IN THE ODISHA REAL ESTATE APPELLATE TRIBUNAL AT BHUBANESWAR

OREAT Appeal No. 139/2025
(Arising out of C.C. No. 55 of 2025)

M/s Devavrat Homes Pvt. Ltd., represented through Sunita Choudhary, Managing Director. ...**Appellant**.

-Versus-

M/s Tirumala Infrastructure Development Pvt. Ltd., represented through Ashish Garg, Director. ...**Respondent**.

Counsel for the appellant : Mr. D.Devesh, Advocate
Counsel for the respondent : Mr. L.K.Maharana, Advocate

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

O R D E R
28.09.2026

The appeal is taken up for final order.

2) Order dated 16.9.2025 passed by the Odisha Real Estate Regulatory Authority (hereinafter referred to as the learned ORERA) rejecting the amendment application dtd. 6.8.2025 filed by the complainant, in Complaint Case No.55 of 2025 pending before it, is under challenge in this appeal. The appellant is the complainant and the respondent is also the respondent in the said complaint case. Prayer has been made in the appeal to set aside the impugned order dtd. 16.9.2025 passed in Complaint Case No.55 of 2025 and to allow the amendment application filed by the complainant on

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6.8.2025 together with any order as deemed fit in the interest of justice by this Tribunal.

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

The appellant being the complainant has filed C.C. No.55 of 2025 before the learned ORERA against the present respondent claiming in the complaint petition that, two registered irrevocable General Power of Attorneys, one dated 30.11.2017 and the other one dated 6.12.2017, were executed between the owners of the lands described in the schedules of the complaint i.e. the Officers Housing Cooperative Society Limited and the Complainant-Company. A registered development agreement dtd. 30.11.2017 was also executed between them in respect of the 'A' schedule lands of the complaint petition. The land owners and the Complainant-company had also entered into a Notarized Development agreement on 19.11.2017 relating to all the scheduled lands. The scheduled lands are located in mouza-Darada, Pipili Sasan, Pipili, Dist-Puri. While the development works in respect of the scheduled lands were commenced by the complainant, there was severe resistance from the adjacent land owners and local villagers on the ground of pending disputes relating to the same. On approach by the complainant the land owners instead of sorting out the issue unilaterally cancelled the Power of Attorneys as well as the Development Agreements executed between them and the complainant, on 7.2.2019. The complainant has alleged that after the unilateral cancellation of the

aforesaid documents the land owners executed another registered General Power of Attorney and entered into new Development Agreements with the respondent company on 16.9.2023. The complainant has claimed that being aggrieved over the unilateral cancellation of the registered General Power of Attorneys and the Development Agreements executed with him and subsequent execution of the aforesaid document with the respondent, he has filed a Civil Suit i.e. C.S. No.131 of 2024 in the Court of Civil Judge (Sr. Divn.), Pipili for declaration and permanent injunction and the same is still sub-judice. It is further alleged by the complainant that, in the meanwhile the respondent company without disclosing about the disputes relating to the scheduled lands and the previous General Power of Attorneys and the Development Agreements executed in favour of the complainant, managed to obtain building plan approval from the Bhubaneswar Development Authority on 28.2.2025. Pointing out to the fact that there is a specific clause in the documents executed between the land owners and the complainant company prohibiting unilateral cancellation of the documents, the complainant has alleged that the land owners have violated this clause by unilaterally cancelling the documents which they had executed with him and illegally executed the registered General Power of Attorneys in favour of the respondent company and also entered into the new development agreements with him. Reiterating the fact that the challenge made by him to the illegal cancellation of the

registered General Power of Attorneys and the Development Agreements executed earlier in his favour by the owners is awaiting adjudication by the Civil Court, the complainant prayed before the learned ORERA not to grant registration certificate to the respondent-company in respect of the proposed project 'Garden of Grace'.

