

IN THE HIGH COURT OF ORISSA, CUTTACK
(ORIGINAL JURISDICTION CASE)

W.P.(C) (PIL) No. _____ of 2021

Code No. _____

IN THE MATTER OF :

A Petition under Article 226 of the Constitution of
India;

And

IN THE MATTER OF :

A Petition challenging the *constitutional validity* of
the Odisha Apartment Ownership (Amendment)
Rules 2021, and for a direction to the Housing and
Urban Development Department, Government of
Odisha, to operationalize the formation of
Association of Allottees as required under Section
11(4)(e), 11(4)(f) and 17 of the Real Estate
(Regulation and Development) Act, 2016.

And

IN THE MATTER OF :

Bimalendu Pradhan,

..... PETITIONER

-Versus-

1. State of Odisha, represented through the Principal Secretary, Housing and Urban Development Department, At Secretariat, Bhubaneswar.
2. The Principal Secretary, Law Department, Government of Odisha, At the Secretariat, Bhubaneswar
3. Inspector General of Registration, At 2nd Floor, Board of Revenue Building, Cuttack
4. Odisha Real Estate Regulatory Authority, represented through its Secretary, Block A1, At Toshali Bhawan, Satya Nagar, Bhubaneswar

..... OPPOSITE PARTIES

The matter out of which this writ application was before this Hon'ble Court in W.P.(C) No.13032 of 2019 for framing of Rules under the Odisha Apartment Ownership (Amendment) Act, 2015, which was disposed of vide order dtd.05.08.2019 directing the Housing and Urban Development Department, Govt. of Odisha, to consider the representation of the Petitioner. The Petitioner had filed W.P.(C) No.17320/2020 for enactment of new Odisha Apartment Ownership Act, 2019 which was disposed of vide order dtd.19.08.2020 observing that the State Government was already in seisin over the matter and no direction can be issued in the time of COVID-19 pandemic.

To

The Hon'ble Chief Justice of the High Court of Orissa and his Lordship's companion Justices of the said Hon'ble Court.

The humble petition of the petitioner above named;

MOST RESPECTFULLY SHEWETH :

1. That, the petitioner is preferring this writ application in the nature of Public Interest Litigation, challenging the

✶ *constitutional validity* of the Odisha Apartment Ownership (Amendment) Rules 2021, and for a direction to the Housing and Urban Development Department, Government of Odisha, to operationalize the formation of Association of Allottees as required under Section 11(4)(e) and 11(4)(f), read with Section 17 of the Real Estate (Regulation and Development) Act, 2016. The *grievance* sought to be redressed in the present petition will benefit all the consumers buying units in residential/commercial projects.

2. That, the petitioner is a citizen of India and resides within the territorial jurisdiction of the Hon'ble Court, the cause of action for filing this writ petition has also arisen within the jurisdiction of the Hon'ble Court.
3. That, the Petitioner is filing the present petition out of his own cost and not at the instance of someone else. The litigation cost and the Advocate's fees are being borne by the Petitioner himself.
4. The facts of the case in brief are as follows:
 - 4.1 That the Government of Odisha enacted the Orissa Apartment Ownership Act, 1982 (hereinafter referred to as '*the OAOA Act*'), thereby making provisions for regulating ownership, common facilities, maintenance of infrastructure and payment of different taxes and liabilities in case of apartments and multi storeyed buildings.

- 4.2 The Act provided for constitution of association of apartment owners, to be formed by the owners of an apartment, to regulate the maintenance and use of common facilities in the apartment. As per Section 5 of the Act, every apartment ought to have its bye-laws and the owners of the flat ought to subscribe to the said bye-laws. The bye laws were to be submitted to the ‘Competent Authority’ as created under the Act so as to ensure compliance of the bye laws. However the Act contained several shortcomings in a way that there was no time period or procedure prescribed for submission of bye laws and no penalty was provided in case of non compliance of the same. As a result, not a single apartment owners association got itself registered under the Act.
- 4.3 That to cover up such shortcomings, the State Government passed the Odisha Apartment Ownership (Amendment) Act, 2015, which was notified in the Gazette on 20.08.2015, thereby providing for appointment of competent authority, provision for submission of bye laws, provision for appeal, and providing for penalty in case of non formation of Association.
- 4.4 That however the State Government failed to pass the relevant Rules for enforcement of amended provisions of the Act. As a result, not a single association of apartment owners of any multi storied building has been registered till date with the Competent Authority under the Act.

