IN THE ODISHA REAL ESTATE APPELLATE TRIBUNAL AT BHUBANESWAR

OREAT Appeal No. 115/2024
(Arising out of C.C. No. 348 of 2023)

Sai Infrastructure & Builders
Represented by Deepak Poddar,
Managing Partner. ...**Appellant**.

-Versus-

1)Kishore Kumar Das
2)The Secretary, Odisha Real Estate Regulatory Authority, Bhubaneswar ...**Respondents**.

Counsel for the appellant : Mr. D.M.Mishra, Advocate
Counsel for respondent no.1 : Mr. K.C.Prusty, Advocate
Counsel 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
18.09.2026

The appeal is taken up for final order.

2) Order dated 25.6.2024 passed in Complaint Case No.348 of 2023 by the Odisha Real Estate Regulatory Authority (hereinafter referred to as the learned ORERA) is under challenge in this appeal. The appellant was the respondent no.1 and the respondent no.1 of this appeal was the complainant in the said complaint case. The respondent no.2 of this appeal is the Secretary, ORERA. Prayer has been made in the appeal to set aside the impugned order dated 25.6.2024 passed in Complaint Case No.348 of 2023 and to remand the complaint case back to the learned ORERA for fresh trial

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together with reliefs as deemed fit and proper by this Tribunal.

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

The respondent no.1 of this appeal being the complainant filed the aforesaid complaint case before the learned ORERA on 8.11.2023 and in the complaint petition it was submitted that the complainant intending to purchase a flat in the project "Shakun Palace", a S+4 storied residential building, the development of which the respondent no.1-promoter had undertaken at sabik mouza-Nayapalli (Hal mouza-Jayadev Vihar), Bhubaneswar. On the application of the complainant dtd.6.12.2010 and payment of a booking amount of Rs.5,10,000/-, the respondent no.1 agreed to sell 2 BHK Flat No.102, with a super built up area of 1340 sq. ft., in the first floor of the project. Agreement for sale in respect of the aforesaid flat was executed by the complainant and the respondent no.1 on 28.12.2010 wherein amenities like parking space, cable TV and telephone outlet in each flat, water supply from deep bore-well through overhead reservoir, power back up generator for common areas, intercom system to each flat, children's park, health club and gym etc. were promised to be provided. Subsequently on payment of the entire cost of the flat the respondent no.1-promoter executed registered sale deed in favour of the complainant in respect of the flat on 14.8.2012 and also delivered possession thereof to him. The complainant alleged that inspite of execution of the registered sale

deed in respect of the flat in favour of the complainant and delivery possession thereof to him, the respondent no.1 had still not obtained the required occupancy certificate in respect of the project from the competent authority and had also not taken steps for formation of association of allottees under the Odisha Apartments Ownership Act, 1982. The respondent no.1 had also not provided basement parking area and amenities like health club and gym for which the complainant brought his notice to the aforesaid deficiencies on 8.9.2021 with a request to complete the remaining works and to provide occupancy certificate. The respondent no.1-promoter however failed to comply with the aforesaid deficiencies in respect of the project. Claiming that the project is still an ongoing one in view of the aforesaid deficiencies and hence is under the cover of the R.E. (R&D) Act, 2016 and the Odisha Real Estate (Regulation & Development) Rules, 2017, the complainant further alleged that the respondent no.1-promoter had also not registered the project with the ORERA. With the aforesaid claims and allegations, the complainant prayed before the learned ORERA for a direction to the respondents to provide him occupancy certificate in respect of his flat, form the association of the flat owners of the project and handover the amenities to it, refund the proportionate amount to him with compound interest @18% for not providing the basement parking area, health club and gym and also to pay a compensation of Rs.2,00,000/- for his financial loss, mental agony and harassment.

Pursuant to the notice issued by the learned ORERA, though the respondent no.1-promoter appeared through his counsel on 31.1.2024 and took time thrice to file written show cause to the complaint, but on 10.4.2024 as the respondent no.1 was found absent and no step was also taken on his behalf, he was set ex parte. Hearing of the complaint case was taken up in absence of the respondent no.1 on 30.4.2024 and the complainant was heard on his complaint on that day. On 25.6.2024, the learned ORERA passed the impugned order directing the respondents to obtain occupancy certificate in respect of the project and handover the same to the complainant, provide the promised amenities and facilities as per the agreement for sale dtd. 28.12.2010 and to form an association of allottees in accordance with the Odisha Apartment (Ownership & Management) Act, 2023. It was made clear in the impugned order that the directions issued were to be complied within a period of two months from the date of order and in the event of failure in such compliance, the order shall be enforced as per law.

