IN THE ODISHA REAL ESTATE APPELLATE TRIBUNAL AT BHUBANESWAR

OREAT Appeal No. 134/2023
(Arising out of C.C. No. 143 of 2020)

Cosmopolis Residents' Welfare Association (CRWA)
...Appellant

-Versus-

1)M/s. Assotech BEBL Infrastructure Pvt. Ltd.
2)Mr. Pramod Kumar Padhy
...Respondents.

For the appellant : Mr.B.S.Das, Advocate

For respondent no.1 : Mr. R.C.Rath, Advocate

For the respondent no.2 : Mr. D.M.Msihra, Advocate

CORAM :
Hon'ble Shri Justice P.Patnaik, Chairperson
Shri S.K.Rajguru, Judicial Member
Dr. B.K.Das, Tech./Admn. Member

O R D E R
29.4.2026

The appeal is taken up for final order.

2) The order dtd. 23.5.2022 passed by the learned Odisha Real Estate Regulatory Authority in C.C. No. 143 of 2020 is under challenge in this appeal. The appellant was the complainant and the respondent no.1 of this appeal was the only respondent in the said complaint case. The respondent no.2 of the appeal is one Mr. Pramod Kumar Padhy, the then General Secretary of the

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appellant-association. Prayer has been made in this appeal to set aside the impugned order dtd. 23.5.2022 passed in C.C. No.143 of 2020 and to direct the learned Regulatory Authority to consider the complaint case afresh and to dispose of it on merit in accordance with law.

3) Facts and circumstances leading to the filing of this appeal are as follows:-

The appellant-association filed the aforesaid complaint case as complainant on 23.12.2020 against the present respondent no.1-promoter with the averments that the respondent-promoter was developing a multi-storied residential apartment-cum-commercial space in the name and style "The Cosmopolis" at Dumduma, NH-5, Bhubaneswar and sell it to the intending buyers after obtaining due permission from the BDA vide letter dtd. 29.7.2010 for construction of six blocks of B+G+16, one B+G+1 and one B+G+2 structures. The respondent entered into agreements for sale with the intending flat buyers and then ultimately sold flats to them. As the respondent failed to form an association of the flat buyers they formed a registered Trust in the name "Cosmopolis Residents' Welfare Trust" and subsequently formed a society in the name 'Cosmopolis Residents' Welfare Association' and registered it under the Societies Registration Act, 1860. The respondent was carrying on maintenance of the project through an agent but due to unreasonable hikes in the maintenance charges time and again by the respondent and its agent Cosmopolis

Residents' Welfare Association took over the maintenance of the common areas from 1.6.2017. The complainant-association after its formation and taking over of the maintenance, started taking up the issues of the flat buyers with the respondent. It was found that though the respondent in the advertisement/brochure relating to the project had promised various amenities but had failed to provide most of the same. At the time of sale of the flats many civic infrastructure works were incomplete and are still lying incomplete. It is alleged by the complainant-association that boundary of the residential project on the northern side is not yet constructed. The swimming pool on the 15th floor is still incomplete and other amenities like GYM, Sauna, Steam and Business Lounge were not provided. Though the respondent had collected Rs. 4,03,50,000/- from the flat buyers for providing 2690 KW of backup power but has so far installed a DG set of only 1250 KW. As a result during power outage and load shedding, the residents are facing innumerable difficulties for non-availability of sufficient power backup. It is further alleged that the respondent has obtained only a part occupancy certificate in respect of three out of six blocks on 20.1.2015 as due to non-compliance of the deficiencies in the project complete occupancy certificate has not yet been provided. Without obtaining the complete occupancy certificate in respect of the project the respondent has delivered possession of the flats to the flat buyers. The respondent has also failed to obtain NOCs from the Fire Department, PH Department, Central

Ground Water Authority, Bhubaneswar Municipal Corporation and State Environment Impact Assessment Authority. It is further alleged that the Sewerage Treatment Plant installed by the respondent is not of the required capacity and therefore the State Pollution Control Board has not granted consent to operate it. It is further alleged that though the complainant-association had paid the respondent an amount of Rs.3,75,000/- towards Interest Free Maintenance Security (IFMS) which was to be kept in a contingency fund and refunded to the complainant-association, but after considerable delay the respondent on 10.4.2019 refunded Rs.3,73,53,250/- and has still not paid interest on the amount of IFMS w.e.f. 1.6.2015 which is Rs.98,75,265/- as per the minutes of meeting dtd. 12.6.2018. It is further alleged that though the respondent had collected a sum of Rs.2,83,50,000/- towards club members fees (Corpus Fund) from the allottees, but the respondent is neither running and maintaining the club nor transferring the management of the club alongwith the corpus fund to the complainant-association. It is further alleged that though the respondent has made a gift deed dtd. 17.5.2017 in respect of a part of the project land in favour of the BDA but the STP of the project is on the said land it being under the possession of the complainant-association, the gift deed is illegal. The complainant-association has further alleged that the respondent has sold 75 open parking spaces though the same is a part of the common areas and accordingly the sale is void ab initio. Apart

