

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

**Present : Sidhanta Das, Chairperson,
Pradeep Kumar Biswal, Member(Admn.)
Ramanath Panda, Member (Judicial)
Complaint Case No.35 of 2022.**

- 1(a). Sreenita Goenka, aged about 59 years,
W/o. Late Umesh Kumar Goenka,
Resident of Matamatha lane,
Cantonment Road,
P.S.Mangalabag, Dist-Cuttack.
- 1(b). Sneha Agarwal, aged about 38 years,
D/o. Late Umesh Kumar Goenka,
Resident of Matamatha lane,
Cantonment Road,
P.S.Mangalabag, Dist-Cuttack.
- 1(c). Raghab Goenka, aged about 34 years,
S/o. Late Umesh Kumar Goenka,
Resident of Matamatha lane,
Cantonment Road,
P.S.Mangalabag, Dist-Cuttack.

... Complainants

-Versus-

M/s. Jain Builders Pvt. Ltd.,
Represented through its Director,
Sumit Kumar Sethia,
Paras Plaza, Tinkonia Bagicha,
Cuttack-753001.

... Respondent

Advocate for the Complainants ... K.K.Mishra & Associates.

Advocate for the Respondent ... S.Mallik & Associates.

ORDER**Dated 24.01.2023**

The Complainants have filed this case against the Respondent under Section-31 of Real Estate (Regulation & Development) Act, 2016 praying to revoke the registration certificate issued in favour of the Respondent vide Registration No.RP/07/2019/00296.

2. The case of the Complainants is that the Complainants are the real owner of the property pertaining to Plot No.317/6248, Khata No.17/137 of Mouza-Unit-8, Tulasipur, Dist-Cuttack. The Respondent is undertaking a project in the said land obtaining registration certificate from this authority. The Complainants entered into an agreement for sale of the above property on 14.05.2008 with true owners, namely, Abani Ballav Dey and Dharani Ballav Dey of Tulasipur, Cuttack and Raghunath Jew represented by Marfatdar Mahanta Bijoy Narayan Ramanuj Das. As per agreement the Complainants paid Rs.20,00,000/- to the owner and Rs.10,00,000/- to Mahanta Bijoy Narayan Ramanuj Das towards part consideration amount from out of total consideration amount of Rs.1,68,00,000/-. On the basis of the agreement the Complainants took possession of the land. The matter was challenged in the Hon'ble High Court of Orissa and as per order of the Hon'ble Court in RSA No.10 of 2002 agreement was executed. Subsequently, without executing sale deed the owners created disturbances in possession of the Complainants and tried to alienate the property to Tulasipur Mahadev Puja Committee for a consideration of Rs.2,00,00,000/-. The Complainants initiated a proceeding under Section-144 of the Cr.P.C. which was disposed of with an observation that the dispute being civil in nature the proceeding was not

maintainable. In the said proceeding the Puja Committee took the stand that the land has been leased out in favour of the committee since 2006. So the Complainants filed Civil Suit No.525 of 2008 for Specific Performance of Contract against the owners which is now pending in the court of 1st Addl. Civil Judge(Sr.Divn.), Cuttack. Subsequently, the Complainants came to know that the order of the Hon'ble High Court in RSA No.10 of 2002 was challenged before the Hon'ble Apex Court and the order was upheld with modification that the consideration amount should be Rs.2.75 crores instead of 45 lakhs. The original owners illegally sold the property to one M/s. Pacheriwala Finvest Pvt. Limited and one Samarendra Mohanty by two registered sale deed dated 01.06.2016. Both the purchasers are parties to the suit. The Respondent knowing very well about the right of the Complainants agreed to purchase the land behind the back of the Complainants. The Complainants came to know that the Respondent was going to develop the project in the land and therefore the Complainants published a notice in daily 'Sambad' and 'Indian Express' on 06.11.2021 and 07.11.2021 respectively. In response to the notice the Respondent through advocate sent a reply stating to have purchased the suit land from the true owner. On the basis of void sale deed the Respondent is developing the project by obtaining registration certificate from this authority. The name of the project is "Jain Avenue". This is the reason the Complainants came up with this application seeking the aforesaid reliefs.

3. The Respondent has filed a counter stating that the case is not maintainable in law. The Complainants have no cause of action to file the case. The Complainants are not the real owner of the property. They have entered into an

agreement for sale of the property on 14.05.2008 with owners Abani Ballav Dey and Dharani Ballav Dey. The same is not a valid agreement. The document is not a registered agreement. So it is illegal under Section-17(1A) of the Registration Act, 1908 read with Section-53A of the Transfer of Property Act, 1882. In the agreement Mahanta Bijaya Narayan Ramanuj Das is not a signatory. Pursuant to the order of the Hon'ble Supreme Court of India Abani Ballav Dey and Dharani Ballav Dey paid Rs.2.75 crores to Sri Raghunath Jew installed at Tulasipur through Marfatdar, Mahanta Bijoya Narayan Ramanuja Das and obtained permission from the Endowment Authority. The owner subsequently alienated the property to M/s. Pachariwala Finvest Pvt. Limited. The Respondent purchased the property from M/s. Pachariwala Finvest Pvt. Limited vide registered sale deed dated 14.03.2017. The Respondent is not a party to the civil suit. The Respondent on the basis of ROR purchased the property and obtained registration certificate from this authority. He has not violated any provisions of Real Estate (Regulation and Development) Act, 2016. So there is no ground to revoke the registration certificate already issued in his favour.

4. From the pleadings of the parties, the following points are framed for adjudication.

- (i) Whether the case is maintainable in law?
- (ii) Whether the Complainants have cause of action to file this case?
- (iii) Whether there are reasons to revoke the registration certificate already issued under Section-5 of the Act in favour of the Respondent?
- (iv) Whether the Complainants are entitled to the reliefs claimed?

