



**IN THE ODISHA REAL ESTATE APPELLATE TRIBUNAL  
AT BHUBANESWAR**

**OREAT Appeal No.150/2024**  
(Arising out of C.C. No. 308 of 2022)

**M/s.Evos Buildcon Pvt. Ltd. ....Appellant**

-Versus-

**Ms.Seema Mohapatra. ....Respondent**

For the appellant : Mr.P.K.Rath, Sr.Advocate  
For the respondent : Mr.S.K.Dwivedy, Advocate

**CORAM :**

**Hon'ble Shri Justice P.Patnaik, Chairperson**

**Shri S.K.Rajguru, Judicial Member**

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

**ORDER**  
**22.5.2026**

The appeal is taken up for final order.

2) Order dtd. 15.02.2023 passed by the learned Odisha Real Estate Regulatory Authority (in short ORERA) in C.C. 308 of 2022 is under challenge in this appeal. The appellant was the only respondent and the respondent of the appeal was the complainant in the said complaint case. Prayer has been made in this appeal to set aside the impugned order dated 15.2.2023 passed in C.C. No.308 of 2022.

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



The respondent of this appeal filed the aforesaid complaint case before the learned ORERA on 27.09.2022 with the averments that in the year 2019 she had booked flat no.302 in the 3<sup>rd</sup> floor of the project “City Homes” which was being developed by the respondent-promoter. Subsequently, in the year 2021 Phase-2 of the project was launched with change in the site map/design with the written assurance that no more change in the design would be made in future. The complainant alleged that despite the aforesaid assurance by the respondent-promoter she during her visit to the project in May, 2022 found that the STP was planned to be set up at the place meant for open parking which would affect her flat. The complainant further alleged that the respondent was not confirming the date of delivery of possession of the flat booked by her with the available amenities. Though as per the approval of the ORERA the date of delivery of possession of the flat was in December, 2021, it had still not been handed over to her despite a lapse of eight months since then. In spite of a number of inquiries made by the complainant no result in this regard had come out. The complainant further alleged that though the respondent at the time of taking consent for Phase-2 of the project had mentioned to provide swimming pool and club house but then has not made it clear as to when these facilities would be provided. The respondent also did not make it clear as to when he would provide the occupancy certificate and the promised amenities to the allottees. Being aggrieved over



the aforesaid failures on the part of the respondent, the complainant prayed for installation of the STP as per the design and not at the place where it has been set up now, delivery of possession of her flat, common areas and common amenities completed in all respect, clear demarcation of swimming pool and club house, supply of all statutory documents including the completion certificate, occupancy certificate and structural stability certificate and a compensation of Rs.10,000/- per month with interest thereon towards notional house rent and legal expenditures made by her.

Being noticed the respondent-promoter appeared through his counsel and filed his written objection to the complaint wherein he submitted that the flat allotted to the complainant was supposed to be delivered to her within three years from the date of the agreement dated 17.12.2019 and accordingly after the project had been completed in the month of August, 2022 many other allottees have already taken possession of their respective flats of the project on payment of the full consideration amount. However, the complainant is not taking possession of her allotted flat on payment of the rest amount of the consideration price. The respondent alleged that the complainant though is required to pay an outstanding amount of Rs.10,00,000/- to him but in stead of paying the said amount has filed the complaint case only to escape from such default in payment. The respondent categorically pointed out that apart from the outstanding dues of



Rs.10,00,000/-, the complainant is also liable to pay him Rs.5,00,000/- for the changes made in the internal design of her flat and Rs.3,00,000/- towards construction of a modular kitchen made on her request. The respondent suggested to purchase back the flat of the complainant on payment of the amount paid by her with interest at the bank rate. As regards the change in the place of installation of STP, the respondent has made it clear that situation warranted for the shifting of the STP from the front site of the project to its rear site but that has been decided only after compliance of the provisions of the ORERA and the BDA and after taking consent of the two third of the total allottees of the project. The respondent assured that the STP installed on the new place is more than 20 feet away from the allotted flat of the complainant. The respondent has claimed that the change of design in the project is in accordance with law and as the registration certificate granted in respect of the project by the ORERA has been extended up to 25.8.2025, the plan has been approved by the BDA up to that period. The respondent has assured that during this extended period he will complete all the amenities including the provision for swimming pool and club house. The respondent has made it clear that phase-1 of the project had no provision for swimming pool and club house but subsequently after the addition of the phase-2 of the project provision of swimming pool and club house are there, which the complainant will also avail. As regards



the occupancy certificate, the respondent has contended that the demand of the complainant for the same as premature, The respondent assured that he has the reputation of completing flats for his allottees before the stipulated date and therefore he will also provide the occupancy certificate in due time. With the aforesaid averments and challenging the complaint case on the ground of non-maintainability and absence of cause of action, the respondent prayed for dismissal of the same.

