



IN THE ODISHA REAL ESTATE APPELLATE TRIBUNAL
AT BHUBANESWAR

OREAT Appeal No. 17/2024
(Arising out of SMCC. No. 07 of 2023)

M/s. Raghupati Estate & Holding Pvt. Ltd.
Represented by its Managing Director,
Mr.Pravat Kumar Nanda

...Appellant

-Versus-

Secretary,
Odisha Real Estate Regulatory Authority,
Bhubaneswar.

.....Respondent.

For the appellant
For respondent

: Mr. S.Pani, Advocate
: Mr.B.Nayak, Advocate

CORAM :

Shri S.K.Rajguru, Judicial Member

Dr. B.K.Das, Tech./Admn. Member

ORDER

24. 07.2026

The appeal is taken up for final order.

2) Order dated 31.7.2023 passed by the Odisha Real Estate Regulatory Authority (here in after referred to as learned ORERA) in SMCC No.07 of 2023 is under challenge in this appeal. The appellant was the only respondent in the said complaint case and the respondent of the appeal is the learned ORERA. Prayer has been made to set aside the impugned order dated 31.7.2023 passed in SMCC No.07 of 2023.

3) Facts and circumstances leading to the filing of this appeal are as follows :

Pursuant to the order dtd. 4.11.2022 passed by the ORERA, its Enforcement Wing inspected the project “Pristine Park” at Bamphakuda in Cuttack Sadar Tahasil of Cuttack district developed by Sri Prabhat Kumar Nanda, Managing



Director of the promoter-company “Raghupati Estate and Holding Pvt. Ltd.” on 3.1.2023 and found that pursuant to the permission granted by the B.D.O., Cuttack Sadar Block vide his office letter no.999 dtd. 31.12.2013, the promoter had constructed a S+7 floor residential building on plots no.2043,2064, 2066, 2067, 2068, 2070 and 2071 of Khata no.323 of mouza-Sainda, Tahasil-Cuttack Sadar, District-Cuttack. The construction of the project was found to be completed and occupancy certificate in respect of it was issued, but the project had not been registered with the ORERA. The promoter’s application for registration of the project submitted in August, 2017 had been rejected vide letter no.2322 dtd.5.8.2021 of the ORERA on the ground that he had failed to submit the building plan approved by the PD, DUDA as required pursuant to the notification no.4844 dtd. 15.2.2020 of the H & UD Department, Govt. of Odisha. The enforcement wing comprised of the Enforcement Officer and Empanelled Engineer further found that a total 154 out of proposed 210 flats had been completed and out of the same possession of more than 100 flats had been given prior to obtaining the occupancy certificate from the competent authority. The Enforcement Wing also found a number of deficiencies in the project including the non-installation of fire safety equipments and non-obtaining of the fire safety certificate from the appropriate authority. In absence of DPR, land details, agreement for sale etc. the Enforcement Wing estimated the cost of the project on the basis of the sale deed of a flat owner to be Rs.49,27,50,911/-. On receiving the joint inspection report dtd.7.1.2023 from the Enforcement Officer and Empanelled Engineer, order was passed by the ORERA on 12.1.2023 to initiate a suo motu



complaint case against the promoter for developing the project and selling flats therein without registering the project with the ORERA and thereby contravening section 3 (1) of the R.E. (R&D) Act, 2016. Accordingly, SMCC No. 7 of 2023 was instituted against the respondent-promoter.

Pursuant to the notice issued by the learned ORERA, the respondent-promoter appeared through his counsel on 21.2.2023. On 23.5.2023 the respondent-promoter filed his written show cause to the complaint wherein he took the plea that the development of the project was started in the year 2010 with permission of the BDO, Cuttack Sadar Block. Subsequently revised plan of the project was also approved by the BDO and as per the approved plan construction was completed in all respect prior to 2015. The respondent-promoter took the further plea that mouza-Sainda did not come under any planning area and the promoter never received direction of the ORERA to register the project with it and therefore section 3 (1) of the RERA Act is not applicable to it. Further, making it clear that, after the year 2015 there was no advertisement, booking, marketing or offer for sale of any flat in the project, learned counsel for the respondent claimed that, section 3 (1) of the RERA Act was not applicable to the project.

Hearing of the suo motu complaint case was taken up on 24.7.2023 and the impugned order was passed on 31.7.2023 directing the respondent to pay a penalty of Rs.10,00,000/- within a period of two months making it clear that in the event of failure to comply with the order, the same shall be enforced and the penalty shall be realized as per law.

