

OREAT Appeal No.192/2024

08. 21.03.2025 The appeal is taken up through hybrid mode.

2) Heard Mr.P.K.Mishra, learned counsel appearing for the appellant, Mr.L.K.Maharana, learned counsel appearing for the respondent no.1 through virtual mode.

3) Being aggrieved and dissatisfied with the impugned order dt.13.11.2024, passed by the Odisha Real Estate Regulatory Authority, Bhubaneswar in Complaint Case No.1364/2024, the instant appeal has been preferred praying inter-alia for setting aside the impugned order on the ground of violation of principle of natural justice and for disregarding genuine concern of the appellant regarding non-payment of dues for the services by the complainant-land buyers.

4) The facts leading to filing of the instant appeal is that the respondent being the complainant filed Complaint Case No.1364/2024 before the learned Authority, stating inter-alia that the present appellant launched a residential duplex project namely "Sampurna Royal Orchid" and floated project brochure. The brochure carries the broad vision of the appellant wherein it promised five years free maintenance. The specification and amenities have been mentioned in the brochure itself. As per the brochure the BDA and RERA has approved 73 unit duplex project. The project brochure assures the allottees to hand over the possession of the duplex within 36 months from the date of booking. The

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project brochure also contains payment plan which is dependent upon its stage of construction. The stage starts from booking and it continues through construction and delivery of possession. The respondent being desirous of a permanent place of stay in Bhubaneswar had a discussion with the appellant and upon such assurance and being allured and swayed by the project brochure the respondent decided to invest in the project. The respondent booked a duplex house no.67 by paying a sum of Rs.3,60,000/- vide cheque towards advance. The appellant executed an agreement for sale and construction agreement on 16.4.2018 with the respondent. Despite booking a duplex house no.67, agreement for sale was done with respect to the sub plot no.67 in terms of BDA approval dt.20.07.2017. The construction agreement was for construction and development of land and building as against payment of Rs.44,00,000/-. The sale deed was executed and it was shown as sub-plot no.67. After completion of the construction, the appellant under Letter Head issued completion certificate, final possession letter of the duplex on 18.10.2021 and handed over the possession of the duplex no.67. The respondent after residing in the duplex for some time could notice cracks in the structure and in the paint work and there was also seepage in the walls. The same was informed to the appellant which fell on the deaf ears. The further case of the respondent is that despite objection of allottees the

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appellant constructed another Independent Block having 8(eight) apartments and the respondent-allottees were also asked by the builder to share the common areas with the allottees of the 8 apartments which amounts to deviation of the project. The grievance of the respondents with regard to structural defects were not addressed by the appellant and the allottees raised their voices for the high-handed activities of the appellant. The respondents came to know that the appellant applied for RERA registration showing it to be plotting type of project. Hence, RERA granted registration under Section 5 of the Act, 2016. Since the appellant showed it to be a plotting project but launched the same claiming it to be the BDA and RERA approved 73 units Duplex project which amounts to playing fraud with the respondents as well as with the statutory authority. Since the appellant has not been maintaining the project including facilities and amenities contrary to the clauses of construction agreement, the respondent was constrained to file the said complaint with the following reliefs:-

(a) initiate appropriate proceedings against the respondents for deliberate violation of the provisions of the RERA act, 2016 vis-a-vis not registration of the project as a duplex residential project.

(b) initiate appropriate proceedings against the respondents for advertising and selling the

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project in contrary to the RERA and BDA registration;

(c) direct the respondents to obtain completion certificate, structural safety certificate and occupancy certificate from competent authority and other statutory clearance mandatory under the law for the time being in force;

(d) initiation appropriate proceedings against the respondents for having constructed another independent block in violation of the project brochure;

(e) further direct the respondents not to share the common areas of the project 'Sampurna Royal Orchid' with the allottees of independent block consisting of eight apartments and restore the boundary wall as existed in the layout of the brochure;

(f) direct the respondent to form the Association of Allottees and hand over the common areas to the said Association;

(g) direct the respondents to maintain the project at his own cost for a period of five years from the date of obtaining the occupancy certificate;

(h) direct the respondents to repair the structural damage to the existing structure;

(i) direct the respondents to return the maintenance charges paid by the complainant till the date of filing of the complaint;

(j) direct the respondents to provide all the amenities and specifications promised in the

project brochure including EPABX, STP, Rainwater Harvesting and Fountain and Badminton Court;

(k) direct the respondent to pay delayed interest on the amount paid by the complainant from the date of payment of the money till the date of obtaining occupancy certificate;

5) During pendency of the complaint case, petition on maintainability of the complaint has been filed by the appellant. In the complaint case, interim prayer has been made by the respondent and the learned Authority after perusing the records vide order dt.13.11.2024 has been pleased to direct that the appellant not to discontinue the essential services and common services of the project till disposal of the complaint case, after collecting the reasonable rates from the allottees. Being aggrieved by the said order, the present appeal has been preferred.

6) Mr.P.K.Mishra, learned counsel for the appellant vehemently submitted that though it was submitted before the authority for hearing of the maintainability petition first, the learned Authority without affording opportunity passed the interim order in violation of principle of natural justice. Learned counsel for the appellant further submitted that on perusal of the approval of the project from BDA dt.20.7.2017, it is revealed that it was approved for sub-division of land (lay-out plan) and as per clause 2(b) of the said approval it was directed that the appellant shall develop the road, drain at their own cost and free gift the road

land measuring 3570.99 sq.mtr., civic amenities of 613.48 sq.mtr., and open space of 1226.90 sq.mtr., to BDA before making application under Section 16 of ODA Act, 1982 for approval of building plan over sub-divided plots. In view of such condition/ direction, the appellant has executed the gift deed in favour of the BDA gifting road land, civic amenities and open space after developing the same, hence BDA became the owner over the said road, civic amenities and open space.