4) In the hearing of the appeal, the learned counsel for the appellant has submitted that the respondent no.1 had filed the complaint before the learned ORERA with a malafide intention when he was already in peaceful possession of the flat purchased by him for 12 years without any complain. It is further submitted by the learned counsel for the appellant that while taking possession of the flat the respondent no.1 had signed the memorandum of delivery of possession out of his own free

will confirming the fact that he had inspected the property and found the construction to have been completed in all respect with a further declaration that he was satisfied with the quality of construction and workmanship of the property and there was no violation of any of the terms and conditions of the agreement for sale dtd. 28.12.2010. It is further submitted that the liability of the appellant-promoter towards the allottees of the project are not permanent as section 14 (3) of the Act, 2016 extends the liability of the promoter in respect of structural defects and other defects in workmanship, quality or provision of service for a maximum period of five years from the date of taking of possession by the allottee. It is further submitted that in disposing of the complaint case ex parte against the appellant the learned ORERA has failed to apply the principle of natural justice. Terming the impugned order as unreasonable and unworkable, the learned counsel for the appellant has made the prayer as mentioned earlier in paragraph-2.

5) On the other hand, the learned counsel for the respondent no.1-allottee has submitted that the appellant has not been able to assail the claims and allegations of the respondent no.1 made in the complaint and the failures of the appellant to obtain the occupancy certificate, provide the amenities as promised in the sale agreement dtd. 28.12.2010 and also to form association of allottees are clearly evident from the memo of appeal. It is further submitted that all the prayers made in the complaint petition were in accordance with the provisions

of law and therefore the grounds on which the appeal has been preferred by the appellant are not sustainable in the eye of law. The learned counsel for the respondent no.1 has accordingly prayed for dismissal of the appeal for being devoid of any merit.

6) The Appellant-Promoter though claims in the appeal memo to have launched the project in the year 2010 and to have delivered possession of the flats therein to the respective allottees after executing registered sale deeds including the one executed on 14.8.2012 in favour of the respondent no.1, but has not made it clear as to when the project was completed. A completion certificate in respect of the project has been filed by the appellant with his written notes of submission dtd. 24.8.2026 showing the project to have been completed in December, 2011 i.e. prior to the commencement of the R.E. (R&D) Act, 2016 i.e. 1.5.2017, but it does not bear the date on which it has been issued. The completion certificate does not contain the certification that all the materials (type and grade) have been used strictly, in accordance with the general and detailed specifications and no provisions of the National Building Code, conditions prescribed or orders issued there-under, have been transgressed in the course of the work. Considering the time of completion of the project as claimed in the certificate, it should have been issued in the prescribed format i.e. Form-VI (Part-I and Part-II) of the BDA (Planning & Building Standards) Regulations, 2008 with the required particulars under regulation 67A to E of the aforesaid Regulations, but that

has not been done. The completion certificate filed by the appellant (Annexure-A) with the aforesaid infirmities is a doubtful document and hence cannot be relied upon. It is notable that, the appellant has also not challenged the applicability of the Act, 2016 to the project.

The appellant has alleged violation of the principle of natural justice in view of the disposal of the complaint case ex parte against him and has prayed for remand of the matter back to the learned ORERA for fresh hearing, but as mentioned earlier the appellant had made his appearance before the learned ORERA in the complaint case through his counsel on 31.1.2024 and after taking time thrice for filing written show cause to the complaint when he remained absent on 10.4.2024 and was also not represented, the case was heard in his absence on 30.4.2024 and the impugned order was passed on 25.6.2024. It is seen from the orders dtd. 18.3.2024 and 10.4.2024 of the complaint case that when time was allowed to the appellant on the third instance to file written show cause to the complaint it was made subject to payment of costs of Rs.1000/- by the appellant, but as neither the cost was paid by him nor any steps was also taken on his behalf, he was set ex parte on 10.4.2024. In our opinion, the appellant could have appeared on the next date i.e. 30.4.2024 and made a prayer to set aside the order setting him ex parte and to allow him to participate in the proceeding of the complaint case but failed to appear till the passing of the final order on 25.6.2024. No explanation has been made by the

appellant about the circumstance behind the default in his appearance. It is therefore clear that there was no undue hurry on the part of the learned ORERA in the hearing of the complaint in absence of the appellant. Apart from this, it is to be noted that, in assailing the impugned order the appellant has relied on a number of grounds, most of which relate to the merit of the facts in the complaint case, supported by documents. So, when there is no denial of fair opportunity to the appellant to present his defence in the complaint case and the correctness of the impugned order can be decided on the basis of the grounds taken by the appellant in the appeal and the documents filed by him in support of the same, we are of the opinion that a remand of the complaint case to the learned ORERA for a fresh hearing in the said forum is not necessary.

