

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P. (C). No.18799 of 2021**

***Bimalendu Pradhan***

***..... Petitioner***

**Mr. Mohit Agarwal**

***-versus-***

***State of Odisha & Others***

***..... Opp. Parties***

**Mr. Ashok Parija, learned AG for the State**

**Mr. S.S. Mohanty, Advocate for the Intervener**

**Dr. N. Swain, Advocate with**

**Mr. A. Mahanta, Advocate for ORERA**

**CORAM:  
THE CHIEF JUSTICE  
JUSTICE R.K.PATTANAİK**

**Order No.**

**ORDER  
12.05.2022**

6. 1. On the very first date of the hearing of this petition on 7<sup>th</sup> July, 2021 Court had noted the central issue which is the inconsistency between the Odisha Apartment Ownership (Amendment) Rules, 2021 and Sections 11(4)(e)(f) and 17 of the Real Estate (Regulation and Development) Act, 2016 ('RERA Act').
2. In a subsequent order dated 5<sup>th</sup> April, 2022 the Court had noted that in a letter addressed by the Odisha Real Estate Regulatory Authority (ORERA) to the Inspector General of Registration (IGR) on 14<sup>th</sup> May, 2019 attention was drawn to Section 17 (1) of the RERA Act specifically stating that requests for registration of conveyance deeds in respect of real estate projects should be rejected if the ownership of the common areas is not conveyed to the association of allottees as is required under the said provision. This Court then asked ORERA to make clear its stand on the main prayer in the petition which was for declaring the Odisha

Apartment Ownership (Amendment) Rules 2021, which mandates that an association of apartment owners will be formed in an apartment only after the execution of conveyance deeds, on the ground that it is repugnant to Section 11(4) (e), Section 11(4)(f) and Section 17 of the RERA Act.

3. Pursuant to the above orders, a series of the affidavits have been filed which the Court will refer to hereafter. ORERA has filed an affidavit on 21<sup>st</sup> April, 2022 claiming that the Odisha Apartment Ownership (Amendment) Rules 2021 binds the promoters as well as allottees and that there is no ambiguity to that extent between the RERA Act and the Odisha Apartment Ownership (Amendment) Rules 2021, since the proviso to Section 11(4) (f) deals with enactment of local laws and that local laws shall prevail. The said averment misses the point that the central challenge in this petition is precisely to such exception created for local laws as that would completely defeat the purpose of Section 17 read with Section 11(4) (e) (f) of the RERA Act.

4. In addition, Mr. B.P.Tripathy, counsel appearing for ORERA has drawn attention of the Court to the format of the agreement for the sale which is part of the Odisha Real Estate (Regulation and Development) Rules, 2017 (ORERA Rules) in which format Clause-G talks of individual apartment owners being conveyed pro rata share in the 'common areas' as defined under Section 2 (n) of the RERA Act. Such a clause is in fact contrary to Section 11(4) (e) of the RERA Act read with Section 17 (1) thereof.

5. At this stage, it must be noticed that counsel for the State, the counsel for RERA and counsel appearing for the Builders/Builders' Associations have referred to the orders

passed by the Supreme Court of India in W.P.(C) No.1216 of 2020 (*Ashwini Kumar Upadhyay v. Union of India & Others*) and batch.

6. This Court has perused the orders dated 4<sup>th</sup> October, 2021, 14<sup>th</sup> February, 2022 and 18<sup>th</sup> April, 2022 passed by the Supreme Court in the said Writ Petition. It is plain from the said orders that the Supreme Court is seized of one particular issue regarding 'absence of a uniform or model' agreement to sell under the RERA Act. Accordingly, this Court is not inclined to accept the submission of the counsel for the Opposite Parties that this Court should await the outcome of the said writ petitions before proceeding to hear this petition. The issue here is regarding the actual registration of sale deeds in which the share in the common areas is conveyed to individual apartment owners, and not to an association of them, as mandated by Section 17 of the RERA Act and whether such sale deeds can be legally sustained? It appears that the said issue is not being considered by the Supreme Court in aforementioned batch of writ petitions.