Learned counsel for the appellant further submits that after execution of the sale deed pursuant to the plotting scheme the project automatically ceases. Therefore, the claim of the respondent to provide five years free maintenance is not maintainable. Learned counsel for the appellant further submits that the registration certificate of the project dt.29.11.2017 granted by the Odisha Real Estate Regulatory Authority clearly reveals that it was directed to execute registered conveyance deed in favour of the allottee and there was no direction for submit completion certificate and occupancy certificate as the project is only a plotted scheme and upon execution of the registered conveyance deed in favour of the allottee, the project will automatically close. Learned counsel for the appellant further submitted that the respondent has been residing there since the year 2021 without any

impediments and the complaint case filed by the respondent is only to harass the present appellant.

7) Mr.L.K.Maharana, learned counsel for the respondent vociferously submitted that despite payment of maintenance fee, there was threat from the appellant to disrupt the essential services, which led to filing of the complaint case before the RERA. Learned counsel for the respondent further submits that basing upon the details in the brochure, the respondent-allottee invested his hard-earned money in the aforementioned project, but as per the statement made by the appellant, it is clear that the appellant has violated Section 12 and 14 of the RERA Act, 2016, which inter-alia envisages adherence to the sanction plans and project specifications by the promoter. Learned counsel for the respondent further submitted that the only ground on which respondent no.1 was forced to discontinue those services in the face of huge amount of unpaid bills and steadfast refusal of the complainant to pay the bills and the appellant undertook to restore the said services on payment of the above amount, subject to payment made by the respondent regularly on time. Learned counsel for the respondent further submitted that recital of the construction agreement in which clause no.1,2,3,4,5,16 would go on to show that the appellant cannot shy away from the responsibility of being the promoter of a project having BDA & RERA approved 73 unit duplex project even though he has fraudulently

obtained RERA registration certificate by portraying the project to be a plotting scheme, after showing it as a BDA and RERA approved 73 unit duplex project and taking money from the allottees. Additionally, pertaining to electricity dues, the electricity bill for the common area of the aforementioned project registered in the name of M/s.Sampurna Contech Pvt. Ltd., makes it evident on the face of it that the promoter itself has been responsible to maintain the common areas and admittedly the third party involved is in direct supervision and control of the appellant-promoter. Learned counsel for the respondent further submitted that the appellant in order to avoid rigors of the RERA, has changed the entire project behind the back of the allottees and very tactfully executed the work through a construction agreement, which amounts to playing fraud on the allottees as well as the Authorities under RERA. Learned counsel for the respondent finally submitted that the impugned order passed by the learned Authority is a balanced order by directing the allottees to pay reasonable charges and directing the builder not to disrupt the essential services and the learned counsel for the respondent further submitted that the maintainability petition has been dismissed vide order dt.06.12.2024 i.e. prior to filing of the appeal, which was well within the knowledge of the appellant.

8) After perusing the appeal memo, show cause and the notes of submissions filed by the respective parties and after hearing the learned counsel for the parties at length, it transpires that the appellant has been aggrieved by the interim order with regard to maintenance of essential services or common services. On going through the documents such as Brochure and construction Agreement, there is no dispute that the brochure contains five years free maintenance and in the said brochure the project advantage and payment plan have been clearly mentioned. On perusal of the clauses of the construction agreement, it appears that the responsibility has been cast upon the promoter in a very clear transparent and unambiguous manner to adhere to the maintenance of the project in question. As per the clauses of the construction agreement the appellant being a signatory to the said agreement is to adhere to the clauses of the agreement in letter and spirit and therefore, the appellant cannot turn around on some pretext, ruse, subterfuge to breach of the agreement.

9) In order to delve into the impugned order it would be apposite to refer Section 12 and 14 of the Real Estate (Regulation and Development) Act, 2016.

Section 12. Obligations of promoter regarding veracity of the advertisement or prospectus : *Where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or*

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building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act;

Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building, as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act.

Section 14. Adherence to sanctioned plans and project specifications by the promoter: (1) The proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities

(2) Notwithstanding anything contained in any law, contract or agreement, after the sanctioned plans, layout plans and specifications and the nature of the fixtures, fittings, amenities and common areas, of the apartment, plot or building, as the case may be, as approved by the competent authority, are disclosed or furnished to the person who agree to take one or more of the said apartment, plot or building, as the case may be, the promoter shall not make –

(i) xx xx xx xx xx

10. So far as maintenance of common area is concerned, it would be pertinent to refer Section 11

(4) (d) of the Act : Functions and duties of Promoter :

(4) The promoter shall –

Xx xx xx xx

(d) be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees.

11. Since the main complaint case is pending before the learned Authority, this Tribunal refrains from commenting on the maintainability of the complaint case at this stage.

12. This Tribunal, on going through the brochure, construction agreement and the relevant provisions of the Act, observes that maintenance of essential services is the paramount duty of the appellant. The learned Authority in the impugned order after taking into consideration the interest of both the appellant as well as respondent-allottees have passed a very reasoned and justified order inter-alia directing the appellant to continue essential services subject to payment of maintenance charges.

13) On the cumulative effect of facts and reasons, we are inclined to hold that the impugned order does not suffer any infirmity or any illegality to warrant our interference and hence the appeal being devoid of any merit is dismissed on contest.

Pending I.A. is accordingly disposed of.

The records of the learned Authority be returned back forthwith.

Justice P.Patnaik
Chairperson

Shri S.K.Rajguru
(Judicial Member)