



IN THE ODISHA REAL ESTATE APPELLATE TRIBUNAL
AT BHUBANESWAR

OREAT Appeal No. 92/2025

(Arising out of C.C. No. 1001 of 2024)

M/s. Utkal Builders Limited

...Appellant.

-Versus-

1)Sanjay Kumar Agasti

2)The Secretary, Odisha Real Estate Regulatory Authority,
Bhubaneswar.

...Respondents.

For the appellant	:	Mr. L.K.Maharana,advocate
For respondent no.1	:	None, being set ex parte
For respondent no.2	:	Mr. B.Nayak, Advocate

CORAM :

Shri S.K.Rajguru, Judicial Member

Dr. B.K.Das, Tech./Admn. Member

O R D E R

24.08.2026

The appeal is taken up for final order.

2) Order dated 4.3.2025 passed by the Odisha Real Estate Regulatory Authority (hereinafter referred to as the learned ORERA) in Complaint Case No.1001 of 2024 is under challenge in this appeal. The appellant is the respondent and the respondent no.1 of this appeal is the complainant in the said complaint case. The respondent no.2 of this appeal is the learned ORERA. Prayer has been made in the appeal to set aside the impugned order dated 4.3.2025 wherein application dtd. 9.12.2024 filed by the appellant challenging the maintainability of the aforesaid complaint case was rejected.



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

The present respondent no.1 being the complainant filed complaint case no.1001 of 2024 before the learned ORERA claiming himself to be an allottee in respect of Flat No. D-201 of the project 'Utkal Villa Apartment', Jayadev Vihar, Bhubaneswar developed by the respondent-promoter (present appellant). The complainant claiming to have purchased the aforesaid flat from the respondent-promoter vide registered sale deed dtd. 14.10.2015 for a consideration price of Rs.61,45,000/- has alleged that the respondent-promoter has not yet obtained the completion certificate and the occupancy certificate in respect of the project. Though at the time of sale the respondent had promised to open the back gate of the project, he has so far failed to keep his promise thereby committing a breach of contract. The respondent-promoter has allotted unauthorized parking space in the common areas of the project. It is further alleged that termite treatment has not been done by the respondent resulting in termite infestation which indicates poor quality of work and water seepage reflects inadequate workmanship. It is further alleged that due to unavailability of water tank there is irregularity in water supply to the project and garden work still remains incomplete. Further alleging that the respondent-promoter has never maintained a proper communication with the allottees and has enhanced maintenance charges without approval, the complainant prayed before



the learned ORERA for a direction to the respondent-promoter to comply with the aforesaid omissions and rectify the defects in the project.

On being noticed the respondent-promoter appeared through his counsel on 20.11.2024 and prayed for time to file written show cause to the complaint petition. On the next date i.e. 9.12.2024 the learned counsel for the respondent-promoter filed an application praying to dismiss the complaint case on the ground that it is not maintainable. After copy of the application was served on the learned counsel for the complainant hearing on it was fixed to 28.1.2025. However on the said date as the complainant was absent, the application was heard from both the sides on 5.2.2025. Subsequently on 4.3.2025 the learned ORERA passed the impugned order rejecting the application dtd. 9.12.2024 of the respondent and held the complaint case to be maintainable in the eye of law.

4) In the hearing of the appeal, the learned counsel for the appellant submitted that, inspite of observing that the project having been completed prior to the commencement of the RERA Act does not require registration, the learned ORERA instead of dismissing the complaint under its power under Rule 38 (e) of the Odisha Real Estate (Regulation and Development) Rules, 2017, held on an erroneous appreciation of law that, the appellant cannot escape from the liability for violation of other sections of the Act. It is further submitted that the aforesaid finding of the learned ORERA is not only