Section 11 (4) (b) of the Act, 2016 casts 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 local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be. Clause (e) of the said sub-section requires the promoter to enable the formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable. Section 14 (2) of the Odisha Apartment (Ownership and Management) Act, 2023 which came into force on

28.6.2023 and is applicable to all apartments, whether constructed before or after the date of its commencement, also provides that, it shall be the joint responsibility of the promoter and the allottees to form an association of allottees if either 50% of allottees or 7 allottees, whichever is lower, have been allotted with the apartments in a project. It is further provided in sub-section (3) of section 14 that the promoter shall enable submission of application by allottees for registration of association of allottees to the Competent Authority in the prescribed manner. The responsibility of the promoter to provide the facilities and amenities promised in the agreement for sale is clearly provided in section 11 (4) (a) of the Act.

The appellant has not disputed the fact that the occupancy certificate in respect of the project has not been obtained and the association of allottees has not been formed in accordance with the Odisha Apartment (Ownership and Management) Act, 2023. During the hearing of the appeal also the appellant-promoter filed an affidavit on 22.12.2025 affirming therein that occupancy certificate in respect of the project has been applied for on 3.10.2025 and the matter is being pursued to obtain the same as soon as possible. As regards the direction of the learned ORERA to form the association of allottees, the appellant has affirmed that, at present an association of allottees is functioning. However, he shall facilitate the formation of the association as per the Act, 2023 after receipt of the occupancy certificate in respect of the project. So far as the direction to provide the promised

amenities as per the agreement for sale dtd. 28.12.2010, the appellant has sworn in that the amenities have already been provided and this fact has been acknowledged by the allottee while taking possession of the flat. In support of this claim, the appellant has enclosed the copy of the Memorandum Evidence Delivery of Possession (Annexure-A/2). This undated document signed jointly by the appellant and the respondent no.1 contains the declaration of the respondent no.1 that having duly inspected the property i.e. Flat No.102 in the first floor of the project he finds its construction to have been undertaken and completed in all respect as per the specifications/facilities/amenities agreed upon. It is further stated by the respondent no.1 that there has been no infraction of any of the terms and conditions of the agreement dtd. 28.12.2010 and that he has no grievance on any aspect whatsoever. The respondent no.1 has specifically stated that after actual inspection of the property and the complex he takes the physical delivery of possession of the property complete in all respect. The memorandum of declaration of the of the respondent no.1-allottee under Annexure-A/2 is however a printed document on the letter head of the appellant-company and being prepared by the appellant cannot be regarded as a conclusive document to hold that amenities promised in the sale agreement dtd. 28.12.2010 like the basement parking area, health club and gym had been provided by the appellant at the time of delivering possession of the flat to the respondent no.1.

7) In view of the discussions made in the preceding paragraph, there remains no doubt that the appellant being the promoter of the real estate project "Shakun Palace", situated at Sabik mouza-Nayapalli (Hal Mouza-Jayadev Vihar), Bhubaneswar and under the fold of the R.E. (R&D) Act, 2016, has so far failed to obtain occupancy certificate in respect of the project, enable the formation of association of allottees of the project as per the provision under the Odisha Apartments (ownership and Management) Act, 2023 and also to provide amenities promised in the agreement for sale dtd. 28.12.2010 like the Basement Parking Area, Health Club and Gym. He is therefore statutorily liable to comply with the deficiencies as directed by the learned ORERA in the impugned order dtd. 25.6.2024 passed in C.C. No.348 of 2023 but the compliance relating to the promised amenities shall confine to the aforesaid three as prayed for in the complaint. The impugned order being correct as per the available facts and existing law, is hereby confirmed. Resultantly, the appeal being devoid of any merit stands dismissed on contest against the respondents. The appellant is directed to comply with the directions of the learned ORERA dtd. 25.6.2024 in C.C. No.348 of 2023 within two months of this order failing which he will be liable to be proceeded with as per law.

Send an authentic copy of this order together with the record in CC No.348 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)
Td (Tech./Admn. Member)

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