



**IN THE ODISHA REAL ESTATE APPELLATE TRIBUNAL
AT BHUBANESWAR**

OREAT Appeal No.171/2024

**K Kiran Babu, Managing Director,
M/s.Sherawali Realcon Pvt. Ltd.**

...Appellant

-Versus-

The Secretary, ORERA, Bhubaneswar

...Respondent

For the appellant : Mr.D.M.Mishra, Advocate.
For the respondent : Mr.B.Nayak, Advocate

CORAM :

Shri S.K.Rajguru, Judicial Member

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

**ORDER
31.7.2026**

The appeal is taken up for final order.

2) In the captioned appeal, the appellant being aggrieved and dis-satisfied with the order dated 31.08.2024 passed by the learned Odisha Real Estate Regulatory Authority in Suo Motu Complaint Case No.209 of 2024 has inter alia prayed to set aside the same, in which, penalty of Rs.8,00,000/- has been imposed on the appellant.

3) Facts and circumstances giving rise to the present appeal are as follows:-

The aforesaid Suo Motu Complaint Case was initiated by the learned ORERA against the present appellant (respondent in the Suo Motu Complaint Case),



under Section 35(1) of the R.E (R & D) Act, 2016 on the allegation that the promoter has violated Section 3 of the Act, 2016.

In pursuance of the order of the Authority vide their UOI Note No.41 dated 29.8.2023 , Sri U.C.Pani, the Enforcement Officer of the learned ORERA inspected the project in the name and style “Sherawali Residential”, a residential apartment project (S+4 storied) having 36 flats, situated on plots No. 1466/7318, 1467/7319, 1469/2306, 1469/7320 and 1470/7317 under Khata No.833/3784 at Somanath Nagar, 1st lane, Mouza-Sashibhusanpur, Berhampur, and submitted his inspection report on 19.03.2024 mentioning therein that, the project has been developed without obtaining registration certificate from the ORERA by the promoter M/s.Sherawali Realcon Pvt. Ltd. and physical possession of the flats of the project had been handed over to the allottees without obtaining occupancy certificate. Basing on the information provided by the allottees present during inspection, the cost of the project was estimated at Rs.10,80,00,000/-, which was at the rate of approximately Rs.30 lakhs per flat.

Being noticed by the learned ORERA, the respondent-promoter appeared and filed his show cause to the complaint with the plea that the project was completed and all the flats therein were sold to the homebuyers by September, 2016 after obtaining completion certificate from the Architect. The respondent-promoter contended that he was not at fault, in not



obtaining occupancy certificate of the project as it was not mandatory at that time. Further contending that, the R.E (R &D) Act has no retrospective effect to the penalty proceedings, the respondent prayed for dismissal of the complaint.

The Suo Motu Complaint Case was heard from both the parties and was disposed of by learned ORERA vide the impugned order dtd. 31.08.2024 with the following finding:

“ The case is allowed on contest against the respondent without any cost. The respondent is directed to pay a penalty of Rs.8,00,000/- (Rupees eight lakhs only) within a period of two months from the date of this order, failing which the order shall be enforced and the penalty shall be realized as per law.”

4) Pleas of the appellant in the appeal are as follows:-

(a) The learned ORERA has erred in accepting the inspection report of their Enforcement Officer and Empanelled Engineer in toto without making any preliminary inquiry into the facts of the case.

(b) The Enforcement Officer and Empanelled Engineer have erred in holding that the project is an ongoing project and hence its registration with the Authority is mandatory. It is also not correct that the appellant has given possession of flats to the allottees without obtaining the Completion Certificate from the competent authority.



(c) The respondent was wrong in holding that there was violation of Section 3(1) of the Act by the appellant as the appellant had advertised, marketed and sold all the units of the project, before the enactment of the said Act. For all purpose, the project was a completed project and not an ongoing one as on 1.5.2017 i.e the date of commencement of the R.E (R&D) Act. Appropriate Completion Certificate for the project has been obtained by the appellant having reflection of the month and year prior to the commencement of the Act.

(d) The R.E (R&D) Act, 2016 has retroactive effect only with regard to the redressal of grievances of the homebuyers but has no effect with respect to the penalty proceedings.

5. On the other hand, learned counsel for the respondent-ORERA has submitted that the completion certificate issued by the Architect Sri M.Srinivasan is neither from the competent Authority nor does it bear the date on which it was issued in respect of the project. It is further contended that the appellant without obtaining the occupancy certificate has sold out the flats in violation of Section 17 of the R.E (R&D) Act, 2016, which requires the promoter to execute the sale deed and deliver possession within three months from the date of issue of the occupancy certificate for the project. Therefore, it is only a lame excuse on the part of the appellant to contend that the project was completed prior to the commencement of the Act. Further contending that the appellant-promoter has sold out all the flats of the project



also without registering it with the ORERA, the learned counsel for the respondent has claimed that the learned ORERA has rightly imposed the penalty of Rs.8,00,000/- on the applicant for violating Section 3 (1) of the Act. Accordingly, the learned counsel has prayed for dismissal of the appeal.

