



IN THE HIGH COURT OF ORISSA AT CUTTACK

AFR

M.S.A No.17 of 2025

Chandramani Behera **Appellant**

Mr. Lalit Kumar Maharana, Advocate

-Versus-

Bhimsen Guru and others **Respondents**

Mr. Partha Sarathi Nayak, Advocate
(for respondent No.3)

CORAM:
JUSTICE R.K. PATTANAİK

DATE OF HEARING: 11.07.2025
DATE OF JUDGMENT:13.10.2025

1. Instant appeal under Section 58 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the Act') is filed by the appellant assailing the impugned order dated 7th February, 2025 passed in connection with I.A. No.105 of 2024 of the learned Odisha Real Estate Appellate Tribunal, Bhubaneswar (shortly as 'the OREAT') arising out of OREAT Appeal No.181 of 2023, whereby, an application pressed into service by him seeking exemption from payment of the statutory amount as required under Section 43(5) of the Act was dismissed on the grounds inter alia that such decision demanding the deposit is not legally tenable and hence, liable to be interfered with and set aside.



2. As per the pleading on record, the appellant is the landowner and was approached by respondent No.2 for its development into a real estate project and accordingly, a Development Agreement as per Annexure-1 was entered into between them preceded by execution of an Irrevocable Power of Attorney dated 14th March, 2012 i.e. Annexure-2. The further pleading is that as per the said agreement, respondent No.2 was required to carry out the developmental work on the land of the appellant and to construct a residential project by the name and style 'Home Town', while the appellant having 30% share in the built up area of the flats. It is stated that respondent No.1 had shown interest to purchase a flat in the residential project and accordingly, approached the appellant, who offered him to sale a 2BHK flat in the first floor having a super built up area of 1260 sq. ft. out of his share of flats and for that, respondent No.2 issued a no objection certificate for the purpose of its production before the Bank and consequently, on 30th March, 2017, a Tripartite Agreement for sale was executed, whereby, the flat was allotted in favour of respondent No.1 for a sale consideration of Rs.34,60,039/- excluding taxes and in that connection, 10% of the consideration amount was paid in cash to the appellant towards booking price and the rest was payable to him as per payment schedule. It is further stated that apart from the agreement dated 30th March, 2017 at Annexure-3, the parties and the Bank entered into a Quadripartite Agreement dated 5th June, 2017 at Annexure-4 for the purpose of loan in favour of respondent No.1 for an amount of Rs.23 lac and such



loan was sanctioned on 16th May, 2017, whereafter, the margin money of Rs.11,60,039 was paid to the appellant.

2.1. In the meanwhile, the Act came into force on 1st May, 2017 and pursuant thereto, respondent No.2 being the promoter applied for registration under Section 3 thereof for the project and accordingly, it was granted vide Annexure-5. As respondent No.1, thereafter, defaulted in making payments to the appellant as well as the Bank, on 8th November, 2018., the latter issued a letter to the appellant calling upon him to submit the registered sale deed executed in the name of the former as it had already remitted the loan amount and upon receiving the same, it was informed by him in reply to Annexure-6 that respondent No.1 has also defaulted in making payment of the margin money despite several reminders. As per the appellant, besides the above letter dated 3rd December, 2018 at Annexure-7, he had correspondence as per Annexure-8 with respondent No.1 requesting him to pay the amount before 5th June, 2017, failing which, the agreement to be terminated.

2.2. According to the appellant, with the necessary correspondences having taken place between him and respondent No.1 as per Annexures-9 and 10 and the action of the Bank with a letter at Annexure-11 and taking over possession of the flat and intimation vide Annexure-12 to sell it off by way of auction and initiation of a proceeding before the Debt Recovery Tribunal, Cuttack in OA No.53 of 2021 vide letter dated 29th January, 2020 i.e. Annexure-12, respondent No.1 in connivance with respondent No.2 instituted the



complaint in CC No.405 of 2022 at Annexure-13 demanding refund of sum of Rs.37,06,039/- with interest and ultimately, it was disposed of by the learned OREAT by order dated 21st September, 2023 for its payment with interest @ 9.7% per annum. The appellant being aggrieved by the above decision at Annexure-15 filed OREAT Appeal No.181 of 2023 and therein, the application seeking exemption from making the deposit as required for a promoter under Section 43(5) of the Act was moved but it has been rejected vide Annexure-20 on the ground that he is equally liable. The plea of the appellant is that he does not fall within the definition of 'promoter' specified in Section 2(zk) of Act, rather, a landowner simpliciter, the fact, which was lost sight of leading to the demand of the deposit in terms of Section 43(5) of the Act, hence, the decision is erroneous and thus, calls for interference.