Pursuant to the notice issued to the respondent-company, he appeared through his counsel on 6.8.2025. On the same day an amendment petition was filed on behalf of the complainant for certain amendments in the complaint petition. On the next date i.e. 16.9.2025 written objection to the amendment petition of the complainant was filed by the learned counsel for the respondent-company and on the same day the amendment petition was heard from both the sides. As mentioned earlier the learned ORERA rejected the amendment petition on the ground that the amendments sought for by the complainant, if allowed, will change the nature and character of the case.

4) In the hearing of the appeal, the learned counsel for the appellant has submitted that the unilateral cancellation of General Power of Attorneys and the Development Agreements executed by the owners of the scheduled lands in his favour is not binding on him as he had already commenced the development works relating to the lands and had also brought the dispute relating to the lands raised by the nearby land owners and local villagers to the notice of the owners seeking their co-operation in the matter. It is further submitted that the

subsequent execution of the General Power of Attorneys and the Development Agreements between the owners of the scheduled lands and the respondent-company are illegal when the execution of the similar documents between him and the owners of the scheduled lands were still in force. It is further submitted that the respondent-company has managed to register the proposed project with the ORERA and obtain the registration number on 25.7.2025 when Civil Suit relating to the dispute is pending in the Court of Civil Judge (Sr. Divn.), Pipili. The learned counsel for the appellant has pointed out that ORERA has granted registration number to the respondent-company without any opportunity of hearing to the appellant. It is further submitted that the respondent-company has played fraud with the ORERA in not revealing the pending Civil Suit and this complaint case and more particularly the order of status quo granted by the learned District Judge, Puri in a F.A.O. arising out of the Civil Suit. It is further submitted that fraud has been practised by the respondent-company not only by suppressing the aforesaid pendency of litigations but also by not affording any opportunity to the appellant to have his say in the grant of registration. The learned counsel for the appellant has emphasized on the fact that, as per the settled position of law, amendment should be allowed, if the cause of action for the amendment has arisen during the pendency of the suit, but the ORERA has lost sight of this aspect while rejecting the amendment petition. It is further submitted by the learned counsel for

the appellant that, as the complainant is entitled to file a fresh complaint case by incorporating the subsequent events that occurred during the pendency of the complaint case, the amendments sought for should have been allowed to prevent multiplicity of litigations. Further contending that merit of the case cannot be looked into at the time of deciding an amendment petition and that the respondent is not entitled to challenge the maintainability of the complaint case at the time of hearing of the amendment petition, the learned counsel for the appellant has drawn the attention of this Tribunal to the fact that if the amendment petition of the complainant will not be allowed, the complaint case will become infructuous and the complainant will have to file a fresh complaint case before the ORERA. With the aforesaid submissions, 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 has submitted that the object of filing the amendment application by the appellant is to change the nature and character of the complaint case and therefore it has been rightly rejected by the learned ORERA. It is further submitted that the owners of the scheduled lands have not been impleaded in the complaint case though the complainant has alleged that the owners of the land have unilaterally cancelled the registered General Power of Attorneys and the Development Agreements executed by them with the complainant. It is further submitted by the learned counsel for the respondent that registration

certificate has been granted by the ORERA in favour of the respondent for the project 'AVARTANA', but the allegation of the appellant is with regard to grant of registration to a project namely 'Garden of Grace'. The learned counsel for the respondent has further submitted that the initial prayer in the complaint was not to grant registration to the project developed by the respondent but the amendment application sought to substitute the said prayer with the prayer for revocation of the registration and therefore the amendment prayed for by the appellant if had been allowed would have completely changed the nature and character of the complaint and it has been rightly held so by the learned ORERA in the impugned order. The learned counsel for the respondent has claimed that in C.S. No.131/2024 filed by the appellant interim injunction has been refused on 16.2.2024 and the FAO No.3 of 2025 filed against the said order of refusal of injunction has also been dismissed. The learned counsel for the respondent has further claimed that even in CMP No.1408 of 2025 filed against the order of dismissal of FAO No.3 of 2025, the Hon'ble High Court of Orissa has observed that constructions, if any, shall be without prejudice to the rights of the parties and subject to the final result of the suit. In view of this order, no restraint exists relating to the scheduled lands either affecting the respondent or the registration of the project. It is further contended by the learned counsel for the respondent that the pendency of civil suit between the parties is no way relevant to the statutory process of the learned ORERA

