



IN THE ODISHA REAL ESTATE APPELLATE TRIBUNAL
AT BHUBANESWAR

OREAT Appeal No. 111/2024

(Arising out of C.C. No. 41 of 2023)

Siba Sekhar Rath

...Appellant

-Versus-

1)LIC HFL Care Homes Ltd.

2)Area Manager, LIC HFL Care Homes Ltd.

3)The Secretary, Odisha Real Estate Regulatory Authority,
Bhubaneswar

...Respondents.

For the appellant	:	Mr. K.C.Prusty, Advocate
For the respondent no.1	:	Mr. S.B.Rath, Advocate
For the respondent no.2	:	Mr. B.Nayak, Advocate

CORAM :

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

ORDER

31.07.2026

The appeal is taken up for final order.

2) Order dated 25.4.2024 passed by the Odisha Real Estate Regulatory Authority (hereinafter referred to as learned ORERA) in Complaint Case No.41 of 2023 is under challenge in this appeal. The appellant was the complainant and the respondents no.1 and 2 of this appeal were the respondents in the said complaint case. The respondent no.3 of this appeal is the learned ORERA. Prayer has been made in this appeal to set aside the impugned order dated 25.04.2024 passed in CC No.41 of 2023 with regard to the direction by the learned ORERA to the complainant (appellant) to pay maintenance charge of Rs.3,000/- per month to the respondent no.1 w.e.f. October, 2022 .



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

The appellant as complainant filed the aforesaid complaint case before the learned ORERA on 24.1.2023 wherein he submitted that he had applied for purchase of a 2 BHK residential flat with covered parking in the project “Jeevan Anand”, Khandagiri, Bhubaneswar and on depositing an amount of Rs.16,42,000/- i.e. 50% of the basic price and service tax on 16.8.2011 he was allotted Flat No.103 in Block No.A-2 (Type-C). The total cost of the flat with covered parking was agreed to between the parties as Rs.32,00,000/-. The complainant paid 20% of the basic price with service tax towards 2nd instalment after completion of foundation and plinth beam. Subsequently, he again paid 20% of the basic price i.e. an amount of Rs.6,40,000/- including service tax to the respondents on 28.6.2019 after completion of RCC frame work towards the 3rd instalment. After payment of the 4th and final instalment i.e. 10% of the basic price the complainant was delivered possession of the allotted flat. The complainant claimed that as per the statutory provision the respondents should have formed the association of allottees. However, inspite of different office bearers for the proposed allottees’ association i.e. “Jeevan Anand LIC HFL Care Homes Allottees’ Association”, Bhubaneswar from the allottees have been selected on the basis of their compliance of the nomination forms, the formation of the association has not yet been completed as procedural formality like submission of Form ‘A’ awaits compliance. In the meanwhile the respondents are maintaining the common areas of the project. The respondents issued a letter to all the allottees including the complainant



informing them that they had to pay outstanding dues in respect of their allotted flats including Rs.1,00,000/- towards maintenance of common areas by 31.12.2019. It was reminded by the respondents to the allottees that the maintenance of the common areas of the project was being done by them since 15.1.2020 but after the expiry of the stipulated period on 14.7.2020, though they were not supposed to carry on the maintenance service, but were still continuing the same. The respondents however informed the allottees that a major part of the collected maintenance fund having been exhausted they would not be able to provide the maintenance service for the project w.e.f. 15.8.2022 after the association was formed. The President of the allottees' association of the project emailed the Executive Director of the respondent no.1 requesting him to consider the extension of maintenance service period for two months as the formation of association of allottees was in progress. The respondents vide their letter dtd. 5.11.2022 informed all the allottees including the complainant that 65 allottees had paid maintenance charges as per their request in the month of October, 2022 and had also paid maintenance charges quarterly. The respondents further stated in their letter that the company was maintaining the premises since December, 2019 i.e. when the project was ready for possession. The initial maintenance charge of Rs.1,00,000/- collected from the allottees was being utilized since 2019 for site campus irrespective of the number of allottees who had taken possession of their flats. The respondents requested the allottees who had defaulted to pay their maintenance charge for the month of October, 2022 to pay the same together with the maintenance charge for the month of November, 2022. The



complainant claimed that he had paid maintenance charges to the respondents but they refunded the said amount to him. On 2.1.2023 the respondents issued an email to the complainant that they would stop maintenance of the common areas from 31.1.2023 and requested all the allottees to take appropriate steps to carry out the maintenance work of the society. The complainant expressed his apprehension that if the respondents would stop maintenance of common areas from 31.1.2023 he and other allottees would face difficulty in maintaining the common services. The complainant claimed that, as the respondents were duty bound to form the association of allottees but the same had not been formed, they should continue the maintenance of the project. With the aforesaid submissions, the complainant prayed before the learned ORERA for a direction to the respondents to form an association of the apartment owners of the project “Jeevan Anand”, continue maintenance of the society till formation of the association and receive reasonable maintenance charges from the complainant and after allottees for maintenance of the society.

