

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.691 of 2021

Akshay Kumar Choudhury Appellant

Mr. A.K. Panigrahi, Advocate

-versus-

State of Odisha (E.O.W.) Respondent

*Mr. J.P. Patra,
Special Counsel (OPID)*

**CORAM:
JUSTICE S.K. SAHOO**

ORDER

16.05.2022

Order No.

08. This matter is taken up through Hybrid arrangement (video conferencing/physical mode).

Heard Mr. A.K. Panigrahi, learned counsel for the appellant and Mr. J.P. Patra, learned Special Counsel appearing for the State of Odisha in OPID Act matters.

This Criminal Appeal has been filed by the appellant under section 13 of the Odisha Protection of Interests of Depositors (in Financial Establishments) Act, 2011 (hereafter 'the OPID Act') challenging the impugned order dated 30.10.2021 passed by the learned Presiding Officer, Designated Court under the OPID Act, Cuttack in E.O.W. Bhubaneswar P.S. Case No.06 of 2020 which corresponds to C.T. Case No.05 of 2020 in rejecting his application for issuing a

direction to the E.O.W. in lifting the freezing of accounts of the appellant lying in various banks.

The learned trial Court has observed while passing the impugned order that the bank accounts of the appellant which have been freezed contain the deposit of the depositors and basing on the report of the Investigating Officer dated 22.02.2021, proceeding under section 3 of the OPID Act has already been initiated with respect to the attached properties, as a measure to safeguard the interest of the duped investors and that section 9 of the OPID Act deals with the powers of the Designated Court with respect to the attachment, sale of the properties attached under section 3 of the OPID Act and also lays down the manner in which the same is to be dealt with by the Designated Court. Accordingly, it was observed that since the motion has already been initiated to proceed with the properties of the appellant including the impugned frozen bank accounts under section 3 of the OPID Act, the direction to the E.O.W. to lift the freezing of the accounts of the appellant in various banks would not be maintainable at this stage.

Learned counsel for the appellant submitted that four bank accounts of the Company M/s. Keshari Estates Pvt. Ltd. as well as its Managing Director and Directors have been frozen on the request of the Investigating Officer and those are of H.D.F.C. Bank,

Janpath, Canara Bank, Bapuji Nagar, Bank of India and ICICI Bank, Bhubaneswar and the instruction was obtained by the learned Special Counsel that despite taking part/full payment by the accused Managing Director/Director of the Company, the construction work of duplex/triplex were not completed after lapse of ten years and being aggrieved by such act and getting no other option, some of the investors filed complaint cases before the Real Estate Regulatory Authority, Odisha, Bhubaneswar and charge sheet has been submitted on 30.12.2020 under various offences under the Indian Penal Code including section 6 of the OPID Act keeping the investigation open under section 178(3) of Cr.P.C. Learned counsel for the appellant further submitted that as per Annexure-6, twenty flats were completed and possession were handed over to the investors and ten duplex/triplex houses were ready for possession and it also indicated about the construction status of other duplex/triplex houses.

As per order dated 07.03.2022, it reveals that Mr. Bibekananda Bhuyan, learned Special Counsel sought for time to obtain instruction in terms of Annexure-6 as to whether it contains the correct statement or not and how many persons are yet to get back the duplex/triplex houses and apart from the bank accounts of the Company, its Managing Director/Director, whether any other properties have been seized and whether those properties are

sufficient in itself to compensate the loss sustained by the depositors or not.

The Investigating Officer was asked to file a specific affidavit in that respect.

The affidavit has already been filed by the Investigating Officer, who is present in Court, from which it appears that out of forty two duplexes/triplexes, possession in respect of thirty one duplexes/triplexes have already been handed over to the buyers. The names of the thirty one buyers have been indicated in it. It is further mentioned that four numbers of houses have been completed and it is ready for delivery of possession. The names of four buyers have been indicated who are to get those houses. However, it is mentioned that there are multiple defects in the construction part and request has been made to the builder to rectify it but it has not been rectified. It is further mentioned that the construction work in respect of five duplexes/triplexes have been delayed due to default in payment of installments to the builders and some of the buyers have filed cases before the ORERA, Bhubaneswar, which are pending and one Sandhyarani Das has stated that the builder has completed 80% of the construction work but due to low standard work and use of below average quality materials, she had requested the builder to stop the work. So far as the buyer Binayak Mohapatra is concerned, he could not

be contacted. It is further mentioned in paragraph-12 of the affidavit that twelve numbers of houses have not yet been completed and are yet to be handed over to the respective buyers so also the defects identified by the buyers are to be addressed to make the houses habitable. Nothing has been stated in the affidavit as to whether any other properties have been seized and whether those properties are sufficient in itself to compensate the loss sustained by the depositors.

Learned counsel for the appellant submitted that on the priority basis, the defects, which are there in four completed houses are to be rectified to the satisfaction of the buyers as mentioned in paragraph-7 of the affidavit and it is to be handed over to them within a month from today and so far as the construction of the rest of the houses are concerned, it is to be completed within six months and handed over to the buyers as per terms and conditions. It is further submitted that the appellant shall file an undertaking to that effect before the learned Presiding Officer, Designated Court under OPID Act, Cuttack.

Considering the submissions made by the learned counsel for the respective parties, the status of the construction work so also handing over the possession of duplexes/triplexes as find place in the affidavit filed by the Investigating Officer and readiness of the appellant to complete the construction work so also the modification of the

completed houses to the satisfaction of the buyers and to hand over possession to them, I am inclined to accept the prayer made in this appeal.

Accordingly, the impugned order dated 30.10.2021 passed by the learned Presiding Officer, Designated Court under OPID Act, Cuttack in C.T. Case No.05 of 2020 is quashed.

The freezing of the bank accounts of the appellant in the aforesaid four banks is lifted. The appellant shall file an undertaking before the learned trial Court on or before 20.05.2022 that he shall complete the repairing/modification of the defects pointed out by the four buyers as mentioned in paragraph-7 of the affidavit filed by the Investigating Officer, which are ready to be delivered for possession to the buyers Anjana Patra, Smt. Urmila Panigrahi, Dr. Manorama Panigrahi and Sidharta Panda within a period of one month and hand over possession of the houses to them and that he shall complete the construction work of the rest of the houses within a period of six months from the date of giving undertaking to the satisfaction of the buyers and hand over possession to the respective buyers as per terms and conditions and that he shall file compliance report to that effect. If there is any violation in fulfilling any of the terms and conditions of the undertaking given, the Prosecuting Agency are at liberty to file appropriate application before the concerned Court to

take coercive steps against the appellant in accordance with law.

With the aforesaid observation, this Criminal Appeal is disposed of.

A free copy of this order be handed over to the learned Special Counsel for the State of Odisha in OPID Act matters.

Urgent certified copy of this order be granted on proper application.

(S.K. Sahoo)
Judge



RKM