



IN THE ODISHA REAL ESTATE APPELLATE TRIBUNAL
AT BHUBANESWAR

OREAT Appeal No. 102/2025

(Arising out of C.C. No. 1394 of 2024)

M/s. Utkal Builders Limited

...Appellant

-Versus-

1)Deepak Kumar Beshra

2)Itilaxmi Nayak

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

4)M/s Pradhan Builders Pvt. Ltd.

...Respondents.

For the appellant

: Mr. L.K.Maharana,advocate

For respondents no.1 & 2

: Mr. K.C.Prusty, Advocate

For respondent no.3

: 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 10.4.2025 passed by the Odisha Real Estate Regulatory Authority (hereinafter referred to as the learned ORERA) in Complaint Case No.1394 of 2024 is under challenge in this appeal. The appellant is the respondent no.1, the respondents no.1 & 2 of the appeal are the complainants and the respondent no.4 of the appeal is the respondent no.2 in the said complaint case. The respondent no.3 of this appeal is the learned ORERA. Prayer has been made in the appeal to set aside the impugned order dated 10.4.2025 wherein application dtd. 13.1.2025 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 respondents no.1 & 2 being the complainants filed Complaint Case no.1394 of 2024 before the learned ORERA claiming themselves to be allottees in respect of Flat No. 201 (3 BHK) in Block-‘F’ of the project ‘Utkal Vatika’, Bhubaneswar, a B+G+4 storied residential apartment building developed by the respondent no.1-promoter (present appellant). Respondent no.2 being the owner of the project land under plots no. 275, 274/6216 and 274/6223 in Khata Nos.928/2447, 928/ 3187 and 928/3192 measuring area Ac.0.299, a development agreement between him and the respondent no.1-promoter was executed on 20.8.2009. Consideration price for the aforesaid flat was agreed to between the parties as Rs.54,49,500/- together with other charges like electrical installation. Club membership fee, cost, PLC and parking charges (total amounting to Rs.58,41,400/-). Subsequently the flat allotted to the complainants was changed from 201 to 108 and indenture agreement was executed between the respondent no.2 and the complainants on 22.11.2017. Five days after i.e. on 27.11.2017 sale deed relating to the flat allotted to the complainants was executed and registered in their favour by the respondents and possession was delivered to them on 17.1.2018. The complainants alleged that despite being in possession of



their purchased flats since 17.1.2018 they are encountering many difficulties. The project building is having multiple cracks which indicate structural defects and this has resulted in seepage and water pouring affecting the complainants. There is no proper drainage system for the flat and as no sloping in the corridor area has been made, the water flowing from the project is pouring inside the complainant's flat. There is also water logging in the balcony and basin water logging in the floor. The complainants have alleged that inspite of their repeated requests and reminders the respondents have not paid any heed to the same. It is further alleged that instead of rectifying the aforesaid defects in the project, the respondents are collecting maintenance charges through one Utkal team Care Pvt. Ltd. The respondents are demanding the maintenance charge of Rs.12,276/- from the complainants though they are not liable to pay the same. With the aforesaid claims and allegations, the complainants prayed before the learned ORERA for a direction to the respondents to register the project with the ORERA u/sec. 3 (1) of the Act, obtain Completion Certificate and Occupancy Certificate from the competent authority and provide the same to them, carry out the repairing works of the structural defects of the project, shift the waste drainage pipe from the balcony of the project building to outside, repair the seepage in the eastern side wall of the master bed room and north side wall existing from the date of possession, provide proper drainage system in the balcony area and cure seepage as



well as leakage of the walls, not collect maintenance charges from the complainants and pay interest on the amount of Rs.53,33,800/- from 27.11.2017 to 17.1.2018.

On being noticed the respondent no.1-promoter appeared through his counsel on 18.12.2024 and after copies of complaint petition and other documents were supplied to him direction was made to file written show cause to the complaint petition on 13.1.2025. On the same day the respondent no.2 being found absent and postal tracking report showing the notice to have been duly delivered upon him on 30.11.2024, he was set ex parte. On the next date i.e. 13.1.2025 the learned counsel for the respondent no.1-promoter filed an application praying to dismiss the complaint case on the ground that it is not maintainable. After objection to the application was filed by the learned counsel for the complainant on 2.4.2025, the application dtd.13.1.2025 was heard on the same day and on 10.4.2025 the learned ORETA passed the impugned order rejecting the application dtd. 13.1.2025 of the respondent no.1 and holding the complaint case to be maintainable in the eye of law.

4) In the hearing of the appeal, the learned counsel for the appellant has submitted that, inspite of observing that the project does not require registration u/sec. 3 of the RERA Act, the learned ORETA 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 and the complaint is maintainable. 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. 13.1.2025 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 complainants has erroneously held that since the complainants have got a prima facie case with regard to the reliefs sought for in the complaint petition, it cannot be said to be maintainable. 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 as already mentioned earlier in paragraph-2.