- 4.5 That initially under the Act, the Director of Town Planning, Odisha, Bhubaneswar was appointed as Competent Authority under Section 3(i) of the Act. However after amendment of the Act and substitution of Section 3(i) the power of Director of Town Planning, Odisha, has ceased. The Director of Town Planning, Odisha, vide letter dtd.15.04.2017 had intimated the State Government the problems being faced by the apartment owners due to non framing of the Rules and non registration of association of apartment owners. *(Copy of letter dtd.15.04.2017 of the Director of Town planning is annexed as Annexure 1).*
- 4.6 That the Petitioner had made applications under the Right to Information Act with the Opposite party to know the status of implementation of the Odisha Apartment Ownership (Amendment) Act, 2015. It was surprising to find that the State Government had not even notified the Competent Authority under the Act. Moreover not a single association of apartment owners has been registered till date under the OAOA Act. *(Copy of RTI reply dtd.27.05.2019 and dtd.12.07.2019 is annexed as Annexure 2 Series).*
- 4.7 That in such circumstance, the Petitioner had filed W.P.(C) No.13032 of 2019 for framing of Rules under the Odisha Apartment Ownership (Amendment) Act, 2015, which was disposed of vide order dtd.05.08.2019 directing the Petitioner to file a representation with the Opposite party, which shall be disposed of within three months.

4.8 That accordingly the Petitioner filed a representation dtd.14.08.2019 with the Opposite party. The Opposite party vide order dtd.11.11.2019, disposed of the representation of the Petitioner, wherein it held that the existing OAOA Act has several shortcomings and wantings to address the present challenges in the housing and real estate sector. Further in view of the enactment of the Real Estate (Regulation and Development) Act, 2016, urgent steps are being taken to formulate a new Odisha Apartment Ownership Act, 2019. *(Copy of order dtd.11.11.2019 is annexed as Annexure 3).*

4.9 That even after lapse of sufficient time, as no steps was taken to formulate the new Odisha Apartment Ownership Act, 2019, the Petitioner had approached this Hon'ble Court vide W.P.(C) No.17320 of 2020 with a prayer to direct the Government of Odisha to frame the new Odisha Apartment Ownership Act, 2019 and the Rules therein, as undertaken in their letter dtd.11.11.2019. This Hon'ble Court vide order dtd.19.08.2020 recorded the submission of the Ld. Advocate General that the State Government was already in seisin of the matter and taking steps to do the needful, and accordingly dismissed the writ, holding that the Court cannot command the State Government to enact the new Act in the period of the COVID-19 pandemic and when the State Government is already aware of the situation. *(Copy of order dtd.19.08.2020 in W.P.(C) No.17320 of 2020 is annexed as Annexure - 4)*

4.10 The Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the RERA Act') was notified on

➤ 01.05.2017. The RERA Act provides to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to protect the interest of the consumers in the real estate sector.

4.11 Section 11 of the RERA Act provides for functions and duties of promoter. **Section 11(4)(e)** states that:

S.11. (4) The promoter shall

(e) 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:

Provided that in the absence of local laws, the association of allottees, by whatever name called, shall be formed within a period of three months of the majority of allottees having booked their plot or apartment or building, as the case may be, in the project;

Section 11(4)(f) states that

S.11. (4) The promoter shall

(f) execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority, as the case may be, as provided under section 17 of this Act

Section 17 of the RERA Act states that:

17. (1) The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as

the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

(2) After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws:

Provided that, in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the occupancy certificate.

