IN THE ODISHA REAL ESTATE APPELLATE TRIBUNAL AT BHUBANESWAR

OREAT Appeal No. 25/2025
(Arising out of C.C. No. 65 of 2024)

Odisha State Housing Board.

...**Appellant**.

-Versus-

1)Sri Gouri Shankar Roy
2)The Secretary, Odisha Real Estate Regulatory Authority, Bhubaneswar ...**Respondents**.

Counsel for the appellant : Mr. P.K.Dasmohapatra, Advocate
Counsel for respondent no.1 : Mr. K.C.Prusty, Advocate
Counsel 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
11.09.2026

The appeal is taken up for final order.

2) Order dated 1.10.2024 passed in Complaint Case No.66 of 2024 by the Odisha Real Estate Regulatory Authority (hereinafter referred to as the learned ORERA) is under challenge in this appeal. The appellant was the respondent no.1 and the respondent no.1 of this appeal was the complainant in the said complaint case. The respondent no.2 of this appeal is the learned ORERA. Prayer has been made in the appeal to set aside the impugned order dated 1.10.2024 passed in Complaint Case No.65 of 2024 and to pass any further order as deemed fit and proper in the interest of justice by the Tribunal.

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

The respondent no.1 of this appeal being the complainant filed the aforesaid complaint case before the learned ORERA on 16.2.2024 submitting in the petition that, pursuant to the advertisement published by the Odisha State Housing Board (respondent no.1) in "The Samaj" dtd. 28.11.2015, he applied for an EWS category flat in the Dumduma Phase-VII, a multi-storied residential apartment complex with a proposed construction of EWS, LIG and MIG flats undertaken by the respondent no.1 at Dumduma, Bhubaneswar. The respondent no.1 vide its letter dtd. 24.6.2016 intimated the complainant that EWS flat with reference no.EDF-325 in the project was allotted to him. Subsequently vide letter dtd. 10.11.2016 the respondent no.1 intimated the complainant that the provisional cost of the flat allotted to him would be Rs. 7,43,000/-. In the said letter, the complainant was asked to pay the cost of the flat in eight instalments i.e. Rs.1,11,450/- per instalment for the first 4 instalments, Rs.74,300/- per instalment for the 5th and 6th instalments, Rs.73,600/- for the 7th instalment and the balance amount involving the differential cost and other dues, if any, in the 8th instalment. It was also stated that the date of handing over of possession of the flat would be 31.12.2019 and before taking over possession agreement/ lease-cum-sale deed would be executed. The complainant further submitted that after loan was sanctioned in his favour by SBI, Treasury

Branch, Bhubaneswar, the first three instalments, each of Rs.1,11,450/-, were released by the Bank in favour of the respondent no.1 on 31.12.2016, 21.6.2017 and 16.1.2018 respectively. However, after receiving the aforesaid amount of Rs.3,34,350/- for the first three instalments and EMD of Rs.75,000/- when the respondent no.1 did not receive the 4th instalment, the complainant enquired about the matter and the respondent no.1 gave an evasive reply that due to unavoidable circumstances, there was delay in construction of EWS flats in the project and accordingly asked the complainant not to pay any further instalment till receiving instruction from the respondent no.1. The complainant claimed to have paid a total amount of Rs.4,09,350/- to the respondent no.1 as on 16.1.2018. When there was inordinate delay in transferring ownership of the flats and delivering their physical possession, the concerned allottees including the complainant met the OSHB authorities a number of times and also submitted representations on which they were assured that they would be handed over ownership and possession of their respective flats. However, no further development in respect of the construction of the project took place despite a long wait by the complainant. Till now the respondent no.1 has failed to deliver the possession of the flat in question to the complainant. The complainant alleged that after publishing advertisement for different categories of flats in the project and taking a total amount of Rs.4,09,350/- there is no justification for

the respondent no.1 to not receive the balance amount from him and transfer the ownership of the flat and deliver its possession to him. Further alleging that the project is still an ongoing one and the respondent no.1-promoter has not obtained the completion certificate and the occupancy certificate in respect of it, the complainant prayed for a direction to the respondent no.1 to handover him the possession of the EWS flat in the project allotted to him after execution of the sale deed in respect of it, pay him interest @12% on the amount of Rs.4,09,350/- paid by him in total so far from the date of the respective payments till the date of actual delivery of possession of flat, obtain completion certificate and occupancy certificate in respect of his flat and also pay him an amount of Rs.10,000/- towards cost of litigation.