from this the respondent has sold parking spaces in the basement which also come under the common areas. The respondent has also sold some portions of the basement by constructing partitions for use as store-rooms to about 31 persons in violation of the building plan. The project also suffers from structural defects and during normal rain water starts leaking from many places in the basement and the columns are getting damaged day by day. There is also leakage of water from the roof top and cracks have developed in the outer walls. With the aforesaid allegations, the complainant-association prayed for a direction to the respondent-promoter to register the project with ORERA, pay agreed interest on the IFMS amount of Rs.98,75,265/-, refund the club membership fees (corpus fund) of Rs.2,83,50,000/- with interest, demolish the store rooms/partition walls constructed at the basement, transfer the open parking spaces to it and refund the charges of open parking with interest, transfer the basement parking spaces to it together with refund of charges of basement parking with interest to the respective buyers, complete the boundary work of the residential project on the northern side, complete the swimming pool and GYM, install power back up of 2700 KW, install power backup of 2200 KW for common areas, enhance the capacity of STP, obtain clearance/NOCs from the authorities, obtain complete occupancy certificate from the BDA, declare the gift deed dtd.17.5.2017 as illegal, rectify the structural defects in the basement of the project, repair the roof tops and cracks in the

buildings and pay penalties for contravention of sections 3, 11 (4) (b) and (e) of the RE (R&D) Act.

Pursuant to the notice issued by the learned Regulatory Authority, the respondent-promoter appeared through his counsel on 2.2.2021 and prayed for time to file written show cause to the complaint. Thereafter, the case was adjourned from time to time either due to the Covid-19 pandemic situation or on the prayer for time by the respondent. On 9.3.2022 the counsel for the respondent again filed a petition praying for time to file written show cause to the complaint but sufficient opportunities having already been given for the same, the learned Regulatory Authority rejected the petition for time and fixed the case to 31.3.2022 for hearing but still gave liberty to the respondent to file his show cause before the date fixed for hearing. On 31.3.2022 the counsel for the complainant was present but the counsel for the respondent prayed for time for the hearing and on the next adjournment i.e. 26.4.2022 counsels for both the parties prayed for time for hearing. The case was adjourned to 23.5.2022 and on that date both the parties appeared together with their respective counsels and filed a joint compromise petition under Order 23, Rule 3 of CPC praying to dispose of the case in terms with the settlement agreement dated 2.4.2022 and averments in the petition. The learned Regulatory Authority after perusing the joint compromising petition and hearing both the parties passed the following order :

> "The contents of the petition and the memorandum of settlement are admitted by both the parties. The compromise appears to be lawful. We record the compromise herewith for the purpose of disposal of the case in terms of compromise within the scope of order 23, Rule 3 of CPC.
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> Accordingly, the petition is allowed. The case is allowed in terms of compromise and the compromise petition along with the terms mentioned therein do form part of this order. No cost."

4) In the hearing of the appeal the learned counsel for the appellant has submitted that the impugned order is vitiated as the compromise petition together with the deed of settlement if analyzed will go to show that the contents thereof do not satisfy the settlement of the claims of the members of the appellant-association. It is further submitted that the present respondent no.2, Mr. Pramod Kumar Padhy was the elected General Secretary of the appellant-association for 2021-22 and during his tenure Mr. Padhy and some others managed to approve a resolution from the General Body of the appellant-association on 30.3.2022 behind the back of all the members of the appellant-association regarding settlement of issues with the promoter. The deed of settlement dtd. 2.4.2022 was executed in a clandestine manner and was not shared with all the members of the association and therefore being not in adherence to the procedure prescribed in the bye law of the association is a void one. It is further submitted that the deed of settlement was executed in collusion with the