3. Heard Mr. Maharana, learned counsel for the appellant and Mr. Nayak, learned counsel for respondent No.3. Notices have not been issued to respondent Nos.1 and 2 as it was felt unnecessary, hence, has been dispensed with.

4. Mr. Maharana, learned counsel for the appellant submits that the appellant is not the promoter as per the Act being the landowner, hence, he is not liable to deposit the statutory amount as required under Section 43(5) of the Act applicable only in case of a promoters. On the contrary, Mr. Nayak, learned counsel for respondent No.3 would submit that in view of the Development Agreement as per Annexure-1, the appellant shall have to be treated alike for having 30% share in



the residential flats, one of which, was agreed upon to be sold to respondent No.1 and therefore, the learned OREAT did not commit any illegality in demanding such deposit while dealing with the appeal. In fact, according to Mr. Maharana, learned counsel for the appellant, the learned OREAT failed to adjudicate the real issue involved as to whether the appellant is liable to pay the statutory amount as per Section 43(5) of the Act and simply referred to the case law in **M/s Newtech Promoters and Developers Pvt. Ltd. Vrs. State of U.P. and others 2021 SCC Online SC 1044** to conclude that the provision is mandatory and it even makes a landowner liable. The contention of Mr. Maharana, learned counsel is that the legislative intent is that in case, any such appeal is filed, the statutory deposit shall have to be made by the promoters and not any other person and in so far as, the appellant is concerned, he is neither a promoter nor a co-promoter. In reply, Mr. Nayak, learned counsel for respondent No.3 opposed such contention of the appellant for the appellant having 30% share in the residential flats as per the Development Agreement.

5. The substantial questions of law involved are formulated by the Court for determination and they are as following:

- (i) Whether, the appellant being a landowner and not the promoter is liable to make statutory deposit under Section 43(5) of the RERA Act, 2016?
- (ii) When the RERA registration applied and is granted in the name of M/s Sanjay Infrastructure Development Pvt. Ltd, namely, respondent No. 2 for the concerned



project, namely, 'Home Town', whether, the learned OREAT has erred in directing the appellant to furnish the statutory deposit in terms of proviso to Section 43(5) of the Act, 2016?

(iii) Whether, the order dated 7th February, 2025 of the learned OREAT in I.A. No. 105 of 2024 arising out of OREAT Appeal No. 181 of 2023 is legally tenable?

6. In course of hearing, Mr. Maharana, learned counsel for the appellant cited the following decisions, such as, **Pooja Constructions Vrs. Secretary, Kerala Uranma Devaswom Board and another 2024 SCC Online Ker 4894** and **S. Sundaram Pillai and others Vrs. V.R. Pattabiraman and others (1985) 1 SCC 591**. According to Mr. Nayak, learned counsel for respondent No.3, the decision in **Pooja Constructions** (supra) is distinguishable on facts and hence, it is inapplicable. The submission of Mr. Nayak, learned counsel is that in the above decision, the landowner entered into an agreement with the Developer, whereby, the former was allotted with flats as consideration in kind and in that context, it was held that he is not a promoter, however, in the case at hand, the construction over the property in question was to be taken up by the appellant as per the Development Agreement and as such, he had received the advance booking amount from respondent No.1 towards sale of the flat in question. In other words, it is claimed that the appellant has to be treated as a co-promoter and is liable to deposit the statutory amount in view of Section 43(5) of the Act and hence, the decision of the learned OREAT is justified and deserves no interference.



7. The appeal has been preferred by the appellant against the decision of the d RERA in CC No.405 of 2022 and as earlier stated, by an order dated 21st September, 2023 therein, a direction was issued for him to make a payment of Rs.37,06,039 to respondent No.1 with interest @ 9.7% per annum compounded quarterly payable from 30th November, 2018 till the date of actual payment. The appellant claiming himself to be a landowner and not the promoter of the project, in view of the decision of the RERA having filed the appeal against it, filed the application vide I.A No.105 of 2024 demanding exemption from making deposit of the statutory amount but and it was not allowed by the learned OREAT.