and therefore converting the compliant from a proceeding opposing the grant of registration to a complaint for revocation of registration, has been rightly rejected by the learned ORERA. It is further submitted that, the appellant has no right to be heard at the stage of granting registration to the project by the ORERA and hence no statutory requirement has been violated. The learned counsel for the respondent has made it clear that the plea of multiplicity of litigations cannot override mandatory statutory procedure and as the amendment sought for was wholly outside the scope and jurisdiction of the complaint, the learned ORERA rightly rejected the same considering the legal inadmissibility and jurisdictional bar. Further contending that the appeal is not maintainable, both in facts and law, and devoid of any merit for absence of any error in the well–reasoned impugned order of the learned ORERA and also because of speculative as well as factually incorrect grounds, the learned counsel for the respondent has prayed for its dismissal.

6) As the subject matter of the present appeal is the rejection of the amendment petition dtd. 6.8.2025 filed by the complainant (present appellant) in C.C. No.55 of 2025, pending before the learned ORERA, the statutory provision relating to amendment of pleadings requires to be gone through. Amendment of pleadings is provided under order 6, rule 17 of CPC which is as under :

> "The the Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such

> amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:
>
> Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

Going through the amendment petition dtd. 6.8.2025 of the appellant in the complaint case, the same discloses that the cause of action for seeking the proposed amendments is the registration granted by the ORERA in favour of the respondent. It is alleged in the amendment petition that the respondent has suppressed the actual facts and disputes relating to the project land in obtaining the registration. The proposed amendments contain facts relating to the respondent's obtaining registration certificate in respect of the project 'AVARTANA' from the ORERA on the lands as per schedule of the complaint, the allegation of the complainant about the respondent's suppression of the pendency of civil suit relating to the scheduled lands, the passing of order of status quo by the District Judge, Puri in I.A. No.4 of 2025 arising out of F.A.O. No.3 of 2025, the allegation that the complainant has not been given opportunity of hearing before the grant of registration and also a change in the relief sought for in the complaint petition. As regards the reliefs sought for, the complainant in his amendment petition had sought to substitute his only earlier prayer for not granting registration certificate to the respondent in respect of the project "Garden of Grace" on the scheduled lands, with

the prayers to cancel the registration certificate, together with the prayer for cancellation of booking, if any, made by the respondent in favour of prospective buyers from the date of grant of registration certificate till the date of disposal of the complaint case, and to penalize the respondent as per law for suppressing the material facts in obtaining the registration certificate from the ORERA.

The respondent had objected to the prayer for amendment on the ground that the same was intended to delay the proceeding and to patch up the lacuna in the complaint petition. The respondent further contended that the prayers for cancellation of registration certificate and cancellation of booking, if any, and also imposition of penalty are completely new prayers and if allowed the same will change the nature and character of the complaint petition, which is not permissible in law. The respondent also pointed out to the discrepancy with regard to the project undertaken by it as in the original complaint prayer was made not to grant registration certificate in respect of the project "Garden of Grace", whereas in the proposed amendments prayer has been made to cancel the registration certificate in respect of the project 'AVARTANA'. The respondent further contended that the civil suit referred to in the complaint is between the complainant and the owners of the scheduled lands wherein the cancellation of the development agreements by the owners has been challenged, whereas in the complaint case the grant of registration certificate by the ORERA in favour of the respondent is the subject matter.

In praying for rejection of the amendment petition, the respondent had also contended that there was no restraint order in respect of the project land adverse to the interest of the respondent and the complaint case was not maintainable for want of necessary party i.e. the owner of the project land.

