water and sewerage as per the application from, agreement for Sub Lease dtd. 4.4.2015 and offer of possession dtd. 30.6.2017 and also maintenance and service agreement, they are liable to pay the differential amount of Rs.2,64,463/-, but the draft sub lease deed being silent about the same, the respondent no.1 should have reflected about the receipt of amount towards the aforesaid additional charges in the draft Sub Lease Deed after the appellants pointed out the inconsistency between the agreed amount and the amounts actually paid by them.

11) So, in view of the discussions made in paragraphs 7 to 10, it is clear that the respondent no.1-promoter has not rectified the inconsistencies in the draft sub lease deed pointed out by the appellants with regard to maintenance charges and the actual consideration amount received from the appellants. So, the cause of delay in execution and registration of the Sub-Lease Deed can certainly be attributed to the inaction of the respondent no.1 in not rectifying the aforesaid defects point out by the appellants.

12) As mentioned earlier, the appellants in their complaint petition had prayed for a direction to the respondent no.1 to refund the consideration amounts for both the apartments, which in total is Rs.1,68,88,308/-,

together with interest thereon and also the amount of Rs.3,70,137/- which according to them was illegally collected by the respondent no.1 towards electricity, water and sewerage connection, with interest. Considering both the prayers of the appellants, the same are no doubt covered under section 18 (1) of the R.E. (R&D)Act, 2016, which provides as under :

> "If the promoter fails to complete or is unable to give possession of an apartment, plot or building, --(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein, or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under the Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act :
>
> Provided that, where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

Thus it is clear from the above mentioned statutory provision that, only in the event of the promoter's failure to complete or inability to give possession of the apartment, plot or building, in the circumstances mentioned therein, an allottee to the said apartment, plot or building, if wishes to withdraw from the project, may seek for refund of the amount paid by him to the promoter

in respect of the apartment, plot or building, as the case may be, with interest at the prescribed rate. In the present case, however, the appellants have not at all alleged in their complaint petition that, the respondent no.1-promtoer has failed to complete their apartments or is unable to give them the possession thereof as per the terms of the agreement for sale. Rather, the complaint petition clearly reveals that, the respondent no.1 offered possession of the apartments to the appellants vide letter dtd. 30.6.2017 after obtaining the occupancy certificate and the appellants took over possession of the same on 25.8.2017.

It is the contention of the appellants that the respondent no.1-promoter is under an obligation under the R.E. (R&D) Act to execute the deed of conveyance of the apartments and handover the possession thereof to the appellant-allottees as well as the undivided proportionate title in the common areas to the association of allottees in terms of Section 11 (4) (f) read with section 17 (1) of the Act, 2016 and therefore the possession of the flats will be complete only after execution of deed of conveyance, which in the present case is the Deed of Sub Lease. The aforesaid contention of the appellants is true and proviso to section 17 (1) of the Act further requires that the conveyance deed in favour of the allottee or the association of allottees shall be carried out by the promoter within three months from the date of issue of occupancy certificate. As per Sec. 17 (1) handing over of the physical possession of the plot, apartment or building,

as the case may be, to the allottees and the common areas to the association of allottees takes place following the execution of the registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees. In the present case, Part Occupancy certificate in respect of 7 towers of the project including the tower of the appellants is found to have been issued on 30.6.2017. So, as per the proviso to Sec. 17 (1), conveyance deed i.e. the Deed of Sub lease should have been executed and registered in favour of the appellants by 29.9.2017. However, the Deed of Sub-lease still remains not executed and registered due to the dispute between the appellants and the respondent no.1 relating to the inconsistent terms in the draft sub lease deed. However, despite this the respondent no.1 promoter has neither failed to complete nor has been unable to give physical possession of the apartments to the appellants. The non-mentioning, of the Maintenance Charge in Actuals and the actual consideration amount received from the appellants in the draft sub lease deed also no way reduce existing contractual right of the appellants in respect of their flats. So, even if the delay in execution and registration of the sub lease deeds relating to the flats allotted to the appellants can be attributable to the conduct of the respondent no.1, still the appellants have not been able to make out a case to withdraw from the project and claim refund of the amount of Rs.1,68,88,308/- paid by them to the respondent no.1

towards the consideration price for both the flats, with interest, as per Sec. 18 (1) (a) of the Act.

As regards the refund of Rs.3,70,137/-, which according to the appellants has been collected illegally from them by the respondent no.1 towards electricity, water and sewerage connection charges, together with interest thereon, it is to be noted that the appellant-allottees are liable to pay the share of certain charges to the respondent no.1-promoter in accordance with Sec. 19 (6) of the Act and the said charges include water and electricity charges and also other charges. Annexure "C1" to the copy of the agreement to sub lease (Annexure R-2 of the complaint case) shows that, charges for water connection, electric metre and, infrastructure shall be "As per actuals". So, as the respondent no.1 is entitled to receive only the amount actually spent for obtaining the water, electricity and sewerage connections, he shall produce authentic proof with regard to such expenditure. In case the said expenditure is less than the amount of Rs.3,70,137/- taken by him, he shall refund the balance amount to the appellants.

13) In view of the discussions made in the paragraphs 7 to 12, we are of the considered opinion that, the appellants are not entitled to their prayer for refund of the amount of Rs.1,68,88,308/-, with interest, in accordance with Sec. 18 (1) (a) of the Act, but are certainly entitled to be refunded the balance, if any, out of the amount of Rs.3,70,137/- remaining after payment of the

actual charges towards water, electricity and sewerage connections.

As the appellants' prayer for refund of the total consideration money with interest has been rejected, we think it necessary to issue a direction to the respondent no.1-promoter for an early execution and registration of the sub-lease deed which remain stalled since the early part of the year 2019. Accordingly, we direct the respondent no.1-promoter to execute and register the deeds of sub lease in the prescribed format, in respect of the flats allotted to the appellants in their favour in terms of the respective agreements to Sub lease dated 20.4.2015, mentioning therein the Maintenance charges as per actuals and the amount actually received towards consideration money, within two months of this order, failing which the appellants shall be at liberty to ensure compliance of the direction by taking recourse to law.

14) With the aforesaid modifications in the impugned order, the appeal is accordingly disposed of on contest against the respondents.

Send a copy of this order alongwith record in C.C. No.139 of 2022 to the learned ORERA for information. Also send a copy of this order each to the appellants and respondent no.1-promoter.

Shri S.K.Rajguru
(Judicial Member)

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

Td