8. The moot question is, whether, the appellant may be treated as a co-promoter to make him liable to pay the statutory deposit as required under Section 43(5) and proviso thereof?

9. Apart from the other case laws cited, Mr. Maharana, learned counsel for the appellant cited an order of this Court in **HDFC Bank Ltd., Khurda Vrs. Secretary, Odisha Real Estate Regulatory Authority, Bhubaneswar and others** (MSA No.21 of 2025 dated 16th May, 2025) to contend that while dealing with a similar question, this Court directed the learned OREAT to entertain the appeal without any such demand of statutory deposit.

10. For better appreciation, the Court is inclined to reproduce Section 43(5) of the Act and the same is, hence, extracted herein below:



“(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 at least 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.”

11. On a plain reading of the above provision, it is understood that a person may approach the OREAT with an appeal and where a promoter files it, the same shall not be entertained without such promoter first having deposited the statutory amount. It is the contention of Mr. Maharana, learned counsel for the appellant that in view of the proviso to Section 43(5) of the Act, the statutory deposit is demanded only from the promoters, not from anyone else. Considering the above claim and objection of Mr. Nayak, learned counsel for respondent No.3, the Court is to examine, whether, the appellant is held liable for the statutory deposit as has been demanded in terms of Section 43(5) of the Act.



12. The registration for the real estate project under RERA was applied by respondent No.2. It is revealed from Annexure-5 that respondent No.2 moved for registration under Section 3 of Act and it was issued in the name of M/s. Sanjay Infrastructure Development Pvt. Ltd. The registration certificate for the project was issued by the RERA on 31st August, 2018. The registration was granted for the project with conditions stipulated therein for the promoter to comply.

13. In fact, the term ‘promoter’ defined in Section 2(zk) of the Act means, a person who constructs or causes to be constructed an independent building or a building consisting of apartments or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or a person, who develops land into a project, whether or not constructs structures on any of the plots for a similar purpose of selling all or some of the plots of the project with such other persons included therein. In the case at hand, it is claimed that the appellant by no means can be treated as a co-promoter considering Annexure-5 issued for the project having been issued to respondent No.2.

14. In **Pooja Constructions** (supra), the question involved was, whether, the term ‘person causes to be constructed’ used in the definition of ‘promoter’ as per Section 2(zk) of the Act includes landowner and whether, the landowners are liable to be treated as co-promoters for applying registration of real estate projects so as to make them liable to perform all the



functions and obligations under the RERA. It has been held therein that the application for registration of the project under Sections 3 and 4 of the Act is to be submitted by the promoters alone and not the landowners; and that there is no such provision for a landowner to apply for registration and even, in case of joint venture agreements, the landowners need not join with the promoters for any such registration under RERA. On a combined reading of Sections 3 and 4 of the Act dealing with registration of real estate project, there is no such mention anywhere that the term ‘promoter’ includes a landowner. Rather, the provisions mandate a promoter to submit a declaration as a necessary compliance and not for a landowner. In **Pooja Constructions** (supra), the further view expressed therein is that if the intention of the Legislature was to include a landowner in clauses (i) and (ii) of Section 2(zk) of the Act, there was no need to include an Explanation to clause (vi) thereof dealing with the case of the landowner; and that, the exclusion of a landowner in clauses (i) and (ii) of Section 2(zk) of the Act but his inclusion in Explanation to clause (vi) indicates that the legislative intent in normal course was not to include a landowner in the definition of promoter and therefore, it cannot be said that wherever the term ‘promoter’ is used in the Act, it is inclusive of landowners.

