IN THE ODISHA REAL ESTATE APPELLATE TRIBUNAL AT BHUBANESWAR

OREAT Appeal No. 11/2026
(Arising out of A.O.C.C. No. 25 of 2024)

Sri Satyaranjan Satpathy. **...Appellant.**

-Versus-

The Secretary, Odisha State Housing Board, Bhubaneswar. **...Respondent.**

Counsel for the appellant :Mr. R.K.Swain, Advocate
Counsel for the respondent :Mr. P.K.Dasmohapatra,Advocate

CORAM :

Shri S.K.Rajguru, Judicial Member

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

O R D E R
16.10.2026

The appeal is taken up for final order.

2) Order dated 28.11.2024 passed by the learned Adjudicating Officer in A.O.C.C. No.25 of 2024 is under challenge in this appeal. The appellant was the complainant and the respondent of this appeal was the only respondent in the said complaint case. Prayer has been made in this appeal to enhance the compensation amount to Rs.7,70,000/-by modifying the impugned order dated 28.11.2024 passed in A.O.C.C. No.25 of 2024, together with cost and any other order as deemed fit by the Tribunal in the interest of the justice.

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

The appellant of this appeal being the complainant filed the aforesaid complaint case before the

learned Adjudicating Officer, ORERA on 15.5.2024 stating therein that the respondent, a Government organization claiming itself to be a premier housing institution in the state of Odisa had made an offer through an advertisement to sell flats of different categories in a multi-storied residential apartment complex in the name "Dumduma Phase-VII". The complainant, a middle class person, in good faith applied for a MIG category flat in the said project on payment of the required fees towards EMD from his hard earned saving and taking loan from Bank on interest. The respondent in his prospectus had undertaken to compete the project within 36 calendar months from the date of signing of the work agreement and the likely date of handing over possession was 31.12.2019 as per the allotment letter dtd. 5.11.2016. After due process of lottery Flat No.208 in MIG-II was allotted to the complainant by the respondent vide letter dtd. 16.8.2019 together with a parking space in the basement. The respondent charged a full consideration amount of Rs.33,14,000/- together with GST and service tax and as a bonafide consumer the complainant paid the same with a hope to get his flat by the due date. The complainant alleged that even after receiving the full consideration amount with GST and service tax, the respondent sent a letter on 22.2.2022 demanding a differential final cost of Rs.44,000/- with GST thereon @1%, membership fee of Rs.10,000/- and an amount of Rs.12,000/- towards maintenance charges for one year. The respondent asked

the aforesaid amount to be paid by 14.3.2022 before taking possession of the flat even when he had not executed an agreement for sale with the complainant. The complainant alleged that the aforesaid additional payments as demanded by the respondent were adjusted against the excess amount paid by the complainant without giving him any opportunity to object. After agreement for advance possession was executed on 21.7.2022 possession slip was issued on 25.7.2022. The complainant further alleged that when he finally entered his flat 67 months after the allotment, against the promise of delivery of possession within 36 months, he found a lot of unfinished works and irregularities in respect of the construction. Building works were found to be of very poor standard, cement plasters were falling off the walls and floors of the building and compound wall on the EWS side was still not completed posing security risk to the inhabitants inside the premises. Though the complainant along with some other allottees had brought the aforesaid un-safe aspects to the notice of the respondent and also about incidents like theft from the flat, biting of stray dogs, sneaking in of snakes and other venomous creatures to the premises of the complex from the aforesaid side, but the same went unheeded by the indifferent respondent. The complainant also alleged about other deficiencies in the project like absence of free approach road, seepage in the walls of the flat near the bathroom, toilet and wash basin, inadequate basement parking space, improper drive way, absence of separate

visitors' parking area, inadequate rain water harvesting pits, non-functional STP etc. The complainant categorically alleged that most of the amenities promised in the brochure were denied while the rest even though provided were of no use. It clearly appeared that the entire construction work of the project had been done in a very casual manner. After several verbal requests and written representations when the respondent could not comply with even basic necessities like water management, power issues, sewerage system, security, sanitation and approach road impediments, the complainant being aggrieved and losing all hopes of a fulfilment of the contractual obligation by the respondent filed the complaint before the learned Adjudicating Officer, ORERA praying for the return of Rs.2,50,000/- taken towards parking space with interest @18% thereon, compensation for contravention of the provision u/sec. 12 of the R.E. (R&D) Act, 2016 by misrepresentation of facts mentioned in the brochure with intention to deceive the complainant, compensation for mental agony and harassment to him on account of poor quality of construction resulting in seepage of internal walls and absence of basic amenities, compensation for non-adherence to the sanctioned plan and project specifications by changing the quality of materials without taking approval of the two-third of the allottees, compensation for sub-standard infrastructure and defective sewerage system, refund of the amount of Rs.44,440/- taken towards the differential cost of the flat