The learned ORERA after taking into consideration the rival pleadings of the parties and the documents filed by them in support of their respective pleas and also on hearing them passed the impugned order dated 15.2.2023 directing the respondent to execute the sale deed in favour of the complainant within three months from the date of issuance of occupancy certificate in respect of the project, pay interest @ 9.70 % per annum to the complainant on the amount of Rs. 49,33,835/- from 1.1.2023 till the date of delivery of possession and maintain the STP in the position as per the sanctioned plan obtained from the local authority in respect of Phase-1 of the project. Direction was also issued to the complainant to pay the respondent a sum of Rs.4,16,165/- on the date of execution of the sale deed. Both the parties were also directed to comply with the respective directions and it was made clear that in the event of failure, the directions shall be enforced as per law. Subsequently, Misc. Case No.23 of 2023 under Section 39 of the R.E (R & D) Act



being filed by the complainant, the learned ORERA vide order dated 26.10.2023 *inter alia* corrected the impugned order dated 15.2.2023 specifying the date from which interest is payable i.e from 01.01.2023 to 01.01.2022.

4) In the hearing of the appeal the learned counsel for the appellant has submitted that, the respondent having defaulted in paying the entire cost of the flat is not entitled to equitable relief like delivery of possession of the flat and other relief in terms of the pre-revised approved building plan. It is further submitted that as there is no complain from any other allottee of the project with regard to construction of the STP pursuant to the revised plan, the learned ORERA should not have accepted the objection of the respondent. The learned counsel for the appellant has claimed that the STP and other developments concerning Phase-2 as per the revised building plan were completed prior to the filing of the complaint case by the respondent and therefore the belated claim of the respondent should not have been entertained by the learned ORERA. The learned counsel for the appellant has further pointed out that installation of the STP at its original position would incur huge expenditure which will adversely affect the interest of the developer and other allottees but this fact has not been considered by the learned ORERA. The learned counsel for the appellant has further claimed that in absence of any challenge by any other allottee to the shifting of the STP, it is to be presumed that two



third of the allottees of the project had the consent for the same and therefore no specific evidence in this regard should have been required by the learned ORERA. It is further contended by the learned counsel for the appellant that it is due to the revised building plan the original allottees from the phase-1 are getting additional advantages like extra passage, garden, children's park, fountain, Gym and all the allottees except the respondent are happy with such provisions. Reiterating the plea taken in the show cause to the complaint that the respondent being a defaulter in payment of the entire cost of the flat is not entitled to any equitable relief and that the flat allotted to her is liable to be cancelled, the learned counsel for the appellant has made the prayer as mentioned earlier in para-2.

5. On the other hand the learned counsel for the respondent has stuck to the claims and allegations of the respondent in her complaint petition. It is submitted that the respondent has paid more than 85% of the cost of the flat and is to pay only an amount of Rs.4,16,165/- at the time of registration of the sale deed. Denying the respondent to be a defaulter in the payment of cost of the flat, the learned counsel has claimed that it is the appellant who has defaulted in registering the flat in favour of the respondent due to non-obtaining of completion certificate and occupancy certificate from the concerned authority. As regards the claim of the appellant that the installation of the STP is in



