

OREAT Appeal No.17/2023

33). 28.11.2025

The appeal is taken up for final order.

2) Already heard Mr.P.C.Mishra, learned counsel for the appellant, Mr.C.Ray, learned counsel appearing for the respondent nos.1 & 2 and Mr.B.Nayak, learned counsel for the respondent no.5-Regulatory Authority.

3) Aggrieved by the order dated 1.12.2022 passed by the Odisha Real Estate Regulatory Authority (hereinafter referred to as 'the learned Regulatory Authority') in Complaint Case No.160 of 2022, the appellant who was the complainant therein has filed this appeal praying to set aside the said order and to pass an order for revocation/ suspension/ cancellation of the registration certificate issued by the ORERA in favour of the respondent no.1. The respondents no.1 & 2 of this appeal were also the respondents no.1 & 2 of the complaint case. The respondents no.3 & 4, who also were the respondents no.3 & 4 of the complaint case, though were initially impleaded in this appeal but were struck out from the cause title vide order dtd. 21.6.2023 on the memo of the appellant. Respondent no.5 of this appeal is the learned Regulatory Authority, who has passed the impugned order dated 1.12.2022.

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

On 27.5.2022, the present appellant filed the aforesaid complaint case before the

(ii)

learned Regulatory Authority submitting that she had purchased a land i.e sub-plot no.12 with an area of Ac.0.045.9 from plot no.280 in khata no.412/383 of Rudrapur Mouza vide registered sale deed dated 12.5.2010 from respondents no.3 & 4, who were the rightful owners of the aforesaid plot along with their brother Madhusudan Dey. Prior to the sale, the respondents no.3 & 4 had divided their respective shares in plot no.280 to different sub-plots leaving a 20 feet wide road for ingress and egress of the intending purchasers. The complainant after purchasing the sub plot no.12 got it mutated in her name in mutation khata no.412/542, plot no.280/2791. After getting due permission from the BDA vide correspondence dated 8.11.2011, the complainant constructed a G+3 building on her land. The main gate of the complainant's three storied building is facing to the northern side of the building i.e the 20 feet wide road and she has also opened another gate of her building on the western side to use the road. It is alleged by the complainant that the respondent no.2-builder is claiming the road as his land along with other areas (sub-plots) purchased from respondents no.3 & 4 and tried to block the road used by the complainant. As a result, the complainant filed a criminal proceeding under Section 144(2) of Cr.P.C before the Addl. DCP-cum-Executive Magistrate, Bhubaneswar

(iii)

against the respondent no.2 and when he further tried to encroach upon the road, the complainant filed a civil suit in the court of Civil Judge (SD), Bhubaneswar for declaration and permanent injunction together with an I.A under order 39, Rules 1 & 2 CPC for temporary injunction against the respondent no.2, wherein order of status quo has been passed and is in force till date. The complainant further alleged that after obtaining plan from the BMC in the name of its sister company (respondent no.1) the respondent no.2 applied for the certificate of registration before the ORERA and accordingly certificate of registration in favour of the respondent no.1 has been issued. The complainant categorically alleged that the respondent no.1 identifying itself as a sister company of respondent no.2 has fraudulently got the approved plan of the BMC and registration certificate from the ORERA and is now trying to close down the road to stop the complainant from enjoying the disputed land as road and is also making construction of the main building of the project closing down the east and south side of the complainant's building without leaving vacant space for ventilation. With the aforesaid averments the complainant prayed to revoke/cancel/annul the registration certificate (No.MP/19/2020/00394 dated 2.11.2020) issued in favour of

(iv)

respondent no.1 by the ORERA in respect of the project "Assotech Pride (Phase-I)".

On being issued notice by the learned Regulatory Authority, the respondents no.1 & 2 appeared through their counsel on 31.5.2022 and thereafter prayed for time to file their written show cause to the complaint on four dates. On 11.10.2022 when the case was posted for filing of show cause by the respondents no.1 & 2, their counsel filed a petition praying to dismiss the complaint case on the point of maintainability. On the next adjournment i.e 1.11.2022 the complainant filed objection to the petition dated 11.10.2022. The learned Regulatory Authority heard both the parties on the petition dated 11.10.2022 on 15.11.2022 and vide the impugned order dated 1.12.2022 were inclined to dismiss the complaint case on the ground that it is not maintainable in law.