On being noticed the respondents appeared through their counsel and filed written show cause to the complaint wherein they categorically alleged that on 8.1.2021 they had initiated the process of formation of the association of allottees as per the Societies Registration Act and accordingly as per the direction of the BDA Form-B was registered with the Sub-Registrar, Khandagiri. However, on their request to the allottees to submit Form-A for registration of the society, no response was received from them and due to the non-cooperation of the allottees, the association could not be formed. It was further submitted that all



the allottees were intimated to pay maintenance charges from 1.10.2022 in accordance with the provision of the RERA Act with a further request to contribute Rs.7,000/- (rupees seven thousand), Rs.9,000/- (rupees nine thousand) and Rs.10,500/- (rupees ten thousand five hundred) towards quarterly maintenance charges in respect of 1 BHK, 2 BHK and 3 BHK flats respectively. However, the response from the side of the allottees was very poor as only 85 of them paid the amounts. As the amount collected was very much insufficient to carry on the maintenance of the project in all respect, the respondents decided to refund the maintenance charges so far collected and accordingly refunded the same on 26.12.2022. The respondents sent a letter on 2.1.2023 to the allottees informing them to stop the maintenance of the project from 1.2.2023. Subsequently, near about 114 allottees paid maintenance charges while the rest including the complainant preferred to litigate the matter before the ORERA. Claiming that as per section 19 (6) of the RERA Act, the allottees are liable to make necessary payment in the manner and within the time, as specified in the agreement for sale, municipal taxes, water and electricity charges, maintenance charges, ground rent and other charges etc., the respondents asserted that no statute gives a privilege to the allottees to enjoy the amenities of an apartment project without payment of maintenance charges. The respondents further submitted that the entire beneficiaries of the project are required to make payments of maintenance charges for the maintenance to continue and therefore the complainant even if individually pays maintenance charge cannot seek the relief of maintenance for the whole project unless all the allottees make payments and the amount required for



maintenance of the project is collected. With the aforesaid submissions and challenging the maintainability of the complaint case, the respondents prayed for its dismissal.

The learned ORERA after taking into consideration the pleadings of the parties and the documents filed only by the complainant and also on hearing their submissions passed the impugned order dtd. 25.4.2024 directing the respondents to facilitate the registration of the association/society formed by the allottees of the project “Jeevan Anand” on 7.4.2024, provide and maintain the essential services till taking over the maintenance of the project by the association of allottees, execute a registered conveyance deed in respect of the common areas of the project in favour of the association of allottees as per section 17 (1) of the Act and hand over a detail account of receipt of maintenance charges from the allottees and expenditures towards maintenance to the association of allottees. Direction was also made to the complainant to pay a maintenance charge of Rs.3,000/- per month w.e.f. October, 2022 as demanded by the respondent no.1. Both the parties were further directed to comply with the aforesaid directions, within a period of two months from the date of the order, and it was made clear that in the event of their 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 direction to the appellant to pay the maintenance charge of Rs.3,000/- per month w.e.f. October, 2022 as demanded by the respondent no.1 being without any agreement, is illegal. It is further submitted that the direction to the appellant to pay maintenance charge of Rs.3,000/- per month is also liable to be set aside in view of the fact that the respondents have not provided



amenities like community hall, gymnasium, park/garden, association hall, community dining, yoga hall and generator for power back up. It is further submitted that the direction to the appellant to pay the maintenance charge is also illegal in absence of a direction to the respondents to furnish the details of the expenditure with regard to the amount of Rs.1,00,000/- received from the appellant towards maintenance. Further submitting that the impugned direction to the appellant being perverse and unsustainable in the eye of law, the learned counsel for the appellant has made the prayer as already mentioned in para-2.

5) On the other hand, the learned counsel for the respondents no.1 and 2 has submitted that the impugned direction to the appellant for payment of Rs.3,000/- per month towards maintenance charges w.e.f. October, 2022 is clear and unambiguous as the same is in accordance with section 19 (6) of the R.E. (R&D) Act, 2016 and clause 7.2, 7.3 and 7.4 of the model agreement provided by Annexure-A under Rule 8 (1) of the Odisha Real Estate (Regulation & Development) Rules, 2017. It is further submitted that the documents relied on by the appellant show the initiative taken by the respondents towards formation of the association/society of the allottees and the amount of Rs.1,00,000/- collected from the appellant towards maintenance cost for a period of six months was in accordance with the terms and conditions of the brochure. It is further submitted that the respondents had fixed quarterly maintenance charges for different categories of flat to be paid from October, 2022 for continuance of the maintenance of the common areas of the project. But as the appellant did not pay the fixed quarterly maintenance amount, the amount of Rs.1,00,000/- paid by him



was refunded back to him and hence there has been no illegality or irregularity in the impugned direction to the appellant. Further contending that the impugned direction to the appellant by the learned ORERA is based on the facts on record and in accordance with law and that the appeal is devoid any merit, the learned counsel for the respondents no.1 and 2 has prayed for its dismissal in the interest of justice.