accordance with the revised plan, the learned counsel for the respondent has contended that the appellant has changed the design even after the lay out plan of Phase-2 was prepared, which showed the STP to be at the appropriate place, and this the appellant is not entitled to do in complete disregard to the existing law. The learned counsel for the respondent has submitted that the respondent came to know about the deviation relating to the STP only after its construction at the present place and that was while she was checking the progress of the construction of her flat on 28.5.2022. It was only after the appellant failed to respond to the query of the respondent with regard to the deviation found by her she was constrained to file the complaint case. It is further contended that the appellant has though obtained the alleged approval of the concerned Authority for making construction of Phase-2 but not specifically for shifting the STP to a place other than the place earmarked in the original plan and therefore the observation of the learned ORERA in this regard is right. The learned counsel for the respondent has contended that due to change in the installation of the STP, the respondent-allottee is affected as the construction has destroyed the ambience of her flat and other allottees are not objecting to it as they are not affected by it. Reiterating the claim that the respondent has paid more than 85% of the cost of the flat and the rest of the amount is to be paid to the appellant only at the time of registration of sale of the flat and making it clear that



the respondent has intimated the appellant that she can take possession of her flat only when he complies with the directions made in the impugned order dated 15.2.2023, the learned counsel for the respondent has termed the impugned order to be in accordance with law and has prayed for dismissal of the appeal.

6. Admittedly the appellant and the respondent are in a promoter-allottee relationship in respect of the real estate project "City Homes". There is no dispute over the fact that the project comes under the fold of the R.E (R&D) Act, 2016 and registration certificate in respect of it has been granted. Non-obtaining of completion certificate in respect of the project also proves it to be not completed on the date of the commencement of the Act. The execution of the sale agreement dated 17.12.2019 by the parties is also an admitted fact. As per the said sale agreement total price for the Flat No.302 (3 BHK) in the 3<sup>rd</sup> floor of the project allotted to the respondent was agreed to at Rs.53,50,000/-. The respondent-allottee claims to have paid so far an amount of Rs.49,33,835/- and according to her a balance amount of Rs.4,16,165/- is required to be paid by her to the appellant-promoter at the time of execution and registration of the sale deed relating to the aforesaid flat allotted to her. The copies of the money receipts issued by the appellant to the respondent which the latter had filed in the complaint case support the aforesaid fact.



The learned ORERA have passed order for execution of the sale deed in favour of the complainant within three months from the date of issuance of occupancy certificate for the project on payment of the aforesaid balance amount by the complainant to the respondent on the date of execution of the sale deed. The appellant has assailed this order on the contention that the respondent being a defaulter in payment of the full consideration price of the flat allotted to her is not entitled to the execution of the sale deed in respect of the flat. The appellant has not disputed the payment of Rs.49,33,835/- by the respondent to him in respect of the consideration price of the flat, but according to him the respondent apart from being liable to pay an outstanding amount of Rs.10,00,000/- towards the balance consideration price is also required to pay Rs.5,00,000/- for the changes made in the internal design of her flat and Rs.3,00,000/- for construction of a modular kitchen made on her request. The learned ORERA has rejected the claim of the appellant for the balance consideration amount of Rs.10,00,000/- and the expenses of Rs.8,00,000/- made towards internal design and construction of modular kitchen in the flat of the respondent on the ground that no document has been filed by the appellant showing the balance consideration amount due against the respondent to be Rs.10,00,000/-. Neither any agreement nor any expenditure statement has been filed showing changes in the internal design and construction of modular



kitchen in the flat of the respondent and that an amount of Rs.8,00,000/- was spent for both the works. The appellant has not successfully assailed this finding of the learned ORERA as no evidence has been adduced with regard to the aforesaid alterations in the flat of the respondent. So, when the respondent is ready to pay the balance consideration amount of Rs.4,16,165/- at the time of execution of sale deed in respect of her flat, the appellant having failed to establish his claim for the additional amount, has not substantiated his claim that because of the non-payment of the extra charges for change in internal design and construction of modular kitchen, the execution and registration of the sale of the flat has been withheld.

The contention of the appellant discloses that the project had been completed in the month of August, 2022 and many other allottees have already taken possession of their respective flats in the project on payment of the full consideration amount. The appellant has claimed the demand of the respondent for the occupancy certificate to be premature and assured that he will provide the same in due time, but he seems to be ignorant of law as Section 17 (1) requires the promoter to execute a registered conveyance deed in favour of the allottee alongwith the un-divided proportionate title in the common areas to the association of allottees or the competent authority, as the case may be, which shall be carried out by the promoter within three months from the date of issue of



