

IN THE HIGH COURT OF ORISSA AT CUTTACK

**W.P.(C) Nos. 18799, 38186, 38664 of 2021 and
14128 of 2022**

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

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

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

Pratap Kumar Rout
(In W.P.(C) No.14128 of 2022)

Mr. Mohit Agarwal, Advocate
(In W.P.(C) Nos.18799, 38186
and 38664 of 2021)

Mr. A.P. Ray, Advocate
(In W.P.(C) No.14128 of 2022)

State of Odisha and others ***Opposite Parties***

Mr. Debakanta Mohanty, AGA for State
Mr. D.P. Nanda, Senior Advocate for Intervener
Mr. S. S. Mohanty, Advocate for Intervener
Mr. Surya Prasad Mishra, Senior Advocate for Intervener
Mr. V. Mohapatra, Advocate for Intervener
Mr. Gautam Mishra, Senior Advocate for Opp. Party No.4
and Mr. Dayananda Mohapatra, Advocate for Opp. Party No.3
(in W.P.(C) No.38186 of 2021)
Mr. B. P. Tripathy, Advocate for ORERA
Ms. Pami Rath, Advocate for Z-1 Apartment Owners Association

CORAM:
THE CHIEF JUSTICE
JUSTICE CHITTARANJAN DASH

ORDER
27.09.2022

Order No.

09.

1. Since the last date of hearing, the developments that have taken place are that on 12th September 2022, the Housing and Urban Development Department has notified the Odisha Real Estate (Regulation and Development) Amendment Rules, 2022 purportedly in light of the observations in the orders passed by this Court earlier. They have also apparently notified the changed draft model agreement to be executed.

2. The second development that has taken place is that on 26th September 2022, the Housing and Urban Development Department has written to the Odisha Real Estate Regulatory Authority (ORERA) recommending the Model Memorandum and Bye-Laws of the Associations along with a draft format of a notification to be issued by ORERA under Section 37 of the Real Estate (Regulation and Development) Act, 2016. ORERA has been asked to coordinate with the Inspector General of Registration (IGR) and notify the Model Memorandum and Bye-Laws of the Association.

3. Mr. B.P. Tripathy, learned counsel appearing for ORERA states that ORERA is already taking steps to comply with the above directions and will shortly be coming out with the Model Memorandum and Bye-Laws of Association.

4. Mr. Debakanta Mohanty, learned Additional Government Advocate (AGA) adds that a model format of a sale deed is to be notified to enable execution of sale deeds in that format consistent with the notified amended rules. He states that all agreements for sale which comply with the new format as notified will be registered. He adds that the State Government is already seized of

preparing the Apartment Ownership and Management Bill in consultation with all the stakeholders and will be tabling it before the Assembly.

5. Pursuant to the order passed by this Court on 24th August 2022 in I.A. No.11525 of 2022 in W.P.(C) No.38186 of 2021 an affidavit has been filed by Shri Kabindra Kumar Sahoo, Secretary of the Bhubaneswar Development Authority (BDA) who is also the Competent Authority under the Odisha Apartment Ownership Act, 1982. Mr. Sahoo states therein that Annexure-1 to the aforementioned I.A., which was a registration certificate issued on 22nd August 2022, was issued 'inadvertently'. He has conveyed his unconditional apology for issuance of the said registration certificate. The apology tendered by him is accepted and his personal appearance is dispensed with.

6. Mr. Dayananda Mohapatra, learned counsel appearing for the BDA seeks leave of the Court to withdraw the said registration certificate. The BDA is permitted to withdraw it.

7. At this stage Ms. Pami Rath who appears for the Z-1 Apartment Owners Association in whose favour the registration was issued has referred to an affidavit filed by the said association placing on record the difficulties being faced by its members in managing the day to day affairs of the Apartment/Building.

8. Unless the provisions of the law are scrupulously followed in terms of the order already passed by this Court, any *ad hoc* temporary solution to the problems faced by the Apartment owners will only compound their difficulties and not resolve them. This has

already been observed by this Court in its earlier order dated 24th August 2022. At the same time, the Court would like to impress upon the State Government that it must put in place the new amended legislation at the very earliest to address these concerns.

9. Mr. Mohit Agrawal, learned counsel appearing for the Petitioner in W.P.(C) No.18799 of 2021 refers to Annexure-2 to the affidavit filed by the Petitioner on 16th August 2022, which is a public notice issued by the IGR, Odisha. In the said notice, there is a sentence which states that “any Apartment completed before commencement of RERA don’t fall into this category where restriction can be imposed”. It is pointed out that the word ‘completed’ has to be properly clarified by the IGR as it can lead to ambiguity.

10. Mr. Debakanta Mohanty, learned AGA appearing for the IGR states that an affidavit will be filed by the IGR clarifying what was meant by the aforementioned sentence in the public notice. The said affidavit will be filed in consultation with the ORERA before the next date.

11. List on 24th November, 2022.

(Dr. S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge

S.K. Guin