6) The appellant-allottee is aggrieved over the direction of the learned ORERA to him to pay an amount of Rs.3,000/- per month towards maintenance charge to the respondent no.1 w.e.f. October, 2022. The plea of the appellant that the direction is illegal in absence of any agreement to this effect is misconceived as no agreement containing such specific term was required under law at the time the appellant accepted the offer of the respondent no.1 made through the brochure to purchase the flat allotted to him. It is notable that, though section 11 (4) (d) of the R.E. (R&D) Act, 2016 makes the promoter responsible for providing and maintaining the essential services till taking over of the maintenance of the project by the association of allottees, but also entitles him to reasonable charges for the same. Section 19 (6) of the Act which deals with rights and duties of the allottees casts a duty on the allottee to pay at the proper time and place some charges which includes maintenance charges. Clause 7.2 of the Annexure-‘A’ i.e. the Agreement For Sale under Rule 8 (1) of the Odisha Real Estate (Regulation and Development) Rules, 2017 also provides that the agreement shall contain the fact that, the Allottees after taking possession agrees to pay the maintenance charges, as determined by the promoter/ association of allottees, as the case may be, after the issuance



of occupancy certificate for the project. So in view of the aforesaid statutory provisions and rule, there remains no doubt that as long as the association of the allottees of a real estate project has not taken over the maintenance of the project and the promoter maintains the essential services relating to the project then reasonable charge for such maintenance has to be paid by every allottee of the project. In the present case, the complaint petition itself shows that the association of allottees till the filing of the complaint had not been registered as procedural formality like submission of Form 'A' by the allottees had not been complied with. In this regard, the respondents have alleged that, inspite of their request to the allottees to submit Form-'A' for registration of the association, no response was received from them and due to the non-cooperation of the allottees, the association could not be formed. Section 14 (2) of the Odisha Apartment (Ownership and Management) Act, 2023 clearly provides that, it shall be the joint responsibility of the promoter and allottees to form an association of allottees if either 50% of the allottees or 7 allottees, whichever is lower, have been allotted with the apartments in a project. So this being the factual position, we are of the opinion that, the respondent no.1-promoter has no fault in the non-registration of the association of allottees of the project.

Sec. 8 (2) of the aforesaid Act, 2023 requires certificate of registration of apartment owners or allottees' association among other documents to be attached to the deed of transfer for its registration. So the association of allottees of the project having not been registered till the filing of the complaint due to the fault of the allottees, the contention of the learned counsel for the appellant during hearing of the appeal that, conveyance



deed has not been executed and registered by the respondent no.1 and therefore maintenance charge is not payable by the appellant-allottee, is not acceptable.

The contention of the appellant that the direction to pay maintenance charge is not lawful due to the respondent no.1's not providing common facilities like community hall, gymnasium, park/garden, association hall, community dining, yoga hall and power backup generator is not acceptable as only two out of the aforesaid common facilities i.e. garden and generator are to be provided as per the brochure published by the respondent no.1. The complaint petition is however silent about the non-provision of the garden and power backup generator as alleged by the appellant in the appeal memo. The plea being a new one at the stage of the appeal is not reliable.

In the impugned order direction has been made to the respondent no.1 to handover a detail account of receipt of maintenance charges from the allottees and expenditure towards maintenance, to the association of allottees. This in our view is a very appropriate order by the learned ORERA which will make it clear if the amount of expenditure so far made by the respondent no.1 for the maintenance of the project justifies the quarterly payments he has asked for from the allottees in accordance with the size of their flats. It is clear from the brochure that the amount of Rs.1,00,000/- collected from the appellant towards maintenance cost was only for a period of six months. The contention of the appellant that the direction to him to pay the maintenance amount should not have been made without calling for the details of the expenditure of the amount of Rs.1,00,000/- paid earlier by him towards maintenance, is absolutely meaningless in view of the fact that in his very



complaint petition the appellant has himself mentioned that the respondent no.1 had refunded back the aforesaid amount of Rs.1,00,000/- to him and had also emailed him in this respect vide Annexure-7. This supports the plea of the respondent no.1 that he had already refunded back the amount of Rs.1,00,000/- paid by the appellant towards maintenance to him due to non-payment of quarterly maintenance charge fixed by him.

Thus, in view of the above discussed factual as well as legal position, the direction of the learned ORERA to the appellant in the impugned order dtd. 25.4.2024 to pay an amount of Rs.3,000/- per month to the respondent no.1 from October, 2022 i.e. when he first intimated the allottees to pay maintenance charges in accordance with the provision of RERA Act, is absolutely lawful and hence needs no interference by this Tribunal.

7) In the result, the appeal being devoid of any merit stands dismissed on contest against the respondents.

Send copy of this order alongwith the record in Complaint Case No. 41 of 2023 to the learned ORERA for information and necessary action. Also send a copy of this order each to the appellant and the respondent no.1.

Shri S.K.Rajguru
(Judicial Member)

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

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