5. In the hearing of the appeal, the learned counsel for the appellant has submitted that, the learned Regulatory Authority have erroneously held the complaint case to be not maintainable only because a civil case is pending before the court of Civil Judge (senior Division), Bhubaneswar and the learned Regulatory Authority have no jurisdiction to decide either the title or easementary right of a party in respect of a land. It is emphasized by the learned counsel that only the learned

(v)

Regulatory Authority is entitled to cancel/revoke/annul the registration certificate granted in respect of a real estate project and civil court has no power in this regard. The learned counsel has termed the dismissal of the complaint case on the ground of pendency of civil case to be bad in the eye of law. It is further contended that if the registration certificate issued in respect of the project by the respondent no.1-promoter is not revoked/cancelled in spite of being based on falsehood, it will amount to perpetuation of illegality. Further contending that the dismissal of the complaint case by the learned Regulatory Authority is highly illegal and arbitrary, the learned counsel for the appellant has made the prayer as mentioned earlier in paragraph-3.

6. On the other hand, the learned counsel for the respondent no.1 has submitted that the complaint case has been properly adjudicated by the learned Regulatory Authority and its dismissal on the ground of being not maintainable in the eye of law is absolutely correct. It is further contended that the respondent no.1 has never disturbed the possession of the appellant in any manner; rather it is the appellant who has constructed her building violating the norms of the planning and building standard regulations under the ODA Act. The learned counsel for the

(vi)

respondent no.1 has claimed that the learned Authority under the ODA Act has categorically held that the appellant has undertaken unauthorised construction of her G+3 building and therefore the complaint filed before the learned Regulatory Authority is a gross misuse of the process of law. It is further contended that the appellant is not an aggrieved person to be entitled to file a complaint under Section 31 of the RERA Act as she is neither an allottee, nor an association of allottees nor a voluntary consumer association. Asserting the principle of law that a person can not raise the same grievance before two judicial forums, the learned counsel for the respondent no.1 has submitted that the appellant having already sought for redressal of her grievance by filing Civil Suit No.1718 of 2020 and Civil Suit No.1191 of 2022, which are still pending for adjudication before the competent civil court, she is not entitled to approach the learned Regulatory Authority for revocation of the registration certificate granted in respect of the project as this amounts to forum shopping. With the aforesaid submissions, the learned counsel for the respondent no.1 has prayed for dismissal of the appeal.

7. The main contentions of the respondent no.1 in the petition dated 11.10.2022 challenging the maintainability of the Complaint Case no.160 of 2022 are; (i) the

(vii)

appellant being neither an allottee nor an association of allottees nor a promoter nor a real estate agent, does not come under the category of "aggrieved person" so as to be entitled to file a complaint under Section 31 of the RERA Act before the learned Regulatory Authority and (ii) the grievance of the appellant against the respondent no.1 having already been agitated before the civil court and as two civil suits relating to the same are pending for adjudication, the learned Regulatory Authority has no jurisdiction to grant the relief prayed for in the complaint.

On the other hand, the appellant had objected to the petition dated 11.10.2022 on the grounds that, filing of civil suit is not a bar to invoke the jurisdiction of the learned Regulatory Authority if the relief is available under the RERA Act, and the respondent no.1 having obtained the registration certificate in respect of its project by practising fraud, it is the duty of the learned Regulatory Authority to withdraw the illegal certificate as soon as the fact came to its knowledge.

On perusal of the impugned order dated 1.12.2022, it is found that the learned Regulatory Authority in dismissing the complaint case for being not maintainable in law has come to the following conclusions:

(viii)

- (i) there has been no suppression of any material fact or presentation of misleading fact before the Regulatory Authority in obtaining the registration certificate.
- (ii) when both the parties have opportunity to put forth their respective cases relating to use of plot no.280 in the civil court, there is no reason to revoke the registration certificate granted in favour of the respondent no.1, who is constructing an apartment on his own land obtaining sanction from the local authority.
- (iii) from the allegations made by the complainant, no contravention of the Act, Rule and Regulations is noticed.
- (iv) The matter is exclusively coming within the jurisdiction of the civil court to decide and both the parties are to abide by the direction of the civil court relating to the land in dispute and therefore the complaint case is not maintainable in law.

As regards the appellant's entitlement to file the complaint under Section 31 of the RERA Act, which has been challenged by the respondent no.1, the said provision needs to be gone through. Section 31 (1) of the Act provides as under ;

"Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter, allottee or real estate agent, as the case may be.

(ix)

Explanation- For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force."