contrary to the provision u/sec. 3 (1) of the RERA Act but also to the observation of the Hon'ble Supreme Court of India in the case of M/s Newtech Promoters and Developers Pvt. Ltd. Vrs. State of U.P. and Others reported in (2021) SCC Online -1044. It is further submitted that the learned ORERA has proceeded to decide the application dtd. 9.12.2024 on a wrong appreciation of law as well as facts as the maintainability of a complaint case under the RERA Act, 2016 is to be decided on the basis of the date of completion of the project and the completion certificate issued in respect of it, but not on the nature of reliefs sought for by the complainant in the complaint petition. It is further submitted that the learned ORERA without making any endeavour to ascertain the correctness of the allegations of the complainant has held that due to the alleged infirmities in the project, it cannot be said to be completed. It is further submitted that, holding the alleged deficiencies in the project as true amounts to prejudging the complaint case without hearing, which is not permissible under law. Drawing attention of the Tribunal to section 3 (2) (b) of the RERA Act, 2016 and the observation of the Hon'ble Apex Court in the Newtech Promoters case (Supra), the learned counsel for the appellant has emphasized on the point that completion certificate in respect of the project having been received prior to 1.5.2017 i.e. the date of commencement of the RERA Act and the aforesaid statutory provision as well as the case law confirming the fact that the Act is not



applicable to a project in respect of which completion certificate has been issued prior to the commencement of the Act, the Act is certainly not applicable to it. With the aforesaid submissions, the learned counsel for the appellant has made the prayer to set aside the impugned order dtd. 4.3.2025 passed by the learned ORERA in C.C. 1001 of 2024 and to hold that the complaint case is not maintainable under the RERA Act, 2016.

Respondent no.1-allottee has been set ex parte for his failure to appear before this Tribunal inspite of due service of notice upon him.

5) On the other hand, the learned counsel for the respondent no.2-ORERA has submitted that as per the allegations in the complaint petition there are several deficiencies in the project which have not been addressed to by the appellant-promoter. The appellant has failed to fulfill his promises like allowing access to the allottees to the project from its back gate, rectify the seepage and complete the garden. The learned counsel for the respondent no.2 has concurred with the observation of the learned ORERA that even if the completion certificate in respect of the project has been obtained prior to the commencement of the Act, the appellant cannot be absolved of his other liabilities under the Act. Suggesting that the appellant should participate in the proceeding of the complaint case pending before the learned ORERA and make sincere endeavour to redress the genuine grievances of the respondent no.1 and other innocent homebuyers, the learned counsel for the respondent no.2



has termed the appeal to be devoid of any merit and has prayed for its dismissal.

6) The respondent-promoter of the complaint case in his application dtd. 9.12.2024 for dismissal of the complaint had contended that the project had been completed prior to the enactment of the RERA Act, 2016 and had also received completion certificate prior to 1.5.2017 and therefore the complaint before the learned ORERA was not maintainable. The respondent claimed that pursuant to the building plan approval dtd. 11.8.2009 of the BDA he had constructed the Integrated Basement+G+4 project and had received the completion certificate in respect of it from the Empanelled Architect on 12.1.2013. The said completion certificate was in the prescribed format i.e. Form-VI and was sent to the Vice-Chairman, Bhubaneswar Development Authority together with a challan of Rs.5,000/- in favour of the BDA on 28.2.2017 for occupancy certificate. Further claiming that, agreement for sale relating to the flat of the Complainant was executed in the year 2014 and sale deed in respect of it was executed on 14.10.2015, the respondent claimed that these facts also show that the project was otherwise completed prior to the commencement of the RERA Act. Asserting that no complaint u/sec. 31 of the Act could be entertained by the ORERA when the project was not registered with it for its completion certificate having been received prior to the commencement of the RERA Act, the learned counsel for the respondent contended that the learned ORERA was



empowered under rule 38 (e) of the Odisha Real Estate (Regulation & Development) Rules, 2017 to dismiss the complaint as it did not require any further enquiry. With the aforesaid submissions, the learned counsel for the respondent-promoter had prayed to dismiss the complaint.

