

**BEFORE ODISHA REAL ESTATE REGULATORY
AUTHORITY, BHUBANESWAR**

Present:

**Shri Asit Kumar Mohapatra, Chairperson,
Shri Shyam Sundar Dash, Member (Judicial)**

C.C. No. 73 of 2024.

Swati Nayak, aged about 44 years, W/o. Bidhubhusan Nayak, At-Flat No. 602, Tower No.8, Z-1, Apartment, Kalarahanga, Bhubaneswar.

... **Complainant.**

Versus

M/s. Z Estates Pvt. Ltd. having its corporate office at M.4/34, Acharya Vihar, Bhubaneswar, represented through its Managing Director, Tapan Kumar Mohanty, aged about 68 years, S/o. late Bansidhar Sahoo, resident of Mohanty's, Jhanjiri Mangala Gada, P.O. Telenga Bazar, P.S. Badambadi, Town/Dist.- Cuttack, PIN-753009.

... **Respondent.**

Advocate for the complainant: Shri M. Agarwal & his Associates.
Advocate for the Respondent: Shri S. S. Mohanty & his Associates.

Dated 13th day of March, 2026

-: ORDER :-

This complaint U/s.31 of the Real Estate (Regulation & Development) Act, 2016 (here-in-after referred as the "Act, 2016") is filed against the promoter/respondent M/s. Z Estates Pvt. Ltd. seeking (i) to declare the agreement for sale dated 13.11.2018 as null and void; and (ii) to direct the respondent to execute an agreement for sale with the complainant strictly as per the format

provided in accordance with Rule-8 of the Odisha Real Estate (Regulation & Development) Rules, 2017 (hereinafter referred as the "Rules, 2017") within a period of one month; and (iii) to cancel the registration certificate No. RP/19/2021/00586 dated 08.11.2021 granted to the respondent for violation of Section-4 of the Act, 2016; and (iv) to declare the land area of Ac.30.506 decimals as mentioned in the plan approval dated 20.06.2016 as the project land for the 1033 numbers of approved dwelling units; and (v) to declare the facilities/ amenities such as (a) club house (B+G+1), dormitory (G+2), changing room (ground floor) and convenient shopping (G+1) which are mentioned in the plan approval as part of the common facilities for the 1033 dwelling units to handover/transfer the same to the association of allottees; and (vi) to provide approach road as per the approved plan dated 20.06.2016; and (vii) to direct to refund Rs.3,00,000/- to the complainant which was collected for garage.

2. The case of the complainant, in brief, is that in the year, 2011, the respondent floated a housing project in the name of "Z One" at Mouza- Kalarahanga, Bhubaneswar for multi-storied residential apartments and commercial complexes and for sale of units to intending buyers. The plan for the project was approved by Bhubaneswar Development Authority (here-in-after referred to as 'BDA') vide letter No.7398/BD/BDA, dt.26.04.2011 (Annexure-1) and its map Annexure-2, valid for three years. The project came up on a land area of Ac.26.449 decimals with one approach road to the 200 ft. width of Nandankanan road. This plan approval was for construction of total built up area of 243934.25 Sq. meters with

parking area of 74637.12 Sq. meters. It was for construction of total 21 residential towers (6 Blocks of B+G+12, 12 Blocks of B+G+14, 2 Blocks of B+G+19 and 1 Block of B+G+24 towers), 26 units of G+2 Villas, 1 tower of Multiplex retail of B+G+4, 1 tower of convenient shopping of G+3, 1 tower of club house of B+G+1 and 2 creches Ground floor. The plan was revised by BDA at the instance of the respondent vide letter No.17230/BDA, Bhubaneswar, dt.20.06.2016 (Annexure-3) with its plan, Annexure-4. The respondent bought an additional area of Ac.4.111 decimals to the project land making it a total of Ac.30.560 decimals and changed the number of Blocks and buildings to be constructed. The total built up area was mentioned as 221103 Sq. Meters. The basement of the project is 47921 Sq. Meters. The project has an approved approach road to the 200 Sq. ft. width of Nandankanan road. The revised plan consists of 2 towers of B+G+12, 6 towers of B+G+14 mentioned as one block, one dormitory (G+2), one club house (B+G+1), one changing room (ground floor) with new constructions of two blocks of residential towers of B+G+20 (one block) and B+G+24 (one block), one block of EWS (G+6) and one block of convenient shopping (G+1). Part occupancy certificate (Annexure-5) with map (Annexure-6) for the project as per the revised plan dated 20.06.2016 was issued by BDA vide letter No. 24944/BDA, Bhubaneswar dated 27.08.2016. It was for residential towers, 02 wings of B+G+12 and 06 wings of B+G+14, dormitory of G+2, club house of B+G+1 and changing room (ground floor). The Act, 2016 came into force from 01.05.2017 and the projects which were ongoing were issued registration certificate No.

RP/19/2018/00213 valid from 06.10.2018 to 22.09.2021 (Annexure-7). During registration, the plan, Annexure-2 and the land details of the project (Annexure-8) were submitted by the respondent to ORERA for the project with land area of 20857.33 sq.mt. (Ac.5.1539 decimals) for 588 residential units, 617 garages and 08 units of convenient shopping in G+1 building. The Rules, 2017 came into force on 25.02.2017 and the respondent submitted an affidavit dated 13.06.2018 (Annexure-9) to ORERA that it will adopt the agreement for sale as required under the Rules. The complainant booked one flat in the project "Z One" on payment of Rs.1,00,000/- vide Annexure-10 on 20.07.2017. The complainant was allotted apartment No.103 in Block-3 of wing-E and issued with an allotment letter dated 25.07.2017 mentioning the total consideration amount as Rs.84,06,000/- which includes Rs.77,79,200/- for construction of the unit, Rs.3,00,000/- for parking space cost, Rs.1,76,800/- towards PLC and Rs.1,50,000/- towards club membership as per Annexure-11. The total consideration is inclusive of the price towards a portion of the undivided interest of the land. On 17.08.2017 the complainant paid Rs.8,41,472/- towards advance installment of the flat vide Annexure-12. The respondent on 13.11.2018 executed one registered agreement for sale (Annexure-13) in favour of the complainant.

It was found by the complainant that while BDA has approved the plan over Ac.30.560 decimals, the respondent in the agreement for sale declared it as Ac.5.154 decimals. Such unilateral declaration is against the approved FAR norms and other planning

parameters. While the project has only covered parking spaces in the basement which is also mentioned in the agreement for sale, the respondent at the time of the project registration has declared 617 numbers of garages. While the total consideration for the apartment included Rs.1,50,000/- towards club membership, the respondent did not disclose the availability of community hall, gymnasium, swimming pool, play ground to ORERA in its application.

The respondent made second plan revision and applied on 09.06.2017 for approval before BDA vide Annexure-14. BDA vide letter dated 09.07.2021 (Annexure-15) and map, Annexure-16 issued a revised plan permission-cum-regularization to the respondent. The project was to come up on a land covering 141590.23 sq.mts. (Ac.34.987 decimals). The project has an approved approach road to the 200 feet Nandankanan Road. The project approved FAR of 2.0 corresponding to 283147.90 sq.mts. (including FAR of 72958.37 sq.mts. constructed under the plan approval dated 26.04.2011). This plan regularization-cum-approval is for regularization (Phase-II-A) of two blocks including Block-2, B+G+20/24 with wing A,B,C,D, Block-3, B+G+20/24 with wing E,F,G, 1 block of convenient shopping (G+2) and for new construction (Phase-II-B) of two residential towers, Block-4, B1+B2+G+34, Block-5, B1+B2+G+28/32 with wings A,B,C,D, one block of club house (B+G+2), one block of driver rest and toilet (ground) and one block of dormitory and toilet (G+1). The respondent received the second ORERA registration certificate for the project on 08.11.2021 vide Annexure-17.