with GST together with interest @18% thereon for charging the amount before execution of agreement for sale, compensation for failure to complete the project and deliver the possession of the flat in question to the complainant within the specified timeline, compensation for contravention of section 18 (3) of the Act, 2016 in failing to discharge the obligations under the Act as well as the rules and regulations made there-under and in accordance with the terms and conditions of the agreement, compensation for not providing informations relating to sanctioned plan, layout plan with specifications and informations as required under Sec. 19 (1), compensation for contravention of section 19 (2) of the Act for not providing stage-wise time schedule of completion of the project including the provision of water, sanitation, power supply and other amenities, compensation of Rs.20,000/- towards the cost of litigation, refund of the excess amount of Rs.69,132/- with interest thereon @ 18% and payment of interest @18% on the total sale price of Rs.36,99,572/- for abnormal delay in handing over the flat from the stipulated date of handing over of possession till the date of order. In total the complainant claimed a compensation of Rs.27,98,379/-.

Pursuant to the notice issued by the learned Adjudicating Officer, the respondent appeared and submitted written show cause to the complaint through his counsel wherein it was claimed that there was no false and incorrect statement in the brochure which

categorically reflected that the allottee shall not raise any objection for any rectification or compensation in respect of the allotted flat. The complainant at the time of taking advance possession of the allotted flat on 25.7.2022 had not raised objection regarding any loss or damage. The complainant having taken possession of the flat allotted to him in complete shape and good condition with full satisfaction and also having neither brought to the notice of the respondent about any defect in workmanship and quality of the work nor produced any evidence in this regard, is not entitled to allege contravention of the provision u/sec. 14 (3) of the Act. The respondent categorically explained that the brochure was published in respect of the multi-storied residential apartment complex at Dumduma, Phase-VII, Bhubaneswar with a proposed 518 units of different categories i.e. MIG, LIG and EWS in the year 2015 and it was specifically mentioned therein that the project period was 36 calendar months from the date of signing of work agreement and handing over of possession of the flat would be 31.12.2019. After registration of the project u/sec. 5 of the R.E. (R&D) Act, 2016, the respondent started the construction work in a phased manner but due to delay caused for cyclone “Fani” in the year 2019 and Covid-19 Pandemic from March, 2020 to April, 2022, he handed over the advance possession of the flat in question to the complainant on 25.7.2022. The respondent asserted that he had received the amount from the complainant as per the schedule of payment and

no arbitrary demand was ever made as alleged by the complainant. It is further submitted by the respondent that he had obtained permission from the competent authority for 9 blocks of different categories having 632 dwelling units in the project and handed over possession of those flats to the concerned allottees in phased manner after completion of the particular blocks. Reiterating his claim that the flat in question was handed over in complete shape and good condition, the respondent pointed out that the complainant has made all the allegations only after taking advance possession of the flat and after expiry of the statutory period of one year categorically specified in the heading "Execution of Lease Deed and Other Details" of the brochure. Claiming that the respondent has not made any irregularities or malpractice during construction , the respondent has asserted that till date he is maintaining the flats of the project properly and to the full satisfaction of the allottees and all the four rain water recharge pits are functioning properly. Due to misuse by some allottees the pits are only jammed, but the respondent is in the process of reviving the pits by repairing. With the aforesaid contentions and challenging the maintainability of the complaint case, the respondent has prayed for its dismissal.

The learned Adjudicating Officer after taking into account the pleadings of the parties, the documents filed only by the complainant in support of his complaint and also on hearing the learned counsels for both the

parties passed the impugned order directing the respondent to pay a compensation of Rs.1,00,000/- to the complainant within a period of 45 days from the date of the order, making it clear that in the event of failure to pay the amount of compensation within the stipulated period, the amount shall carry an interest @9.50% per annum till total realization. Liberty was given to the complainant to take steps for realization of the amount of compensation, if it still remains unpaid, by resorting to section 40 of the Act read with rule 26 of the Odisha Real Estate (Regulation & Development) Rules, 2017.

4) In the hearing of the appeal, the learned counsel for the appellant has submitted that, the project was contractually required to be completed by 31.12.2019, but possession was handed over to the appellant after an abnormal delay of more than two years and that too in an incomplete and unsafe condition. It is further submitted that due to prolonged delay, defective construction and denial of basic amenities, the appellant in his complaint case had claimed an amount of Rs.7,70,000/- as compensation towards actual loss, mental agony and hardship excluding interest and refund components. It is further submitted by the learned counsel for the appellant that vide the impugned order dtd. 28.11.2024 the learned Adjudicating Officer had awarded only a compensation of Rs.1,00,000/- without proper assessment of the statutory factors under section 71 of the Act, 2016. Terming the impugned order as arbitrary, grossly inadequate and contrary to the

beneficial object of the Act, the learned counsel for the appellant has made the prayer as mentioned earlier in paragraph-2.

