

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

**Present : Siddhanta Das, Chairperson,
Pradeep Kumar Biswal, Member (Admn.)
Gopal Charan Patnaik, Member (Judl.)**

Complaint Case No. 71 of 2023

Debaraj Mohapatra,
At – Nuapatana, P.O. Balakati, Dist. Khordha
At/Pr. GK G 120, Ranga Bazar, Bhubaneswar

... Complainant

Versus

1. Bansidhar Sahoo, S/o late Muli Sahoo
At- Balakati, Dipati Sahi, P.O. Balakati,
Dist. Khordha – 752 100
2. Sub-Registrar, Baliana
At- Baliana, P.O. Garasrirampur,
Dist. Khordha – 752 100

.... Respondents

Advocate for the complainant ...		Mr. S. Sahu
Advocate for the respondent no. 1 ...		None
Advocate for the respondent no. 2 ...		Mr. S. Das

ORDER

Dated 8th November, 2023

The complainant, Debaraj Mohapatra has filed this case against the respondents under Sec. 31 of Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'the Act, 2016') seeking the following reliefs:

- (a) To direct the Sub-Registrar, Baliana not to allow registration of fragmented sub-plots (plot area exceeding 500 sq. metres) under its jurisdiction in violation of ORERA Notification no. 250/2017/ORERA dated 29.3.2018;

- (b) To recommend the State Government of Odisha for necessary action against the Sub-Registrar, Baliana for deliberately violating the ORERA Notification no. 250/2017/ORERA dated 29.3.2018;
- (c) To direct the owner of the scheduled property to register the plotting project/fragmented sub-plots with ORERA, Bhubaneswar;
- (d) To direct the owner of the scheduled property to re-register the sold sub-plots to all purchased consumers at the cost of the owner, after completion of the registration of the project under ORERA, Bhubaneswar.
- (e) To declare all the registered sale deeds null and void, which are sold to various consumers without registration of the fragmented sub-plots under ORERA, Bhubaneswar.

2. It is the case of the complainant before this Authority that, as an intending buyer, the complainant approached the respondent no.1 namely, Bansidhar Sahoo to alienate 2000 sq. ft. of homestead land from Plot No. 4643 under Khata No. 899 at Mouza-Pratap Sasan for a consideration amount. In order to purchase the said piece of land from the respondent no.1, the complainant approached a nearby Bank to avail a loan and in future he was interested to construct a residential house over the said purchased land. The Bank authorities after scrutiny of the documents refused to sanction the loan on the ground that the said scheduled property belonging to the respondent no.1 has been fragmented into different sub-plots and the same were sold to various customers by way of plotted scheme. Further, the Bank informed that as per the guidelines made by the ORERA Authority vide letter no. 250/2017 dated 29.3.2018 the said scheduled

property is not registered with ORERA and there is no such approval of layout plan has been obtained from the planning authority. Hence, the complainant obtained an Encumbrance Certificate of the scheduled property and found that the then Sub-Registrar Sri Saroj Kumar Panda in the capacity of Registering Officer of Baliana has allowed for sale of total 11 nos. of sub-plots by fragmenting the said scheduled property into various sub-plots. The said Saroj Kumar Panda violated the Notification of the ORERA dated 29.3.2018. Hence, the complainant has filed this complaint case against the respondent no.1 who is the landlord of the Chaka Plot and the then Sub-Registrar Saroj Kumar Panda. Later on he came to know that the said Chaka plot belonging to the respondent no.1 has been fragmented into more than 20 nos. of sub-plots and they were sold to various persons. As the Chaka Plot has been fragmented into sub-plots, both the landlord and the registering authority of Baliana have violated the notification of the ORERA, Bhubaneswar dated 29.3.2018 and as such they are liable to be answerable to this Authority. 80 CPC notice was also served on the Sub-Registrar, Baliana. The relief sought for by the complainant is that necessary action may be initiated against the Sub-Registrar, Baliana who has allowed selling and registration of the sub-plots which is clear violation of the Notification of the ORERA. He also sought for a relief to recommend the concerned Government to take suitable action against the Sub-Registrars who have allowed registration of the fragmented Chaka Plot area. Further, it is prayed by the complainant that necessary direction be given to the respondent no.1 to register the project with the ORERA Authority under Sec.3 of the Act and to direct the registering authority to re-register the sold sub-plots of all the bonafide purchasers after declaring the registered sale deeds null and void.

3. The respondent no.1-Bansidhar Sahoo being the owner of the scheduled property did not appear in this case nor filed any show cause, for which he was set ex parte on 8.5.2023.

