

OREAT Appeal No.116/2024

14) 23.04.2025

The appeal is taken up through hybrid mode.

2) Heard Mr.S.K.Mishra alongwith Mr.P.C.Mishra, learned counsels appearing for the appellant, Mr.A.Das, learned senior counsel alongwith Ms.B.Pradhan, learned counsel for the respondent No.1 and Mr.B.Nayak, advocate appearing on behalf of Mr.P.S.Nayak, learned counsel appearing for the respondent no.2-Regulatory Authority. The learned counsels for the appellant and the respondent no.1 have filed their respective written notes of submission.

3) Aggrieved over the order dtd. 7.06.2024 passed in Complaint case No. 382/2023 by the Odisha Real Estate Regulatory Authority, the appellant who were the respondents therein has filed this appeal praying to set aside the said order and to pass specific orders declaring the deviation in the construction of the project from the permission granted by the Bhubaneswar Development Authority to have been done at the instance of respondent no.1 and other duplex owners, that the appellant has not constructed any building for the purpose of sale to the respondent no.1 and other duplex owners and hence is not a promoter u/sec. 2 (zk) of the RERA Act, that the appellant is not liable to provide completion certificate and occupancy certificate to the duplex owners and to direct the respondent no.1 and other duplex owners to issue notice to the Bhubaneswar Development Authority with regard to completion of construction of their respective duplexes. The respondent no.1 of this appeal was the complainant in the aforesaid complaint case and the respondent no.2 is the learned Regulatory Authority who has passed the impugned order.

4) The facts and circumstances leading to the filing of the present appeal are as follows :

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On 6.12.2023 the respondent no.1 of this appeal filed the aforesaid complaint case before the learned Regulatory Authority alleging that the appellant was not providing occupancy certificate as well as other documents relating to the project and was also not facilitating the formation of the allottees-society as well as transfer of common areas. The project has been developed under Group Housing Plan but due to the inaction of the appellant, he (the respondent no.1) is facing problems with regard to electric power, water, drainage and sewerage connections. It is further alleged by the respondent no.1 that, after being handed over his duplex house i.e. House no.12 by the appellant when he approached the Bhubaneswar Development Authority for registration of the allottees' association under the Odisha Apartment Ownership Act, 1982 and Odisha Apartment Ownership (Amendment) Rules, 2021, he came to know that occupancy certificate is mandatory for the registration, but the appellant who is under an obligation to provide the same had kept him dark about this important statutory requirement. It is alleged by the respondent no.1 that inspite of his several applications to the appellant during the period from July, 2022 to 6.6.2023 through registered post and e-mail for the occupancy certificate as well as the other connected documents in respect of the common areas and the common facilities, but the appellant has not taken any step to provide the same. It is further alleged that Group Housing Plan was approved by the Bhubaneswar Development Authority on 20.2.2010 with 24 terms and conditions and the appellant has constructed 41 duplexes with common facilities and the appellant was well aware of the conditions including the provisions and restriction causes while receiving the permission order dated 20.02.2010 from the BDA and

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therefore not providing the occupancy certificate to the respondent no.1 is certainly illegal. It is further alleged by the respondent no.1 that the appellant is not providing the approved plan of the BDA in respect of the common areas and common facilities and also the ROR together with all connected documents relating to the ownership of the entire land basing on which the project has been developed. The Respondent no.1 has expressed apprehension that if the appellant will not provide the BDA approved plan, completion certificate and occupancy certificate in respect of the project and will not facilitate the allottees to form their association, they will not only be highly prejudiced but also will face a lot of inconvenience and legal complications in future. Accordingly, the respondent no.1 approached the learned Regulatory Authority with the complaint case with a prayer to direct the appellant to provide him the completion certificate, the occupancy certificate and the BDA approved plan in respect of the common areas and common facilities together with the ROR and all connected documents with regard to ownership of the entire project land, to direct the appellant to assist the respondent no.1 in the formation of the registered association/society under Section 11(4)(e) of the RERA Act as well as to transfer the ownership of the common areas and all common facilities to the said registered association/society and to direct the appellant to bear the maintenance cost of the group housing project till providing the occupancy certificate to the respondent no.1 and handing over the area of common interest to the registered society/association of the group housing project.