Due to change in the plan, the interest of the complainant was hampered. While the plan approval was earlier on Ac.30.560 decimals, it changed to Ac.34.9877 decimals. As per the plan approval dated 20.06.2016, the built-up area was 221103 sq.mt. for Ac.30.560 decimals, as per the plan approval dated 09.07.2021, the built-up area increased to 374922.90 sq.mt. While the entire FAR was consumed after the revised plan, the respondent has marked the vacant land for future development. The internal approach road was changed. Tunnel on internal road constructed which was not in the earlier plan. In the earlier plan, there was Aromatic Park over which Block-4, B1 + B2 + G+ 34 tower is planned. In the brochure of the project (Annexure-18), it is mentioned that the amenities will remain in developer's area. The registered agreement for sale signed with allottees after plan approval dated 09.07.2021 under clause-18, 20 and others (Annexure-19) have clauses regarding developer's area.

BDA vide letter No.5467/BDA, Bhubaneswar, dt.10.02.2022 issued occupancy certificate (Annexure-20) in respect of residential towers, Block-2, Wing-A, B+G+24 and Wing- B, C, D (B+G+20), Block-3, Wing-E, G (B+G+20), Wing-F (B+G+24) and convenient shopping (G+2).

The agreement for sale (Annexure-13) is not as per Rule-8 and Annexure-A of the Odisha Real Estate (Regulation & Development) Rules, 2017. The registration certificate issued on 08.11.2021 is based on misleading information submitted by the respondent. The land detail of the project as compared to the earlier approval was changed during registration dt.08.11.2021. The

respondent has not disclosed the details of the ownership of the land during registration. So, registration certificate dt.08.11.2021 needs to be cancelled. So, the complainant came up with this case seeking the aforesaid reliefs.

3. The respondent came up with its show cause that the complainant has concealed previous similar litigations against the promoter by similarly interested person having nexus with each other, wherein they have failed in their vested and ulterior motive. Such previous attempt was decided in favour of the promoter by different judicial forums including Hon'ble High Court and this Authority. So, this complaint is barred by the principle of constructive *res judicata*. Similar reliefs were contested by the Residents' Welfare Association (RWA) of Phase-I (Advait) led by the Secretary of the association, namely, Bidhubhusan Nayak (husband of the complainant), before the Hon'ble High Court of Orissa in WP(C) No.1215 of 2022, wherein Hon'ble High Court of Orissa vide order dt.19.04.2022 disposed of the writ petition by relegating the same to be decided by BDA. BDA vide order dt.22.07.2022 adjudicated the matter and the same attained finality being not challenged. Agitating the same reliefs, RWA of Phase-I moved before this Authority which was rejected by order dt.26.07.2022 of this Authority. The order of this Authority was upheld by order dt.04.01.2023 of Hon'ble OREAT. The Writ petition and the complaint petition are filed as Annexure-D and E. The complainant has clubbed misconceived reliefs concerning all three phases of "Z one" project, i.e., (Phase-I), Vyom (Phase-II) and Nirvaana (Phase-III) without adding all necessary parties. This

complaint is directed to tarnish the image of the promoter. BDA vide letter No.7389 dt.26.04.2011 granted permission to the promoter to develop projects over an area of Ac.26.449 decimal. The promoter while developing different phases, has followed the procedure. The promoter has not obtained the approvals illegally. Registration of each phase shall be considered as stand alone project as mentioned in Section-3 of the Act, 2016. The complainant being an allottee of Phase-II is entitled to raise her grievance with regard to phase-II and not with respect to the amenities/areas/dwelling houses/apartments outside the boundary line of Phase-II. The respondent never approached the complainant for purchase of flat. The complainant approached the respondent for purchase of flat and was allotted Flat No.103 of Block-B at Unit-E through allotment letter dt.25.07.2017 for a total consideration of Rs.84,06,000/-. However, after making initial payment of Rs.9,41,472/-, the complainant did not pay the remaining amount of Rs.22,82,988/-. After repeated requests and reminders by the promoter, when the complainant failed to pay the remaining amount, the promoter was constrained to cancel the booking of the flat in favour of the complainant. The copies of communication are at Annexure-B series. On the request of the complainant, the promoter, as a matter of good faith, restored the booking on 12.09.2018 vide Annexure-C in favour of the complainant. The complainant was well aware of all the ORERA registrations and BDA plan approvals by that time but still continued to pay the entire consideration amount and being satisfied, took possession of the flat. The complainant and her

husband have connived to institute this false case only to harass, defame and blackmail the promoter for some vested interest. In Phase-II of the "Z one" project of which the complainant is an allottee was constructed after obtaining due approval from BDA vide approved plan dated 20.06.2016. The registration certificate No. RP/19/2018/00213 dated 06.10.2018 was obtained for an area of Ac.5.154 decimals comprising 589 residential units and 617 garages. The occupancy certificate was issued on 10.02.2022 and the entire 589 dwelling units have been handed over and the residents are in peaceful possession of the same. The complainant has taken possession of the flat since April, 2022 and has been in peaceful and uninterrupted possession of the same since then. So, she is estopped from challenging the same. Floor Area Ratio (hereinafter referred to as "FAR") is a mechanism and tool for the purpose of calculation and determination of various aspects of approval by the concerned Authority with a maximum ceiling of 7. Where approval is obtained for a large project, which is being executed in phases, the applicability and usage of FAR is different. FAR for the entire project may be different from that of the FAR of each phase. With regard to Phase-II, the calculation and reference to FAR are limited to its boundary line and not with respect to the entire project. FAR is calculated by the approving Authority viz. BDA/BMC and any objection to the FAR should lay before such Authority. The terms "covered parking space" and "garages" are used interchangeably. Neither the complainant nor any resident of Phase-II have ever raised any objection with regard to it. The complainant was well aware of the situation and she has taken

possession without any demurrer or objection. Such allegation by the complainant is absolutely baseless, unfounded and omnibus in nature. The amenities mentioned in para-4 (n) (iii) of the complaint petition are outside the boundary line of Phase-II (Vyom) and the same has been clearly mentioned in the agreement for sale. Though the complainant has averred that her interest has been severely affected due to revised BDA approval dated 09.07.2021, but has miserably failed to state if there is any disturbance inside the boundary line of Phase-II in which the complainant is an allottee. Any construction made by the promoter on land outside Phase-II boundary is as per the approval accorded by the Authority in terms of building by-laws and is strictly as per the agreement for sale executed with the complainant. There is no specific averment regarding the prejudice caused to the complainant by the approval of Phase-III granted by this Authority. The approach road which was changed and new approach road constructed in shape of an underground bye-pass used by the residents of "Z One" project are to the utmost satisfaction of the residents of "Z One" project except the complainant. No internal road of Phase-II has been changed which are as per RERA registration. The road constructed is as per the approved building plan and the complainant was well aware of the same before restoring her cancellation, paying in full and taking delivery of possession. The averment of the complainant in Para-4(u) of the complaint petition is an outcome of incorrect and erroneous understanding of law. The promoter has duly complied with the requirements of Section-4 of the Act, 2016 in its true spirit.

The complainant has failed to demonstrate any non-compliance by the promoter in respect of Section-4 of the Act, 2016.