Section 8 of the RERA Act states that:

8. Upon lapse of the registration or on revocation of the registration under this Act, the Authority, may consult the appropriate Government to take such action as it may deem fit including the carrying out of the remaining development works by competent authority or by the association of allottees or in any other manner, as may be determined by the Authority:

Provided that no direction, decision or order of the Authority under this section shall take effect until the

expiry of the period of appeal provided under the provisions of this Act:

Provided further that in case of revocation of registration of a project under this Act, the association of allottees shall have the first right of refusal for carrying out of the remaining development works.

Section 31(1) of the RERA Act provides that:

31. Filing of complaints with the Authority or the adjudicating officer.—

(1) 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 there under, against any promoter, allottee or real estate agent, as the case may be.

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.

Section 43(5) of the RERA Act provides that:

43. Establishment of Real Estate Appellate Tribunal:

(1).....

(5) Any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer under this Act may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter:

Provided that where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained, without the promoter first having deposited with the Appellate Tribunal atleast thirty per cent. of the penalty, or such higher percentage as may be determined by the Appellate Tribunal, or the total amount to be paid to the allottee including interest and compensation imposed

on him, if any, or with both, as the case may be, before the said appeal is heard.

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

- 4.12. That it is apparent from the aforesaid provisions that as per Section 11(4)(e) of the RERA Act, the promoter is to enable the formation of an association of allottees, within a period of three months from the majority of the allottees having booked their apartment in the project.
- 4.13 Section 11(4)(f) read with Section 17 of the RERA Act provides that the promoter shall execute a registered conveyance deed of the apartment in favour of the allottee, and the undivided proportionate title in the common areas in favour of the association of allottees. The conveyances in favour of the allottee and the association of allottees, have to be ordinarily carried out within a period of three months from the date of issue of occupancy certificate.
- 4.14 That it is apparent from a reading of the aforesaid statutory provisions of the RERA Act, that an association of allottees is to be formed upon the majority of the allottees having booked their apartments. Thereafter when the project is completed, and occupancy certificate is obtained, the promoter is to sell the unit in favour of the allottee and the undivided proportionate title in the common areas to the association of allottees. As such an association of allottees is to exist before any sale of a unit in a real estate project takes place.

4.15 Similarly Section 8 of the RERA Act provides that if the registration of the promoter gets lapses or is revoked, then the remaining development work is to be carried out by the competent authority or the association of allottees as may be determined by the Real Estate Regulatory Authority, provided that the association of allottees shall have the first right of refusal for carrying out of the remaining development works. Hence the intention of the Legislature is that an association of allottees is to exist before any sale of a unit in a real estate project takes place.

4.16 Section 31(1) of the RERA Act provides the right to the association of allottees to file a complaint before the RERA against the violation of the provisions of the RERA Act or Rules by the promoter. Similarly Section 43(5) of the RERA Act entitles the association of allottees to challenge any order passed by the RERA before the Appellate Tribunal. In case during construction of a project, if there is statutory violation by the promoter, then the allottees of the project are entitled to ventilate their grievances before the RERA through the association of allottees.

4.17 While things stood thus, the Petitioner was surprised to find that the Opposite parties notified the Odisha Apartment Ownership (Amendment) Rules 2021 (hereinafter referred to as the **Amendment Rules of 2021**), thereby amending the erstwhile Odisha Apartment Ownership Rules, 1992, in order to operationalize the Odisha Apartment Ownership (Amendment) Act 2015. This act of the Opposite parties is in

gross violation of the letter dtd.11.11.2019 issued by the Opp. Party No.1 and so also the statement made by the Ld. Advocate General in W.P.(C) No. 17320/2020 that the State of Odisha was working to bring a new Odisha Apartment Ownership Act, 2019, and is furthermore in derogation to Section 11(4)(e), 11(4)(f) and 17 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the RERA Act').

(Copy of Odisha Apartment Ownership (Amendment) Act 2015 is annexed as Annexure 5). (Copy of Odisha Apartment Ownership Rules 1992 is annexed as Annexure 6). (Copy of Odisha Apartment Ownership (Amendment) Rules 2021 is annexed as Annexure 7).