On the other hand, the learned counsel for the complainant in his written objection to the aforesaid application dtd. 9.12.2024 submitted that the application by the respondent-promoter had been filed only to linger the matter and to harass the complainant. It was claimed that the completion certificate issued by the Empanelled Architect showing the project to have been completed on 12.1.2013 is a manufactured one. It was further claimed that the respondent-promoter had constructed the project violating the building approval plan of the BDA. The learned counsel of the complainant in his written objection asserted that till now many works of the project had not been completed. Pointing out to the fact that occupancy certificate in respect of the project had not yet been issued, the learned counsel for the complainant claimed that the project could not be registered with the ORERA for this reason. Further claiming that there being many problems in the project and the veracity of the allegations of the complainant could be ascertained only after a due enquiry, the learned counsel for the complainant prayed for rejection of the respondent's application dtd.9.12.2024 challenging the maintainability of the complaint case.



The learned ORERA after hearing both the parties passed the impugned order dtd. 4.3.2025 rejecting the application dtd. 9.12.2024 of the respondent-promoter making the following observation :

“After hearing the matter from both the sides, this authority gone through the complaint case filed by the complainant wherein he sought some reliefs like to obtain occupancy certificate, completion certificate and repair of the seepage, water blockage due to incomplete garden works, unauthorised parking in common areas and access to the main gate. So, from the above infirmities available in the project, it can be said that the project has not been completed in all respect. No doubt if a project is completed much prior to the cut off date, the same is not required the registration u/s. 3 (1) of the Act but for violation of the other sections of the Act, the promoter cannot escape from the liability. Hence, the complaint case preferred by the complainant is maintainable in the eye of law and the petition filed by the respondent is hereby rejected”.

7) As regards the applicability of the R.E. (R &D)Act, 2016 to a real estate project, the first proviso to section 3 (1) of the Act provides that, project that are ongoing on the date of commencement of the Act and for which the 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 the Act..... In the case of **Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P. & Others** reported in 2021 SCC Online page-1044, the Hon'ble Supreme Court of India has observed that, “From the scheme of the Act, 2016, it's application is retroactive in character and it can safely be observed that the projects already completed or to which



the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the ongoing projects and future projects registered u/sec.3 to prospectively follow the mandate of the Act, 2016.” It is therefore clear from section 3 (1) of the Act and the observation of the Hon’ble Apex Court in the Newtech Promoters case (Supra) that real estate projects that are ongoing on the date of commencement of the R.E. (R&D) Act i.e. 1.5.2017 and also the projects, the construction of which commenced after the Act came into force, are required to be registered with the RERA u/sec. 3 (1) of the Act, and similarly projects which are completed and to which completion certificates have been granted before the Act came into force, the provisions of the Act would not apply. The duties and responsibilities of the promoter of a real estate project have certainly a connection with the registration of the project u/sec. 3 (1) of the Act as Sec. 5 (1) (b) of the Act clearly provides that, the application for registration u/sec. 4 (1) of the Act by the promoter shall be rejected by the Regulatory Authority if such application does not conform to the provisions of the Act or the rules or regulations made there-under. Sec. 7 (1) (a) of the Act also empowers the Regulatory Authority to revoke the registration granted under Sec. 5 if the promoter makes default in doing anything required by or under the Act or the rules or regulations made there-under. These provisions therefore make it clear that, it is the registration of the project u/sec. 3 (1) which obligates



its promoter with the duties and responsibilities under the Act. So the finding of the learned ORERA that, even if a project is completed prior to the cut off date i.e. 1.5.2017 and is not required to be registered u/sec. 3 (1) of the Act then also for violation of other sections of the Act, the promoter cannot escape from the liabilities, is in our considered opinion a misconception of law.

