IN THE ODISHA REAL ESTATE APPELLATE TRIBUNAL AT BHUBANESWAR

OREAT Appeal No. 138/2023
(Arising out of A.O.C.C. No. 13 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 1.6.2023 passed by the learned Adjudicating Officer, ORERA in A.O.C.C. No.13 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/modify the impugned order dated 1.6.2023 passed in A.O.C.C. No.13 of 2022 to the extent assailed in the appeal memo and to enhance the amount of compensation as claimed in the said complaint case.

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

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The appellants being the complainants filed the aforesaid complaint case before the learned Adjudicating Officer, ORERA on 8.7.2022 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 allege that due to the arbitrary action of the respondent they had suffered huge financial as well as mental loss. The complainant no.1 had to travel from New Delhi to Bhubaneswar more than four times in the past three to four years and the cost of travel, which is quantified at Rs.48,000/-, is attributable to the respondent. Apart from this, the complainants have also spent a sum of Rs.20,000/- towards legal expenses in filing the complaint and engaging a local advocate to look after the proceedings before the ORERA. The complainants further alleged that after being not able to travel to Bhubaneswar for a period of one year due to the Covid-19 pandemic when the complainant no.1 finally visited Bhubaneswar on 18.3.2021 he found on reaching his flat that supply of electricity to it was disconnected with none to take care of the situation. The complainant no.1 was informed that the electric supply to his flat was automatically disconnected by the distributor as there was no fund available in respect of the same. The complainants alleged that the disconnection of electricity to their flat without giving statutory notice to them under

the Electricity Act, 2003 was illegal. The complainants categorically alleged that the respondent out-rightly rejected their suggestion to mention the actual maintenance charge and also to amend the future liability clause in the draft Sub-Lease Deed. Further alleging that due to the conduct of the respondent they had suffered mental harassment and had to bear unnecessary expenses, the complainants prayed before the learned Adjudicating Officer for a direction to the respondent to pay them a compensation of Rs.2,00,000/- towards delay in executing the registered Deed of Sub-Lease, with interest thereon @18% per annum, compounded quarterly, from the date of last payment i.e. 25.8.2017 till the realisation of the amount, a further amount of Rs.2,00,000/- for their mental harassment and agony, an amount of Rs.48,000/- towards expenses incurred by them in their travel from New Delhi to Bhubaneswar on four occasions and Rs.20,000/- towards legal expenses.

In response to the notice issued by the learned Adjudicating Officer the respondent-promoter appeared through his counsel on 16.8.2022 and filed his written show cause to the complaint on 15.9.2022.

The respondent 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 CRM 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 totally without any proper cause of action, the respondent prayed for dismissal of the complaint case.

The learned Adjudicating Officer 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. 1.6.2023 directing

the respondent to pay a compensation of Rs.25,000/- to the complainants, within a period of 45 days, making it clear that in the event of failure in making the payment, the amount shall carry interest @9.70% per annum till total realization. It was further made clear in the order that in case of non-payment of the amount to the complainants within the aforesaid period they would be at liberty to take steps for realization of the amount by resorting to Section 40 of the Act read with Rule 26 of the Odisha Real Estate (Regulation and Development) Rules, 2017.

4) In the hearing of the appeal, the learned counsel for the appellants has contended that the finding of the learned Adjudicating Officer in the impugned order that there are no guidelines to fix the quantum of compensation is incorrect in view of the fact that such guidelines are there in section 72 of the RERA Act, 2016. It is further submitted that, when the learned Adjudicating Officer has categorically held that the appellants have suffered mental agony due to the action of the respondent, then compensation has to be awarded in accordance with section 72 of the Act. It is further submitted that the respondent has not executed the Sub-Lease Deed in terms of the original lease deed and those of the agreement for sale and so the non-execution of the Sub-Lease Deed is a violation of sections 18 and 19 of the Act. It is further submitted that it is due to the non-execution of the Sub-Lease Deed, the appellants inspite of investing more than Rs.1.2 crores for both the flats have

still not acquired title over the same and consequently have also not been able to transfer, gift or alienate the flats inspite of paying the entire consideration amount and therefore the claim of Rs.2,00,000/- as compensation for their mental harassment and agony is quite justified. This further makes it clear that awarding only an amount of Rs.25,000/- as compensation to the appellants for their mental harassment and agony is not only inadequate but also unreasonable. As regards the learned Adjudicating Officer's finding that no proof with regard to the legal expenses has been adduced, it is the contention of the learned counsel for the appellants that the drafting and filing of the complaint together with copies of documents certainly involve expenses and therefore rejecting the prayer for only Rs.20,000/- towards legal expenses, which is a reasonable amount, certainly renders the impugned order perverse. It is further submitted that the claim of the appellants for an amount of Rs.48,000/- towards their travel expenses between New Delhi and Odisha on four occasions for consulting their Advocate, signing papers etc., is also a justifiable one, and therefore the rejection of such prayer is inappropriate and erroneous. It is further submitted that clause 6 (i) of the draft lease deed specifies that the Sub-Lease shall be executed in conformity with the terms of the Principal Lease and the indenture and in the event of any conflict between the Sub-Lease and principal lease or the indenture, the inconsistent terms of the Sub-Lease shall stand modified to that extent. The learned Adjudicating Officer therefore ignored the clauses

in the Sub-Lease Deed which are contrary to the Principal Lease Deed. With the aforesaid submissions, 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 has stuck to the pleas of the respondent no.1 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 has 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. It is further submitted that, clause 4

