IN THE ODISHA REAL ESTATE APPELLATE TRIBUNAL
AT BHUBANESWAR

OREAT Appeal No. 60/2023
(Arising out of C.C. No. 242 of 2022)

M/s ODI-Tech Properties Pvt. Ltd.
Represented through its Managing Director
Mr. Ranjan Kumar Nanda,

...Appellant

-Versus-

1)Oditech Pride Buyers Association.
2)Babaji Sahoo
3)Manjulata Sahoo
4)Prakash Ch. Sahoo

...Respondents.

For the appellant : Mr. S.N.Das, Advocate
For respondent no.1 : Mr. R.C.Rath, Advocate
For respondent no.2 : Mr. S.P.Pattnaik Advocate
For respondent no.3 & 4 : Did not appear inspite of due service of notice on them.

CORAM :
Shri S.K.Rajguru, Judicial Member
Dr. B.K.Das, Tech./Admn. Member

ORDER
17.07.2026

The appeal is taken up for final order.

2) Order dtd. 21.1.2023 passed by the Odisha Real Estate Regulatory Authority (herein after referred to as the learned ORERA) in Complaint Case No. 242 of 2022 is under challenge in this appeal. The appellant was the only respondent and the respondent no.1 was the complainant of the aforesaid complaint case. Respondents no.2,3 and 4 being necessary parties have been subsequently impleaded in the appeal vide order dtd. 4.9.2024 passed in I.A. No.198/2024 filed

by the learned counsel for the appellant. Prayer has been made in this appeal to set aside the impugned order dtd. 21.1.2023 passed in C.C. No.242/2022 and to pass any such order as deemed fit and proper in the interest of justice by this Tribunal.

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

The respondent no.1-association of this appeal being the complainant filed the aforesaid complaint case before the learned ORERA on 19.7.2022 against the present appellant-promoter stating therein that pursuant to the brochure circulated by the respondent in respect of his proposed residential project namely "ODITECH PRIDE" at Patia, Bhubaneswar, the members of the complainant-association approached the respondent to purchase flats in the said project. They were informed by the Managing Director of the company that the project had been registered with the ORERA and that statutory compliances relating to the project had been made. The members of the complainant-association booked a flat each in the project on payment of a consideration amount of Rs.17,00,000/- on 21.2.2018 out of the agreed total consideration amount of Rs.45,00,000/-. The complainant-association alleged that inspite of the project approval from the Bhubaneswar Municipal Corporation and registration of the project with the ORERA, the respondent-promoter violated all the conditions stipulated therein. The respondent-promoter made the first violation of Section 3 (1) of the R.E. (R&D) Act, 2016 by circulating brochures prior to the registration of the project and then violated Section 13 (1) of the Act by collecting more than 30% of the consideration amount prior to the execution of the agreement for sale. It is further alleged that the agreement for sale executed between the promoter and the allottees is also not in conformity with Section 13 (2) of the Act read with rule 8 (1) of the ORERA Rules, 2017. Though the respondent-promoter is supposed to complete the project in all respect by 16.4.2021 but he has failed to do so. It is further alleged that inspite of not completing the project as per the approved plan and layout of the BMC, the respondent-promoter issuing threat to cancel the allotment of flats forced the allottees to take possession of their respective allotted units in an incomplete stage without execution and registration of sale and without allotment of parking slots. The respondent has also not obtained the completion certificate and occupancy certificate in respect of the project from the competent authority. The complainant-association claimed that even though the allottees were given possession of their respective units but there is no proper infrastructure for them to lead a normal life in the society complex. It is further alleged that even though the project is not complete the respondent is collecting maintenance charges and a corpus fund of Rs. 60,000- Rs.70,000/- per unit to maintain the project for a period of one year including rectification of any manufacturing defect. The complainant-association has alleged that this is contrary to sec. 14 (3) of the R.E. (R&D) Act as the promoter is duty bound to rectify the structural defects brought to his notice within a period of five years from the date of handing over of possession of the flats to the allottees. Pointing out a number of deficiencies in the project such as lack of connectivity from the main road to the entry point of the society complex, absence of entry/exit points in the project, non-construction of boundary wall and proper main gate of the society complex, non-installation of transformer and sewage treatment plant at proper location, non-installation of two more elevators as per the approved building plan, non-construction of one more staircase in the project as per the approved building plan, defective construction of water tank/sump at the ground level, sale of parking slots meant for visitors to different allottees, non-allotment of parking slots to the allottees, non-provision for GYM despite its mention in the building plan, non-provision of park/garden/plantation as per the approved plan, non-installation of video door phone, intercom and C.C.T.V. It is further alleged that despite collecting maintenance fee from residents the respondent is not maintaining the society properly. The common areas are not cleaned and debris are not cleared for days together. Necessary repair works are not being done even after repeated requests. It is further alleged that the respondent is utilizing the community hall, gymnasium, library, ladies club room, society office room and other rooms as well as vacant places in common areas in accommodating his workers engaged in other projects and for storage using electricity and water of the present project. It is further alleged that the respondent has made constructions and structures in the project beyond the approved plan and has not constructed the EWS units in every floor. In the 4^{th} floor of the project though only one flat and six EWS units were approved by the BMC, the respondent has illegally constructed eleven number of bigger size flats and has also sold them out. It is further alleged that the respondent is forcing the members of the complainant-association to give their consent for building more units in the 5^{th} floor of the project and has made illegal constructions and structures on the common areas ear marked for open space, plantations, parking, drainage and other utility services. It is further alleged that the respondent is trying to merge the project with another adjoining proposed project and to change the name of the project from 'ODITECH PRIDE' to "ODITECH PRIDE PHASE-1" and inspite of repeated requests by the members of the complainant-association is not relenting in carrying out illegal constructions in violation of the approved building plan. Further alleging that the respondent-promoter has not taken step to complete the project inspite of seeking extensions of the validity of the registration of the project, the complainant-association has prayed for compliance of the omissions and rectification of the defects as pointed out above together with imposition of penalties under sections 59 and 61 of the R.E. (R.D) Act for contravention of Section 3 and Sections 13,14 and 17 of the Act respectively.