4. The respondent no.2, the Sub-Registrar of Baliana filed his show cause denying the allegations and contended that the complaint case is not maintainable in the eye of law and the complainant is not an aggrieved person for which the case is not maintainable against him. The complainant was not an intending purchaser and as the landlord has not alienated his land of 2000 sq. ft. to him, he brought this complaint case against the landlord and the sub-registrar office with an ulterior motive. Further, it was contended that the complainant ought to have approached the door of the civil court to get such reliefs and this Authority has no locus standi to entertain such a complaint petition. The said show cause has been filed on 13.9.2023 by the Sub-Registrar, Baliana named, Joginath Dash. It is further contended that the sale deeds registered at his office are not related to his period and it belongs to his predecessors. Hence, he prays before this Authority to drop the proceeding against him as it is not maintainable in the present form.

5. In support of his case, the complainant has filed xerox copy of the Notification of the ORERA bearing no. 250/2017 dated 29.3.2018, copy of notice under Sec.80 CPC issued to the Sub-Registrar and the landowner and EC available in Form no. 26 relating Khata no. 899 of Plot No. 4643 and the copy of ROR of Khata no. 889 of Chaka Plot No. 188 and 260 mentioned as Kisam-Gharabari. On the other hand, the respondent no.2 who appeared in this case did not choose to file any document in support of his contention.

6. From the above pleadings the following issues are framed for adjudication.

- (i) Whether the complainant has got a cause of action to file this case against the respondents and whether the case is maintainable in the eye of law?
- (ii) Whether the Sub-Registrar, Baliana allowed registration of the fragmented sub-plots exceeding 500 sq. metres in violation of ORERA Notification no. 250/2017 dated 29.3.2018?
- (iii) Whether this Authority can recommend the concerned Government to take necessary action against the Sub-Registrars who were posted at Baliana registering office and who have violated the Notification of the ORERA Authority, Bhubaneswar?
- (iv) Whether the sale deeds registered at the office of Sub-Registrar, Baliana in which the respondent no.1 alienated the sub-plots to different buyers can be declared as null and void?
- (v) Whether the complainant is entitled to the reliefs, claimed?

7. **Issue no. (i) :-**

As per issue no. (i), it is to be adjudicated by this Authority as to whether the complaint case preferred by the complainant has got a cause of action to file such case against the respondents and whether the case is maintainable in the eye of law. In this regard, on going through the record, it is forthcoming that the respondent no.2 filed a maintainability petition before this Authority and the same was disposed of on 19.7.2023 and this Authority held that the case is maintainable in the eye of law as the complainant has got a cause of action by way of an intending buyer of the plot. So, there is no need to discuss further in this regard as the order dated 19.7.2023 is very clear.

8. **Issue nos. (ii) to (v) :-**

Now coming to the next issues (ii) to (v) as to whether the respondent nos. 1 and 2 in connivance have registered the sale deeds of the sub-plots in favour of buyers by ignoring the Notification no. 250/2017 dated 29.3.2018 issued by the ORERA Authority. Now going through the said Notification of the ORERA Authority, it is forthcoming from Clause-5 that where the plot area exceeds 500 sq. meter, approval of the planning authority to the layout plan and registration with ORERA under Sec.3 of the Act are required and where the land is less than 500 sq. meter, no approval or registration is required from the ORERA Authority. Verified the ROR furnished by the complainant and it is forthcoming that the total land area is Ac.1.250 dec. Kisam-Ghara Bari and it is related to Chaka no. 188 and 260. The ROR further speaks that the land of Ac.1.250 dec. stands recorded in the name of the respondent no.1- Bansidhara Sahoo S/o Muli Sahoo and the said land is in Mouza-Pratap Sasan of Baliana Tahasil of District Khurda. So, the total area of Ghara Bari land is Ac.1.250 dec.. While registering the conveyance deeds executed by the respondent no.1 in favour of the home-buyers, how could the then Sub-Registrar of Baliana shut his eyes when there is restriction on fragmentation of Chaka land under Chapter-V of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972? Sec. 35 (1) of the above Act clearly speaks that *a transfer or partition in contravention of the provisions of section 34 shall be void*. Now coming to Sec. 34(1) it is stated that *no agricultural land in a locality shall be transferred or partitioned so as to create a fragment*. Clause (2) speaks that *no fragment shall be transferred except to a land-owner of a contiguous Chaka*. So Sections 34 and 35 of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 is very clear in this regard and how Saroj Kumar Panda, being the Sub-Registrar of Baliana has