4. In proof of the case, the complainant has filed photocopy of permission letter No.7398/BP/BDA, Bhubaneswar dated 26.04.2011 as Annexure-1, photocopy of key-plan map as Annexure-2, photocopy of letter No.17230/BDA, Bhubaneswar dated 20.06.2016 as Annexure-3, photocopy of map of future extension plan as Annexure-4, photocopy of occupancy certificate vide letter No.24944/BDA, Bhubaneswar dated 27.08.2016 as Annexure-5, photocopy of another map of future extension plan as Annexure-6, photocopy of registration certificate of ORERA as Annexure-7, photocopy of land details of the project as Annexure-8, photocopy of Affidavit sworn by Tapan Kumar Mohanty, Managing Director as Annexure-9, photocopy of money receipt for Rs.1,00,000/- dated 25.07.2017 as Annexure-10, photocopy of allotment letter dated 25.07.2017 as Annexure-11, photocopy of money receipt for Rs.8,41,472/- dated 17.08.2017 as Annexure-12, photocopy of agreement for transfer of a self-contained independent flat dated 13.11.2018 as Annexure-13, photocopy of building plan application form as Annexure-14, photocopy of permission No.24018/BDA, Bhubaneswar dated 09.07.2021 as Annexure-15, photocopy of plan map as Annexure-16, original Form 'B' registration certificate of project as Annexure-17, photocopy of master plan as Annexure-18, photocopy of agreement for sale for transfer of a self contained independent flat dated 19.01.2023 as Annexure-19, photocopy of occupancy certificate No.5467/BDA, Bhubaneswar dated 10.02.2022 as Annexure-20.

In proof of its case, the respondent has filed letter dated 29.04.2022 of Swati Nayak regarding non-raising of any wall for parking area as Annexure-A, photocopy of memorandum evidencing delivery of possession dated 29.4.2022 given by Swati Nayak as Annexure-B, photocopy of letter dated 10.09.2018 addressing to the Managing Director, Z Estates Pvt. Ltd. regarding revocation of cancellation and restoration of apartment of Flat No.103 as Annexure-C, copy of writ application, copy of order dated 19.04.2022 passed by the Hon'ble High Court in WP(C) No. 1215 of 2022 as Annexure-D series, copy of notice in Complaint Case No.224 of 2021, copy of complaint petition in CC No.224 of 2021 and copy of order dated 26.07.2022 in CC No.224 of 2021 as Annexure-F series, copy of the application dated 21.07.2017 along with enclosures as Annexure-F series, copy of the sanction plan dated 20.6.2016, relevant portion of brochure and photographs of elderly park and aromatic garden as Annexure-G series, copy of the order dated 17.02.2022 passed in W.P.(C) No. 1215 of 2022 as Annexure-H, copy of the order dated 11.3.2022 passed in W.A No.204 of 2022 as Annexure-J, copy of the order dated 04.04.2022 passed by the Hon'ble Supreme Court in S.L.P. No.5451 of 2022 as Annexure-K, copy of the order dated 18.04.2022 passed by the Hon'ble Supreme Court in SLP No.5451 of 2022 as Annexure-L, copy of the order dated 19.4.2022 passed in W.P.(C) No. 1215 of 2022 as Annexure-M, copy of the BDA compliance order dated 22.07.2022 as Annexure-N, copy of the order dated 12.02.2021 vide W.P. (C) No.3069 of 2024 as Annexure-P, copy of the BDA compliance order as Annexure-Q, copies of the plaint, injunction

application, order dated 5.10.2021 passed in C.S. No.2099 of 2021 as Annexure-R series, copy of the FIR No.201 of Info City PS dated 16.08.2022 as Annexure-S, copy of the FIR No.306 of Info City PS dated 01.11.2022 as Annexure-T, copy of the FIR No. 307 of Info City PS dated 01.11.2022 as Annexure-U, copy of the FIR No.308 of Info-City PS dated 01.11.2022 as Annexure-V, copy of the final form, charge sheet, statements U/s. 161 CrPC along with seizure lists, discharge petition and relevant orders of CT No.330 of 2022 as Annexure-W series and copy of the order dated 20.06.2024 in CRLMC No.3696 of 2023 as Annexure-X.

5. With such averments of both the parties, the following issues are framed for a decision:

- i. Whether the case is maintainable?
- ii. Whether the registration certificate granted by this Authority bearing No. RP/19/2021/00586 dated 08.11.2021 is liable to be revoked for violation of Section-4 of the Act, 2016?
- iii. Whether the agreement for sale dated 13.11.2018 can be declared as null and void being not in accordance with Rules, 2017?
- iv. Whether the approved plan dated 20.06.2016 over Ac.30.560 decimals is in respect of the project land for 1033 numbers of approved dwelling units?
- v. Whether the respondent is liable to handover/transfer the amenities mentioned in the approved plan for 1033 dwelling units to the association of allottees?
- vi. Whether the respondent is liable to provide approach road and aromatic garden as per approved plan dated 20.06.2016?

vii. Whether the respondent is liable to refund Rs.3,00,000/- to the complainant which the respondent has taken from the complainant towards garage?

viii. Whether the complainant is entitled to the relief/s sought for?

6. **Issue No. i.**

As regards maintainability of the complaint, learned counsel for the respondent submitted that there is no allegation that the promoter acted with deficiency in any manner as regards Phase-II of the project measuring Ac.5.154 decimal in which the complainant is an allottee. The complainant is contractually barred from raising any dispute regarding any area or construction made beyond Phase-II boundary. The challenge of the complainant as to the agreement for sale is not maintainable as it is as per the sample of the agreement for sale submitted by the respondent before this Authority on 21.07.2017 along with its application for registration as enclosure-11. The challenge is after taking possession of the flat by the complainant after long delay. This Authority has initiated SMCC No.69 of 2023 against the promoter as the promoter has executed agreement for sale in contravention of the format provided in Annexure-A of the Rules, 2017. The case has been stayed by Hon'ble OREAT. So, this matter cannot be decided by this Authority in this case as it is a matter to be decided in SMCC No.69 of 2023. Further, the husband of the complainant being the Secretary of the Phase-I (Advait) association, made similar allegations before Hon'ble High Court of Orissa in WP(C) No.1215 of 2022, wherein Hon'ble High Court in its order dt.17.02.2022 directed the parties as an interim to maintain *status quo*. The

respondent preferred WA No.204 of 2022, wherein by order dt.11.03.2022, Hon'ble High Court in Division Bench stayed the order dt.17.02.2022. The association preferred SLP No.5451 of 2022 before Hon'ble Apex Court, wherein Hon'ble Apex Court by order dt.18.04.2022 found that learned single Judge of High Court has reserved judgment in the writ petition and as such directed learned single Judge to pronounce judgment within 4 weeks. Hon'ble High Court vide order dt.19.04.2022 relegated the matter back to BDA for disposal afresh after providing the parties an opportunity of being heard. BDA accordingly passed order dt.22.07.2022, which was not challenged by the parties in any forum. This complainant, Swati Nayak preferred WP (C) No.3069 of 2024 before Hon'ble High Court of Orissa challenging the BDA plan approval dt.09.07.2021, wherein Hon'ble High Court directed BDA to examine the representation of the complainant. Pursuant thereto BDA passed compliance affirming respondent's building plan to be in conformity with Acts and Rules. The order of BDA has not been challenged by the complainant. The complainant having suppressed all those facts in the complaint, this case is not maintainable.

Learned counsel for the complainant submitted that the project "Z One" is a single project and there is no mention of phase in the project first approved by BDA. So, the complainant can challenge the activities of the respondent in contravention of promises made and also the contravention of the provisions of Act, 2016 and Rules, 2017. The previous litigations challenging the project approvals have no *ratio decidendi* to make this Authority

binding. The complainant was not a party in the earlier proceedings and the issues in these proceedings are not directly and substantially in issue in this complaint and as such it will not operate as constructive *res judicata* against the complainant. So, to him, this case is maintainable.

We have gone through the documents filed by both the parties. The issues decided in W.P.(C) No.1215 of 2022 is different from the issues to be decided in this case. Though the complainant has asserted that the entire project of “Z One” is a single project and there is no phase in it; in earlier proceedings it is held that the project is in phases and separate registration certificates are issued by this Authority in respect of different phases. There are certain common areas for different phases. The complainant has a right to challenge the act of the respondent in violation of the promises made in respect of such common areas. That having been challenged in this case, the case is maintainable against the respondent. Issues of revocation of registration certificate No.RP/19/2021/00586 dt.08.11.2021 and validity of agreement for sale will be discussed later. So, this issue is decided accordingly in favour of the complainant.

