

OREAT Appeal No.79/2024

10) 24.02.2025

The appeal is taken up through hybrid mode.

2) Heard Mr.K.C.Prusty, learned counsel appearing for the appellant, Mr. M.Agrawal, learned counsel appearing for the respondent no.1 and Mr. P.P.Sahoo, learned counsel appearing for the respondent no.2-Authority.

3) Aggrieved and dissatisfied with the order dtd. 16.05.2024 of the Odisha Real Estate Regulatory Authority, Bhubaneswar (hereinafter referred to as 'learned Authority') passed in Complaint Case No. 408/2023, the appellant has preferred this appeal against the respondents inter alia praying therein to set aside the impugned order passed by the learned Authority. The appellant is the respondent and the respondent no.1 is the complainant in the complaint case before the learned Authority and the respondent no.2 is the learned Authority who has passed the impugned order.

4) The sequel of events leading to filing of the present appeal is that the respondent no.1 (Complainant before the learned Authority) has filed Complaint Case NO.408 of 2023 against the appellant (respondent before the learned Authority) for the following reliefs :

- "a)Direct the Opposite party to re-register its project 'Haribandhu Apartment' with the ORERA.
- b)Direct the Opposite Party to complete the project by getting an occupancy certificate from the competent authority within 2 months.
- c)Direct the Opposite party to obtain fire clearance certificate.

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d)Direct the Opp. Party to provide the following amenities i.e. childrens play area, two shops in stilt (medicine and grocery), parking facility for all flats, 20% mandatory visitor parking area, plantation in 20% of land area, community hall and CCTV with intercom facility, bike parking, garbage storage bin each within 100 sqm, one stretcher lift as per NBC Code, 3rd stair case.

e)Direct the Opp. Party to undertake maintenance of the project without charging any amount from the residents till the receipt of occupancy certificate.

f)Repair cracks which have developed in the building due to poor workmanship."

5) During pendency of the complaint, the appellant being the respondent filed an application for maintainability of the complaint before the learned Authority. In the said application, the appellant (respondent before the Authority) has inter alia submitted that the project "Haribandhu Apartment" was completed since 6.12.2019 and the respondent no.1 purchased the flat bearing No.404 under the said project on 10.8.2021 as an outright purchaser and took possession of the flat with full satisfaction. Hence, there is no scope for the respondent no.1 (complainant in the complaint case) to file such complaint against the appellant (respondent in the complaint case). As such the complaint is not maintainable before the learned Authority which is liable to be dismissed as not maintainable.

6) The learned Authority vide the impugned order by taking note of submissions of learned counsel for the respective parties has been pleased to hold that the project in question is an on-going project and the allegations levelled by the respondent (complainant in

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the complaint case) cannot be affectively adjudicated upon by the Authority during hearing of the case. Accordingly, the maintainability petition filed by the appellant has been rejected, which is impugned in this appeal.

7) Learned counsel for the appellant during course of hearing has strenuously urged that the impugned order is per se perverse, cryptic and unsustainable in law since the delivery of possession of the flat has been given with full satisfaction of the allottee/respondent no.1. Learned counsel for the appellant further submits that as per sale deed, the purchaser-respondent agreed not to raise any objection in case the builder-appellant raises additional stories and structure as may be subsequently permitted by BDA. Learned counsel for the appellant also submits that obtaining completion certificate from Engineer is also reflected in the sale deed. Learned counsel for the appellant further advances his submission that when the sale deed has been executed and the respondent no.1 has already enjoyed the amenities as per the sale deed, the learned Authority ought not to have entertained the complaint. Therefore, the impugned order is liable to be set aside.

8) Mr. Mohit Agrawal, learned counsel for the respondent no.1 during course of hearing vociferously submitted that the project in question has not obtained the Occupancy Certificate and in absence of Occupancy Certificate, it shall be construed to be an ongoing

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project. Learned counsel for the respondent no.1 further vehemently submits that after taking over possession of the flat in question, the respondent no.1-allottee came to know about short-comings such as the amenities as provided in the brochure/advertisement has not been provided. Learned counsel for the respondent no.1 further submits that the Enforcement Officer and Empanelled Engineer had conducted inspection of the project 'Haribandhu Apartment' on 14.08.2023 and as per report under Annexure-A/1 there are several short-comings have been found. Moreover, Section 8(2) of the Odisha Apartment (Ownership and Management) Act, 2023 envisages that Occupancy Certificate is mandatory which would enable the allottees to sale their flats subsequently. Accordingly, the counsel for respondent no.1 submits for dismissal of the appeal.

9) We have heard learned counsels for the respective parties at length and perused the documents meticulously. On going through the documents we do find that the project has been completed after coming into effect of the Real Estate (Regulation & Development) Act, 2016 i.e. after 1.5.2017. The appellant is yet to obtain Occupancy Certificate as mandated under the Odisha Apartment (Ownership and Management) Act, 2023. The inspection report dt. 14.8.2023 under Annexure-A/1 clearly shows the infirmity in the project and there are certain short-falls in the project and in absence of fulfilment of those ingredients as has been pointed out in

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the inspection report, it cannot be said that the project in question is a completed project.

10) In that view of the matter, we are of the considered view that the project in question i.e. 'Haribandhu Apartment' is an ongoing project and it comes within the scope and ambit of the Real Estate (Regulation & Development) Act, 2016. Further, the impugned order is neither patently illegal nor manifestly erroneous to warrant our interference. On the other hand, we are of the view that the impugned order dismissing the maintainability petition is justified in the facts and circumstances of the case. Accordingly, we hold that the present appeal being devoid of any merit is liable to be dismissed.

Accordingly, the appeal is dismissed.

Send an authentic copy of this order to each of the parties of this appeal. Records of the learned Authority be returned forthwith.

Justice P.Patnaik
Chairperson

Shri S.K.Rajguru
(Judicial Member)