committed such mistakes and thereafter him, by his successors who have alienated nearly 20 sub-plots of the said Chaka bearing no. 188 and 260 to different buyers and further violated the notification of the ORERA Authority which was issued to all ADMs-cum-District Registrars of all districts vide letter no. 250/2017 dated 29.3.2018. Further on going through the Encumbrance Certificate in Form No.26 as provided by the complainant it is forthcoming that the land available in Khata no. 899 Plot No. 4643 is consisting to an area of Ac.1.025 dec. and the then Sub-Registrar, Saroj Kumar Panda registered the plots in favour of different buyers by fragmenting the Chaka plot into sub-plots which is against the clear violation of Notification of the ORERA Authority and the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972. On perusal of the EC obtained by the complainant, it is forthcoming that the first party is Bansidhara Sahoo and the second parties are different persons who purchased the sub-plots from the respondent no.1 and the respondent no.2 Saroj Kumar Panda committed the illegality by allowing such registration of the conveyance deed in favour of buyers by ignoring the Notification dated 29.3.2018 and the provisions of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972. So, it is crystal clear from the Encumbrance Certificate available in Form no. 26 related to the Sub-Registrar office of Baliantha that the respondent no.1 being the land owner who has been set ex parte in this case has cunningly fragmented the entire area of Ac.1.025 dec. of Khata no. 899 Plot No. 4643 of Mouza-Pratap Sasan into sub-plots and sold the same to different persons which is illegal and such conveyance deeds executed by the respondent no.1 in favour of different buyers is to be declared as null and void by this Authority. So, due to hand in glove between the landowner-respondent no.1 and the Sub-Registrar-respondent no.2 and subsequent Sub-Registrars of the

said office are equally liable for committing such mistakes which cannot be ignored by this Authority.

9. As discussed above, this Authority feels that necessary recommendation is to be made to the concerned Government to avoid such lapses committed by the registering authority throughout the Odisha. When the Act is very clear that the Chaka plot cannot be fragmented into sub-plots as per Sections 34 and 35 of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972, the respondent no.2-the then Sub-Registrar and after him his successors who violated the existing provisions and the acts in making such illegal conveyance deeds have to be brought to book to prevent the other Sub-Registrars in the State of Odisha to abide by the Notification of the ORERA Authority and the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972. Hence, before parting with the order, we reiterate that the conveyance deeds executed by the respondent no.1 in favour of home-buyers are being declared as null and void and the respondent no.1 has to obtain the lay out plan from the competent authority and to register the project under Sec.3 of the RERA Act and thereafter, fresh conveyance deeds have to be executed by the respondent no.1 at the Sub-Registrar office under Sec.17(1) of the Act. As there were lapses on the part of the Sub-Registrars including the respondent no.2-Saroj Kumar Panda, we recommend to Inspector General of Registration, Odisha, Cuttack and the Collector, Khurda to take suitable action against the defaulting officers on administrative side in the interest of justice. The issues are accordingly answered. Hence, it is ordered:

ORDER

The case is allowed on contest against the respondent no.2 and ex parte against respondent no. 1 without cost.

The conveyance deeds executed by the respondent no.1 in favour of the home-buyers in respect of fragmented sub-plots of Chaka no. 188 and 260 having Khata no. 899 Plot No. 4643 measuring total area Ac.1.025 dec. are hereby declared as null and void.

The respondent no.1 is directed to obtain layout plan from the competent authority in respect of Chaka no. 188 and 260 having Khata no. 899 Plot No. 4643 within a period of two months and within 45 days thereafter, apply for registration of the project before this Authority

Office to initiate a proceeding under Sec. 59 of the Act against the respondent no.1 forthwith.

Send copy of this order to the Inspector General of Registration, Cuttack, Odisha and all the Collectors of districts in the State of Odisha for information. The IGR and the Collector, Khurda are directed to take suitable action on administrative side against the respondent no.2-Saroj Kumar Panda and his successors who were involved in such type of dereliction of duties as Sub-Registrars, Baliana.

Sd/-	Sd/-	Sd/-
Member (Judicial) (Gopal Ch. Patnaik)	Member (Admn.) (Pradeep Ku. Biswal)	Chairperson (Siddhanta Das)

List of documents relied upon by the complainant

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| Annexure- 1 | Copy of the legal notice to Sub-Registrar, Baliana |
| Annexure- 2 | Copy of the legal notice to the landowner. |
| Annexure-3 | Copy of the ORERA Notification no. 250/2017/ORERA dated 29.3.2018. |
| Annexure-4 | Copy of the Encumbrance Certificate showing sale of fragmented sub-plots |
| Annexure-5 | Copy of ROR in respect of Chaka plot nos. 188 and 260 |

List of documents relied upon by the respondent s

Sd/-	Nil.	Sd/-	Sd/-
Member (Judicial) (Gopal Ch. Patnaik)		Member (Admn.) (Pradeep Ku. Biswal)	Chairperson (Siddhanta Das)

TRUE COPY


Registrar
Odisha Real Estate Regulatory Authority

Memo No. 6602(3) Dt. 14/11/23
Copy of order forwarded to the
complainant / Respondents / O.S.D.
Petitioner / Opposite Parties
(Land) Registration branch for
Information.


Registrar
Odisha Real Estate Regulatory Authority

o/c