7. **Issue No.ii**

As regards revocation of registration certificate No.RP/19/2021/00586 dt.08.11.2021, learned counsel for the complainant submitted that the promoter has not submitted the plan approval of the entire project and for each phase along with the application for registration, as required U/s.4(2)(d) of the Act, 2016. The land details of the project as compared to the earlier

approval was changed during registration in violation of Section-4(2)(f) of the Act, 2016. The interest or the title created through sale deeds already registered was not disclosed by the promoter before ORERA during registration, which is in violation of Section-4(2)(1)(A) of the Act, 2016. Nowhere in the plan approved by BDA vide letter No.7398/BD/BDA, dt.26.04.2011 (Annexure-1) for an area of 26.449 decimals and its map, Annexure-2, it is mentioned that the project is to come up in phases. This plan approval was revised by BDA on 20.06.2016 vide Annexure-3 and its map, Annexure-4 with an additional area of Ac.4.111 decimals to the project making the total project area to Ac.30.560 decimals. The revised plan does not indicate that the project is to come up in phases. The plan approval dt.26.04.2011 was revised again on 09.07.2021 (Annexure-15) by BDA and added further area of 4 acres to the project. Basing on the said revised plan, ORERA granted registration certificate dt.08.11.2021 (Annexure-17) as a phase. The respondent is going on adding areas to the project without taking consent of 2/3rd of the allottees as per Section-14(2)(ii) of the Act, 2016. The registration certificate dt.08.11.2021, Annexure-17 was granted by ORERA to the promoter on misleading information submitted by the respondent. So, to him, the registration certificate No.RP/19/2021/00586 dt.08.11.2021 should be revoked as per Section-7 of the Act, 2016.

Learned counsel for the respondent submitted that the validity of plan approval of BDA in respect of Phase-III of the project vide letter No.24018/BDA dt.09.07.2021 (Annexure-15) and its plan, Annexure-16 were challenged by the complainant

before Hon'ble High Court in WP(C) No.3069 of 2024, wherein Hon'ble High Court by order dt.12.02.2024 (Annexure-O) directed BDA to consider and examine allegations of the complainant at Annexure-5 and to take decision regarding revised approved plan and to pass a final order within a period of four weeks. BDA vide order under Annexure-P, decided the allegations of the complainant against the promoter point wise while dismissing the representation for revocation of permission. This case of the complainant with self-same allegations for revocation of registration certificate U/s.7 of the Act, 2016 is not maintainable. Further, BDA and other Authorities have multiple times decided as per Annexure-N, Annexure-P and E series that the project is in phases and the complainant is a resident of Phase-II of the project. So, the complainant cannot challenge the registration certificate for Phase-III on the self-same ground as taken in those cases seeking revocation.

We have carefully gone through the cases decided earlier in respect of the project "Z One". M/s.Z1 Residents' Welfare Association (here-in-after referred to as "RWA") preferred CC No.224 of 2021 against the promoter, Z Estates Pvt. Ltd. and its Managing Director. The case was dismissed on 26.07.2022 (Page-80 to 88 of Annexure-E series) on contest on preliminary point that the first phase of the project having obtained occupancy certificate on 27.08.2016, *i.e.*, before commencement of the Act, 2016, the case is not maintainable. The order dt.26.07.2022 of ORERA was challenged before Odisha Real Estate Appellate Tribunal, Bhubaneswar in OREAT Appeal No.94 of 2022, wherein Hon'ble

OREAT vide order dt.04.01.2023 upheld the order dt.26.07.2022 of ORERA in CC No.224 of 2021. The contention of learned counsel for the complainant that it is one project and not in phases, as such part occupancy certificate has been issued in respect of certain buildings is well answered in the negative in the order dt.26.07.2022 in CC No.224 of 2021 by this Authority. There is no ambiguity that the project is in phases, occupancy certificates were issued for each phase and the complainant is an allottee of Phase-II of the project.

By the order dt.19.04.2022 in W.P. (C) No.1215 of 2022, Hon'ble High Court of Orissa remitted back the matter for a fresh decision by Competent Authority in exercise of power U/s.17 of the Odisha Development Authorities Act. BDA while deciding this case, discussed all the aspects of the plan approvals of different phases of the project and ordered that there is no infirmity in the permission granted in letter No.17230/BDA dt.20.06.2016 and letter No.24018/BDA dt.09.07.2021. Section-3 to 19 of the Act, 2016 came into force from 01.05.2017. Phase-II of the project "Z1-Vyom", of which the complainant is an allottee, consists of Ac.5.154 decimals of land as per the agreement for sale, Annexure-13. Further, the project is in phases and Phase-III is beyond the areas of Phase-I & Phase-II. Explanation to Sub-section-2 of Section-3 of the Act, 2016 is as follows:

"Explanation – For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a stand alone real estate project, and the promoter shall obtain registration under this Act for each phase separately."

The promoter has taken separate registration certificate from this Authority for Phase-II and Phase-III and Phase-I has no registration certificate as it obtained occupancy certificate on 27.08.2016, before the Act, 2016 came into force. So, there is no need for taking approval of 2/3rd allottees of Phase-I and Phase-II U/s.14 of the Act, 2016 for registering the project of Phase-III with ORERA. The further contention of learned counsel for the complainant is that the act of the promoter going on adding areas to the project in first revised plan dt.20.06.2016 and 2nd revised plan dt.09.07.2021, without taking consent of 2/3rd of allottees are in violation of Section-14(2)(ii) of the Act, 2016. Section-14(2)(ii) of the Act, 2016 is as follows:

“14. Adherence to Sanctioned plans and project specifications by the promoter-(1) x xxx

(2) Notwithstanding anything contained in any law, contract or agreement, after the sanctioned plans, layout plans and specifications and the nature of the fixtures, fittings, amenities and common areas, of the apartment, plot or building, as the case may be, as approved by the competent authority, are disclosed or furnished to the person who agrees to take one or more of the said apartment, plot or building, as the case may be, the promoter shall not make –

(i) xxxxx

(ii) any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building.

x xxx”

(The underlining is by us to give emphasis)

The words “within the project” as underlined above, means the concerned phase of entire project, because as per Explanation to sub-section-2 of Section-3 of the Act, 2016, each phase of the project is a stand alone project. So, the addition of areas to “Z One” project by the promoter without taking consent of 2/3rd allottees of other phases is not in contravention of Section-14(2)(ii) of the Act, 2016.

The further contention of learned counsel for the complainant is that the registration certificate of Phase-III of the project was issued without there being a plan approval as per Section-4(2)(c) and Section-4(2)(d) of the Act, 2016. Section-4(2)(c) & (d) are as follows:

“4. Application for registration of real estate projects- (1) Every promoter shall make an application to the Authority for registration of the real estate project in such form, manner, within such time and accompanied by such fee as may be prescribed.

(2) The promoter shall enclose the following documents along with the application referred to in sub-section (1), namely:-

x xxxx

(c) an authenticated copy of the approvals and commencement certificate from the competent authority obtained in accordance with the laws as may be applicable for the real estate project mentioned in the application, and **where the project is proposed to be developed in phases, an authenticated copy of the approvals and commencement certificate from the competent authority for each of such phases;**

(d) the sanctioned plan, layout plan and specifications of the proposed project or the phase thereof, and the whole project as sanctioned by the competent authority;
x xxx”

(highlighted by us to give emphasis)

The problem started as the 1st Phase of “Z One” project was approved by BDA on 26.04.2011 and it was revised on 20.06.2016, when the Act, 2016 was not in force. The 2nd Phase was approved by BDA on 20.06.2016 when the Act, 2016 was not in force. The registration certificate No.RP/19/2018/00213 dt.06.10.2018 was issued by this Authority in respect of 2nd Phase of the project. So, when the project started, there was no question of adhering to Section-4(2)(c) & (d) of the Act, 2016. The words in Section-4(2)(c), “where the project is proposed to be developed in phases, an authenticated copy of the approvals and commencement certificate from the competent authority for each of such phases” cannot be applied to Phase-I & II of the project as by that time the Act, 2016 was not in force. As there is provision for modification of plan, the promoter has from time to time modified the plan for the total project without affecting the previous phases.

