

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) Nos.18799, 38186 and 38664 of 2021

Bimalendu Pradhan ***Petitioner***
(In W.P.(C) No.18799 of 2021)

Sanghamitra Mishra and others
(In W.P.(C) No.38186 of 2021)

Falcon Real Estate Private Limited,
Bhubaneswar
(In W.P.(C) No.38664 of 2021)

Mr. Mohit Agarwal, Advocate

-versus-

State of Orissa and others ***Opposite Parties***

Mr. Ashok Kumar Parija, Advocate General along with
Mr. Debakanta Mohanty, AGA for State,
Mr. Bijay Anand Mahanty, Senior Advocate for Intervenor,
Mr. Saurjya Kanta Padhi, Senior Advocate along with
Mr. S. S. Mohanty, Advocate for Intervenor,
Mr. Surya Prasad Mishra, Senior Advocate for Intervenor,
Mr. Gautam Mishra, Senior Advocate for Opp. Party No.4
and Mr. Dayananda Mohapatra, Advocate for Opp. Party No.3
(in W.P.(C) No.38664 of 2021) and
Mr. B. P. Tripathy, Advocate for ORERA

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAİK

ORDER
22.06.2022

Order No.

07. 1. An affidavit dated 17th June, 2022 has been filed by the Additional Secretary, Housing and Urban Development Department, Government of Odisha, in which it is stated that pursuant to the order dated 12th May, 2022 passed by this Court, a meeting was held under the Chairmanship of the Chairperson, Odisha Real Estate Regulatory Authority (ORERA) on 17th May, 2022 for detailed deliberations on the issues related to the

registration of conveyance deed in favour of the Association of Allottees for the common area in a real estate project. It was agreed at the meeting that “Promoters are obliged, by the provisions of law, to form association of the allottees within three months from the date of issue of Occupancy Certificate.” It was further noted that the drafting of a fresh RERA compliant Apartment Ownership and Management Bill has been completed and “expeditious steps are being taken by the Government to enact it, preferably within a period of three months, by adhering to necessary legislative procedures.” Further, the ORERA has also been requested to recommend measures, if any, that are required to facilitate implementation of the Real Estate (Regulation and Development) Act, 2016 (the ‘RERA Act’).

2. The attention of the Court has been drawn to an instruction dated 17th May, 2022 issued by the Inspector General of Registration (IGR) to all the Registering Officers of the State stating that they should refuse to register any “instrument which is contrary to the RERA Act.” The letter also states that “with the RERA Act mandating that the transfer of common areas should only be effected in favour of an Association of allottees, sale deeds presented for registration which contain clauses contrary thereto cannot be allowed to be registered.”

3. Mr. Ashok Parija, the learned Advocate General, today reiterated before the Court that expeditious steps are being taken to have the RERA compliant Apartment Ownership and Management Bill enacted so that all the anomalies pointed out by this Court in its earlier orders are fully addressed.

4. Mr. Surya Prasad Mishra, learned Senior Counsel appearing for an association of builders (CREDAI) states that they are

experiencing some difficulties in getting agreements to sell registered in view of the above letter of the IGR. He states that his clients will approach the Government of Odisha in that regard by way of a representation enclosing the formats of the agreement to sell which they intend to get registered. If such representation is made to the Government of Odisha within a period of ten days from today enclosing the proposed format agreements, they will then be examined by the Government expeditiously and convey its decision thereon not later than fifteen days thereafter. The Government will ensure that the said agreements to sell strictly comply with the requirements of the RERA Act and the Rules thereunder. Thereafter, it would be open to the IGR to issue instructions vis-à-vis registration of agreements to sell.

5. The Court will also like to impress upon the ORERA that it should forthwith re-examine the format agreements specified in the Rules and bring them in conformity with the requirements of the RERA Act and the Rules thereunder.

6. It is clarified that as far as the time period within which an Association of Allottees should be formed, due regard will be had to Section 11 (4) (e) of the RERA Act and the proviso thereto.

7. List on 24th August, 2022.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

M. Panda