5. The documents filed by the Complainants are considered as evidence on their behalf. No document has been filed on behalf of the Respondent.

Point Nos.(i) &(ii):-

6. Admittedly this is a registered project. The Authority has issued registration certificate in favour of the Respondent vide Registration No.RP/07/2019/00296. So the provisions of the Act apply to the project. In that view of the matter, the case filed at the instance of the Complainants are maintainable in law and that the Complainants have cause of action to file the case. The points are accordingly answered.

Point Nos.(iii) &(iv):-

7. In the instant case, the Complainants claim the property on the basis of an agreement executed in the year, 2018. According to the Complainants the consideration amount has only been raised by the Hon'ble Supreme Court of India. The Complainants have filed C.S.No.525 of 2008 for Specific Performance of Contract. They have also taken the plea that on the basis of the agreement they took possession of the land. So this is a case squarely covered under Section-53A of Transfer of Property Act. The agreement coupled with delivery of possession is compulsorily registerable under Section-17 of the Indian Registration Act as submitted by the counsel for the Respondent. There is also necessary amendments to Section-53A of Transfer of Property Act and Section-17 of the Indian Registration Act relating to requirement of registration of agreement when possession of the property is delivered on the basis of the agreement. Towards part performance of contract possession is delivered in the present case as claimed by the Complainants. The agreement is not a registered document. It

has been notarised. But in case of agreement followed by delivery of possession the document is to be compulsorily registered under the Registration Act on payment of stamp duty. Necessary amendments have also been carried out in the Stamp Act.

8. The amendment to Section-17 has been made on 24.09.2001. Section-17(1)(A) has been added making such agreement compulsorily registerable. Section-53A of Transfer of Property Act, 1882 states that nothing in the Section shall affect the rights of a transferee for consideration who has no notice of the contract or the part performance thereof.

9. The validity of the agreement is to be decided by the Civil Court in the suit pending. In case the agreement is held to be valid and specific performance is granted, the Complainants will be clothed with title after execution of the sale deed in their favour. Now the true owner executed sale deed in favour of M/s. Pachariwala Finvest Pvt. Limited on 01.06.2016. The said company sold the land in favour of the Respondent. On the basis of sale deed the Respondent became the owner of the property. Of course both M/s. Pachariwala Finvest Pvt. Limited and the Respondent are to be considered as lis pendence purchasers. Therefore, their right is subject to result of the suit pending in the Civil Court. The Respondent claims that he is not a party to the civil suit. He is a bonafide purchaser for value without prior notice of the earlier contract. So his right on the basis of sale deed is not affected. The Respondent after obtaining registration certificate has entered into contract with many home buyers and collected money to develop the project. In that case number of persons will be affected if the registration is revoked. There is no material

before us about the present status of the project. There is no averment relating to any stay order or order of injunction obtained from the Civil Court.

10. Revocation is permissible under Section-7(1) of the Real Estate (Regulation & Development) Act, 2016 on the following grounds:-

"(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;

(B) the promoter permits the publication of any advertisement or prospectus whether in any newspaper or otherwise of services that are not intended to be offered;

(d) the promoter indulges in any fraudulent practices.

11. The Complainants claim that the Respondent knowing fully well about the agreement between the owner and the Complainants purchased the property. He has suppressed the material facts before the Authority. So he has violated the provisions of the Act, Rules and Regulations made thereunder. The promoter is involved in unfair practice and irregularities. We find that the Respondent cannot be said to have contravened Section-7(1)(c) (A),(B) of the Real Estate (Regulation & Development) Act, 2016 as he has not made false assurance or misleading representation regarding services to be assured to the allottees. The Authority on consideration of the prima facie material relating to title granted registration certificate. The prima facie ownership of the Respondent in respect of the disputed land cannot be disputed. However, such right and title is subject to result of the suit. The Authority has no scope to revoke registration certificate as the promoter has produced documents relating to title and approval of the project obtained from the local authority. So there is no ground to revoke the registration certificate already issued in favour of the Respondent. However, the Civil Court being the competent authority to decide the suit for Specific Performance of Contract, the Complainants have rightly approached the Civil Court for appropriate relief. So except giving a finding that the right of the Respondent is subject to the result of the suit pending in the Civil Court, no other relief can be made available

to the Complainants. The points are accordingly answered.
Hence, ordered.

ORDER

The case is allowed in part on contest against the Respondent without cost. It is declared that the right of the Respondent on the basis of registration certificate obtained from this Authority is subject to result of the Civil Suit No.525 of 2008 pending in the court of learned 1st Additional Civil Judge(Sr. Divn.), Cuttack.

sd/ 24.1.2023
Member-(Judl.) Member-(Admn.) Chairperson
(Ramanath Panda) (Pradeep Ku.Biswal) (Siddhanta Das)

List of documents relied upon by the Complainants:-

Copy of :

1. The Xerox copy of the registration certificate issued in favour of the Respondent.
2. The agreement for sale dated 14.05.2008.
3. The plaint in C.S. No.525 of 2008.
4. The written statement of the defendants/vendor's vander of the Respondent in C.S. No.525 of 2008.
5. The paper advertisement.
6. The advocate notice of the defendant.

List of documents relied upon by the Respondent:-

sd Nil.
Member-(Judl.) Member-(Admn.) Chairperson
(Ramanath Panda) (Pradeep Ku.Biswal) (Siddhanta Das)

Medo NO - 572(3) dt-30/01/2023
copy forwarded to the Complaint/
Registration/052(Land) Registrar
Branch Area Faradani

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ok

Registrar
Mishra Real Estate Regulatory Authority