Pursuant to the notice issued by the learned ORERA, the respondent no.1-Housing Board appeared through his counsel and filed written reply to the complaint with the contention that the respondent no.1 had already communicated a letter to the complainant on 30.12.2017 informing him not to pay any further amount after the 3rd instalment due to delay in construction of the flat allotted to him. It is further submitted that the respondent no.1 has so far constructed 48 EWS category of flats in one block but has been unable to start construction work in other four blocks for EWS flats due to encroachment by some outsiders on the land. It is further contended that since the respondent no.1 has already intimated the complainant about the delay in

construction due to the encroachment of the site by the encroachers since the year 2017, the complaint is meaningless and liable to be dismissed. It is further submitted by the respondent no.1 that though efforts were made to start construction work of the EWS flats in the other four blocks and correspondences were also made to authorities to take up construction work of the said four blocks, but due to heavy protest by the encroachers of the land site the construction could not be materialized and accordingly the respondent no.1 decided to refund the deposits made by the complainant with prescribed rate of interest from the respective dates of deposit till the date of payment. Admitting the total payment of Rs.4,09,350/- by the complainant, the respondent no.1 submitted that the same would be refunded with interest to the complainant very soon. With the aforesaid averments the respondent no.1 prayed for dismissal of the complaint.

Taking into consideration the above described pleadings of the parties, the documents filed only by the complainant in support of his complaint and also on hearing the respective counsels for the parties, the learned ORERA passed the impugned order dtd. 1.10.2024 directing the respondents to handover the possession of the flat in favour of the complainant after its completion and after obtaining occupancy certificate in accordance with section 11 (4) (f) read with section 17 of the R.E. (R&D) Act, 2016, pay interest on the amount of Rs.4,09,350/- @9.50% per annum from 1.1.2020 till

the date of delivery of possession with a further direction to the respondents to comply with the aforesaid directions within a period of six months, making it clear that in the event of failure in such compliance, the order shall be enforced as per law.

4) In the hearing of the appeal, the learned counsel for the appellant submitted that the impugned order has been passed without application of mind to the facts involved in the case and the learned ORERA has travelled beyond its jurisdiction. It is further submitted that the direction of the learned ORERA to the appellant to handover the possession of the flat to the respondent no.1 after completion and after obtaining occupancy certificate is erroneous in view of the fact that the appellant in his written reply to the complaint had already submitted that he could only refund the money paid by the respondent no.1 to him as the completion of the flat was not possible due to unavoidable circumstances beyond his control. It is further submitted that the learned ORERA has failed to realize the fact stated in the written reply to the complaint that due to encroachment by outsiders no construction of EWS flats could be possible on the land site. The learned counsel for the appellant has further submitted that passing the direction to pay interest on the amount of Rs.4,09,350/- with interest @9.50% per annum from 1.1.2020 is illegal as the suggestion of the appellant-Board to refund the amount paid by the respondent no.1 with interest as per SBI MCLR +2% from the date of deposits till the date of actual payment has not been

considered. With the aforesaid contentions the learned counsel for the appellant has made the prayer as already mentioned in para-2.

5) On the other hand, the learned counsel for the respondent no.1 in his submissions has stuck to the averments made in the complaint petition. It is further submitted that the stipulated date for delivery of possession of the flat being on or before 30.12.2019, there was undoubtedly delay on the part of the appellant. It is further contended that the appellant having received three instalments from the respondent no.1 should have executed registered sale deed in respect of the flat in his favour on receiving the balance cost but in failing to do so has certainly contravened the provision of the R.E. (R&D) Act. The learned counsel for the respondent no.1 has claimed that the appellant having received part consideration money is bound to remove the encroachment on the land site within a reasonable time and after completion of construction deliver possession of the flat to the respondent no.1. Further claiming that the impugned order is absolutely right in the light of the facts available in the record as well as the existing law, the learned counsel for the respondent no.1 has prayed to dismiss the appeal for being not legally sustainable.