In response to the summons issued by the learned Regulatory Authority, the appellant appeared through its

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counsel on 19.02.2024 and filed its written show cause on 3.4.2024 wherein it submitted that the appellant has not developed the duplex house of the respondent no.1 under group housing plan. The appellant claimed that he had got permission from the BDA vide letter dated 20.02.2010 for sub-division of land and construction of double storied residential buildings but at the very initial stage of the project it was mutually agreed between the appellant and some purchasers including the respondent no.1 that they would first purchase the plots on payment of land value, so that they would be benefited by paying less stamp duty to the state. It was also agreed at the same time that the appellant and the respondent no.1 as well as other intending purchasers would enter into a construction agreement for construction of duplex houses for them on their respective plots as per the plan approved by the BDA. The subsequent purchasers also accepted the same proposal. Accordingly, all the 41 purchasers purchased their plots and the appellant assisted them in mutation of their name in the revenue records in respect of their respective plots. Thereafter, the plot owners entered into construction agreement with the appellant and took possession of their houses after construction. Accordingly, the respondent no.1 who has purchased the plot no.12 vide sale deed dated 06.07.2011, executed and registered in the sub-registrar's office at Jatani, mutated his plots to obtain two RORs, one with khatian no.384/994 and the other with khatian no.384/1349 of mouza Uttarmundamuhan under Jatani tahasil. It is further claimed by the appellant that there is no agreement to sale between the respondent no.1 and the appellant-company but there is only agreement for construction of the duplex house. After

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construction of the houses the appellant has handed over possession of the same to all the owners including the respondent no.1 on receipt of the value of construction and the respondent no.1 has also taken possession of his duplex house on 02.01.2013 after being satisfied with the construction in all respect as per BDA approved plan and is residing there since then. The appellant has claimed that under the aforesaid circumstances it can only be called a promoter for limited purpose of developing the land to plots and selling the same to the purchasers but can not be called the promoter/developer of the houses built for the land owners including the respondent no.1 as it has not built these houses for the purpose of sale to the respective purchasers. It is further claimed by the appellant that all the 41 house owners including the respondent no.1 have become owners of their lands and buildings and thus stepped into the shoes of the promoter in respect of their houses. The respondent no.1 and others being the owners of the plot are under an obligation to intimate the BDA regarding completion of the building through an empanelled engineer or architect and apply for completion certificate as well as occupancy certificate in accordance with the Bhubaneswar Development Authority (Planning and Building Standards) Regulations, 2008. It is further claimed by the appellant that after handing over the possession of the houses to the respondent no.1 and other house owners by the year 2013 it had requested them several times orally as well as in writing to apply for the occupancy certificate with assurance to provide all sorts of assistance on its part but they have never listened to its advice. It is further claimed by the appellant that the respondent no.1 and other house owners were supplied with the copies of the BDA

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approval letter with the approved lay out and building plan at the time of execution of sale deeds of their plots and at the time of signing the construction agreements as well as all other connected documents with regard to the projects and they were again supplied the said documents in the year 2022 but the other documents connected to the project as well as some other correspondences were destroyed in the flood and cyclone and therefore could not be provided. It is reiterated by the appellant that the respondent no.1 and other purchasers had preferred to purchase their respective plots prior to the construction of the duplexes over the same in deviation of the terms of the BDA approval letter dated 20.02.2010 only with the intention to evade stamp duty payable to the Government of Odisha. Rejecting the allegation of the respondent no.1 that it had kept him as well as other purchasers dark about the provision of obtaining occupancy certificate and providing the same to them, the appellant has asserted that the respondent no.1 and other purchasers being educated citizens of India are supposed to know the law of the land. The appellant has claimed that in spite of knowledge about the requirement to obtain the occupancy certificates the respondent no.1 and other purchasers failed to apply for the same only because of negligence. It is further alleged by the appellant that after sleeping over the matter for more than ten years, the respondent no.1 and other purchasers are now putting the blame on it. The appellant has asserted that the occupancy certificates can be applied for and obtained by the house owners themselves from the BDA as the land on which buildings have been constructed stand in their names in the revenue records. Reiterating his claim that the approved plan of common areas and facilities and all other connected documents have already been submitted to the respondent