Pursuant to the notice issued to him, the respondent-promoter appeared through his counsel and filed his written show cause to the complaint on 5.12.2022 wherein he took the plea that the consideration price for all the flats are not same and differs from unit to unit. The construction of the project is in accordance with the approved building plan and there has been no deviation from it by the respondent. The respondent admitted the alleged mischiefs caused by the land owner of the project including construction of illegal structures inside the project without the consent of the complainant-association and the registration of F.I.Rs by police in this regard. Denying the alleged force used by him on the allottees to take possession of their flats when the same were incomplete and parking slots were not allotted, the respondent claimed that all the individual purchasers have taken peaceful delivery of possession of their respective units. The respondent admitted that there is delay in the grant of occupancy certificate by the competent authority but that is because the land owner is creating a lot of nuisance including construction of a temporary GCI sheet roofing shop and giving it on rent by obstructing the approach road. The respondent also admitted the alleged obstruction caused to the BMC personnel by the land owner in their inspection of the project. The respondent has submitted that as he could not obtain the occupancy certificate as per the statute he is not able to execute and register the sale deeds in favour of the allottees even though possession of the units have been handed over to them. It is alleged by the respondent that another alternative road available to the apartment and used by all the inhabitants has now been blocked by the land owner with construction of brick works and masonry. It is claimed by the respondent that delivery of possession of the units have been given to the respective allottees since 12.7.2021 and they are using the same with all facilities like two lifts, a 100 KVA generator, automatic STP, a 500 KVA transformer, bore well, underground water reservation and overhead water tank with auto filled system, C.C. TVs, intercoms and common areas. The allottees were paying the maintenance charges but since May, 2022 they have completely stopped paying the same inspite of repeated requests and reminders by the respondent and therefore the respondent is maintaining the project common areas from his own fund which the complainant-association is liable to pay. It is claimed by the respondent that the project has been completed in every sphere. The transformer and the STP are located on the specified project areas. There is facility for ingress and egress but the land owner is unnecessarily creating nuisance including obstruction of boundary construction at the entire southern side of the plot putting the security of the campus at stake and also causing obstruction to the construction of the front entrance gate. According to the respondent, other facilities including the gymnasium has also been provided to the complainant-association. The respondent has categorically claimed that community hall, gymnasium, library, ladies club rooms, society office rooms and other rooms as well as vacant space of the common areas have also been handed over to the members of the complainant-association and they are enjoying the same. Even EWS units have also been constructed but the land owners are forcibly occupying the premises for which FIR has been lodged against them. Denying other allegations against him including that of extra construction inside the project in deviation to the approved plan, the respondent has claimed that the complainant-association is not entitled to any of the reliefs prayed for in the complaint petition and therefore it is liable to be rejected with cost.