6) As it appears from the brochure, the project 'Dumduma Phase-VII', a multi-storied residential apartment complex was launched in the year 2015 by the appellant-Odisha State Housing Board, a premier housing institution of the state inviting applications from the public through the brochure for

MIG, LIG and EWS category houses. The allotment of the flat in question having been made to the respondent no.1 vide letter dtd. 10.11.2016, but admittedly the project not having yet been completed, there remains no doubt that it is an ongoing one and hence comes under the fold of the R.E. (R&D) Act, 2016. The view of the learned Regulatory Authority in the impugned order that the Act has application to the project is not disputed by the appellant-promoter.

There is no dispute between the parties that the respondent no.1 had applied for an EWS category of flat in the aforesaid project in 2015 and after its allotment to him vide letter dtd. 10.11.2016 has so far paid Rs.4,09,350/- to the appellant-promoter as per demand. It is also not disputed that it is the appellant-promoter who has asked the respondent no.1-allottee not to pay the balance amount. It is further not disputed that the appellant-promoter has failed to complete the construction and make delivery of possession of the flat in question to the respondent no.1 till date due to encroachments on the project land.

As regards the alleged delay in the delivery of possession of the flat in question, it is seen that the brochure mentions the project period as 36 months from the date of signing of work agreement. There is no sale agreement between the parties, but the allotment letter dtd.10.11.2016 issued by the appellant to the respondent no.1 clearly shows that the likely date of handing over of possession of the flat in question will be 31.12.2019. So, as on the date of filing of the complaint case, a delay of more than 49 months in completing the project appears to have occasioned. The brochure contains the categorical term that no interest will be paid by the Board in case of delay in construction due to the factors beyond the control of the Board. Under the heading 'Force Majeure' in the

brochure it is provided that, if the construction of the houses is delayed for the reasons of force majeure, the OSHB shall entitled to be a reasonable extension of time stipulated for delivery of possession of the asset. 'Force Majeure' has been stated to include inordinate delay in approval of tenders, delay on account of non-availability of steel, cement or any other building materials/labour or water supply or electric power backup or slow down strike or due to dispute with the construction agency employed by OSHB, civil commotion or war or criminal action or earthquake or any other act of God, delay in certain decisions/ clearances from statutory bodies or any notice, order, rule or notification of the government or any other public or competent authority or for any other reason beyond the control of OSHB. The inclusion of so many aspects in 'Force Majeure' exhibits an arbitrary interpretation of the term in the brochure by the OSHB for its own advantage, particularly when the same brochure clearly provides that for any default by allottee in payment of instalment as per schedule, simple interest @ 18% per annum on overdue amount will be levied for the defaulted period and the allotment may be cancelled for default in two consecutive instalments. For the purpose of section 6 of the RERA Act, the expression 'Force Majeure" shall mean a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project. As the project in question is under the fold of RERA Act, 'force majeure, for delay in its completion can only include the aforesaid circumstances as per Section 6 but not the other circumstances as included in the brochure. The aforesaid terms in the brochure which make only the allottee liable to pay interest in case of default in payment of instalments, but not the promoter in case of delay in delivery of possession of

the flat are certainly one sided clauses. In the case of **Pioneer Urban Land and Infrastructure Ltd. Vrs. Govindan Raghavan reported in 2019 SCC online SC-458,** the Hon'ble Apex Court have made it clear that, incorporation of one sided clauses in an agreement constitutes an unfair trade practice as per Sec. 2 (r) of the Consumer Protection Act, 1986 since it adopts unfair methods or practices for the purpose of selling the flats by the Builder.