The other contention of learned counsel for the complainant is that the road from the entry and exit point to the towers of the complainant have been admittedly changed during second revised plan approval on 09.07.2021 without taking consent of 2/3rd allottees. The road from the entry to the exit point to the tower of the complainant has to be transferred to the association of allottees. If it is held that the project is in phases, there will be multiple association of allottees and the ownership of the road cannot be transferred to anyone, which will be contrary to the Act, 2016 and Regulation 29(4) of BDA (planning and building standards) Regulation, 2008.

The road for ingress and egress to the project is changed vide revised plan approval dt. 09.07.2021. The correctness of the revised plan approval was taken up by BDA in its order dt.22.07.2022 passed after the complaint was remitted back by Hon'ble High Court to BDA for a decision after hearing the parties. At para-F of the order, Planning Member, BDA held that the internal passage/driveway in the latest layout of 2021 approval is more planned and convenient than the driveway shown in 2011 and no right of allottees has been taken away by the driveway proposed in 2021 or cause any prejudice to them, rather it is comfortable to them so as to use driveways with two entry from the Nandankanan road. For better appreciation, Planning Member, BDA has made available a copy of the sketch map superimposing the roads of 2011, 2016 and 2021 in the order. So, Planning Member, BDA has held that there is no violation of any provision of regulation and the objection is not sufficient for cancellation of approved plan of 2016 and 2021. The order of the Planning Member, BDA having not been challenged in higher forum, attained its finality and we found no reason to take a contrary view by sitting over the order of Planning Member, BDA. So far transfer of such areas to association of allottees is concerned, it cannot be transferred to one association of allottees as in such a project with phases, there will be multiple association of allottees as each phase is a stand alone project. Further, such areas, which are for common use of allottees of all the phases, can be transferred to the federation of association of allottees. The concept of "Federation of Association of Allottees" is

there in Section-11(4)(e) and Section-19(9) of the Act, 2016, which is as follows:

“11. Functions and duties of promoter- (1) x xxxx

(4) The promoter shall-. x xxxx

(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,

x xxxx”

“19. Rights and duties of allottees- (1) x xxxx

(9) Every allottee of the apartment, plot or building as the case may be, shall participate towards the formation of an association or society or cooperative society of the allottees, **or a federation of the same**.

x x x xx”

(highlighted by us to give emphasis)

The words “or a federation of the same” means an association formed by multiple associations of allottees. Such areas which are for common use of all the associations can be transferred to the federation of association of allottees.

Learned counsel for the complainant sought to cancel the registration certificate being violative of Section-7(1)(b) and Section-7(c)(A) of the Act, 2016, which are as follows:

“7. Revocation of registration-(1) The authority may, on receipt of a complaint or *suo motu* in this behalf or on the recommendation of the competent authority, revoke the

registration granted under section-5, after being satisfied that-

(a) the promoter makes default in doing anything required by or under this Act or the rules or the regulations made thereunder;

(b) the promoter violates any of the terms or conditions of the approval given by the competent authority;

(c) the promoter is involved in any kind of unfair practice or irregularities.

Explanation – For the purposes of this clause, the term “unfair practice” means a practice which, for the purpose of promoting the sale or development of any real estate project adopts any unfair method or unfair or deceptive practice including any of the following practices, namely –

- (A) the practice of making any statement, whether in writing or by visible representation which, -
- (i) falsely represents that the services are of a particular standard or grade;
 - (ii) represents that the promoter has approval or affiliation which such promoter does not have;
 - (iii) makes a false or misleading representation concerning the services;

xxxxx”

Learned counsel for the complainant could not bring to our notice any violation of Section-7(1)(b) and Section-7(c)(A) of the Act, 2016 to revoke the registration certificate granted U/s.5 of the Act, 2016. However, registration certificate No.RP/19/2018/00213 dt.06.10.2018 and registration certificate No.RP/19/2021/00586 dt.08.11.2021 were issued after the commencement of the Act, 2016 and the Rules, 2017. These certificates were issued without adhering to Section-4(2)(c) and (d) of the Act, 2016. The dispute arose as the respondent/promoter has not mentioned the detail of

the phases to be developed as the approval for the first phase was obtained way back in the year, 2011 but the Act, 2016 came into force on 01.05.2017. Before the commencement of the Act, 2016, projects were carried out in phases and there were no restrictions for the promoters as that of Section-4(2)(c) and (d) of the Act, 2016. In view of Explanation to sub-section-2 of Section-3 of the Act, 2016, if the project is in phases, each phase is a stand alone project and separate registration is to be taken for each phase. As per sub-section-2(c) of Section-4 of the Act, 2016, where the project is proposed to be developed in phases, the promoter is to file before the Authority, an authenticated copy of the approvals and commencement certificate from the competent authority for each of such phases. As per Section-4(2)(d) of the Act, 2016, the promoter is to file the sanctioned plan, layout plan and specifications of the proposed project or the phase thereof, and the whole project as sanctioned by the competent authority. The promoter is now duty bound to get approval for each phase from the time of filing for registration certificate for the first phase. In this project, the allottees are in dark as to in how many phases, the project is proposed to be developed and when other phases will commence. The promoter has kept apart certain areas for future development. Such a situation is going on despite the project is revised from time to time, even after commencement of the Act, 2016. The promoter/respondent cannot be allowed to add on land indefinitely and reserve lands for future expansion in the same project. A project once started, must end within a certain period. The commencement of each proposed phase must be mentioned. In

order to advance the intention of the legislature, it is required to direct the respondent to disclose by obtaining approval from competent Authority as to the number of phases proposed to be developed and commencement certificate for each phase. Further, it is found that the respondent/promoter has reserved certain areas for future expansion of the project and there are certain facilities which are outside the phases for all the home buyers of different phases. The promoter cannot reserve any area or facility for himself/itself when the entire project is for allottees. The respondent/promoter is to enable formation of association of allottees and when the project is in phases, a federation of the association of allottees of the project as per sub-section-4(e) of Section-11 and sub-section-9 of Section-19. The respondent/promoter is required to transfer the 'common areas' (as defined in Section-2(n) of the Act, 2016) of the phase to the association of allottees of that phase and the other 'common areas' beyond all such phases to the federation of association of allottees. Now it will cause much inconvenience to the allottees of Phase-III of the project causing irreparable injury if the registration certificate will be revoked. Their right in the project will affect and the allottees of Phase-III are not parties in this case. So, instead of revoking registration certificate No. RP/19/2021/00586 dt.08.11.2021 for Phase-III of "Z One" project, it will be expedient to impart some directions to the promoter as per sub-section-3 of Section-7 of the Act, 2016 to bring the entire project within the fold of the Act, 2016. The issue is answered accordingly in favour of the complainant.