then General Secretary of the Association with a view to swindle away the money of the association. The learned counsel for the appellant has pointed out that in the complaint case the appellant-association had claimed more than Rs.30,00,00,000/- but in the compromise petition the amount was settled only with a meagre amount of Rs.1,54,15,277/-. Some other claims which have still not been complied with by the respondent no.1 were conspicuously absent in the deed of settlement. The present respondent no.2 being in hand in glove with the respondent no.1-promoter has caused a loss of crores of rupees to the appellant-association. It is further submitted that the respondent no.2 and some other persons have mis-appropriated the money of the appellant-association by forgery for which the appellant-association has lodged FIR against him and accordingly Khandagiri P.S. case No.294 dtd. 13.7.2023 u/sec. 420 of IPC has been registered. It is further submitted that the non-production of the minutes of the resolution for appreciation of the Regulatory Authority was wilful and was with an ulterior motive to help the respondent no.1. In absence of a decision taken by the association by following procedure established under law, the then General Secretary of the association had no authority to enter into the compromise with the promoter on behalf of the association. Asserting that the appellant-association is not going to gain anything from the illegal compromise entered into by the then General Secretary with the promoter and that the impugned order dtd. 23.5.2022 is

erroneous, illegal and the result of non-application of judicial mind, the learned counsel for the appellant has made the prayer as mentioned earlier in paragraph-2.

5) On the other hand, the learned counsel for the respondent no.1 has submitted that since the impugned order has been passed by the learned Regulatory Authority on the basis of the compromise arrived at between the parties, no appeal shall lie against such order. It is further submitted that the plea of the appellant that the deed of settlement dtd. 2.4.2022 was not within the knowledge of the members of the appellant-association is a frivolous one. It is further submitted that the respondent no.2, the then General Secretary of the appellant-association had obtained the sanction of the General Body to reach compromise with the respondent no.1-promoter and accordingly had signed the joint compromise petition and so the plea of the appellant that some members of the association were ignorant of certain clauses of the deed of settlement, cannot be accepted after more than a year. Emphasizing on the point of law that an appeal shall not lie against a decree passed on compromise, the learned counsel for the respondent no.1 has prayed to dismiss the appeal.

The learned counsel for the respondent no.2 has categorically claimed that the appeal is not maintainable against the respondent no.2 as he is not a necessary party to the appeal. It is further submitted that, as per clause 12 (B) of the approved Bye-law of the appellant-association the Governing Body consisting of

seventeen members is authorized to look after and manage the issues and affairs of the association and to take appropriate legal steps which may appear beneficial for the smooth and better management of the association. However, surprisingly some office bearers of the appellant-association with an ulterior motive authorized the executive body consisting of only six members to seek legal opinion about filing of F.I.R. with police and legal tenability of the deed of settlement thereby flouting the statutory clauses in the approved Bye-Law of the association. It is further submitted that in absence of any amendment to the existing Bye-law, the General Body is not competent to authorize the Executive Body in place of the Governing Body to look after the legal matters by passing the rules and regulations incorporated in the Bye law of the association. In the instant case, the General Secretary of the association has acted with patent illegality and has filed the present case without taking sanction of and consulting the Governing Body and without following the due process contained in the Bye-law of the association and as such the appeal suffers from material irregularities. The learned counsel for the respondent no.2 has reiterated that the deed of settlement has been executed by the respondent no.2 with the approval of the General Body in the best interest of the association and therefore he has not acted in contrary to the provisions of the Bye-law of the appellant-association. It is further submitted that after every General Body meeting the copy of the minutes of the

meeting is circulated in the official whatsapp group of the association and also displayed in the notice board of all the towers in the association complex for information of all the members of the association and therefore the appellant at this belated stage cannot take the plea that the deed of settlement was not within the knowledge of all the members of the association. With the aforesaid submissions, the learned counsel for respondent no.2 has prayed for dismissal of the appeal.

6) The order impugned in this appeal is the order passed on compromise between the parties. Order 23, Rule 3 of C.P.C which deals with compromise of suit provides that, Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise satisfaction to be recorded, and shall pass a decree is accordance therewith so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit.

> Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.
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> Explanation-An agreement or compromise which is void or voidable under the Indian

> Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule.

Section 3-A of C.P.C. provides that No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.

In the present case it is the allegation of the appellant-association that the composition of C.C. No.143 of 2020 vide the impugned order dtd. 23.5.2022 is illegal in view of the fact that majority of the members of the association had not consented to the compromise between the appellant and the respondent no.1. On the other hand, the respondent no.1-promoter and the respondent no.2, the then General Secretary of the appellant-association have taken the plea that the deed of settlement executed between the respondent no.1-promoter and the association was with the approval of the General Body of the members in the best interest of the association and therefore the deed of settlement was within the knowledge of all the members of the association.