4.18 Clause 2 of the Amendment Rules of 2021 provides that Rule 3(1) of the Odisha Apartment Ownership Rules, 1992 shall be substituted and it shall be read as

“The sole owner or all the owners or the apartment owner(s), as the case may be, shall execute the instrument in Form A within 15 days from the date of execution of the deed of purchase, lease, gift, exchange or otherwise, as the case may be, under which such sole owner or all owners or apartment owners acquire interest in such apartment which shall be signed and verified by such owner or owners in the presence of Magistrate or any other officers competent to administer oath.”

4.19 A buyer of an apartment, within 15 days from the date of execution of the conveyance deed, has to fill Form A of the Odisha Apartment Ownership Rules 1992 by giving details of

the conveyance deed and file the same before the Competent Authority to initiate the process for forming an association of apartment owners.

4.20 That simultaneously the promoter, has to give an undertaking under Rule 6D of the Amended Rules of 2021, in Form G, stating that it shall form an association of apartment owners within 30 days of transfer of ownership to eight owners or of 33% of apartment owners, whichever is more, through registered deed of apartment, and that thereafter the promoter shall transfer his right, title and interest in the property to the Association of Apartment Owners within 90 days of the formation of the Association of Apartment Owners.

4.21 That it is apparent from perusal of the aforementioned provisions of the Amended Rules of 2021 that the same is in derogation to, and repugnant to Section 11(4)(e), 11(4)(f) and 17 of the RERA Act.

4.22 Section 11(4)(e), 11(4)(f) and 17 of the RERA Act provides that an association of allottees should be formed and be in existence when majority of the booking in a project has taken place, and in any event before the first sale of an apartment in a project takes place. However the Amended Rules of 2021 provides that the process of formation of an association of apartment owners shall start only after at least eight sales of apartment or 33% of the apartments has taken place. As such there is no provision in the State of Odisha to form an association of allottees.

4.23 That the non-implementation of Section 11(4)(e), 11(4)(f) and 17 of the RERA Act is leading to complete frustration of the RERA Act. Section 8 of the RERA Act cannot be implemented at all in the State of Odisha. If a promoter does not complete his project within the stipulated time-frame and his registration under the RERA Act is revoked, then there will be no association of allottees who will carry out the remaining developmental works in accordance with Section 8 of the RERA Act.

4.24 That Section 17 of the RERA Act provides that the undivided proportionate interest in the common area is to be conveyed to the association of allottees at the time when the conveyance deed of an apartment is executed with an allottee. Due to absence of an association of allottee, the promoters are retaining the interest in the common areas with themselves and are flagrantly violating the provisions of the RERA Act.

4.25. The Hon'ble Supreme Court in the case of *Bikram Chatterji vs Union of India* [W.P.(C) No.940/2017, dtd.23.07.2019] has held at para 116 that after the transfer of conveyance deed, the title vests in the allottee and of the common area in the association of the allottees or the competent authority as the case may be. No title remains with the promoter. It has been further held at para 121 that the common areas as provided under Section 17 have to be ultimately handed over to the Association of Allottees or the Competent Authority as the case may be and any sub-lease, alienation or transfer affected by the promoter of the common areas as defined in the RERA

and otherwise reserved under the plan shall be void and inoperative.