4) In the hearing of the appeal, the learned counsel for the appellant has stuck to his pleas in the written



show cause to the suo motu complaint. It is categorically submitted that after commencement of the RERA Act, 2016, no construction of the project has been made and no flat has been allotted to anybody. It is further submitted that mouza-Sainda where the project is situated is not within the territorial jurisdiction of any development authority and although occupancy certificate in respect of the project has been issued by the B.D.O on 25.11.2022, but in absence of the date of completion of the project the impugned order with a finding that the project has been constructed after commencement of the RERA Act, is only a presumption. The learned counsel for the appellant has drawn the attention of this Tribunal to the fact that the copy of the inspection report of the Enforcement Officer and the Empanelled Engineer was not served upon him, though the impugned order has been passed on the said report and therefore principle of natural justice has been violated. With the aforesaid submissions and terming the impugned order to be an illegal one, the learned counsel for the appellant has made the prayer as mentioned earlier in para-2.

5) On the other hand, the learned counsel for the respondent-ORERA has submitted that no completion certificate in respect of the project has been filed and as the application of the appellant-promoter for registration of the project with the ORERA had been rejected on 5.8.2021 for failing to submit the approval of the DUDA to the building plan as required under the notification no.4844 dtd. 15.2.2020 of the H & UD Department, Govt. of Odisha, the project was certainly an incomplete one on the date of commencement of the R.E. (R&D)Act, 2016. Claiming that the project being an ongoing one on the date of commencement of the R.E. (R&D) Act was



required to be registered with the ORERA u/sec. 3 (1) of the Act but the same having not been done the imposition of the penalty of Rs.10,00,000/- on the appellant by the learned ORERA is a rightful exercise of its power, the learned counsel for the respondent has prayed for dismissal of the appeal for being unwarranted.

6) Suo Motu Complaint Case No.7 of 2023 has been instituted against the appellant for development of the project 'Pristine Park' and sale of its flats without registration with the ORERA thereby violating Section 3 (1) of the R.E. (R&D) Act, 2016. The appellant has admitted to have developed the project, but has claimed it to have been completed prior to the year 2015. However, no completion certificate from the competent authority has been produced to show that the project was actually completed prior to the date of commencement of the R.E. (R&D) Act i.e. 1.5.2017. Though occupancy certificate has been obtained by the appellant from the B.D.O., Cuttack Sadar Block, on 25.11.2022, but the same does not show as to when the project has been completed. It is the requirement u/sec. 3 (1) of the Act, that projects that are ongoing on the date of commencement of the Act and for which completion certificate has not been issued, the promoter shall make an application to the Regulatory Authority for registration of the said project within a period of three months from the date of commencement of the Act. Section 3 (2) (b) of the Act makes it clear that, no registration of the real estate project shall be required where the promoter has received completion certificate in respect of it prior to commencement of this Act. In the case of Newtech Promoters and Developers Pvt. Ltd. Vrs. State of U.P. and Others reported in 2021 SCC Online-1044, the Hon'ble Apex



Court has also made it clear that, projects which are already completed and in respect of which the completion certificates were issued prior to the commencement of the Act, 2016, are outside its purview. So in view of the aforesaid statutory provisions and the observation of the Hon'ble Apex Court in the Newtech Promoters case (Supra) there remains no doubt that the date of issuance of the completion certificate is the determining factor for applicability of the R.E. (R&D) Act to a project. In the present case, permission for construction of the project, a S+7 residential building structure was granted by the BDO, Cuttack Sadar Block in favour of the appellant vide letter no.999 dtd. 31.12.2013 and therefore if the project is completed prior to the year 2015 then its completion certificate also should have been issued by the said Authority i.e. BDO, Cuttack Sadar Block. In absence of the completion certificate and the occupancy certificate issued showing no date of completion of the project, the plea of the appellant that the project had been completed prior to the year 2015, cannot be accepted.

The joint inspection report of the Enforcement Officer and Empanelled Engineer of the ORERA dtd.7.1.2023 shows a number of deficiencies relating to the project including the non-completion of 56 flats out of the proposed 210 flats and non-obtaining of the fire safety certificate in respect of the project inspite of the fact that the height of the building was more than 15 feet. The report further reveals that application of the appellant for registration of the project with the ORERA made in August, 2017 had been rejected vide letter no. 2322 dtd. 5.8.2021 for failure to submit the building plan approved by the PD of the concerned DUDA in view of the notification no.4844 dtd. 15.2.2020 of the H & UD Department of the Government of



Odisha. It is not understood as to why the appellant had applied for registration of the project with the ORERA in August, 2017 if according to him it was completed prior to the year 2015 and Sainda mouza, where the project had been developed, did not come under any planning area. It may be noted here that, the ORERA through their notification no.2504 dtd.16.7.2018 has made it obligatory for developers to get the real estate projects registered under the ORERA, irrespective of the location of the projects. Hence, even if the project in question has been developed at a place beyond the planning area, the appellant had to register the project with the ORERA after the publication of the aforesaid notification dtd. 16.7.2018.