(x) of the draft sub lease deed which makes the sub-lessees liable to pay all future levies as may be levied on the said unit and land and larger property including EDC, IDC, infrastructure Development Charges, GST etc. was already therein the agreement for sub lease which were earlier agreed to by the appellants. However for better clarification, the respondent no.1 modified the said clause in the subsequent amended draft sub lease deed as per the suggestion of the appellants. It is further submitted that, the separate maintenance and service agreement entered into by the appellants with the respondent no.1 provides for maintenance charges to which the appellants had agreed at the time of taking possession of their flats in the year 2017. It is further submitted that, the learned counsel for the respondent no.1 made it clear 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. Moreover, at the time of taking possession the appellants had already paid such dues without objection. 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, the 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 Adjudicating Officer, 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 mentioned earlier, the appellants had prayed for a compensation of Rs.2,00,000/- for delay in the execution of the registered deed of Sub-Lease with interest @18% per annum, compounded quarterly, from 25.8.2017 i.e. the date of last payment made by them till realization of the said amount. Compensation of an equal amount has also been prayed for mental harassment and

agony. Further prayers for compensation of Rs.48,000/- and Rs.20,000/- have also been made for the travel expenses between New Delhi and Bhubaneswar on four occasions and legal expenses, respectively.

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 learned Adjudicating Officer in his finding has agreed to the aforesaid contentions of the respondent no.1-promoter. It is held by the learned Adjudicating Officer as follows :

> "Prior to the RERA Act, the Odisha Development Authorities Act was governing the field. Since the apartment comes under the Bhubaneswar Municipal Corporation, the BMC Regulations are applicable to it. On going through the ODA Act as well as Bhubaneswar Municipal Corporation (Building Standards Regulation), 2008, the 'carpet area' concept was not there. Even 'carpet area' has also not been defined either in the ODA Act or in the BMC Regulations. It is not known as to wherefrom the concept of carpet area came to be placed in the offer of possession letter. Be that as it may, in the possession offer letter as well as the draft Sub-Lease Deed the saleable area has been noted 1325 square feet. Therefore, there is no change in the saleable

area. As such the objection to the above clause is not having not much substance."

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 learned Adjudicating Officer was therefore in error to observe that the concept of 'carpet area' was not there either in the ODA Act or in the BMC Regulations, 2008. Even the learned Adjudicating Officer wrongly mentioned the BDA (Planning & Building Standards)Regulations, 2008 as Bhubaneswar Municipal Corporation (Building Standard Regulations), 2008. 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 and contended that had there been any modification there was no occasion for them to approach the learned Adjudicating Officer with the present complaint. 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 a service provider company 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. Annexure-C1 to the written agreement for sub-lease dtd. 20.4.2015 however 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 pointed out by the appellants. The delay in transfer of leasehold interest in the flats to the appellant-allottees has certainly resulted in mental harassment and agony to them. They are therefore entitled to compensation u/sec. 18 (3) of the R.E. (R&D) Act, 2016 and the quantum of compensation is to be adjudged u/sec. 72 (d) of the Act. The factors of delay in execution and registration of the Sub Lease Deed and the mental harassment and agony suffered by the appellants being inter related and arise out of the same cause of action, payment of separate compensation amounts is not desirable. However, no compensation can be awarded for the travelling expenses and the cost of litigation as mentioned in the complaint petition as the same are not supported by any evidence and also cannot be said to be on account of the failure of the respondent no.1 to discharge his obligation of executing and registering the sub lease deed under the provision of Sec. 18 (3) of the Act.

Considering the fact that it is due to the inaction of the respondent no.1 since his getting the e-mail dtd. 19.8.2021 of the appellants objecting to the inconsistencies in the draft sub lease deed, the draft sub lease has not yet been executed and registered in favour of the appellants and the same has certainly caused mental agony to them, we are of the opinion that, a compensation of Rs.1,00,000/- would meet the ends of justice.

Accordingly, the respondent no.1-promoter shall pay a compensation of Rs.1,00,000/- to the appellants for their mental agony resulting from the delay in execution and registration of the Sub Lease Deed, with interest thereon @ as prescribed under rule-16 of the Odisha Real Estate (Regulation and Development) Rules, 2017 i.e. SBI highest MCLR plus two percent, which comes to 9.30% (7.30%+2.00%) per annum, from 19.8.2021 till the final realization of the amount.

12) With the aforesaid modifications relating to the amount of compensation and the rate of interest, the impugned order dtd. 1.6.2023 passed by the learned Adjudicating Officer in AOCC no.13 of 2022 is hereby confirmed. The appeal is accordingly partly allowed on contest against the respondent no.1.

Send a copy of this order together with the record in AOCC No.13 of 2022 to the learned Adjudicating Officer, ORERA for information and necessary action. Also send a copy of this order, each to the appellants and the respondent no.1.

Shri S.K.Rajguru
(Judicial Member)

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

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