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no.1 and other owners and are no more available with it for having been destroyed during cyclone and flood in Chennai, the appellant has made it clear that these being public documents and available in the office of the Bhubaneswar Development Authority, the respondent no.1 can obtain the same through the RTI Act. As regards the formation of allottees association/society, drawing attention of this Tribunal to clause 17 of the Construction Agreement, the appellant has claimed that the respondent no.1 and other house owners had agreed to form the association of allottees and to do all other works for maintenance of the buildings as well as the common areas and that it had assured them to extend all necessary assistance in this regard. The appellant had also agreed to transfer the ownership of the common areas and common facilities to the association of allottees once it is formed and registered. It is further submitted by the appellant that the common areas are being maintained by the appellant-company since the last ten years out of the interest accruing from the corpus fund subscribed by the house owners and though the appellant had desired to hand over the said corpus fund amount of Rs.78,00,000/- to the house owners, they did not agree to take it back. With the aforesaid submissions, the appellant has claimed the complaint case to be not maintainable.

The learned Regulatory Authority on perusal of the pleadings of the parties and hearing their respective counsels and also taking into account the documents relied on by them passed the impugned order dtd.7.6.2024 directing the appellant to obtain completion certificate and occupancy certificate from the competent authority in respect of the real estate project, to enable formation of the association of

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allottees, to hand over the common areas and facilities of the real estate project to the association of allottees as per Section 17 of the RERA Act, to provide all the statutory documents to the association of allottees and to maintain the common areas as well as essential services out of the interest on the income from the deposit of the corpus fund of Rs.78,00,000/- available with the appellant till handing over of the common areas to the association of allottees of the project. Direction was also given to the appellant to comply with the order within a period of two months and it was made clear that in the event of its failure to comply with the order, the same shall be enforced as per law.

5) In the hearing of the appeal, the learned counsel for the appellant has submitted that the learned Regulatory Authority has ignored the fact of deviation in the construction of the project from the terms and conditions of the permission letter of the Bhubaneswar Development Authority at the instance of the respondent no.1 only for evading stamp duty to the government. It is further submitted that the appellant has never received any extra financial benefit by agreeing to the proposal of selling the plot to the respondent no.1 without the duplex on it. It is further submitted that the respondent no.1 in spite of initially agreeing to form the association of allottees and obtaining the occupancy certificate from the BDA, remained silent for a long period like 12 years after taking possession of the building on 2.1.2013 and therefore the impugned order directing the appellant to obtain occupancy certificate from the competent authority in respect of the project is erroneous. It is further submitted that the respondent no.1 being a highly educated and high ranking government official had every knowledge about the

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consequence of occupying a duplex house without the occupancy certificate and therefore his plea that he was kept in dark about the requirement of obtaining the occupancy certificate is not acceptable. It is further submitted that the appellant has only acted in the interest of its customers by constructing their houses as a contractor, but it is the respondent no.1 and other purchasers being the real owners of their respective duplex houses are required to give notice of the completion of their respective buildings to the BDA as per the provisions of the BDA(P&BS) Regulations, 2008, to obtain the occupancy certificate from the authority. The learned counsel for the appellant has emphasized on the fact that, in view of the deviation in the development of the project from the terms and conditions approved by the BDA at the instance of respondent no.1 and other duplex owners, the project is no more a group housing project but an individual housing project and therefore the appellant is only a promoter for limited purpose i.e. for developing the land to plot and selling it but not in respect of the building, which it has constructed not for the purpose of sale. Further submitting that the respondent no.1 and other purchasers have made an attempt to create a cause of action by instituting the complaint case against the appellant after ten years of taking possession of their respective duplexes, the observation of the learned Regulatory Authority that the respondent no.1 has cause of action and that it has the jurisdiction to adjudicate the matter, is erroneous. The learned counsel for the appellant has accordingly made the prayers as mentioned earlier in para-3.

6) On the other hand, the learned counsel for the respondent no.1 has stuck to the claims and allegations made in the complaint petition and dismissed the appellant's plea of

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not being the promoter in respect of the duplex buildings as not acceptable. Terming the impugned order passed by the learned Regulatory Authority to be just and correct in the light of the facts on record as well as the existing law, the learned counsel has prayed to dismiss the appeal for being without any merit.