5) On the other hand, the learned counsel for the respondents no.1 and 2 have stuck to the averments of the complainants in the complaint petition. It is further submitted that the complaint filed by the complainants is maintainable in the eye of law as the project in question with a number of deficiencies including structural defects is not yet completed and the common areas of the project have not been handed over to the association of allottees. Apart from these, the occupancy certificate in respect of the project is yet to be obtained from the BDA, Bhubaneswar and so the grounds taken by the appellant in the appeal are not sustainable in the eye of law. Claiming that there is no error in the impugned order dtd. 10.4.2025 passed by the learned ORERA in C.C. No.1394 of 2024, the learned counsel for respondents no.1 and 2 has asserted that the appeal being devoid of merit is liable to be dismissed.



No written objection has been filed by the learned counsel for the respondent no.3-Authority.

The appellant having not taken any steps for issuance of process against the respondent no.4, the appeal is deemed to have been dismissed against him.

6) The respondent no.1-promoter of the complaint case in his application dtd. 13.1.2025 for dismissal of the complaint had contended that the project after receiving plan approval from the BDA vide L.No.6647/BP/BDA dtd.21.4.2010 had been completed prior to the enactment of the RERA Act, 2016 and had also received duly certified completion certificate from the BDA empanelled Architect on 17.3.2016 and therefore the complaint before the learned ORERA was not maintainable. The respondent no.1 further contended that, after receipt of said completion certificate he applied to the BDA on 28.2.2017 for occupancy certificate. Asserting that no complaint u/sec. 31 of the Act is maintainable before 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 no.1 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 complainants in his written objection to the aforesaid application dtd. 13.1.2025 submitted that the respondent no.1 having not filed any show cause to the complaint, there is no scope for him to file the application for dismissal of the complaint on the ground of maintainability and therefore the application is liable to be rejected. It is further submitted that considering the reliefs prayed for by the complainants, the same are well within the jurisdiction of the learned ORERA to adjudicate and decide and therefore the application dtd. 13.1.2025 has no merit. It is further submitted that when the application of the respondent no.1 itself discloses that occupancy certificate in respect of the project has not been obtained, it is clear that the project is an ongoing one and hence the learned ORERA has the jurisdiction to adjudicate the claims of the complainant. The learned counsel for the complainants accordingly prayed for rejection of the application dtd. 13.1.2025 filed by the respondent no.1-promoter.

The learned ORERA after hearing both the parties passed the impugned order dtd. 10.4.2025 rejecting the application dtd. 13.1.2025 of the respondent no.1-promoter wherein the relevant portion is as follows :

“Perused the case record and gone through the complaint petition and found that the complainants have sought some reliefs at para-5 of their petition i.e. to direct the respondent to carry out the repairing work of the structural defects and to attend the pending works to register the project with ORERA, to obtain completion certificate and



occupancy certificate from the competent authority and to provide the same to the complainants etc. Perused the documents filed by the respondent no.1 and as per the maintainability petition, the completion certificate was obtained from the architect on 17.3.2016. In the completion certificate submitted by the respondent no.1, no date is mentioned to know when it was issued by the empanelled Architect. Thus the document seems not to be genuine and smells fishy. It is pertinent to mention here that, as per the RERA Act, 2016, the competent authority is the planning authority i.e. BDA, Bhubaneswar who has been empowered to issue completion certificate/occupancy certificate. If the project has been completed and related to pre-RERA, the judgment of the Hon'ble Apex Court in Newtech case is applicable. So the promoter is not liable to register the project within two months from 1.5.2017 under section 3 of the Act. But the question arises as to whether the promoter is liable for violation of other sections of the Act, except Sections 3 and 4. It is submitted by the learned counsel for the complainants that in this case the common areas of the project have not been handed over to the association of allottees and in the meantime the Odisha Apartments (Ownership and Management) Act, 2023 and the Rules, 2024 there-under have already come into force. The occupancy certificate is yet to be obtained from the BDA, Bhubaneswar. So, the plea of the respondent no.1 that the project has been completed prior to the enforcement of the RERA Act, is not acceptable by this Authority. As the complainants have got a prima facie case with regard to the reliefs sought for by them in the complaint petition, the same is maintainable in the eye of law. Hence, the maintainability petition filed by the respondent no.1 is hereby rejected as the same is devoid of merits.”



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. 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 under the Development Authority area of Bhubaneswar had been supervised by him and it was completed on 17.3.2016 according to the plans sanctioned vide No.6647/BP/BDA dtd. 21.4.2010, 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, 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 (21.4.2010) i.e. upto 20.4.2013, the project has been shown to be completed in the completion certificate on 17.3.2016 i.e. after 2 years and 10 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 20.4.2013. Therefore the undated completion certificate showing the completion of the project on 17.3.2016 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. 21.4.2010 had been validated before 20.4.2013 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 cases 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 through claims the building to be completed on 17.3.2016, 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 17.3.2016, 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.1394 of 2024 pending before the learned ORERA is held to be maintainable. The impugned order dtd. 10.4.2025 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 respondents.

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 almost a year, and dispose of it as early as possible.

Send a copy of this order alongwith record in C.C. No.1394 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)

Td