7. An affidavit has been filed by the Opposite Party No.3 IGR stating that there is no provision in the RERA Act or even in the Apartment Ownership Act, 2012 for IGR to issue directions to the registering authorities. The IGR has perhaps not noted that a notification dated 22<sup>nd</sup> February, 2014 was issued by the Law Department whereby the amendment to the Registration Act 1908 by way of the Registration (Odisha Amendment) Act, 2013 which inserted Section 22-A in the Registration Act, 2008 was notified. The said provision reads as under:

“22-A (1) The registering officer shall refuse to register,-

- (a) any instrument relating to the transfer of immovable properties by way of sale, gift, mortgage, exchange or lease,-
  - (i) belonging to the State Government, or the Local Authority;
  - (ii) belonging to any religious institution to which the Odisha Hindu Religious Endowment Act, 1951 is applicable.
  - (iii) belonging to or recorded in the name of Lord Jagannath, Puri;
  - (iv) Donated for Bhoodan Yagna and vested in the Odisha Bhoodan Yagna Samiti established under section 3 of the Odisha Bhoodan and Gramdan Act, 1970;
  - (v) belonging to Wakfs which are under the supervision of the Odisha Wakf Board established under the Wakf Act, 1995;

unless a sanction in this regard, issued by the competent authority as provided under the relevant Act or in absence of any such authority, an authority so authorized by the State Government for this purpose, is produced before the registering officer;

Explanation.- For the purpose of this section Local Authority means any Municipal Corporation, Municipality, Notified Area Council, Zilla Parisad, Grama Panchayat, Urban Development Authority and Planning Authority or any Local Self Government constituted under any law for the time being in force.

- (b) the instrument relating to cancellation of sale deeds without the consent of the person claiming under the said sale deed; and
  - (c) any instrument relating to transfer of immovable property, the alienation or transfer of which is prohibited under any State or the Central Act.
- (2) Notwithstanding anything contained in this Act, the registering officer shall not register any document presented to him for registration unless the transferor produce the record of rights for the satisfaction of the

registering officer that such transferor has right, title and interest over the property so transferred.

Explanation.- For the purpose of this sub-section 'record-of-rights' means the record of rights as defined under the Odisha Survey and Settlement Act, 1958."

8. It is, therefore, plain that the Registering Authority is bound to refuse to register an instrument for transfer of immovable property the 'alienation or transfer of which is prohibited at any State and Central Act'. With the RERA Act mandating that the transfer of common areas should only be effected in favour of an Association of Apartment Owners, sale deeds presented for registration which contain clauses contrary thereto cannot be allowed to be registered by the IGR. It should not be difficult, therefore, for the IGR to issue instructions that Section 22-A of the Registration Act, 1908 shall be strictly complied with by all the registering authorities in Odisha.

9. Now to turn to the affidavit filed by the Petitioner on 4<sup>th</sup> May, 2022 enclosing the sample copies of certain sale deeds executed by two of the Builders i.e. M/s. Trident Properties Pvt. Ltd. and Z Estates Pvt. Ltd. These sample sale deeds which are at Annexures 13 & 14 to the said affidavit reflect the confusion which has led to the filing of the present petition. While the said sale deeds acknowledge that there is a statutory need for an Association of Apartment Owners to be formed, they proceed to convey the common areas to the individual apartment owners and not to an Association of Apartment Owners, for the obvious reason that such Associations are yet to be formed. It is a matter of concern that such type of sale deeds are getting registered on a daily basis with clauses contrary to the RERA Act and the Rules made thereunder.

10. The learned Advocate General of Odisha who was present during the hearings made a statement that the State Government and the ORERA will sit together in the next week to work out a solution to the problem. He has assured the Court that the proceedings of such deliberations will be placed before the Court with an affidavit before the next date of hearing.

11. The Court is confident that a solution can be found by the Authorities by reconciling the two contrary statutory enactments viz., the Odisha Apartment Ownership (Amendment) Rules 2021 and the RERA Act and the Rules there under. The Court directs that, in the meanwhile, the IGR will strictly enforce Section 22-A of the Registration Act, 1908 as inserted by Registration (Odisha Amendment) Act, 2013 and ensure that sale deeds registered hereafter strictly abide by the provisions of the RERA Act and Rules made thereunder.

12. For considering the further arguments of the parties and awaiting the outcome of the deliberations between the State Government and the ORERA, list on 22<sup>nd</sup> June, 2022. The interim order passed earlier shall continue till then.

**(Dr. S. Muralidhar)**  
**Chief Justice**

**( R.K.Pattanaik)**  
**Judge**