occupancy certificate. So, when the occupancy certificate in respect of the project has not yet been obtained by the appellant, it is surprising as to how he has shifted the blame on the respondent with the contention that she is at fault for not taking possession of the flat allotted to her on paying the rest amount of the consideration price and the extra charges for change in internal design and construction of a modular kitchen. Position of law under Section 17(1) of the Act that, only after occupancy certificate in respect of a project is obtained, conveyance deed in respect of any flat therein can be executed and registered finds force also from the judgment of the Hon'ble Apex Court in the case of **Dharmendra Sharma versus Agra Development Authority ( 2024 INSC 667)** wherein it has been categorically held that, a purchaser can not compelled to accept possession without completion and statutory certificates, and such an offer is legally untenable. Referring to the aforesaid observation in Dharmendra Sharma's case (Supra) and some other cases, the Hon'ble Apex Court in the case of **Parsvnath Developers Ltd. Versus Mohit Khirbat (Civil Appeal No.5289 of 2022)** and two other civil appeals have reiterated the position of law that, possession without an occupancy certificate can not be forced upon the respondents ( allottees ). Obtaining such certificate is a statutory pre-condition integral to lawful delivery of possession. So, in view of the aforesaid pronouncements by the Hon'ble Apex Court, the appellant can not force the respondent to take



possession of the flat allotted to her on payment of the residual consideration money without obtaining the occupancy certificate in respect of the project.

The respondent even if has refused to take possession of the flat allotted to her is right in doing so as a sensible home-buyer, because of the fact that occupancy certificate in respect of the project has not yet been obtained by the appellant. Accordingly, the order of the learned ORERA directing the appellant to pay interest to the respondent on the amount of Rs.49,33,835/-, which she has so far paid, from 1.1.2022 till the date of actual delivery of possession of the flat, is correct. However, the rate of interest shall be as per rule 16 of the O.R.E (R & D) Rules, 2017 i.e SBI highest Marginal Cost of Lending Rate plus two per cent, which was 9.30% per annum (7.30%+2%) on 1.1.2022.

As regards the change in the position in the STP, the learned ORERA has held that the STP has been actually shifted as admitted by the promoter. On finding that the promoter has not taken consent of two third of the total allottees of phase-1 for shifting the STP as required under Section 14(2)(ii) of the Act held the shifting to be illegal and directed the promoter to maintain the STP in the position as per the sanctioned plan obtained from the local authority in respect of phase-1 of the project. The appellant has assailed this finding on the contention that the change in the position of STP has been as per the revised plan. However, no evidence in this regard has been adduced by the



appellant. The further plea of the appellant that as no allottee other than the respondent has challenged the change in the position of the STP, it is to be presumed that two third of the allottees of the project had the consent for the same and the learned ORERA should not have required any specific evidence in this regard. This plea of the appellant is not acceptable as Section 14(2) (ii) of the Act requires previous written consent of the two-third of the allottees, other than the promoter, who have agreed to take apartments in the project, for the alteration in the sanctioned plan, but that is found absent in respect of the change carried out in the position of the STP. The further plea of the appellant that installation of the STP again at its original position would incur huge expenditure and will adversely affect the interest of the developer and other allottees, is not acceptable as the appellant should have thought about the expenditure before shifting the STP from its original position in deviation to the sanctioned plan. He has not made it clear as to how the shifting of the STP to its original position will affect the interest of other allottees. On the other hand, the contention of the respondent-allottee that due to change in the installation of the STP, she alone is affected as the construction at the new place has destroyed the ambience of her flat and other allottees being not affected by the change are not objecting to it, certainly appears to be forceful and logical.



7. Thus, from the discussions made in the preceding paragraph, we are of the considered opinion that, with the aforesaid modification in the rate of interest the directions in the impugned order dated 15.02.2023 passed by the learned ORERA in C.C. No.308 of 2022 are absolutely correct as per the facts of the case and existing law and accordingly, do not need any interference by this Tribunal. The impugned order with the modification being confirmed, the appeal fails and accordingly is dismissed on contest against the respondent.

Send an authentic copy of this order along with the record of the Complaint Case No.308 of 2022 to the learned ORERA for information and necessary action. Also send a copy of this order, each to the appellant and the respondent.

Shri Justice P.Patnaik  
Chairperson

Shri S.K.Rajguru  
(Judicial Member)

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

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