The project being under the fold of the RERA Act, the appellant-promoter is not entitled to keep a clause in the brochure which will be violative of respondent no.1-allottee's right to interest u/sec. 18 (1) of the Act. The circumstance of the present case i.e. encroachment of the project land by outsiders and the inability of the appellant to remove the encroachments is not a reason beyond the control of the appellant because of the fact that the encroachments on the project land are not an over-night development or a development after the publication of the brochure. While advertising for the project the appellant was well aware of the fact of encroachments on the project land and therefore, it's plea that inspite of efforts made to start construction work of the EWS flats in the other four blocks and correspondences made to authorities to take up construction work, the encroachments could not be removed because of heavy protest by the encroachers, is not acceptable. The appellant should not have made advertisement inviting public to apply for the EWS, LIG and MIG category of houses in the project without first ensuring the project land to be free from encroachments. In the case **Jagpal Singh and Others Vrs. State of Punjab and Others reported in AIR SC-1123**, the Hon'ble Apex Court on finding encroachment by trespassers on a Gram

Panchayat land by use of muscle power/money power and also in collusion with the officials and even with the Gram Panchayat, observed in clear terms that, such kind of blatant illegalities must not be condoned. Even if the appellant (encroachers) have built houses on the land in question they must be ordered to remove their constructions and possession of the land in question must be handed over back to the Gram Panchayat. The Hon'ble Apex Court in the said case also ruled out any regularization of such illegality by holding that the letter dtd. 26.9.2007 of the Govt. of Punjab permitting regularization of the possession of the unauthorized occupants is not valid. The state has a responsibility to protect public land and ensure that it is used for its intended purpose. Individuals allotted land by the State should not suffer due to the State's failure to evict the encroachers from that land. Hence, the respondent no.1 being a legitimate allottee, his right u/sec. 18 (1) (b) proviso must be safeguarded.

The appellant is a statute created constructing agency which is engaged in housing and development activities in the State. It provides houses to all sections of the society including EWS and LIG categories at affordable price. However, considering the nature of its function, relating to the project, it is certainly a 'Promoter' as contemplated u/sec. 2 (zk) of the RERA Act and hence is bound to discharge its obligations as per the provisions of the Act. In the present case, the appellant having failed to fulfill its contractual obligation of completing the project and deliver the possession of the flat in question to the respondent no.1-allottee within the stipulated time in the

allotment letter and the respondent no.1 having not intended to withdraw from the project, he shall be paid by the appellant interest for every month of delay, till the handing over of the possession of the flat in question, in accordance with Section 18 (1) (b) of the Act, at the rate as prescribed under Rule 16 of the Odisha Real Estate (Regulation & Development) Rules, 2017 i.e. SBI Marginal Cost of Lending Rate Plus two percent.

7) In view of the discussions made in the preceding paragraph, we are of the considered opinion that the challenge made by the appellant-promoter to the impugned order, is without merit. The impugned order dtd. 1.10.2024 directing the appellant to hand over the flat in question to the respondent no.1 after its completion and after obtaining the occupancy certificate is hereby confirmed but subject to payment of the balance agreed amount by the respondent no.1-allottee to the appellant-promoter. The impugned order directing the appellant to pay interest on the amount of Rs.4,09,350/- from 1.1.2020 till the date of delivery of possession of the house in question is also confirmed but rate of interest payable shall be in accordance with the Rule 16 of the ORERA Rules, 2017 i.e. SBI Marginal Cost of Lending Rate Plus two percent as on 1.1.2020 which comes to 10.20% (8.20% + 2%). The appeal is accordingly disposed of on contest against the respondents.

Accounts Officer of this Tribunal is directed to calculate the interest payable by the appellant-promoter at the rate prescribed under Rule 16 of the ORERA Rules, 2017. The same shall be paid to the respondent no.1-allottee from the statutory amount deposited by the appellant-promoter after expiry of the appeal period. The balance amount, if any, be refunded to the appellant alongwith accrued interest on proper identification.

Send an authentic copy of this order alongwith the record of the complaint case to the learned ORERA for information and necessary action. Also send a copy of the impugned order each to the appellant-promoter and the respondent No.1.

Shri S.K.Rajguru
(Judicial Member)

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