IN THE ODISHA REAL ESTATE APPELLATE TRIBUNAL AT BHUBANESWAR

OREAT Appeal No.113 OF 2025

M/s.Sai Krishna Homes Pvt. Ltd. ... **Appellant**

-Versus-

Prasanta Kumar Prusty ... **Respondent**

For the appellant Mr.B.P.Tripathy, Senior Advocate
Mr.D.K.Pradhan, Advocate
Mr.S.S.Senapati, Advocate

For respondent None

CORAM :

Hon'ble Shri Justice P.Patnaik, Chairperson
Shri S.K.Rajguru, Judicial Member
Dr.B.K.Das, Tech./Admn. Member

O R D E R
29.4.2026

The appeal is taken up through hybrid mode.

2. Heard Mr.B.P.Tripathy, learned senior counsel, appearing for the appellant through virtual mode.

3. In the captioned appeal, the appellant being aggrieved and dis-satisfied with the order dated 03.03.2025 passed by the learned Regulatory Authority in Complaint Case No.994 of 2024 has inter alia prayed for setting aside the same with further prayer for remitting back the matter to the learned Authority by granting liberty to the appellant

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to file its show cause and the matter may be heard on its own merit.

4. In the instant appeal, though the notices were issued to the respondent, as the respondent did not appear, he has been set ex parte vide order dated 1.12.2025.

5. The respondent being the complainant filed the Complaint Case bearing no.994 of 2024 under Section 31 of the Real Estate (Regulation & Development) Act, 2016 praying for a direction to the respondent (present appellant) to execute the registered sale deed upon delivery of possession of the allotted flat after receiving the balance consideration amount of Rs.8,61,992/-, to restrain the respondent (the present appellant) to alienate the allotted flat of the complainant to any third party, to provide him occupancy, completion and other statutory document, direct the respondent to pay interest for the delayed period, form an association of allottees as per the act and pay cost of Rs.50,000/- towards legal expenses.

6. On perusal of the records of the learned Authority, it appears that though notices were issued to the respondent (present appellant) and the respondent appeared through his counsel but despite opportunities, he did not appear and file his show cause. Finally, the respondent was set ex parte on 05.02.2025 and the Complaint Case No.994 of 2024 has been disposed of by the learned Authority with the following directions.

"The case of the complainant is allowed ex parte against the respondent-promoter but without any cost. The respondent is directed to

(i) to execute the conveyance deed in respect of flat No.404, 3 BHK, 4th floor of type-V, Block-A, Daya Complex in the project " Sai Krishna Residency" Nandapur, Bhubaneswar as per allotment letter dated 24.7.2017 and the agreement dated 25.11.2017 in favour of the complainant after receiving the balance amount of Rs.8,61,992/- from the complainant on the date of execution and to handover the possession thereof to him.

(ii) to obtain the occupancy certificate from the competent authority and to handover the same to the complainant

(iii) to pay interest @ 9.70% per annum on Rs.33,25,000/- for the delayed period from 4.12.2017 till the date of handing over possession of the flat as per Section 18(1) of the Act; and

(iv) not to create any 3rd party interest in respect of the flat no.404.

7. Mr.B.P.Tripanty, learned Senior Counsel appearing for the appellant fairly submits that though several opportunities had been granted to the counsel appearing for the appellant before the learned Authority but the reasons best known to him the show cause could not be filed and the factual aspect from the side of the appellant could not be brought before the learned Authority, as a result of which, the impugned order has been passed thereby appellant has been subjected to mis-carriage of justice. Learned Senior counsel

during course of hearing further submits that if the instant appeal would be remitted to the learned Authority for fresh adjudication by affording opportunity to the present appeal to file his show cause alongwith other relevant documents and for opportunity of hearing then, the grievance of the appellant would be meted out and redressed and such course of action would sub-serve the ends of justice.

8. It would be pertinent to mention the decision of the Hon'ble Supreme Court of India in the case of ***Madhyama Broadcasting Vs. Union of India*** (reported in 2023 SCC (1) SC 3667), wherein the Hon'ble Apex Court has been pleased to opine that it is now an established principle of natural justice that relevant material must be disclosed to the affected party. This rule ensures that that the affected party is able to effectively exercise his right to appeal. It is also reiterated that in circumstances where relevant materials are not disclosed, that form of adjudication perpetuates a culture of secrecy and opaqueness and places the judgment beyond the reach of challenge. The affected party would then be unable to contradict errors, identify omissions, challenge the credibility of informants or refute false allegations.

9. The powers of the Tribunal as envisaged **U/s.53 of the Act**, the relevant portion of the Act is extracted below :

> ***53. Powers of Tribunal :*** *(1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice.*
>
> *(2) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure.*

(3) The appellate Tribunal shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872(1 of 1872).

(4) The Appellate Tribunal shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a civil court under the Coe of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person and examining him on oath;
(b) requiring the discovery and production of documents;
(c) receiving evidence on affidavits;
(d) issuing commissions for the examinations of witnesses or documents;
(e) reviewing its decisions;
(f) dismissing an application for default or directing it ex parte; and;
(g) any other matter which may be prescribed.

(5) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 for the purposes of section 196 of the Indian Penal Code (45 of 1860) and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973(2 of 1974).”

10. On perusal of the impugned order, taking into account the Section 53 of the Act, it is quite clear that non-filing of show cause, obviously vitiate the entire proceeding and filing of the show cause is a condition precedent for fair decision making.

11. In the instant case despite opportunity given to the appellant, the appellant could not filed his show cause before the learned Authority, as such, he could not bring the factual and legal aspects before the learned Authority, which

has caused prejudice to the appellant, which is anthesis to the principle of natural justice, equity and fair play.

12. On the cumulative facts and various judicial pronouncement, we are inclined to set aside the impugned order dated 03.03.2025 passed in Complaint Case No.994 of 2024 passed by the learned Regulatory Authority and accordingly, the same is set aside and the matter is remitted back to the learned Authority for fresh adjudication and disposal in accordance with law after providing opportunity to the appellant for filing show cause and opportunity of hearing to all concerned. Learned Authority shall do well to dispose of the Complaint Case No.994 of 2024 as expeditiously as possible preferably within a period of two months from the date of appearance of the appellant.

13. It is open to the appellant to file his show cause and necessary documents, if any before the learned Regulatory Authority in support of his claim, which shall be considered on its own merit in accordance with law. The appellant is also directed to appear before the learned Authority for further consideration of the matter positively on 11.5.2026.

14. It is made clear that we have not delved into the merit of the matter and the learned Authority is at liberty to dispose of the matter in accordance with law.

With the above orders, the appeal is disposed of accordingly.

The statutory amount deposited by the appellant be refunded to him alongwith its accrued interest on proper identification and application after the appeal period is over.

The record in Complaint Case No.994 of 2024 alongwith a copy of this order be sent to the learned Authority. Also send a copy of this order to the appellant.

Justice P.Patnaik
Chairperson

Shri S.K.Rajguru
(Judicial Member)

Dr.B.K.Das
(Tech./Admn. Member)

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