

OREAT Appeal No.173/2024

6) 30.01.2025

The appeal is taken up through hybrid mode.

2) Already heard Mr.P.Sahoo alongwith Mr. B.Subudhi, learned counsels appearing for the appellant, Mr. A. Sahoo, learned counsel appearing for the respondent no.2 and Mr. S.S.Swain, Advocate appearing on behalf of Mr. B.P.Tripathy, learned counsel for the respondent no.1-Authority on 22.01.2025. Today, the learned counsel for the appellant has filed written notes of submission.

3) Aggrieved over the order dtd. 2.11.2024 passed by the Odisha Real Estate Regulatory Authority, Bhubaneswar (hereinafter referred to as 'learned Authority') in Complaint Case 616 of 2024, the appellant, who is the sole respondent in the said case, has filed the appeal against the respondents praying to set aside the said order. The respondent no.1 is the learned Authority who has passed the impugned order and the respondent no.2 is the complainant in the complaint case.

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

The present respondent no.2 being the complainant has filed complaint case No.616 of 2024 against the present appellant before the learned Authority alleging that the appellant has constructed more dwelling units than shown in the brochure thereby exceeding the number of total dwelling units as

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approved by the regulatory bodies (77 units against the sanctioned 70 units). It is further alleged that the appellant has illegally combined 4 BHK and 1 BHK units making them one unit but registered twice. It is further alleged that the appellant-promoter is not taking any interest to complete the pending activities and in spite of forming welfare society for the allottees has not handed over the corpus/IFMS funds. It is further alleged that the appellant-promoter has not issued project completion certificate and occupancy certificate and is not bothering to respond the queries and requests of the welfare society of the allottees. The respondent no.2-welfare society accordingly prayed for repairment of the roof and roof top water tanks which are leaking, to refund the corpus fund to the welfare society without which it is not able to function, to construct the inside road and pavement in absence of which there are frequent accidents inside the project, to demolish the seven extra units which have been constructed without approval and which appellant-promoter is illegally selling to anti socials, to provide completion certificate as well as occupancy certificate and also to complete the pending activities.

Pursuant to the notice issued, the appellant-promoter appeared through his counsel but filed a petition challenging the maintainability of the complaint case. It was submitted by the appellant in the petition that the project had been completed in the year 2013 i.e.

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15.07.2013 and completion certificate was issued by the Architect to the Vice-Chairman, BDA on 20.7.2013 and delivery of possession of the flats was also completed in the same year, which was well before the commencement of the RERA Act. As in view of Section 3 of the RERA Act the learned Authority had no jurisdiction in respect of the project, it should have rejected the complaint case. After service of the copy of the petition on the learned counsel for the respondent no.2-welfare society and filing of written reply by it, the petition was heard from both the sides on 2.11.2024 and the impugned order was passed by the learned Authority on the same day rejecting the petition of the appellant challenging the maintainability of the complaint case.

5) In the hearing of the appeal, the learned counsel for the appellant-promoter has contended that the project 'Royal Heritage' is a completed one prior to the coming into operation of the RERA Act and therefore is not liable to be registered u/s 3 of the Act. The appellant has already submitted the required list of documents alongwith the required fee to the B.D.A. for issuance of occupancy certificate as per the prescribed procedure and all the flats have been delivered to the prospective buyers. The learned counsel for the appellant has claimed that all the developmental works of the project have been completed and completion certificate in the prescribed form has been issued by the concerned technical person to the vice-Chairman of the

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BDA on 20.7.2013 and therefore, it is not an ongoing project. It is asserted by the learned counsel for the appellant that the project being not liable to be registered under the RERA Act, its provisions will not apply to it and therefore the allottees of an unregistered project cannot seek to redress their grievances before the learned Authority. Terming the impugned order dtd.2.11.2024 passed by the learned Authority as erroneous and not based on facts as well as law, the learned counsel for the appellant has made the prayer as already mentioned in para-3.

6) On the other hand, the learned counsel for respondent no.2 has contended that the appellant had though brought the approval for construction of 70 dwelling units in the particular apartment, but has actually constructed 77 dwelling units. This has been ignored by the architect as he never went to the site for inspection and issued the completion certificate falsely certifying that the project has been completed strictly in accordance with the general and detailed specification and that no provision of the conditions prescribed in the approved plan has been violated. It is further submitted that the appellant had submitted a proposal before the B.D.A. for regularization of the existing B+G+7 multi storied building and it was placed before the DP and BP Committee Meeting held on 12.6.2014 for consideration but the application for regularization is still pending for consideration, as ascertained from the Bhubaneswar

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Municipal Corporation. This shows that a deviation was made by the appellant with regard to the number of dwelling units of the Apartment and for this reason regularization of the building is pending. The learned counsel for the respondent no.2 has claimed that on this ground the completion certificate even though issued prior to the commencement of the RERA Act is invalid and as no revised completion certificate has been issued so far, the project is deemed to be an ongoing one after the commencement of the RERA Act. Justifying the impugned order as correct in facts as well as law and alleging that the works as per the brochure are still not completed, the learned counsel for the respondent no.2 has termed the appeal as not maintainable and prayed for its dismissal.