8. Issue No. iii.

Learned counsel for the complainant submitted that the agreement for sale dt.13.11.2018 (Annexure-13) executed by the respondent with the complainant is contrary to the statutory format provided in Annexure-A appended to Rule-8 of the Rules, 2017. Section-13 of the Act, 2016 provides that the promoter shall execute and register an agreement for sale with the allottee in such form as may be prescribed. Rule-8 of the Rules, 2017 provides that the agreement for sale shall be in the format as per Annexure-A to the Rules. Annexure-A provides the format for agreement for sale and it says that the parties may incorporate such additional terms and conditions which should not be in derogation of the Act and Rules. In the agreement for sale, at Clause-5 the complainant was given only the right to use the common area of the project, whereas as per Sec.17 of the Act, 2016, the common areas of the project is to be transferred to the association of allottees through a registered conveyance deed. At clause-35 of the agreement, the allottee was to pay the charges for club membership, development expenses, monthly charges, but the ownership of the club will be retained by the builder. At Schedule-D of the agreement for sale, the builder disclosed that the development of the project will be on an area of Ac.5.154 decimals of land but the plan was sanctioned on an area of about Ac.30.00 decimals. Ac.5.154 decimals is equivalent to 20853 sq. meter (5.154×4046). FAR for second phase is 2.33. FAR area is 20853×2.33 which is equal to 48588 sq. meters. FAR area + basement area is equal to total built up area. So, the total built up area is $48588 + 24533 = 73121$ sq. meter. As approved by BDA

vide Annexure-3, the second phase built up area is 123536 sq. meter. Thus, the version of the builder that second phase will come up on an area of Ac.5.154 decimals is false. So, to him, the respondent should be directed to execute a fresh agreement for sale with the complainant strictly as per Annexure-A to the Rules, 2017.

Learned counsel for the respondent submitted that the agreement for sale dated 13.11.2018 was filed with ORERA and the respondent went ahead registering the same format after no objection was raised by the Authority. The legality of agreement for sale is subject of adjudication in Suo Motu Case No.69 of 2023. Hon'ble High Court was pleased to grant stay of the proceeding vide its order dated 12.02.2025 in MSA No.5 of 2025. In that case, the respondent has filed model agreement for sale of Maharashtra RERA, Hariyana RERA, Karnataka RERA and Madhya Pradesh RERA along with the approved agreement for sale of major real estate players like DLF, Purvankra, Godrej property, EMAAR, etc. who have executed similar agreements for mega projects being developed by them. It is therefore, a standard practice across the country for executing agreements similar to the present agreement in question and no non-compliance or objections have been raised against them. So, to him, the relief sought for by the complainant, seeking to declare the agreement for sale to be void and to direct the respondent to execute fresh agreement for sale, should be rejected being devoid of merit.

The agreement for sale dt.13.11.2018 (Annexure-13) was executed by the respondent in favour of the complainant after the Act, 2016 and Rules, 2017 came into force. The respondent is to

execute agreement for sale in favour of the complainant as per Annexure 'A' appended to the Rules, 2017 as per Rule-8(1) of the Rules, 2017. Rule-8(1) of the Rules, 2017 provides that for the purpose of sub-section (2) of Section 13 of the Act, the agreement for sale shall be in the form as per *Annexure-A*. The complainant challenges Clause-5 of the agreement for sale which is as follows:

"5. Common Areas in the Project and Z-One Project: That the vendee shall be the exclusive, absolute and indefeasible owner of the unit as described and delineated in the schedule written hereunder purchased and acquired by him, and shall be entitled to use and enjoy the common areas, facilities, amenities and conveniences provided and earmarked in the Building such as lift, lobby, corridors, passages, multipurpose common utility room etc. including as defined under the Orissa Apartment Ownership Act, 1982 in harmony with other owners/occupants of the flats/ units in the Project (Residence Owners). However, such use and enjoyment of the aforesaid common facilities and conveniences shall be in such manner so as not to affect or impair the right of the other Residence Owners of the Project and for Z-One Project.

The vendee shall not be entitled to any right in respect of other area and space in the Property save the right to use the common areas as may be necessary for the ingress and egress of men and materials to and from the Unit and/or for utility pipes and cables to be installed in the unit.

Given the size of the Z-One Project and the development of the same in multiple phases, the vendee is aware and acknowledges that certain common areas in all phases will be available for the use and benefit of all the owners/occupants of the Z-One Project and are not limited to any specific phase alone and will be available to all phases on the completion of the Z-One Project. Such use of common areas in the Z-One Project by the Vendee and owners/ occupants of all phases of the Z-one Project will not affect the Vendee's ownership rights to the Schedule Property as detailed in this Agreement.

That the Vendee shall have the right to use the roads/ passages/ pavements/ drive ways provided and earmarked in the Project and/or Z-One Project as per the building plans approved by the Bhubaneswar Development Authority. The Vendee and/ or the Association shall not have the right to make any construction over the area earmarked as passage or other areas earmarked as common utility areas, facilities, etc. or cause any encroachment over any portion of roads/ passages etc. or other common areas/common utility areas."

Such agreement by the parties will not abolish the right of the complainant over the common areas inside Phase-II of the project which are conferred to the complainant by law. The agreement will be read as if there is no such condition/s, which is/are not as per the provisions of law. So, as per law, the respondent is to handover the common areas to the association of

allottees by way of conveyance deed and we have already discussed that part.

The other challenge of the complainant is as to Clause-35 of the agreement for sale, which is as follows:

“35. The membership of the club will be regulated by the Vendor. The Vendee agrees to apply for the club membership and payment of necessary charges, development expenses, security deposit and monthly subscription charges. The Vendee agrees to abide by the rules and regulations of the club.”

Such a clause is valid if the club house is beyond the boundary of Phase-II of the project and until it is transferred to the federation of association of allottees. The promoter cannot keep to himself the right, title or interest over any common area inside the phase after completion of the project with all phases. As per law, the promoter is to transfer the right, title and interest over the common areas and facilities to the association of allottees. The promoter cannot construct any amenities in the phase of the project having commercial interest for the promoter. It is not mentioned in the agreement for sale (Annexure-13) or the map of the project that the club house is outside the project area of Phase-II as it was approved with the approval of Phase-II of the project. It is found from the agreement for sale (Annexure-13) that the promoter has mentioned the khata number and plot number over which the total area of Phase-II consisting of Ac.5.154 decimals in Schedule-A. It is not mentioned therein that the club house is outside the project

area approved by BDA. If it is not within the project area of Phase-II, the promoter has to convey the title of it and handover the club house to the federation of association of allottees after completion of the "Z One" project. If the club house is within the project area of Phase-II, the promoter is to transfer the club house to the association of allottees of Phase-II of the project.

The other challenge of the complainant is that at Schedule-D of the agreement for sale, the builder disclosed that the development of the project will be on an area of Ac.5.154 decimals of land but the plan was sanctioned on an area of about Ac.30.00 decimals. Ac.5.154 decimal of land is equivalent to 20853 sq. mtrs. (5.154x4046) of land. FAR (floor area ratio) for second phase is 2.33 FAR. So, area is 20853 x 2.33 which is equal to 48588 sq. meter. FAR area + basement area is equal to total built up area. So, the total built up area is 48588 + 24533 = 73121 sq. meter. As approved by BDA vide Annexure-3, the second phase built up area is 123536 sq. meter. Thus, the version of the builder that second phase will come up on an area of Ac.5.154 decimals is false.

Such calculation of FAR and its correctness is within the jurisdiction of BDA. The schedule of the agreement for sale speaks of the project area with plot number, khata number and area. FAR could have been challenged by the complainant before BDA. The correctness of the calculation of FAR and the project area cannot be gone into by this Authority to declare the agreement for sale to be void. The format in Annexure-A is a model and no point mentioned in it should be left out in the agreement for sale. We have carefully gone through the prescribed format (Annexure-A) and the

agreement for sale. We did not find any point of Annexure-A, which is left out in the agreement for sale. So, the respondent/promoter cannot be directed to execute fresh agreement for sale with all the allottees of the project. This issue is answered accordingly in favour of the respondent.

9. **Issue No.iv**

Learned counsel for the complainant submitted that when the plan is approved on 20.06.2016 by BDA vide Annexure-3 in respect of Ac.30.560 decimals of land and also in respect of 1032 units, it should be declared that the entire project area of Ac.30.560 decimals comes within the project area of the so called Phase-I and Phase-II of the project consisting of 1032 units which includes existing 444 units for Phase-I and 588 units for Phase-II. The complainant has wrongly mentioned the total units of Phase-I and Phase-II as 1033 instead of 1032.