Taking into consideration the pleadings of the parties, the documents filed in support of the same and also on hearing them, the learned ORERA passed the impugned order dtd. 21.1.2023 directing the respondent to provide all amenities to the complainant-association in the common areas in terms of the agreement within two months, rectify the structural defects as pointed out by the complainant-association in the prayer portion of the complaint petition within two months, give details of the account relating to the corpus fund and maintenance amount collected from the allottees of the complainant-association within two months, hand over all the documents including the completion certificate and occupancy certificate to the complainant-association after receiving the same from the competent authority, hand over the management of the common areas to the complainant-association after obtaining occupancy certificate for the project from the local authority, continue the maintenance of the common areas without collecting maintenance charges from the allottees till the charge of management is handed over to the complainant-association and execute sale deed in respect of the common areas in favour of the complainant-association, within two months after obtaining occupancy certificate for the project. Direction was also made to the respondent to comply with the order and it was made clear that in the event of failure the order shall be enforced as per law.

4) In the hearing of the appeal, the learned counsel for the appellant submitted that the impugned order is erroneous both in facts as well as law. It is further submitted that the developer could not complete the work of the project due to the various mischiefs created by the land owner including construction of illegal structures inside the project without the consent of the respondent no.1-association. It is further submitted that construction of the project has been made as per the approved building plan and ORERA Rules in compliance with the terms of the agreement between the parties and the project has been completed within the stipulated period and individual allottees have also taken peaceful delivery of possession of their respective units. The learned counsel for the appellant has further claimed that no allottee has ever been forced to take possession of his flat when it was incomplete and parking slot was not allotted. It is further submitted that completion certificate in respect of the project has been submitted before the competent authority as per the statute but occupancy certificate has so far not been obtained due to delay on the part of the BMC. The issuance of occupancy

certificate has also been delayed because of the fact that the land owner is creating a lot of nuisance including construction of temporary GCI sheet roofed shop and giving it on rent obstructing the approach road and also obstructing the BMC personnel in their inspection of the project. Admitting the appellant's inability to execute and register the sale of the units of the project in favour of the respective allottees, the learned counsel for the appellant has submitted that the same is due to the non-obtaining of the occupancy certificate. Claiming that the allottees are liable to pay charges for the common areas and facilities, which they are not paying, the learned counsel for the appellant has termed the impugned order of the learned ORERA as bad and illegal and accordingly made the prayer as already mentioned in para-2.

5) On the other hand, the learned counsel for the respondent no.1-association has stuck to the claims and allegations made in the complaint petition. It is submitted by the learned counsel for the respondent no.1-association that even though more than seven months have passed from the date of the passing of the impugned order by the learned ORERA, the appellant has wilfully not complied with the directions made therein. Claiming that the impugned order dtd. 21.1.2023 passed by the learned ORERA in C.C. No.242/2022 is correct in facts as well as law and that the appellant-promoter has blatantly flouted the provisions of the RERA Act, 2016 and ORERA Rules, 2017 in constructing the project, the learned counsel for the respondent no.1 has prayed to dismiss the appeal for being not maintainable in the eye of law.

The learned counsel for the respondent no.2-owner has submitted that there is no cause of action for the appellant to file this appeal against the respondent no.2. The appellant has cheated the respondent no.2-owner by not providing him his specific share in the built up area as mentioned in the agreement dated 14.9.2016 and made false allegation against him only to linger the case. Admitting the lodging of two FIRs against the respondent no.2-owner and his son Subash Chandra Sahoo by the appellant, the learned counsel for the respondent no.2 has claimed that the respondent no.2 has also lodged an FIR against Ranjan Nanda, the representative of the appellant-company and accordingly three criminal cases in total are pending between the appellant and the respondent no.2 for trial. It is alleged by the learned counsel for the respondent no.2 that due to unauthorized constructions on the project land made by the appellant U.A.P case No.63 of 2022 has been filed against him by the respondent no.2 in the court of Officer on Special Duty u/sec. 91 of the ODA Act, 1982 and in the joint inspection report submitted by the Enforcement Officer and Empanelled Engineer of the ORERA in the said case it is clearly mentioned that in violation of the approved building plan the appellant has actually constructed eleven dwelling units each in the first, second, third and fourth floor as against the approved ten dwelling units each in the first, second and third floors and one dwelling unit in the fourth floor. Though eighteen EWS units have been approved, not a single one has been constructed. It is further alleged that the appellant has constructed 12 rooms in the basement and 4 rooms in the stilt area and also one unauthorized cottage inside the project area for the reasons best known to them. The appellant has not left any space for ingress and egress of ambulance and fire brigade though the same are essential for the lives of the occupants of the apartment. Further alleging that basic amenities like ground water supply, fire fighting facility, renewal of energy, boundary wall of the project on the southern side, visitors' parking space, basement parking, community hall, gym, Park/garden, solar water heater and two lifts out of the provision for three have not yet been provided by the appellant, the learned counsel for the respondent no.2 has claimed that it is the respondent no.2 who has completed the main entrance gate. It is further claimed by the learned counsel for the respondent no.2 that BDA and BMC authorities have already verified the project at the spot and the respondent no.2 has no objection if the GCI sheet roofed shop is demolished and constructed on the eastern side. Terming the allegations made against the respondent no.2-owner as false and concocted, the learned counsel has prayed for dismissal of the appeal for being devoid of merit.