As the date of completion of the project and issuance of completion certificate in respect of it are the determining factors to ascertain whether a real estate project would be covered under the R.E. (R&D) Act or not, the same are to be analyzed in the light of the available facts in respect of the project in question. The appellant claims the project to have been completed on 12.1.2013 and in proof of his claim, he has produced the copy of the completion certificate purported to be issued by Mr. Mitul S. Shukla, who has been described as a BDA registered Architect in the certificate itself. Sec. 20 of the Odisha Development Authorities Act, 1982 authorises a registered architect or engineer or a person approved by the Authority to submit completion certificate in the prescribed form under regulations. The learned ORERA has made no discussion on the completion certificate and has given no finding thereon. This is a major omission in the impugned order, but as the hearing of the complaint case is stalled for more than one year because of this appeal, we are of the opinion that the validity of the completion certificate needs to be decided in this appeal instead of by the learned ORERA on a direction for



remand of the matter, to avoid further delay in the disposal of the complaint case. This Tribunal on going through the information available in the website of the BDA found that the name of Mr. Mitul S. Shukla was not there in the list of empanelled architects. On being directed by this Tribunal Mr. Mitul S. Shukla appeared in person and filed a printout of the soft copy of the purported extension of the period of his empanelment as an Architect under the Bhubaneswar Development Authority. On perusal of the said printout, it is seen that, Mr. Shukla's empanelment as an architect of the BDA, which was initially from 13.5.2009 to 12.5.2010, was purportedly extended by a rubber-stamp endorsement reading 'Validity renewed upto 12.5.2018', authenticated by the signature of Planning Member/Authorised Officer, BDA, Bhubaneswar. The date under the signature is not legible. The completion certificate which is issued as per the prescribed form i.e. Form-VI (Part-I) of the Bhubaneswar Development Authority (Planning & Building Standards) Regulations, 2008 i.e. the Regulations applicable under section 124 of the ODA Act, 1982 to the project at the relevant time, is completely silent as to on which date it was issued. Though the Architect has certified that the development of the building at Madhusudan Nagar Mouza of Bhubaneswar Municipal corporation had been supervised by him and it was completed on 12.1.2013 according to the plans sanctioned vide No.10684/BP/BDA dtd. 11.8.2009, but the name of the building and its structure have not been



mentioned. The building plan approval in respect of the project granted by the Bhubaneswar Development Authority u/sec. 16 (3) of the ODA Act, 1982 shows that permission for construction of the building i.e. Integrated Basement+G+4 storied building was granted in respect of plot no.26(P) and 63/1274 in Khata no.584 of Madhusudan Nagar Mouza, but the completion certificate relied on by the appellant shows the development of the building (without mentioning the structure) on plots no.A-6/7, 6/6 and 6/5 in the same mouza. Khata number of these plots has not been mentioned. The discrepancy with regard to the plot numbers of the project in the building plan approval and those in the completion certificate has not been explained by the appellant. It is further found that though the permission for construction of the project under section 16 (3) of the ODA Act was valid for a period of three years w.e.f. the date of its issue (11.8.2009) i.e. upto 10.8.2012, the project has been shown to be completed in the completion certificate on 12.1.2013 i.e. after five months. Sec. 20 of the ODA Act clearly provides that, every permission granted under Chapter-V of the Act shall remain valid upto three years during which period completion certificate from a registered architect or engineer or person approved by the Authority in the forms prescribed by regulations shall be submitted and if this is not done, the permission shall have to be revalidated before the expiration of this period. The permission for construction of the project granted by the BDA u/sec. 16 (3) of the ODA Act being a permission under Chapter-V of



the Act, the project should have been completed by 10.8.2012. Therefore the undated completion certificate showing the completion of the project on 12.1.2013 cannot be said to be in consonance with the ODA Act as the appellant has not led any evidence to show that the building plan approval dtd. 11.8.2009 had been validated before 10.8.2012 by the Development Authority for a specific period beyond the said date.