The inclusion of the association of allottees or any voluntary consumer association registered under any law for the time being in force in the term "person" in the above explanation means, there are also others apart from these two who come under this term. This is obvious because "**Person**" under **Section 2 (zg) of the Act** includes, (i) an individual; (ii) a Hindu undivided family; (iii) a company; (iv) a firm under the Indian Partnership Act, 1932 (9 of 1932) or the Limited Liability Partnership Act, 2008 (6 of 2009), as the case may be; (v) a competent authority; (vi) an association of persons or a body of individuals whether incorporated or not; (vii) a co-operative society registered under any law relating to co-operative societies; (viii) any such other entity as the appropriate Government may, by notification, specify in this behalf.

A combined reading of Section 2(zg) and Section 31(1) of the Act therefore makes it clear that an individual who is not an allottee may also file a complaint under Section 31 (1) of the Act, if he or she is aggrieved by any violation or contravention of the provisions of the Act, or the Rules and Regulations made

(x)

thereunder against any promoter, allottee or real estate agent. So, the requirement under Section 31(1) of the Act is that the respondent of a complaint must be either a promoter or an allottee or a real estate agent. This is however not the vice versa in the case of a complainant, who may be any one among Section 2(zg) of the Act apart from the registered association of allottees or the registered voluntary consumer association as per the explanation under Section 31 (1) of the Act. It is therefore to be concluded that, the contention of the respondent no.1 in the petition dated 11.10.2022 challenging the maintainability of the complaint case as well as in the written show cause to the appeal memo that an aggrieved person under Section 31 (1) of the Act is restricted only to mean and include allottees, association of allottees or any voluntary consumer association registered under any law for the time being in force, is misconceived. The appellant being an "individual" under Section 2 (zg) (i) of the Act and alleging contravention of Section 7 (1) (c) of the Act is undoubtedly entitled to file the complaint case against the respondent no.1- promoter and others, because she is aggrieved by the grant of registration certificate in favour of the respondent no.1 in respect of the whole of the plot no.280 of Khata No.412/383, of

(xi)

which her purchased land under Plot No.280/2791 in khata No.412/542 is a part.

Now coming to the question as to whether the appellant having already approached the competent civil court by filing two civil suits (C. S. No.1718 of 2020 and C.S. No.1191 of 2022) pending before the court of Civil Judge (Senior Division), Bhubaneswar, is still entitled to get the relief claimed before the learned Regulatory Authority in the complaint case for the same grievance, it is to be noted that, as per section 79 of the Act, no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act. The appellant in the complaint case had made the prayer to pass an order for revocation of the registration certificate in respect of the project "Assotech Pride (Phase-I)" under Section 7 (1) (c) of the Act. Certainly the court of Civil Judge (S.D.), Bhubaneswar is not entitled to grant this relief. In Civil Suit No.1718 of 2020, the present appellant as plaintiff has prayed to declare that she and her family members have every right to enjoy the suit land as their road and to permanently restrain the defendant no.1

(xii)

(respondent no.2 in this appeal) from making disturbance in any manner in her peaceful use of the suit land as her road along with her family members. In Civil Suit No.1191 of 2022 the appellant apart from making the prayer for declaration of right, as aforesaid, has also prayed for permanent injunction against the defendant no.3 (respondent no.1 of this appeal) restraining him from making any permanent construction over the disputed road. So considering the prayers made by the present appellant in the two civil suits, we are of the opinion that, the prayer made before the learned Regulatory Authority being a totally different one and can be granted by it within its power, is certainly not illegal.

The suit property as described in the schedule of the plaint of the aforesaid two suits is Khata No.412/383, plot No.280 of Rudrapur Mouza with a total area of 3400 sqft. i.e Ac.0.78.05 out of a total area of Ac.1.250. In the complaint petition before the learned Regulatory Authority the appellant has described her land purchased from respondent nos.3 and 4 as sub-plot no.12 out of plot no.280 under khata no.412/383 of Rudrapur mouza with an area of Ac.0.045.9. After mutation of her purchased land she has described it as plot no.280/2791 under khata no.412/542 with an area of Ac.0.045. From the