Respondents no.3 and 4 have not appeared inspite of due service of notice on them.

6) The appellant has not disputed the applicability of the R.E. (R&D) Act, 2016 to the project.

As regards the providing of all the amenities in the common areas in terms of the agreement, the learned ORERA has held that the respondent (present appellant) by a letter assured the complainant-association to provide all the amenities as per the terms of the agreement. In para-9 of the impugned order, the learned ORERA has held that the respondent has not provided community hall, gymnasium, park or garden and boundary wall in the southern side and has provided only one lift as against the provision of three. This finding of the learned ORERA finds support from the report dtd. 21.10.2022 of the Enforcement Officer and Empanelled Engineer of the ORERA on their joint inspection of the project made on 12.10.2022. The learned ORERA has not accepted the plea of the respondent that it is due to the nuisances created by the land owner like encroachment of common areas by construction of asbestos roofed houses, he (respondent) has not been able to provide the amenities to the complainant-association as per the terms of the agreement. It is categorically observed by the learned ORERA that the promoter is responsible to protect the interest of the allottees so far as common areas are concerned and if the land owner is creating any nuisance then it is a dispute between the promoter and the land owner and the former may take suitable legal action against the latter in this regard. The appellant has not challenged the aforesaid findings of the learned ORERA. Order sheet dtd. 3.9.2025 of this appeal shows that the learned counsel for the appellant had undertaken to take prompt steps to comply with the basic amenities, as has been pointed out by the Enforcement Officer, within two weeks. The appellant-promoter having not challenged the non-providing of the aforesaid amenities in the appeal, certainly owes a responsibility to provide the same to the allottees as per sec. 11 (4) (a) of the RE & RD Act, 2016.

As regards structural defects in the project, the respondent no.1-association in his complaint petition has alleged that there is heavy leakage and seepage of water from the overhead water tank and the roof top terrace during rain as a result of which the residents of the third and fourth floor of the project are facing a lot of inconvenience. The learned ORERA referring to section 14 (3) of the Act has held that the respondent-promoter having violated section 17 of the Act while transferring the units in favour of the allottees before obtaining occupancy certificate, the liability of respondent-promoter will continue u/sec. 14 (3) of the Act for a period of five years from the date of issue of occupancy certificate by the local authority. It is further held by the learned ORERA that structural defects have been intimated to the respondent-promoter and he by a letter assured the complainant-association to rectify the defects. The finding of the learned ORERA with regards to existence of the structural defects in the project has found support from the joint inspection report dated 21.10.2022 of the Enforcement Officer and Empanelled Engineer which reveals that cracks had developed on the roof and wall of the 4^{th} floor of the project and this speaks about the poor workmanship. It is further reported by the inspecting team that expansion joint has not been done properly and as a result there is seepage on the roof. The aforesaid observations of the learned ORERA and the report dated 21.10.2022 of the inspecting team with regard to the structural defects have not been challenged by the appellant-promoter. As section 14 (3) of the Act puts an obligation on the promoter to rectify structural defects or any other defect in workmanship, quality or provision of services brought to his notice within a period of five years by the allottee from the date of handing over of possession, the appellant has to comply with the direction of learned ORERA in the impugned order and the report of inspecting team in this regard.

Section 4 (2) (*l*) (D) of the Act provides that seventy per cent of the amounts realised for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose, Provided that the promoter shall withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project, Provided further that the amounts from the separate account shall be withdrawn by the promoter after it is certified by an engineer, an architect and a chartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the project, Provided also that the promoter shall get his account audited within six months after the end of every financial year by a chartered accountant in practice and shall produce a statement of accounts duly certified and signed by such chartered accountant and it shall be verified during the audit that the amounts collected for a particular project have been utilized for the project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project.