As regards compromise under Order 23, Rule 3 of C.P.C. the Hon'ble Supreme Court of India in their Judgment dated 12.12.2024 passed in the case of **Navratan Lal Sharma Vrs. Radha Mohan Sharma & Others** (Civil Appeal No.14328/2024) reported in (2024) 12 SCR-453 have referred to the case of Banwari Lal Vrs. Chando Devi reported in (1993) 1 SCC 581 wherein they have laid down the law on the disposal of a proceeding in accordance with a compromise between the parties and

on recall of a compromise decree. It is held by the Hon'ble Apex Court that, under Order 23, Rule 3, the Court must be satisfied upon applying judicial mind that the agreement between the parties is lawful before accepting the same and disposing the suit. Further, the proviso and Explanation to Order 23, Rule 3 mandate that Court must 'decide the question' of whether an adjustment or satisfaction has been arrived at, and it is clarified that void and voidable agreements under the Indian Contract Act 1872 shall be deemed to be not lawful. Upon such reading of the provision, it held that the Court recording the compromise can examine the legality of the agreement, in accordance with the provisions of the Contract Act, even after the compromise decree is passed and when a party moves an application for recall.

In Navratan Lal Sharma (Supra) the Hon'ble Apex Court further observed that, the law on the issue is summarized in Pushpa Devi Bhagat Vrs. Rajindar Singh reported in (2006) 5 SCC 566. In this case the Hon'ble Apex Court also took note of Section 96 (3) of CPC and the deletion of Order 43, Rule 1 (m) of CPC by way of an amendment in 1976, as well as Order 23, Rule 3-A. The consequence of these is that an appeal against a consent decree and an order recording (or refusing to record) a compromise is not maintainable, nor can a fresh suit be filed for setting aside such decree. Hence, the only remedy available to the aggrieved party is to approach the Court that recorded the compromise under the proviso to Order 23, Rule 3. The Court held :

> "17. The position that emerges from the amended provisions of Order 23 can be summed up thus:
> (i)No appeal is maintainable against a consent decree having regard to the specific bar contained in Section 96 (3) CPC.
> (ii)No appeal is maintainable against the order of the court recording the compromise (or refusing to record a compromise) in view of the deletion of clause (m) of Rule 1 Order 43.
> (iii)No independent suit can be filed for setting aside a compromise decree on the ground that the compromise was not lawful in view of the bar contained in Rule 3-A.
> (iv)A consent decree operates as an estoppel and is valid and binding unless it is set aside by the court which passed the consent decree, by an order on an application under the proviso to Rule 3 Order 23.
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> Therefore, the only remedy available to a party to consent decree to avoid such consent decree, is to approach the court which recorded the compromise and made a decree in terms of it, and establish that there was no compromise. In that event, the court which recorded the compromise will itself consider and decide the question as to whether there was a valid compromise or not. This is so because a consent decree is nothing but contract between parties superimposed with the seal of approval of the court. The validity of a consent decree depends wholly on the validity of the agreement or compromise on which it is made...."

Referring to the above mentioned observations made in Banwari Lal case and Puspha Devi Bhagat case, the Hon'ble Apex Court in the case of Navratan Lal Sharma have held that :

> (13) When the court disposes of a proceeding pursuant to a compromise under Order 23, Rule 3, it bears the duty to examine this issue and be satisfied that the agreement or compromise is lawful. The proviso explicitly obligates the Court that entertains the petition of compromise to determine this issue, and as per the law laid down by this Court in Banwari Lal (Supra), this issue can be agitated by way of a recall application even after a compromise decree has been passed.

> (14) .....“This Court in Puspa Devi Bhagat (Supra) as well as several others cases has held that, only the court that entertains the petition of compromise can determine its legality, at the time of recording the compromise or when it is questioned by way of a recall application. No other remedy is available to the party who is aggrieved by the compromise decree as an appeal and fresh suit are not maintainable under the CPC.”

7. In view of this legal position, we are of the considered opinion that, the present appeal is not maintainable as the appellant-association is not entitled to file appeal against the compromise order dtd. 23.5.2022 before this forum. The appellant has the only remedy available to approach the learned Regulatory Authority that recorded the compromise under Order 23, Rule 3 of CPC. Thus, while rejecting the prayer of the appellant to set aside the order of compromise dtd.23.5.2022 passed by the learned Regulatory Authority in C.C. No.143 of 2020, we direct the appellant to challenge the compromise dtd.23.5.2022 before the learned Regulatory Authority on the grounds made in this appeal, and in such event the learned Regulatory Authority shall decide the prayer of the appellant after providing reasonable opportunity of hearing to the appellant and the respondents. The complaint case being of the year 2020, the learned Regulatory Authority shall do well to decide the legality of the order of compromise dtd. 23.5.2022, positively by the end of June, 2026.

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

Send a copy of this order, together with the record in C.C. No. 143 of 2020, to the learned Regulatory Authority for information and necessary action. Also send a copy of this order each to the appellant, the respondent no.1 and the respondent no.2.

Shri Justice P.Patnaik
(Chairperson)

Shri S.K.Rajguru
(Judicial Member)

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

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