Considering the date of completion of the project as per the completion certificate, the project in question being a multi-storied one is covered under regulation 67 of the aforesaid BDA Regulations, 2008, but Part-II of the Form-VI i.e. Certificate For Execution Of Work As Per Structural Safety Requirements, which is required to be issued by the Empanelled Engineer/ Structural Engineer with counter signature of the owner, is found missing. Regulation 67, which is in addition to the general provision contained in Regulation 15 and partial modification thereof, requires that, the notice in Form-VI (Part-I and Part-II) regarding completion of the construction of a multi-storied building to the Development Authority shall be accompanied with particulars like, **A.** Three copies of plan of the completed building, **B.** A fee of Rs.5,000/-, **C.** Record of Rights (ROR) relating to ownership, **D.** Evidence to the effect that all public utility services, and in particular sewerage, drainage, water-supply and electricity have been linked to the main public utility system and **E.** No Objection Certificate from Fire Prevention Officer. However, the



completion certificate relied on by the appellant does not at all show whether the aforesaid particulars had accompanied the notice of completion certificate while being sent to the Bhubaneswar Development Authority, as claimed by the appellant. Even the copy of the bank challan of Rs.5,000/- in favour of the Bhubaneswar Development Authority i.e the particular under 'B' produced by the appellant shows that the same had been drawn on 28.2.2017 i.e. more than four years after the date of completion of the project, as claimed by the appellant. No reason has been shown as to why the fee deposited in favour of the BDA for issuance of occupancy certificate in respect of the project was after so much delay from the date of completion of the project. As mentioned earlier, the particulars under A, B, C, D and E of Regulation 67 have not been shown to have been submitted along with the Form No.VI (Part-I). In this context, the observation of the Hon'ble High Court of Orissa in the common Judgment dtd. 22.12.2025 passed in MSA No.44 of 2024 (Utkal Realtors Vrs. Akhil Agarwal and Another) and M.S.A. No.45 of 2024 (Utkal Realtors Vrs Neeraj Beri and Another) is noteworthy. The Hon'ble Court in the above mentioned appeals has categorically observed that,

“At the time of considering, whether construction of the project is complete, necessary paraphernalia under the Regulations shall have to be followed.....
.....



To elaborate further, Regulation 15 of the Regulations provides that, the Empanelled Architect or Engineer is to serve a notice of completion in Form-VI to the Authority concerned with an intimation that the building is completed in all respect as per the approved plan and as such notice is to accompany NOC from a Fire Prevention Officer alongwith copies of the plan of the completed building, fee, record of right relating to ownership, evidence with respect to public utility services, sewerage, drainage, water supply, electricity and thereafter, the same is certified subject to satisfaction reached at and if such an exercise is over and the completion certificate is issued at any time before the commencement of the Act, in the humble view of the Court, a project has to be held as complete irrespective of issuance of occupancy certificate thereafter.....”

The notice of completion in Form-VI (Part-I) produced by the appellant though claims the building to be completed on 12.1.2013, but the above mentioned particulars under A to E of regulation 67 are not shown to have been sent along with it. So, the project cannot be held to be complete from this perspective as well.

8) In view of the above mentioned detailed discussions in the preceding paragraph, we are of the considered opinion that, the completion certificate in respect of the project issued by Architect Mr. Mitul S. Shukla is a doubtful document and hence the completion of the project being shown therein as 12.1.2013, is not acceptable. The project is therefore to be held an ongoing one on the date of commencement of the R.E. (R&D) Act i.e. 1.5.2017 and accordingly to be under its fold.

Consequently, C.C. No.1001 of 2024 pending before the learned ORERA is held to be maintainable. The



impugned order dtd. 4.3.2025 passed by the learned ORERA in the aforesaid complaint case is therefore confirmed, to the extent it is held to be correct in the present order. The appeal being devoid of any merit stands dismissed on contest against the respondent no.2 and ex parte against the respondent no.1.

While parting with this order, we think it appropriate to direct the learned ORERA to expeditiously take up the hearing of the complaint case, which is stalled for more than one year, and dispose of it as early as possible.

Send a copy of this order alongwith record in C.C. No.1001 of 2024 to the learned ORERA for information and necessary action. Also send a copy of the order to the appellant-promoter.

Shri S.K.Rajguru
(Judicial Member)

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

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