As mentioned earlier, the learned ORERA has rejected the amendment petition dtd. 6.8.2025 of the complainant on the only ground that the amendments sought for by the complainant will change the nature and character of the case. No discussion has been made at all and it has not been explained by the learned ORERA as to how the proposed amendments, if allowed, will change the nature and character of the complaint case.

It is clear from the provision under Order 6, Rule 17 CPC that, the court may allow amendment of pleading sought for by either party at any stage of the proceedings, if such amendments are necessary for the purpose of determining the real questions in controversy between the parties and cause no injustice to the other side. However, a rider has been put on the court not to allow amendment after commencement of the trial except when the court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before commencement of the trial.

In the present case, amendments sought for through a complete change in the prayer portion of the complaint petition by incorporating the facts relating to the grant of registration by the ORERA in favour of the

respondent during the pendency of the complaint case and the suppression of facts by the respondent in obtaining the said registration, have been objected to by the respondent on the ground that the same are not permissible as that will completely change the nature and character of the complaint case.

In the case of **M/s. Revajeetu Builders & Developers vs M/s. Narayanaswamy & Sons and Others reported in 2009 (II) OLR (SC)-815**, the Hon'ble Supreme Court of India have categorically held that, *"The general principle is that, courts at any stage of the proceedings may allow either party to alter or amend the pleadings in such manner and on such terms as may be just and all those amendments must be allowed which are imperative for determining the real questions in controversy between the parties."* In the said case, the Hon'ble Apex Court have laid down the basic principles, which ought to be taken into consideration while allowing or rejecting the application for amendment, as follows :

1)Whether the amendment sought is imperative for proper and effective adjudication of the case?

2)Whether the application for amendment is bona fide or mala fide?

3)The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

4)Refusing amendment would in fact lead to injustice or lead to multiple litigation;

5)Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? And

6)As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application:

In the case of **Sampath Kumar vs Ayyakannu and Another reported in AIR 2002 Supreme Court-3369**, the plaintiff of a suit instituted in the year 1988 had moved an application under Order 6, Rule 17 of CPC to amend his plaint by substituting the earlier prayer for issuance of permanent prohibitory injunction with the prayer for declaration of title to the suit property and consequential relief of the delivery of possession. The prayer for amendment sought before the commencement of trial of the suit was opposed on behalf of the defendant on the ground that the plaintiff was changing the cause of action through amendment which was not permissible. The trial court rejected the application for amendment and during the course of its order the court observed that the appropriate course for the plaintiff is to bring a new suit. This order has been maintained by the High Court in revision. The Hon'ble Apex Court in the Civil Appeal No.5839/2002 while deciding the question as to whether it is permissible to convert through amendment a suit merely for permanent prohibitory injunction into a suit for declaration of title and recovery of possession held as follows :

"It is true that the plaintiff on the averments made in the application for amendment proposes to introduce a cause of action which has arisen to the plaintiff during the pendency of the suit. According to the defendant the averments made in the application for amendment are factually incorrect and the defendant was not in

possession of the property since before the institution of the suit itself.

In our opinion, the basic structure of the suit is not altered by the proposed amendment. What is sought to be changed is the nature of relief sought for by the plaintiff. In the opinion of the Trial Court it was one to the plaintiff to file a fresh suit and that is one of the reasons which has prevailed with the Trial Court and with the High Court in refusing the prayer for amendment and also in dismissing the plaintiffs revision. We fail to understand, if it is permissible for the plaintiff to file an independent suit, why the same relief which could be prayed for in a new suit cannot be permitted to be incorporated in the pending suit. In the facts and circumstances of the present case, allowing the amendment would curtail multiplicity of legal proceedings."