4.26 That the Hon'ble Supreme Court in the case of **Manish Kumar Yadav vs Union of India [W.P.(C) No.26 of 2020, judgment dtd.19.01.2021]**, accepted the contention of the Union of India, that Section 11 (4)(e) of RERA also obliges the Promoter to enable the formation of such an Association. RERA compels the constitution of such an Association, prior to the allotment. This is for the reason that an Association plays an important role during the development of the project. It is pointed out that under Section 8 of RERA, upon lapse of or revocation of the registration, the Authority is obliged to take such action, as it may deem fit, including the carrying out of the remaining development works. The Association of allottees have been given the right of first refusal for carrying out the remaining development works. Section 11(4) contemplates the obligations to be discharged by the Promoter towards the Association. Reference is also made to Section 4(2)(c) of RERA. Under Section 17 of the RERA, the Promoter is to execute a registered conveyance in regard to the undivided proportionate title in the common areas to the Association of the allottees. Physical possession of the common areas is to be handed over to the Association of the Allottees. Under Section 31 of RERA, the Association can file complaint with the Authority. Accepting the submissions, the Hon'ble Supreme Court at para 163 held that the role of the association in the matter of becoming the transferee of the

common areas, being clothed with the right of first refusal within the meaning of section 7 of the Act and also the right to complain otherwise under the Act cannot be ignored. This aspect of the association of allottees is not a matter of mere trifle. The allottees cannot truly possess and enjoy their properties be it an apartment or building without their having right of common areas. The promoter is bound under Section 17 to transfer title to the common areas to the association and handover possession of the common areas to the association of the allottees.

4.27 That the non-implementation of Section 17 of the RERA Act in the State of Odisha is leading to exploitation of the home buyers at the hands of the promoters. There is no provision for formation of association of allottees in the State of Odisha. As a result, the promoters are retaining the common areas in a real estate project with themselves and are charging exorbitant rates to maintain the common areas. A home buyer has no option but to yield to the arbitrary demands of the promoters.

4.28 That there are several real estate projects in Odisha which are incomplete and do not have an occupancy certificate. However in spite of the same, the promoters are selling the apartments to the consumers and exploiting the consumers by forcing them to occupy under-construction buildings. The Opp. Party No.4 - Odisha Real Estate Regulatory Authority (ORERA) has completely turned a blind eye to such exploitation activities and have frustrated the purpose of the RERA Act.

- 4.29 That the Opp. Party No.4 vide letter dtd.14.05.2019 had instructed the Opp. Party No.3 to reject the conveyance deeds wherein the promoters are retaining ownership right over the common areas, instead of conveying the common areas to the association of allottees. *(Copy of letter dtd.14.05.2019 of the ORERA is annexed as Annexure - 8).* However thereafter registration of conveyance deeds are going on in blatant violation to the letter dtd.14.05.2019 issued by the Opp. Party No.4, and the Opp. Party No.4 has remained a mute spectator.
- 4.30 Section 32(a) of the RERA Act provides that the Opp. Party No.4 shall make recommendations to the appropriate Government for protection of interest of the allottees, promoter and real estate agent. Section 34(g) of the RERA Act provides that the Opp. Party No.4 shall ensure compliance of its regulations, orders and directions passed under the RERA Act.
- 4.31 The Opp.party No.4 has been sitting like a mute spectator without taking any steps with the Government of Odisha to ensure that association of allottees could be formed. Further it is pertinent to state here that till date the Opp. Party No.4 has not executed a single order passed by itself and hundreds of execution cases are simply lying in cold storage before the Opp. Party No.4 or is being sent to the Civil Court.
- 4.32 That Regulation 66(1) of the BDA (Planning and Building Standards) Regulation 2008 framed under Section 124 of the Orissa Development Authorities Act, 1982, which was in force till 09.08.2020, provided that no person shall occupy or allow

any other person to occupy, any part of a multi storied building until such building or part of it, as the case may be, is granted occupancy certificate by the Authority. Regulation 66(3) provides that the builder shall cause to register an association of apartment owners as required under the Orissa Apartment Ownership Act, 1982, before occupancy certificate for 50% or more floor area is given. However the Bhubaneswar Development Authority has issued Occupancy Certificates to all the builders without ensuring compliance with Regulation 66(3) and without the presence of an association of allottees. *(Copy of extract of Regulation 66 and 67 of BDA (Planning and Building Standards) Regulation 2008 is annexed as **Annexure 9)**. Copies of some occupancy certificates granted in Khurda District is annexed as **Annexure 10 Series**.*