7. There is no dispute between the appellant and the respondent no.1 that Bhubaneswar Development Authority had granted permission under Section 16(3) of the Orissa Development Authorities Act, 1982 in favour of the appellant for sub-division of the project land for construction of 41 nos. of duplex residential units thereon under lay out and Group Housing Building plan. Annexure-2 of the appeal memo (copy of the permission letter no.2508 dated 20.02.2010 of the BDA to the appellant) supports the aforesaid fact. This approval order dated 20.02.2010 of the Bhubaneswar Development Authority also contains certain conditions. It is clearly stipulated in sl. no.15 of the conditions that, after completion of building with all other infrastructure facilities the applicant shall submit completion certificate in the prescribed form and apply for issuance of occupancy certificate as per the provisions and Regulations. Condition Sl. No.16 stipulates that the building shall not be occupied fully or partly before issuance of occupancy certificate by BDA. Sl. No.20 makes it clear that the applicant is to construct the building strictly as per the approved plan and fulfill all other stipulated conditions of the permission letter, failing which action shall be taken as per the provisions of the ODA Act, 1982, ODA Rules 1983 and Building Regulations, 2008. Sl. No.22 requires that the applicant/developer/land owner shall cause to register an Association of Apartment Owners as required under the Orissa

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Apartment Ownership Act, 1982 before applying for occupancy certificate for 50% or more floor area.

It is an admitted fact between the appellant and the respondent no.1 that the lay-out and building plan approval dated 20.02.2010 of the Bhubaneswar Development Authority has been violated to the extent that after subdivision of the project land into plots by the appellant the same were sold by it to the respondent no.1 and other purchasers and then duplex houses were constructed by the appellant on those lands basing on the construction agreements between the appellant and the purchasers including the respondent no.1. Under this circumstance, the appellant has taken the plea that it has not developed the duplex houses under the group housing plan approved by the Bhubaneswar Development Authority vide letter dated 20.02.2010. According to the appellant, the deviation from the BDA's approved plan was at the initiative of the purchasers as they wanted to be benefited by paying less stamp duty to the state. It is claimed by the appellant that, after construction the purchasers have taken possession of their houses and accordingly, the respondent no.1, who has purchased plot no.12 vide sale deed dated 06.07.2011, executed and registered in the Sub-registrar's office at Jatani, has mutated his plot in the revenue record to obtain two RORs in respect of the same. The appellant has asserted that, it is only a promoter for limited purpose as having developed the project land into plots only up to their sale, it is a promoter to that extent only, but the duplex houses of the purchasers including the respondent no.1 having been constructed on the basis of construction agreements between it and the individual purchasers for construction price, it is not a promoter in

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respect of the building part of the project. Admittedly no completion certificate in respect of the project has been issued till now and hence the project is deemed to be an ongoing one on the date of commencement of the RERA Act i.e 01.05.2017 and hence under its fold. In this context, the meaning of "Promoter" as per Section 2(zk) of the RERA Act needs to be gone through. As per this provision "Promoter" means:

- (i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or
- (ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon ; or

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As the appellant has denied itself to be a promoter in respect of the building parts of the project and the main basis of his claim is the construction agreements executed between him and the purchasers, the same need to be gone through. The copy of the construction agreement dated 09.09.2011 between the appellant and the respondent no.1 (Annexure 4 of the appeal memo) shows that the respondent no.1 has agreed to pay a construction cost of Rs.20,25,420/- for construction of bungalow and car parking. It is further agreed between the parties that the super structure will be in conformity with the building plan approved by the Local Authority or any other competent authority. Sl. No.17 of the construction agreement shows that the respondent no.1 has inter alia agreed that he shall enter into an agreement with

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other purchasers of the property for maintenance of the common area and to form an association as well as to become a member in such association for maintenance of the building. On a thorough perusal of the construction agreement dated 09.09.2011 as a whole, it is clear that the appellant and the purchasers including the respondent no.1 had a mutual arrangement between themselves for construction of the building structures on the project land, in deviation from the BDA approved plan. This arrangement preceded by sale of plots according to the appellant was at the instance of the purchasers including the respondent no.1 as they wanted to avoid payment of stamp duty to the State in respect of the whole of the project i.e land as well as building and to get away with the stamp duty only in respect of the land. Even if this is true, the appellant is a consenting party to this arrangement and so can not escape from its liability as a party to the deviation. As already mentioned earlier, the permission of the Bhubaneswar Development Authority vide its correspondence no.2508 dated 20.02.2010 is a statutory approval of a lay out and group housing building plan in favour of the appellant and therefore, the mutual arrangement between the appellant and the purchasers including the respondent no.1 vide the construction agreements can not override it as that will frustrate the statutory power of a Development Authority. As already mentioned earlier, Sl. No.20 of the conditions of the permission letter dated 20.02.2010 clearly puts a liability on the appellant to construct the double storied buildings strictly as per the approved plan and fulfil other stipulated conditions of the permission letter and so the appellant is not entitled to construct the building

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structures of the duplex units on the basis of the construction agreement with the purchasers including the respondent no.1.