The Hon'ble Apex Court in the case of Sampath Kumar (Supra) further categorically held that, "*in order to avoid multiplicity of suits it would be a sound exercise of discretion to permit the relief of declaration of title and recovery of possession being sought for in the pending suit. The plaintiff has alleged the cause of action for the reliefs now sought to be added as having arisen to him during the pendency of the suit. The merits of the averments sought to be incorporated by way of amendment are not be judged at the stage of allowing prayer for amendment.*"

In the present case, the appellant sought to amend his complaint petition when registration certificate was granted by the ORERA in favour of the respondent relating to the project proposed to be developed on four plots of the scheduled 'B' lands i.e plot no.433 under Khata no.429/119, plot no.432 under Khata no.279, plot No.431 under Khata no. 429/191 and Plot no.454 under Khata

no.429/236 and lands under four other khatas which are not among the schedule lands. The substitution of the initial prayer to not grant registration by the new prayer for revocation of registration certificate granted in favour of the respondent is natural and obvious as the initial prayer has become infructuous and meaningless after the grant of registration certificate in favour of the respondent during the pendency of the complaint case. The amendments sought for are necessitated because of the aforesaid change in circumstance. If amendment prayed for is not granted then the appellant will have to file a fresh complaint, which is certainly not desirable as it would lead to multiplicity of legal proceedings. The amendments sought are therefore imperative for proper and effective adjudication of the case. Trial of the complaint case had not started when the amendments were sought for and considering the circumstance under which the amendments are sought for, there has been no delay in seeking the amendment. The respondent has not yet filed his written show cause to the complaint and therefore there is no question of any prejudice to him as he will have all the opportunity to file reply to the case of complainant if amends are allowed. The contention of the respondent that, the initial prayer for not granting registration was in respect of a project namely 'Garden of Grace', but the impugned registration certificate has been granted in respect of a project namely 'Avartana', is found to be correct, but the fact remains that the grievance of the appellant also related to the scheduled lands in

respect of which Irrevocable General Power of Attorneys and Development Agreements were executed between the land owners and the appellant prior to the execution of the fresh General Power of Attorneys and Development Agreement between the land owners and respondent. Relating to the scheduled lands also civil suit between the appellant and the land owners is pending. So despite inconsistency in the name of the project mentioned in the complaint petition and the name of the project in respect of which registration certificate has been granted, the subject matter of the complaint relates also to the aforesaid four plots of 'B' scheduled lands. The orders passed so far in the civil litigations between the appellant and the owner of the schedule lands are immaterial to the subject matter of the present dispute between the parties. The new reliefs sought for through the proposed amendments in our opinion will no way change the nature and character of the complaint case proceeding pending before the learned ORERA.

As the proposed amendments in the contents of the complaint petition having been sought for on account of the development during the pendency of the complaint case i.e. grant of registration certificate in favour of the respondent to develop the project on the four plots of 'B' scheduled lands, the same are not new but relevant additions to the existing facts therein. The proposed amendments in the reliefs sought for in the complaint petition are also obvious and natural due to the aforesaid development during the pendency of the complaint case,

but in para-3 (b) of the amendment petition dtd. 6.8.2025, the prayer for cancellation of booking should be with respect to the four plots of 'B' scheduled lands as mentioned in clause (a) of the same para, and not the suit lands of C.S. No.131 of 2024. As already mentioned earlier, the merits of the proposed amendment are not required to be looked into at this stage.

7) In view of the entire discussions made in the preceding paragraph, we are of the opinion that the learned ORERA has committed an error in not allowing the amendments sought for by the complainant vide his petition dtd. 6.8.2025 filed in C.C. No.55 of 2025, to the above extent. The impugned order dtd. 16.9.2025 passed by the learned ORERA being illegal is therefore set aside. The appeal is accordingly allowed, in part, on contest against the respondent. The appellant is directed to file his consolidated complaint petition incorporating the proposed amendments therein, to the extent allowed in this order, positively within three weeks of this order.

Send an authentic copy of this order together with the record in CC No.55 of 2025 to the learned ORERA for information and necessary action. Also send a copy of this order, each to the appellant and the respondent.

Shri S.K.Rajguru
(Judicial Member)

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

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