4.33 That the Petitioner has booked and purchased a flat at the real estate project constructed by M/s. Vipul Limited, Bhubaneswar, at Bhubaneswar by paying a consideration amount of Rs.91,74,939/-. Now due to non formation of association of allottees, the Petitioner fears that the maintenance of common facilities and infrastructure in the apartment will be severely affected to his prejudice and absolute chaos will rule in the apartment. The Petitioner had filed C.C. No.55 of 2018 before the Opp. Party No.4 against the builder, wherein by order dtd.12.06.2018, the Opp. Party No.4 had directed the builder to form an association of allottees within 2 months and handover the common areas of the project to the association of allottees. However till date the

said order could not be complied as because there is no provision in the State of Odisha for formation of an association of allottees. Petitioner's execution case no.6/2018 is pending till date before the RERA. *(Copy of order dtd.12.06.2018 in C.C. No.55 of 2018 is annexed as Annexure - 11).*

4.34 That till date the State of Odisha does not have any law prescribing the procedure for formation and registration of an association of allottees. In the meantime, when the COVID-19 was at its peak in the State of Odisha and there was scarcity of quarantine and treatment facilities, the State Government vide their press release dtd.13.07.2020 decided to allow for Institutional isolation/ Home isolation of their members who are mildly symptomatic and asymptomatic cases. The State Government further directed certain organizations and institutions to create Covid Care Home and Covid Care Centre to accommodate Covid-19 positive persons belonging to their establishments. At Sl. No. 9 of the list of organizations, the aforesaid responsibility was bestowed upon Resident Welfare Associations. *(Copy of press release dtd.13.07.2020 is annexed at Annexure 12).*

5. That the source of information of the Petitioner is based on RTI replies received by the Petitioner which have been annexed in this petition.

6. That the Petitioner's representation dtd.14.08.2019 was disposed of by the Opp. Party No.1 vide letter dtd.11.11.2019 by undertaking to bring a new Odisha Apartment Ownership Act, 2019 very soon,

however the Opposite parties have acted contrary to their own letter dtd.11.11.2019 and have formulated the Amendment Rules of 2021, which is in complete derogation of the RERA Act. Hence no further representation can solve the issue in this writ petition and the Petitioner had to straightaway approach this Hon'ble Court challenging the Amendment Rules of 2021 and to immediately prevent the registration of illegal conveyance deeds in respect of real estate projects.

7. That to the best knowledge of the Petitioner, no other PIL has been filed before this Hon'ble Court concerning the present cause of action.

Being aggrieved by such inaction of the State Government in not operationalizing the formation of association of allottees as mandated under Section 17 of the RERA Act, the Petitioner prefers this writ on the following amongst other

GROUND

- A. For that there is no provision in the State of Odisha for formation of association of allottees in accordance with Section 11(4)(e), 11(4)(f) and 17 of the RERA Act, and for which the conveyance deeds in respect of real estate projects are being registered in gross violation to Section 17 of the RERA Act.
- B. For that due to non formation of association of allottees, common facilities and infrastructure in a real estate project is

severely affected as the home buyers are left at the mercy of the promoters who charge hefty maintenance charges for maintaining the common facilities and amenities.

- C. For that Section 11(4)(e), 11(4)(f) and 17 of the RERA Act provides that the promoter should form an association of allottees within three months of the majority of the allottees booking their apartments, and at the time of conveyance, the apartment is to be sold to the allottee, and the common areas to the association of allottees. Thus under the RERA Act, the association of allottees is to be formed prior to the execution of conveyance deeds by the buyers. However the Amended Rules of 2021 provides for formation of association after the buyers have purchased the apartments, and moreover only after eight buyers have purchased the apartments, which is in derogation to, and repugnant to Section 11(4)(e), 11(4)(f) and 17 of the RERA Act.
- D. For that the Amendment Rules of 2021 framed by the Government of Odisha is totally contrary, and repugnant to the provisions of the RERA Act framed by the Union Legislature, and is absolutely unworkable, and there is no provision for formation of association of allottees in the Amendment Rules of 2021. The conveyance deeds in real estate projects are being registered in blatant violation to Section 17 of the RERA Act, whereby the promoters are retaining the common areas with themselves.