5) On the other hand, the learned counsel for the respondent while sticking to the averments in the written show cause to the complaint, has submitted that the learned Adjudicating Officer has directed the respondent to pay a compensation of Rs.1,00,000/- to the appellant inspite of observing that, as regards section 72 (a), (b) and (c) of the Act, 2016, there is no specific pleading and calculation in the complaint petition and so no amount can be awarded as compensation under these clauses. The learned counsel for the respondent has drawn the attention of the Tribunal to the fact that the order of the learned Adjudicating Officer directing the respondent to pay a compensation of Rs.1,00,000/- to the appellant has been challenged by the respondent in OREAT Appeal No.15 of 2025 pending before this Tribunal. It is further contended by the learned counsel for the respondent that though the appellant in his written show cause dtd. 30.4.2025 to the appeal memo in OREAT Appeal No.15 of 2025 has categorically mentioned that the learned Adjudicating Officer has passed the impugned order with due application of mind with thorough study of both rival contentions and within the purview of his adjudicating power under sections 12,14,18 and 19 of his jurisdiction, but in the present appeal memo has categorically termed the impugned order as arbitrary, grossly inadequate and defeating the beneficial object of the Act. The learned

counsel for the respondent has further pointed out that though the appellant has expressed his grievance due to prolonged delay in delivery of possession of his flat, defective construction and denial of basic amenities, but the same are after-thought. The learned counsel for the respondent has drawn the attention of the Tribunal to the learned Adjudicating Officer's finding wherein he has justified the delay in handing over of the possession of the flat and has rejected the prayer for compensation in that regard with his specific observation that the delay of two years is attributable to Covid-19 and cyclone "Fani". Further contending that the grounds taken in the appeal are not sustainable in the eye of law and the appeal has been deliberately filed with malafide intention, the learned counsel for the respondent has prayed for its dismissal.

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

The applicability of the R.E. (R&D) Act, 2016 to the project is not disputed by the appellant-promoter. This is also evident from the fact that no completion certificate showing the project to have been completed prior to the date of commencement of the Act i.e.1.5.2017 has been produced. The unchallenged fact in the serial no.2 (v) of

the complaint petition (particulars of the respondent) showing the project to have been registered under the ORERA in the year 2018 vide registration No.MP/19/2018/00113 and also the allotment letter dtd. 5.11.2016 showing the likely date of handing over of possession of the flat to be 31.12.2019 leads to the conclusion that the project is under the fold the Act, 2016.

As contended by the learned counsel for the appellant and also disclosed from the complaint petition, the appellant's claim for compensation is based on three reasons i.e. prolonged delay in delivery of possession of his flat, defective constructions and denial of basic amenities. In regard to the claim of compensation for the alleged delay in delivery of possession of the flat, the learned Adjudicating Officer in the impugned order dtd. 28.11.2024 has categorically observed that the delay of about two years in handing over of the possession of the flat is attributable to Covid-19 and Cyclone "Fani" and hence seems to be justified. However, the allotment letter dtd. 5.11.2016 shows that the likely date of handing over of possession was 31.12.2019. The payment schedule in the said allotment letter also reveals that the agreed consideration price was to be paid in eight instalments from 31.12.2016 to 31.12.2019. It is known to all that Covid-19 Pandemic started in March, 2020 and so, the stipulated dateline for handing over of possession was more than two months prior to that. So far as cyclone "Fani" is concerned, the same took place on a day in May, 2019 and considering the nature and extent of impact of

the said natural disaster, it is not acceptable that the progress of construction of the project was stalled for a long period like more than two years for which possession of the flat could be delivered to the appellant only on 25.7.2022. So neither of the two situations can be accepted as a reasonable ground for non-delivery of possession of the flat to the appellant within the stipulated time period. The acceptance of the respondent's plea of delay in handing over of the possession of the flat due to "Fani" and "Covid-19" by the learned Adjudicating Officer is therefore erroneous. However, the fact still remains that the appellant-allottee instead of intending to withdraw from the project has accepted the delayed delivery of possession and therefore being already in possession of his flat since 25.7.2022, he is not entitled to any compensation as section 18 (1) makes it very clear that, in case of the failure of the promoter to complete or his inability to give possession of an apartment in accordance with the terms of the agreement for sale or, duly completed by the date specified therein, only the allottee who wishes to withdraw from the project is entitled to compensation with interest. In the present case, the appellant having accepted the possession of his flat certainly wishes to remain in the project and hence is not entitled to compensation for the delay.