The appellant therefore is not entitled to take the plea that it is only a promoter in a limited sense in respect of the project for having not constructed the buildings for sale but for the construction price as per the construction agreements with the purchasers. The construction agreement dated 09.09.2011 between the appellant and the respondent no.1 being a violation of the condition of the lay out and group housing plan approved by the Bhubaneswar Development Authority in exercise of its statutory power, is undoubtedly an illegal agreement and hence, not acceptable. Permission having been granted to the appellant vide the letter no.2508 dated 20.02.2010 of the Bhubaneswar Development Authority for sub-division of the project land and construction of 41 nos. of duplex residential units thereon under lay out and group housing building plan, it is deemed that the appellant is a promoter from the stage of development of the project land to plots till the construction of duplex residential units thereon. The appellant can not on its own on the basis of a mutual arrangement with the purchasers deny his liability as a promoter in respect of the construction of the duplex residential units.

The contention of the appellant that the respondent no.1 and other purchasers having mutated their purchased lands in their names in the revenue record and RORs having been issued in respect of the same in their name, they are the lawful owners of their duplex units and so it is they who are required to issue notice to the Bhubaneswar Development Authority about completion of their buildings to obtain occupancy certificate, is not acceptable in view of the

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specific stipulation in Sl. no.15 of the conditions of the permission letter that after completion of the building with all other infrastructure facilities, it is the appellant who shall submit the completion certificate in the prescribed form and apply for issuance of occupancy certificate as per the provision of Regulations, 2008. The appellant being the promoter of the whole project is also responsible to obtain Completion Certificate and Occupancy Certificate from the relevant competent authority as per existing local laws or other laws and make the same available to the purchasers including respondent no.1 or their association in accordance with Section 11(4) (b) of the RERA Act. The selling of the developed plots to the purchasers including the respondent no.1 and allowing them to reside in their duplex houses constructed on those plots is also violative of condition no.16 of the permission letter, which clearly provides that the building shall not be occupied fully or partly before issuance of the occupancy certificate by the BDA.

The appellant is also responsible to enable the formation of an association or society or co-operative society, as the case may be, of the purchasers including the respondent no.1 under the laws applicable as per Section 11 (4) (e) of the RERA Act. It is also responsible to handover the common areas of the project and its necessary documents to the association of purchasers including the respondent no.1 as per Section 17(2) of the Act. The maintenance of the common areas and essential services out of the interest on the corpus fund deposit till handing over of the common areas to the association of the purchasers shall also be responsibility of the appellant as per Section 11(4)(d) of the Act.

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8. In view of the entire discussions made in the preceding paragraph, we are of the considered opinion that the impugned order dated 07.06.2024 of the learned Regulatory Authority in Complaint Case No.382 of 2023 with the directions made therein to the appellant being absolutely correct as per facts on record and existing law, needs no interference from this Tribunal and the appeal being without any merit stands dismissed on contest against the respondents.

While parting with the order, we feel it necessary to send a copy of this order to the Bhubaneswar Development Authority to apprise it about the unscrupulous conduct of the appellant-promoter in developing the project in deviation from the BDA approved lay out and Group Housing Building plan vide its permission letter no.2508 dated 20.02.2010. The appellant-promoter is liable to be proceeded against as per the provisions of the ODA Act, 1982, ODA Rules, 1983 and Building Regulations, 2008 for violating Sl. No.20 of the Conditions of the aforesaid permission letter.

Send an authentic copy of this order alongwith the record of the complaint case to the learned Regulatory Authority for information and necessary action. Also send a copy of this order each to the appellant and the respondent no.1.

Justice P.Patnaik
Chairperson

Shri S.K.Rajguru
(Judicial Member)

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