- E. For that there is a head on collision between the Amendment Rules of 2021 and Sections 11(4)(e), 11(4)(f) and 17 of the RERA Act, and as such the Amendment Rules of 2021 is repugnant to the RERA Act and is liable to be struck down under Article 254(1) of the Constitution of India, 1950. After the enactment of the RERA Act, the provisions of the OAOA Act, which were repugnant to the RERA Act, impliedly became void under Article 254(1) of the Constitution of India.
- F. For that spaces which are left in the RERA Act can be legislated upon by the State legislature by enacting a legislation, so long as it is allied to, incidental or cognate to the exercise of Parliament's legislative authority. What the State legislature in the present case has done is not to enact cognate or allied legislation but legislation which, in in direct conflict with and in absolute derogation to the RERA Act. This plainly implicates the test of repugnancy by setting up a parallel regime under the State law. The State legislature has encroached upon the legislative authority of Parliament which has supremacy within the ambit of the subjects falling within the Concurrent List of the Seventh Schedule.
- G. For that valuable safeguard which is introduced by Parliament in the public interest under the RERA Act has been sought to be snatched away from the home buyers under the Amendment Rules of 2021 by not allowing formation of an association of allottees during the stage of construction of a real estate project

- H. For that though there are hundreds of multi-storied housing complexes within the State of Odisha, but there is not a single registered association of allottees in the State of Odisha which has been granted registration under the Odisha Apartment Ownership Act, 1982 as a result of which there is complete mismanagement in the upkeep and maintenance of multistoried housing complexes.
- I. For that the non-implementation of Section 11(4)(e), 11(4)(f) and 17 of the RERA Act is leading to complete frustration of the RERA Act. Section 8 of the RERA Act cannot be implemented at all in the State of Odisha. If a promoter does not complete his project within the stipulated time-frame and his registration under the RERA Act is revoked, then there will be no association of allottees who can carry out the remaining developmental works in accordance with Section 8 of the RERA Act. Further due to non formation association of allottees, the right to file complaint under Section 31(1) of the RERA Act has been rendered redundant and nugatory.
- J. For that the Opposite party No.4 has absolutely failed in its statutory obligations as mandated under Section 34 and 38 of the RERA Act, by not ensuring that association of allottees could be formed, and not taking any steps whatsoever to execute the orders and directions passed by it.
8. That the present PIL be entertained considering the urgency involved. The requirement of Rule 8 of the Orissa High Court PIL Rules 2010 for sending a prior representation to the State

Government may be dispensed with considering the reliefs sought for in the writ petition, which can only be agitated before this Hon'ble Court.

P R A Y E R

The petitioner, therefore, humbly prays that your Lordships would graciously be pleased to issue appropriate writ / writs / order / direction / declaration and most appropriately

1. Direct the Housing and Urban Development Department, Government of Odisha, to operationalize and implement the formation of Association of Allottees as required under Section 11(4)(e), 11(4)(f) and 17 of the Real Estate (Regulation and Development) Act, 2016.
2. Declare the Odisha Apartment Ownership (Amendment) Rules 2021 as repugnant to Section 11(4)(e), 11(4)(f) and 17 of the Real Estate (Regulation and Development) Act, 2016, and hence unconstitutional.
3. Direct the Odisha Real Estate Regulatory Authority to effectively comply with Section 32(a) of the Real Estate (Regulation and Development) Act, 2016, and so also comply with Section 34(g) Real Estate (Regulation and Development) Act, 2016 by ensuring execution of the orders passed by it.

2021
11/11/21
A.A.

4. Any such further direction/Order as this Hon'ble Court may deem fit in the interest of justice.

And for this act of kindness, the Petitioner as in duty bound shall ever pray.

Cuttack

By the Petitioner through

Date : 25.6.2021