(xiii)

copy of the ROR of the main plot no.280 recorded in the name of respondent nos.3 & 4 of the complaint, it is seen that the same under khata no.412/383 was Ac.0.1860. The claim of the appellant that the respondents no.3 and 4 had divided the plot no.280 to sub-plots out of which she had purchased sub-plot no.12 and that the respondent no.1 promoter has purchased some other sub-plots of plot no.280 are not disputed by the respondent no.1. The respondent no.1-promoter has not stated about the exact description of the land on which it is developing the project. Definitely the project land is a part of plot no.280 and can not be the whole plot no.280. It is however noticed that the registration certificate No.MP/19/2020/00394 dated 2.11.2020, which has been superseded subsequently by the registration certificate No.MP/19/2021/00585 dated 8.11.2021, has been granted in respect of the project in favour of the respondent no.1-promoter and the same describes the project as "Assotech Pride (Phase-I)" and the project land to be comprised of a number of plots in different khatas including the plot no.280 under khata no.412/383. The area of plot no.280 under khata no.412/383 in the registration certificate dated 8.11.2021 has not been mentioned. So, when plot no.280 has been undisputedly divided into a number of sub-plots, one of which has been purchased by the appellant, the registration certificate dated

(xiv)

8.11.2021 granted in respect of the whole of the plot no.280 in khata no.412/383 is certainly erroneous and also as a result of the default on the part of the promoter under Section 7(1) (a) of the Act in view of the fact that under Section 4(2) (I) (A) he should have made a declaration supported by affidavit as to over what exact extent of plot no.280 under Khata No.412/383 he has legal title. By not specifying the aforesaid fact and mentioning the whole of the plot no.280 to be under his ownership in the application for registration of the project, the respondent no.1 has certainly made the default under Section 7(1) (a) of the Act. The learned Regulatory Authority also without verifying the fact of division of the plot no.280 to sub-plots has granted the registration certificate in respect of the project for the whole of the plot no.280 in khata no.412/383. When the property of the appellant under plot no.280/2791 in khata no.412/542 measuring Ac.0.045 is a part of plot no.280 under khata No.412/383, it is obvious that she is aggrieved by the grant of registration certificate in respect of the project of the respondent no.1 for whole of the plot no.280 in khata No.412/383. Though it is clear that the learned Regulatory Authority is not entitled to decide the question of the right of passage of the appellant across plot no.280 of khata no.412/383 and also the prayer for

(xv)

permanent injunction against the respondents no.1 & 2 in respect of it, but is certainly entitled to reconsider the registration certificate granted erroneously in respect of the whole of the plot no.280 under khata No.412/383 due to the aforesaid default of the respondent no.1.

It may be noted here that during hearing of the appeal when the learned counsel for the appellant submitted that registration of the project has been granted in respect of the entire plot no.280 and the appellant is aggrieved by this fact, the learned counsel for the respondent no.1 admitting the disputed road to be a part and parcel of plot no.280 submitted that there will be no obstruction to the appellant to use the road. Respondent no.2, Mr.Sashanka Sekhar Rout, the representative of the respondent no.1 has also filed an affidavit affirming that the respondent no.1 undertakes not to obstruct the appellant from using the approach road to her house on plot no.280/2791 in khata no.412/542 measuring Ac.0.045 in mouza Rudrapur. However, the appellant's right to use the disputed road being a matter to be decided by the civil court, this Tribunal refrains from giving any finding on the same.

9. In view of the discussions made in the preceding paragraph, we are of the opinion that, the appellant is entitled to file the

Complaint Case No.160 of 2022 against the respondent no.1 and others for default of the respondent no.1 under Section 7 (1) (a) of the Act. The grant of the registration certificate (No.MP/19/2021/00585) dated 8.11.2021 in respect of the whole of the plot no.280 in khata No.412/383, is erroneous and therefore requires correction.

Accordingly, in stead of directing the learned Regulatory Authority to revoke the registration certificate dated 8.11.2021, we direct it to mention in the project land the actual part of the plot no.280 in khata no.412/383 which is under the ownership of the respondent no.1, with the description of its Khata number, plot number and area, in place of the whole of the plot no.280 under Khata No.412/383. The respondent no.1-promoter shall confine the development work of the project in question only to the part of the plot no.280 under his ownership and not beyond that, so far as this plot is concerned.

In the result, the impugned order dated 1.12.2022 of the learned Regulatory Authority dismissing the Complaint Case No.160 of 2022 is hereby set aside. Accordingly, with the aforesaid directions, the appeal is disposed of on contest against the respondents no.1, 2 & 5.

(xvii)

Send an authentic copy of this order along with the record of the complaint case to the learned Regulatory Authority for information and necessary action. Also send a copy of this order, each to the appellant and respondent No.1-promoter.

Justice P.Patnaik
Chairperson

Shri S.K.Rajguru
(Judicial Member)

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

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