So far as the appellant's claim of compensation for defective construction and denial of basic amenities is concerned, it is to be noted that the respondent in his written show cause to the complaint except making a

general denial of the alleged seepage in the walls of the flat of the appellant, inadequate and defective basement parking space, improper driveway, absence of separate visitors' parking area, inadequate rain water harvesting pits, non-functional STP, has not furnished his specific reply to each of the aforesaid defects and deficiencies. The learned Adjudicating Officer in the impugned order has rejected the prayer for compensation u/sec. 14 (3) of the Act, 2016 on the ground that the information relating to the defects in the construction work and seepage of water as alleged in the complaint has never been brought to the notice of the promoter by the complainant within five years from the date of handing over of possession. The learned Adjudicating Officer in arriving at this finding seems to have emphasized on the admission of the learned counsel for the complainant during the course of argument that the complainant has not issued any written notice to the promoter regarding the defects in the construction work and seepage of water. However, the provision u/sec. 14 (3) does not expressly require a written notice by the allottee to the promoter within the prescribed period of five years from the date of handing over of possession and as already mentioned earlier in para-3 the appellant has claimed that he alongwith other allottees had met the officials of the respondent with several oral and written representations but the same yielded nothing. The appellant has relied on the copy of the inspection report dtd. 19.4.2024 of the enforcement team of the ORERA submitted in another complaint i.e.

C.C. No.6 of 2024 filed by one Jyotsnarani Swain before the learned Regulatory Authority. The Enforcement Team of the Regulatory Authority had submitted the said inspection report in respect of the present project pursuant to the orders dtd. 14.3.2024 and 15.3.2024 passed by the learned Regulatory Authority in the said complaint case wherein the Enforcement Officer and Empanelled Engineer of the ORERA had inter alia mentioned the following defects :

i) poor workmanship was noticed in corridor A S flooring;
ii)there were insufficient covered four wheeler parking spaces in the building;
iii) there was violation of the BDA approval clause 18 (iv) as there was no ear-marked parking space for outside visitors;
iv)the Sewage Treatment Plan (STP) was not fully functional;
v)although four rain water harvesting structures had been constructed, few pipe lines were yet to be connected;
vi)west side compound wall had not been constructed due to land disputes;
vii)leakage of sewage pipes and stagnation of sewage water in the premises were noticed.
viii)The approach road having a width of 60 feet had not been demarcated and some encroachments were noticed.

The aforesaid inspection report dtd. 19.4.2024 of the Enforcement Team of the ORERA corroborate most

of the appellant's allegations relating to the specific defects and deficiencies in the present project which remain unattended by the respondent. The respondent-promoter having not rectified the aforesaid defects and deficiencies is certainly liable to pay compensation to the appellant u/sec. 18 (3) if not under sec. 14 (3) of the Act, 2016.

However, it is notable that in another complaint case i.e. A.O.C.C. No.30 of 2024 involving almost similar facts and circumstances relating to Dumduma Phase-VII, the learned Adjudicating Officer vide order dtd. 21.11.2024 had awarded a compensation of Rs.2,00,000/- for the complainant of the said case and the same has been confirmed by this Tribunal vide order dtd. 31.8.2026 passed in O.A. No.190 of 2024. We are therefore of the considered opinion that, interest of justice would be served, if the respondent will be directed to pay an additional amount of Rs.1,00,000/- to the appellant towards compensation for the above mentioned defects and deficiencies in the project.

7) In view of the discussions made in the preceding paragraph, the impugned order dtd. 28.11.2024 passed by the learned Adjudicating Officer in AOCC No.25 of 2024 is modified to the extent that the respondent-promoter shall pay a compensation of Rs.2,00,000/- to the appellant-allottee. Other parts of the operating portion of the impugned order shall remain intact.

Order having been passed today in OREAT Appeal No.15/2025 for payment of the statutory amount

of Rs.1,00,000/- deposited by the appellant (respondent of the present appeal) to the respondent (appellant of the present appeal), it is hereby made clear that, in the event the said amount of Rs.1,00,000/- is released in favour of the present appellant, after expiry of the appeal period due to non-filing of appeal, then the present appellant shall receive only the remaining amount of Rs.1,00,000/- towards compensation.

With the above directions, the appeal is allowed in part, on contest against the respondent.

Send a copy of this order to the Adjudicating Officer, ORERA for information and necessary action. Send also a copy of this order, each to the appellant and the respondent.

Shri S.K.Rajguru
(Judicial Member)

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

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