Learned counsel for the respondent submitted that the complainant acquires right over the area of the land mentioned in the agreement for sale and the area of the land mentioned as project land while registering the project under RERA. In the present case, in the agreement for sale as well as RERA registration mentions the area as Ac.5.154 decimals. In the plan approval of 20.06.2016, the construction was approved for the present project over an area of Ac.5.154 decimals. The rest of the areas are clearly shown as future development. Such a prayer was also made in WP(C) No. 1215 of 2022 but the same was not granted. The complainant being the wife of the writ petitioner is trying to revive the prayer afresh. So, to

him, it cannot be declared that the plan approval for Phase-I and Phase-II is in respect of 1032 units.

We have gone through the plan approval dated 20.06.2016 (Annexure-3) and its map (Annexure-4). The project was approved before the Act, 2016 came into force. However, it is in respect of existing Block-1 and proposed buildings for development. The occupancy certificate (part) vide Annexure-5 was obtained on 27.08.2016 in respect of Phase-I of the project. Phase-II of the project was registered by this Authority vide Annexure-7 and extension was given U/s. 6 of the Act, 2016 vide Annexure-8 which contains the details of the land of the project "Z-One Vyom". The land of the project tallies with the land of the project mentioned in Schedule-A of the agreement for sale (Annexure-13). The total covered area is mentioned as Ac.5.154 decimals. As the project is in phases and the promoter has reserved the remaining area for future extension, it cannot be said that the total area of Ac.30.560 decimals is within the project area of Phase-I and Phase-II consisting of 1032 units. The issue is answered accordingly in favour of the respondent.

10. **Issue No.v.**

Learned counsel for the complainant submitted that the common facilities and amenities as disclosed by the builder be declared to be that of the allottees and the same needs to be handed over to the association of allottees. "Common areas" as defined in Section-2(n) of the Act, 2016 are to be transferred to the association of allottees as per Section-17 of the Act, 2016. In the agreement for sale dated 13.11.2018, the respondent has mentioned that the

allottees will only have the right to use the common areas, with no ownership and the allottees are paying for the common areas, the ownership of the same should remain with the allottees. As per the agreement for sale (Annexure-19) executed by the respondent in favour of an allottee of Phase-III, it is mentioned that the common areas shall be the developer's area and the developer has the right to sell, lease or otherwise disposed of the said areas. There is no concept of developer's area in the Act, 2016 and the common areas must go to the association of allottees. He has cited the decision of Hon'ble Supreme Court in the case between **Bikram Chatterji vs. Union of India: 2019 (19) SCC 161** to buttress his contention. So, to him, the respondent should be directed to hand over/transfer the amenities mentioned in the approved plan for 1032 dwelling units to the association of allottees.

Learned counsel for the respondent submitted that RERA registration was not obtained for 1032 dwelling units. The common facilities were not mentioned in the registration certificate as amenities. No commitment was made by the respondent in the agreement for sale to provide such facility to any association of allottees of any particular phase. The registration certificate for Phase-II and III states the common areas and facilities provided in their respective phase boundary. The common amenities as stated by the complainant are common to all phases but are not within the project boundary of any individual phase. The recitals of the agreement for sale (Annexure-13), at page-42 of the complaint, clearly speaks that "Z One" project is developed in multiple phases and certain common areas are available for use and benefit of all

the residents but are not limited to any specific phase alone. At Clause-24 of the agreement for sale, it is clear that the vendee shall not have right, title and interest over the areas beyond the areas specified in the agreement for sale. Section-11 (4)(e) and 19 (9) of the Act, 2016 provides for federation or an Apex body to be formed consisting of the association of allottees of all phases. He has cited provisions in the Apartment Ownership laws of different States and contended that such federation is to be made within three months from the date of receipt of the occupancy certificate of the last phase which was to be constructed in the layout. He has cited decisions between **Lodha Belmondo Hsg. Federation Limited vs. State of Maharashtra: 2024 SCC OnLine Bom 3622** to buttress his contention.

From the discussions made above, we have already come to the conclusion that "Z One" project is in phases, such as Advaita (Phase-I), Vyom (Phase-II) and Nirvaana (Phase-III). Some lands are still kept apart for future development. Phase-I consist of Ac.4.193 decimals of land, Phase-II consist of Ac.5.154 decimals of land and Phase-III consist of Ac.4.364 decimals of land. The first phase got approval by BDA for construction on 26.04.2011. Subsequently, it was revised and regularized by BDA on 20.06.2016. Occupancy certificates in respect of Phase-I was issued on 27.08.2016 vide Annexure-5 and occupancy certificate in respect of Phase-II was issued on 10.02.2022 vide Annexure-20. Explanation to Sub-section-2 of Section-3 of the Act, 2016 speaks that if one project is in phases, each phase is a stand alone project. So, the common areas within the phase are to be transferred by the

respondent/promoter to the association of allottees as per Section-17 of the Act, 2016. The facilities or amenities which are beyond the boundary area of the phases need to be registered in favour of the federation of the association of allottees. Section-11 (4) (e) and Section-19(9) of the Act, 2016 speaks of the federation of association of allottees or the apex body to be formed consisting of the association of allottees of each phase. So, the respondent is to enable the formation a federation of association of allottees of all phases of “Z One” project for transfer of the “common areas” of the projects, which are beyond the boundary of different phases, to the federation. Though the respondent has cited Apartment Ownership laws of different States, there is no mention of procedure for registration of Federation of Association of Allottees in the Odisha Apartment (Ownership and Management) Act, 2023. But common areas and facilities as per Section-2 (n) (vii) of the Act, 2016 means all community and commercial facilities as provided in the real estate project. Such common areas should be given to a federation of association of allottees consisting of existing association of allottees. As two phases of the project are already complete, the respondent should form a federation of association of allottees to handover such common facilities to the federation of association of allottees. The respondent is to form association of allottees for the phases of the projects that will be developed later and such association of allottees will be included in the federation of association of allottees. So, the promoter-respondent is to apply for approval of the draft format of Federation of Association of Allottees before this Authority within three months of this order

and on approval, will register the same for Federation of Association of Allottees within six months of this order; if no such law for procedure of registration of Federation of Association of Allottees is made at that time by Government. The contention of the complainant that the respondent/promoter should handover/transfer the amenities mentioned in the approved plan for 1032 dwelling units to the association of allottees, cannot be accepted. The issue is answered accordingly in favour of the respondent.

11. Issue No.vi

It is the contention of learned counsel for the complainant that the respondent/promoter should provide approach road and aromatic garden as per approved plan dt.20.06.2016. He has submitted that while illegally approving the second revised plan dt.09.07.2021, the respondent/promoter has changed the approach road connecting the main entry/exit point from the project to the tower of the complainant's flat without taking consent of 2/3rd allottees, which is in violation of Section-14(2)(ii) of the Act, 2016. The other contention of learned counsel for the complainant is that the respondent/promoter is constructing Phase-III over the aromatic garden shown in the approved plan dt.20.06.2016 after approval of the same by BDA in the second plan revision dt.09.07.2021.

Learned counsel for the respondent submitted that the agreement for sale (Annexure-13) at Clause-29(e), it is mentioned that the vendee shall not have any right whatsoever over anything outside its phase boundary and any re-orientation or realignment of

the main approach road are totally at the discretion of the respondent considering the very nature and character of the mega project. A comparison of the approach roads of 2016 and 2021 approvals (Annexure-B) would show that the change in layout made it much easier for the Phase-II Vyom residents to approach their flats. The photograph of the road as per 2021 plan approval would show that it is available to both Phase-I and Phase-II of the project. The road being beyond the boundary of Phase-II, the complainant has no right to raise any objection regarding change of the road. On the second point he has submitted that the aromatic garden has already been provided along with an elderly park strictly as per the brochure and its photograph (Annexure-G). The complainant is only trying to take advantage of a typographical oversight in the approved building plan when the brochure is clear that the construction will be made beside the Aromatic Garden and Elderly Park. A small part of the aromatic garden is currently cordoned off due to safety reasons and the same shall be duly opened after the Phase-III construction is over.