As regards building plans approved by B.D.Os and P.R.Is in respect of real estate projects in rural areas which are not within the jurisdiction of the Development Authorities, notification No.4844 dtd.15.2.2020 of the Government of Odisha, Housing and Urban Development Department makes it clear that, such approvals by BDOs/PRIs up to 7.6.2018 leading to construction of housing projects involving 500 square meters of land area or more than 8 apartments need to be submitted by all the promoters of real estate projects in the office of the PD, DUDA of the respective districts in Form-I for scrutiny within a period of three months from the date of this notification. The notification further provides that, the Officer-in-Charge of District Town Planning Unit shall assist DUDA for scrutiny to ascertain adherence to the essential Building safety norms i.e. the structural stability and fire safety norms. If essential building safety norms are found to be adhered to then the PD, DUDA shall issue approvals in Form-II. Besides this, the notification also provides for a slew of other procedural



formalities to be observed by the DUDA during scrutiny of the building plans approved by the BDOs/PRI. The notification dtd. 15.2.2020 empowers DUDAs to reject the building plans if the structural stability and fire safety norm, as may be applicable to such projects, have been compromised or violated. DUDAs shall also reject the building plan in case it is noticed that the plan has been approved in contravention of a Master Plan and other restrictions related to ASI,AAI, CRZ etc. subject to condition that the plan was approved after publication of the Master Plan.

So it is clear from the notification dtd. 15.2.2020 that, in absence of the approval of the PD,DUDA, no plan/project in the rural areas which were accorded by the BDOs/PRI upto 7.6.2018 can be stated to be valid.

Basing on the above mentioned notification, the Full Bench of this Tribunal vide its order dtd. 28.8.2024 in O.A. No. 62/2023 and order dated 16.1.2026 in O.A. No. 48/2024 while analyzing the validity of the building plans, one approved by the Baliana Gram Panchayat and the other one approved by the BDO, Baliana Block, in respect of two different projects situated in rural area has categorically held that, in view of the notification No.4844 dtd. 15.2.2020 of the Govt. of Odisha, Housing and Urban Development Department, no plan/project in rural areas approved by the BDOs/PRI upto 7.6.2018 can be stated to be valid in absence of the approval of the concerned PD, DUDA. This Tribunal in O.A. No.48 of 2024 has concluded that, the building plan sanctioned by the BDO, Baliana Block vide his office letter no.1037 dtd. 15.5.2010 having not been submitted for necessary approval by the PD, DUDA, Khordha district, the Completion Certificate of the project dtd. 9.9.2016



issued by the Architect according to the said plan, cannot be held to be valid.

In the light of the above mentioned view taken by the Full Bench of this Tribunal vide its order dtd. 28.8.2024 and 16.1.2026 in O.A. No.62 of 2023 and O.A. No.48 of 2024 respectively, the building plan of the present project having been approved by the BDO, Cuttack Sadar Block on 31.12.2013 i.e. before 7.6.2018, the appellant-promoter was required to apply to the PD, DUDA, Cuttack in the prescribed form for scrutiny within a period of three months from the date of aforesaid notification of the H & UD i.e. 15.2.2020. The same having not yet been done, the project on the basis of a building plan, which is yet to be validated by the appropriate authority i.e. PD, DUDA, Cuttack cannot be said to be completed prior to the commencement of the R.E. (R&D) Act, particularly when completion certificate in respect of the project has not been produced and the occupancy certificate issued in respect of it shows no date of completion.

7) For the discussions made in the preceding paragraph, we come to the conclusion that, the appellant having not obtained the completion certificate in respect of the project from the competent authority and the occupancy certificate being silent about the date of completion of the project and moreover, the building plan of the project approved by the BDO, Cuttack Sadar Block having not yet been approved by the DUDA, Cuttack, the project is certainly not a completed one as on the date of the commencement of the R.E. (R&D) Act and hence under its fold. The appellant has admitted to have sold the flats of the project but has failed to prove his claim that all the sales were prior to the year 2015. Accordingly, we are of the considered opinion that



the impugned order dtd. 31.7.2023 passed by the learned ORERA in SMCC No.7 of 2023 imposing a penalty of Rs.10,00,000/- on the appellant-promoter u/sec. 59 of the Act for the alleged violation u/sec. 3 (1) is correct as per the facts in record and law and hence is confirmed. Resultantly, the appeal being devoid of any merit stands dismissed on contest against the respondent.

The appellant is directed to deposit the penalty amount before the learned ORERA and on submission of receipt thereof, he will be refunded back the statutory amount alongwith accrued interest thereon, on proper application and identification.

Send a copy of this order to the learned ORERA together with the record of SMCC No.7/2023. Also supply a copy of this order to the appellant-promoter.

Shri S.K.Rajguru
(Judicial Member)

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

td