15. As far as the appellant is concerned, in view of the Development Agreement at Annexure-1, it is found that he is to undertake construction over and in respect of schedule ‘A’ property meant for a commercial complex further having 30%



share in the residential flats with disposable rights leaving the rest 70% for respondent No.2 vis-à-vis schedule 'B' property. In **Pooja Constructions** (supra), it was noticed that there was acceptance of consideration in kind by the landowners in view of the agreement entered between them and the developer, hence, were held not to be co-promoters of the project and for having no any responsibilities assigned towards construction and development with sharing of profit and loss of the project. Such was the decision arrived at while seized with a question as to whether the landowners are to apply for registration under the Act alongside the developer/promoter. Considering the nature of transaction inter se parties and the submission of Mr. Maharana, learned counsel for the appellant with reference to the decisions in **Pooja Constructions** and **S. Sundaram Pillai** (supra) vis-à-vis interpretation of a statute and having regard to sub-section (5) of Section 43 of the Act and proviso thereto, the Court is of the humble view that the appellant is a landowner but is also to be treated as a co-promoter in view of the terms of the Development Agreement i.e. Annexure-1 since he is involved in the project having received a 30% share therein as regards the residential flats. In an area sharing agreement where the landowner receives a portion of the built up area of the flats not as a consideration in kind, he is perceived as a co-promoter because such share is intended for potential sale to the allottees making him a beneficiary of the project.

16. According to the Court, having regard to the Development Agreement at Annexure-1, the appellant as the landowner



received 30% of the share in the residential flats with the rights of disposal having an arrangement with respondent No.2 not as a consideration in kind besides when he is to take up construction of a commercial complex, hence, he does fall in the category of a co-promoter and therefore, the learned OREAT did not commit any error in demanding the statutory deposit from him. The project is shared in the ratio of 30%:70% in respect of the residential flats. From Annexure-1, it is also revealed that the appellant is to manage construction and development vis-à-vis residential flats over schedule 'B' property (leaving aside 70% thereof for respondent No.2) and schedule 'A' property for the commercial complex. Furthermore, the cost relating to development of the internal road in both the sides of the commercial complex over schedule 'A' property and all the expenses, such as, Architecture's fees etc. shall be borne by the appellant. In fact, as per the above agreement, respondent No.2 shall be entitled to carry construction of the residential flats over the project area marked in Map-2 only leaving apart the area under Map-1 to be constructed by the appellant on his own. The extent of participation of the appellant is conspicuously revealed from Annexure-1 and therefore, under such circumstances, with the kind of involvement in the project, though, its registration was applied by respondent No.2, shall have to be treated as a co-promoter.

17. The RERA aims to regulate the real estate sector and primarily to protect homebuyers' interest by imposing



responsibilities on anyone involved in the development and sale of real estate projects. In the case of the appellant, it appears from Annexure-1 that he is integrally connected with the project by not only sharing 30% built up area but also to take up constructions of residential flats over the same besides the commercial complex. With so much of sharing in the project after having entered into agreements like Annexures-3 and 4, the appellant shall have to be treated as a co-promoter and cannot escape from depositing the statutory amount merely referring to Annexure-5. In such situations, the Court is inclined to hold that the landowners are to be held jointly liable for the functions and responsibilities specified under the Act along with the primary developer. Any such residential built up area shared by the appellant to the extent of 30%, by no stretch of imagination, can be claimed as consideration in kind for parting with the property, which is really not a fact. In **Pooja Constructions** (supra), such was the case as the landowners received flats towards consideration having no other responsibilities assigned in respect of the project, hence, held not to be co-promoters as claimed by the promoter/developer for applying registration under the Act. The facts of the present case reveal a different picture altogether and distinguishable from the one in **Pooja Constructions** (supra) as rightly pointed out by Mr. Nayak, learned counsel for respondent No.3. The project is though with the assistance of respondent No.2, who, as its promoter is liable to discharge the obligations arising therefrom but the appellant is a co-promoter in view of the sharing revealed from Annexure-1 and therefore, the learned



OREAT was not at fault in demanding the statutory amount vide Annexure-20.

18. The Court's order in **HDFC Bank Ltd., Khurda** (supra) referred to by Mr. Maharana, learned counsel for the appellant was on the premise that the demand of compensation was directed with joint liability fixed, hence, concluded that there should not be any such demand of statutory amount under Section 43(5) of the Act from the Bank to be insisted upon, which is, hence, not to render any assistance to the appellant.

19. The substantial questions of law formulated by the Court are answered accordingly.

20. In the result, the appeal stands dismissed. As a necessary corollary, the impugned order dated 7th February, 2025 of the learned Odisha Real Estate Appellate Tribunal, Bhubaneswar in I.A. No.105 of 2024 arising out of OREAT Appeal No.181 of 2023 is hereby affirmed.

(R.K. Pattanaik)
Judge

Rojina

Signature Not Verified

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Reason: Authentication
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