So far the change of approach road is concerned, it is admittedly beyond the boundary of Phase-I & Phase-II. All the phases in the project are stand alone projects as per Explanation to sub-section-2 of Section-3 of the Act, 2016. Section-14 of the Act, 2016 mandates for 2/3rd consent of allottees in case of any change within the project. So, the change of the approach road as approved by BDA during second revised plan dt.09.07.2021 is not violative of Section-14 of the Act, 2016. So far the aromatic garden is concerned, the case of the respondent that the aromatic garden is

written by the side of the aromatic garden for adjustment of space may be true; but it is apparent from the photograph in Annexure-G series that Phase-III of the project is going on over the elderly park as marked in the approved map of 20.06.2016 at page-14 of Annexure-G series. It is also found from the map that the dotted lines demarcating the phases are going over the elderly park. So, it cannot be said that the project is going on over the aromatic garden as shown in the map. So, the issue is decided accordingly against the complainant.

11. **Issue No.vii**

Learned counsel for the complainant did not press hard on seeking relief as to refund of Rs.3,00,000/- taken by the respondent towards garage. But he has submitted that as the respondent has not provided any garage and only provided one car parking space, the respondent is liable to refund the amount of Rs.3,00,000/- taken towards garage. Learned counsel for the respondent submitted that the complainant was well aware from the approved plan that he is going to get only one parking space. Further, the complainant has sent a letter dt.29.04.2022 (Annexure-A) requesting the respondent not to raise wall on three sides of parking space. So, to him, the respondent is not liable to return Rs.3,00,000/- to the complainant.

The respondent has taken Rs.3,00,000/- from the complainant for garage. The complainant is provided with a parking space by the respondent. The complainant requested by letter dt.29.04.2022 to the respondent not to raise walls on three

sides of the parking space. So, the respondent has not violated the terms of the agreement and the complainant is not entitled to the relief of refund of Rs.3,00,000/- from the respondent. The issue is answered accordingly against the complainant.

12. **Issue No.viii**

In view of our foregoing discussions, the complainant is not entitled to the reliefs sought for by her. However, directions are required to be given to the respondent/promoter as per sub-section-3 of Section-7 of the Act, 2016 instead of revoking the registration certificate (RP/19/2021/00586 dt.08.11.2021) for Phase-III of “Z One” project. Hence ordered.

ORDER

The case of the complainant is allowed, in part, on contest against the respondent. The respondent is directed

- (1) to file before this Authority and upload in the website, an authenticated copy of the approvals and commencement certificate from the competent Authority for each phase of “Z One” project proposed to be developed along with the present three phases; and the project approval with map should clearly mention the khata number, plot number, area and amenities of each phase of the project to be transferred to the concerned association of allottees and the khata number, plot number, area and the amenities to be transferred to the Federation of the Association of Allottees; and
- (2) to enable formation of association of allottees in due time for each phase of the “Z One” project, which are not yet formed;

and to transfer the land and all facilities of the concerned project to the concerned association of allottees within three months of obtaining occupancy certificate for the phase; and (3) to enable formation of a Federation of Association of Allottees within six months of passing of this order after applying for approval of the draft format of Federation of Association of Allottees before this Authority and on approval, will register the same for Federation of Association of Allottees; if no such law for procedure of registration of Federation of Association of Allottees is made at that time by Government; and to transfer the land and all the facilities reserved for Federation of Association of Allottees within three months of formation of the Federation. The association of allottees formed in respect of the up-coming projects will automatically include in the Federation of Association of Allottees.

Member (Judl.)

Chairperson.

LIST OF DOCUMENTS RELIED ON BY THE COMPLAINANT.

Annexure-1	photocopy of permission letter No.7398/BP/BDA, Bhubaneswar dated 26.04.2011.
Annexure-2	photocopy of key-plan map.
Annexure-3	photocopy of letter No.17230/BDA, Bhubaneswar dated 20.06.2016.
Annexure-4	photocopy of map of future extension plan.
Annexure-5	photocopy of occupancy certificate vide letter No.24944/BDA, Bhubaneswar dated 27.08.2016.

Annexure-6	photocopy of another map of future extension plan.
Annexure-7	photocopy of registration certificate of ORERA.
Annexure-8	photocopy of land details of the project.
Annexure-9	photocopy of Affidavit sworn by Tapa Kumar Mohanty, Managing Director.
Annexure-10	photocopy of money receipt for Rs.1,00,000/- dated 25.07.2017.
Annexure-11	photocopy of allotment letter dated 25.07.2017.
Annexure-12	photocopy of money receipt for Rs.8,41,472/- dated 17.08.2017.
Annexure-13	photocopy of agreement for transfer of a self-contained independent flat dated 13.11.2018.
Annexure-14	photocopy of building plan application form.
Annexure-15	photocopy of permission No.24018/BDA, Bhubaneswar dated 09.07.2021.
Annexure-16	photocopy of plan map as Annexure-16, original Form 'B' registration certificate of project.
Annexure-17	original Form 'B' registration certificate of project.
Annexure-18	photocopy of master plan.
Annexure-19	photocopy of agreement for sale for transfer of a self contained independent flat dated 19.01.2023.
Annexure-20	photocopy of occupancy certificate No.5467/BDA, Bhubaneswar dated 10.02.2022.

LIST OF DOCUMENTS RELIED ON BY THE RESPONDENT.

Annexure-A	letter dated 29.04.2022 of Swati Nayak regarding non-raising of any wall for parking area.
Annexure-B	photocopy of memorandum evidencing delivery of possession dated 29.4.2022 given by Swati Nayak.
Annexure-C	photocopy of letter dated 10.09.2018 addressing to the Managing Director Z-estates Pvt. Ltd. regarding revocation of cancellation and restoration of apartment of Flat No.103.

Annexure-D	copy of writ application, copy of order dated 19.04.2022 passed by the Hon'ble High Court in WP(C) No. 1215 of 2022.
Annexure-E	copy of notice in complaint case No.224 of 2021.
Annexure-F	copy of complaint petition in CC No.224 of 2021 and copy of order dated 26.07.2022 in CC No.224 of 2021.
Annexure-G	copy of the sanction plan dated 20.6.2016, relevant portion of brochure and photographs of elderly park and aromatic garden.
Annexure-H	copy of the order dated 17.02.2022 passed in W.P.(C) No. 1215 of 2022.
Annexure-J	copy of the order dated 11.03.2022 passed in W.A No.204 of 2022.
Annexure-K	copy of the order dated 04.04.2022 passed by the Hon'ble Supreme Court in S.L.p. No.5451 of 2022.
Annexure-L	copy of the order dated 18.04.2022 passed by the Hon'ble Supreme Court in SLP No.5451 of 2022.
Annexure-M	copy of the order dated 19.4.2022 passed in W.P.(C) No. 1215 of 2022.
Annexure-N	copy of the BDA compliance order dated 22.07.2022.
Annexure-O	copy of the order dated 12.02.2021 vide W.P. (C) No.3069 of 2024.
Annexure-P	copy of the BDA compliance order.
Annexure-Q	copies of the plaint, injunction application, order dated 5.10.2021 passed in C.S. No.2099 of 2021.
Annexure-R	copy of the FIR No.201 of Info City PS dated 16.08.2022.
Annexure-S	copy of the FIR No.306 of Info City PS dated 01.11.2022.
Annexure-T	copy of the FIR No. 307 of Info City PS dated 01.11.2022.
Annexure-U	copy of the FIR No.308 of Info City PS dated 01.11.2022.
Annexure-V	copy of the final form, charge sheet, statements

	u/s. 161 Cr.P.C. along with seizure lists, discharge petition and relevant orders of CT No.330 of 2022.
Annexure-W	copy of the order dated 20.06.2024 in CRLMC No.3696 of 2023.

Member (Judl.)

Chairperson.