7) The learned Authority while rejecting the maintainability petition in the impugned order has observed as follows :

“3. Now the question arises as to whether the project carried out by the promoter is a completed one or it is an ongoing project. If it is a completed project, the Act is not applicable and if it is an ongoing project, violation of other provisions of the Act other than Sec. 3 of the Act is applicable. The Newtech case clearly speaks that if the project is completed prior to 1.5.2017 and the occupancy certificate has been obtained, then the promoter may escape from the registration of the project U/s 3 of the Act or else he has to register the project within two months from 1.5.2017. But in the instant case at para-5 of the complaint petition, the complainant has alleged about leakage in the roof, non-transfer of the corpus fund and also construction of other units beyond the approval of the BDA authority, for which there are violation of other sections other than Sec. 3 of the Act by the promoter

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in his project. Hence, the case is maintainable in the eye of law and the respondent-promoter cannot escape from his liability for violation of other sections of the Act except Sec.3. Hence, the case is maintainable in the eye of law.”

The first proviso to section 3 (1) of the RERA Act clearly provides that, projects that are ongoing on the date of commencement of the Act and for which completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act. Also in the case of M/s. Newtech Promoters and Developers Pvt. Ltd. Vrs. State of U.P. and others decided on 11.11.2021, the Hon'ble Supreme Court of India have made it clear that, projects already completed and to which completion certificate has been granted before the commencement of the Act are not under its fold. The observation of the learned Authority in para-3 of the impugned order that if the project is an ongoing one violation of provisions of the Act other than section 3 is applicable is erroneous in view of the fact that section 3 of the Act is applicable to ongoing projects as per the proviso contained in sub-section 1. Apart from this the learned Authority in the impugned order has also made an erroneous observation that as per the Newtech Promoter case (Supra) the promoter may escape from the registration of the project u/s 3 of the Act if occupancy certificate has been obtained prior to 1.5.2017. Though referring to the allegations of the complainant in para-5 of the complaint petition about leakage in the

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roof, non-transfer of the corpus fund and construction of other units without the approval of BDA, the learned Authority has held that there are violations of sections other than section 3 of the Act by the promoter in respect of his project, but has nowhere held whether the project which the appellant-promoter has claimed to have been completed on 15.7.2013 with all the flats of it have been delivered to the prospective buyers, has been completed prior to the commencement of the RERA Act or is an ongoing one. The appellant's claim that the project has been completed on 15.7.2013 and completion certificate has been issued on 20.7.2013 are vehemently disputed by the respondent no.2 on the plea that, apart from the various unfinished works as mentioned in paragraph-5 of the complaint petition, the project is still not completed as the appellant-promoter has constructed 77 dwelling units in the project instead of the approved 70 dwelling units and that the proposal for regularization of the existing B+G+7 multi storied building submitted before the BDA by the respondent is still pending for consideration. The completion certificate dtd. 20.07.2013 being not in consistent with the existing approved building plan is an invalid one according to the respondent no.2. The learned Authority instead of deciding these issues in the impugned order has straight away come to the conclusion that in view of the allegations about leakage of roof, non-transfer of the corpus fund and construction of other units without the

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approval of BDA, there are violations of provisions other than section 3 of the RERA Act by the promoter in his project and hence the case is maintainable in the eye of law. The learned Authority should have made a specific finding on the applicability of the RERA Act to the project by analyzing the validity of the completion certificate as only when the project is held to be an ongoing one at the time of commencement of the RERA Act and hence under its fold then only the learned Authority will be competent to decide the alleged violations under other provisions of it. The learned Authority is competent to decide its jurisdiction in respect of the project, which is disputed by the appellant, before the main hearing of the case.

8) For the discussions made in the preceding paragraph, we are of the considered opinion that the learned Authority shall decide the question of the maintainability of the complaint case on the point of applicability of the RERA Act to the project as challenged in the petition dtd.30.9.2024 by the appellant. Accordingly, we set aside the impugned order dtd. 2.11.2024 passed by the learned Authority in Complaint Case No. 616/2024 and remand the matter back to the learned Authority for fresh consideration of the petition dtd. 30.9.2024 of the appellant. The learned Authority shall decide the maintainability of the complaint case by analyzing the validity of the completion certificate dtd. 20.7.2013 in the light of the RERA Act, the ODA Act, 1982,

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the Bhubaneswar Development Authority (Planning & Building Standards) Regulations, 2008 and the decision of the Hon'ble Apex Court in M/s. Newtech Promoters case (Supra). While parting with this order, we make it very clear that we have not made any observation on merit relating to the point of maintainability of the complaint case.

The appeal is accordingly disposed of on contest against the respondents.

Send an authentic copy of this order to each of the parties of this appeal.

Justice P.Patnaik
Chairperson

Shri S.K.Rajguru
(Judicial Member)

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