In para-8 of the impugned order the learned ORERA has held that the complainant-association in course of hearing agreed to make payment of maintenance charges provided that a specific account is opened in the name of association for the purpose of securing the money paid towards maintenance to the promoter. It is further held that the promoter is responsible to give detail account of expenditures in respect of the amount collected from the allottees, but he is not disclosing the accounts in detail so as to show transparency in his conduct. It is categorically held by the learned ORERA that the promoter should keep a detail account of the corpus fund and the expenditures made out of the money collected from the allottees. The appellant has not at all challenged this finding and hence as per the above mentioned obligations under sec. 4 (2) (D) (l) he is to comply with the direction of the learned ORERA.

Section 17 (2) of the Act provides that, after obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws, Provided that in the absence of any local law, the promoter shall hand over the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the occupancy certificate. The appellant-promoter in his appeal memo has claimed to have submitted the completion certificate in respect of the project as per the statute to the competent authority, but has not produced the copy of such completion certificate in proof of his claim. The appellant-promoter has admitted to have not obtained the occupancy certificate in respect of the project, but has attributed its cause to the delay on the part of the BMC due to the nuisances created by the land owner such as construction of a temporary GCI sheet roofed shop obstructing the approach road and physical obstruction caused to the BMC personnel in their inspection of the project. However, section 11 (4) (b) of the R.E. (R&D) Act puts a responsibility on the promoter to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per existing local laws or other laws and to make the same available individually or to the association of allottees, as the case may be. So the appellant-promoter is certainly bound to obtain and provide the completion certificate and occupancy certificate to the respondent no.1-association.

As per 17(1) of the R.E. (R&D) Act, the promoter of a real estate project shall handover the physical possession of the apartment to the allottees and that of the common areas to the association of the allottees or the competent authority, as the case may be, on execution of a registered conveyance deed in favour of the allottee along with undivided proportionate title in the common areas to the association of allottees or the competent authority as the case may be. As per the proviso to section 17 (1) read with section 8 (1) of the Odisha Apartment (Ownership & Management) Act, 2023, a conveyance deed in favour of the allottee or in favour of association of allottees or the competent authority, as the case may be, shall be carried out by the promoter within three months from the date of issue of occupancy certificate. The appellant has not challenged the non-handing over of the management of the common areas to the respondent no.1-association of allottees, but has taken the plea that occupancy certificate having not been issued by the BMC, registration of sales of the apartments in favour of the allottees along with undivided proportionate title in the common areas have not been done. As already mentioned earlier, section 11 (4) (b) of the Act makes a promoter responsible to obtain occupancy certificate from the competent authority and make it available to the allottees individually or to the association of allottees, as the case may be. Therefore, the appellant is duty bound to first obtain the occupancy certificate from the competent authority and then execute registered conveyance deeds in favour of the allottees along with undivided proportionate title in the common areas to the association of allottees followed by handing over of physical possession of the common areas of the project to the association of allottees. The appellant shall continue to maintain the common areas till their maintenance is taken over by the association of allottees as this is his responsibility u/sec. 11 (4) (d) of the Act. The learned ORERA's direction to the appellant to maintain the common areas without collecting maintenance charges from the allottees is justified as the delay in handing over of the maintenance of the common areas to the respondent no.1-association is due to the inability of the appellant to obtain the occupancy certificate and register the transfer of common areas to the association of allottees. The direction of the learned ORERA to the promoter to execute conveyance deed in respect of the common areas in favour of the allottees-association within two months after obtaining occupancy certificate is modified as per Sec. 17 (1) of the R.E. (R&D) Act, 2016 read with section 8 (1) of the Odisha Apartments (Ownership & Management) Act, 2023 to the extent that, the execution of conveyance deed shall be made within three months after obtaining the occupancy certificate.

7) From the discussions made in the preceding paragraph, we are of the considered opinion that the appellant is statutorily liable to comply with the directions in the impugned order dtd. 21.1.2023 passed by the learned ORERA in C.C. 242 of 2022 subject to the aforesaid modification. The grounds on which the appeal has been preferred against the impugned order are without any merit and hence the appeal fails. Resultantly, the appeal is dismissed on contest against the respondents no.1 and 2 and without contest against the respondents no.3 and 4.

Send a copy of this order together with the record in C.C. No.242/2022 to the learned ORERA 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 S.K.Rajguru
(Judicial Member)

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