6. From the appeal memo and the submissions made by the learned counsel for the appellant, it is seen that he has been hovering around on his only plea of non-applicability of the R.E (R&D) Act to the project. His relied Completion Certificate has reflected the completion of the project as September, 2016, which is much prior to 1.5.2017, the date of commencement of the R.E (R&D) Act.

In the hearing of the appeal, the learned counsel for the appellant has made a detailed submission on the aforesaid issue, supported with relevant documents, provisions of the RERA Act and the decision of the Hon'ble Supreme Court in the case of New Tech Promoters and Developers Ltd. Vrs. State of U.P. and Others reported in (2021) SCC OnLine 1044. On the other hand, the counsel for the learned Regulatory Authority has also put forth his substantial argument on the same issue. Therefore, only the issue of non-applicability of the R.E (R&D) Act to the project being the crux of the dispute between the parties, needs to be decided.

In the case of M/s.New Tech Promoters (Supra), the Hon'ble Supreme Court of India have held that from the scheme of the Act, 2016, its application is



retrospective in character and it can safely be observed that the projects already completed or to which the Completion Certificate has been granted are not under its fold. Therefore, it is the date of completion of the project reflected in the completion certificate, which is the deciding factor for applicability of the R.E (R&D) Act to the project.

7. It is seen that, the permission, under Section 16 (3) of the Odisha Development Authorities Act, 1982 read with Regulation 13(6) of Berhampur Development Authority's Planning and Building Standard Regulations, 1998 for development of the project, issued vide letter no.135/BDA, Berhampur dated 7.3.2013 categorically stipulated in its Sl. No.12, that “ *The applicant shall not occupy or permit to occupy the building or permit to use the building or any part thereof until completion certificate is submitted to this Authority, as per Section 20 of ODA Act and the Regulations.*”

Completion certificate and the occupancy certificate are defined under Section 2(q) and Section 2(zf) of the RERA Act respectively, and are also referred to in the Odisha Development Authorities Act, 1982.

Section 20 of the ODA Act reads as follows:-

Duration of permission: Every permission granted under this Chapter shall remain valid up to three years, during which period, completion certificate from a registered architect or engineer or a person approved by the Authority, in the forms prescribed by regulations shall be submitted and if this is not done, the permission shall have to



be re-validated before the expiration of this period, on payment of such fee as may be prescribed, under rules and such revalidation shall be subject to the rules and regulations then in force.

20A- Grant of Occupancy Certificate:- On receipt of Completion Certificate under Section 20, the Authority shall consider for grant of Occupancy Certificate in such Form for authorizing occupation of the building or the premises in part or full, on payment of such fees and on such terms and conditions as may be prescribed.

In the instant case, the approved plan was valid up to 6.3.2016, which is 3 years from the date of its issue. In the meantime, Brahmapur Development Authority (Planning & Building Standards) Regulations, 2013 came into force with effect from 10.4.2013. Therefore, the Completion Certificate is required to be as per Form-VI (Part-I & Part-II) of the Brahmapur Development Authority (Planning and Building Standards) Regulations, 2013. The Completion Certificate, relied upon by the appellant is found to have the following short comings:

(i) It does not have the reflection of exact date of completion as has been prescribed in the Form-VI (Part-1) of the aforesaid Regulations, rather the entire month (September, 2016) has been recorded as the completion date.

(ii) The exact date of issue of the specific completion certificate at the bottom of Form-VI is missing.



(iii) The sanctioned plan according to which the Architect has supervised the development of the project building and certified its completion has not been mentioned at all.

(iv) Further, Part-II of the Form-VI, i.e Certificate For Execution of Work As per Structural Safety Requirements, duly, signed by the Registered Engineer/Structural Engineer with date and registration number and duly countersigned by the owner with date are also missing.

8. The appellant has also not produced any evidence to show if he had submitted the notice in the prescribed Form-VI regarding completion of the construction of the project to the Berhampur Development Authority with the required particulars as provided in Regulation 66 of the Brahmapur Development Authority (Planning and Building Standards) Regulations, 2013 which was applicable to the project. This is also a doubtful omission on the part of the appellant.

9. As per Section 20 of the ODA Act, 1982 the validity of the approval of the building plan being three years from the date of issue of the approval i.e up to 6.3.2016, the Completion Certificate showing the project to have been completed in September, 2016 i.e after the lapse of validity of approval, is certainly not a valid one, particularly considering the fact that no revalidated plan beyond 6.3.2016 and upto 30.09.2016 has been produced by the appellant.



The appellant has filed a copy of the bank challan of Rs.1000/- issued on 3.6.2024 (Annexure-B of his show cause to the complaint), which he had submitted alongwith the application for occupancy certificate, but no explanation has been made as to why the occupancy certificate was applied for so late i.e 8 years after the completion of the project, claimed to be in September, 2016. This casts also a doubt on the appellant's claim that the project was completed in September, 2016.

In view of the discussions made above, we are of the considered opinion that, the Completion Certificate obtained by the appellant is not a reliable one and resultantly, the project is not a completed one, as on the date of the commencement of the RERA Act, i.e 1.5.2017.

10. The project being an ongoing one, as on the date of commencement of RERA Act i.e 1.5.2017, is certainly under its fold.

Though the appellant has claimed in his show cause to the complaint and appeal memo that all the flats/units of the project were sold by September, 2016, not a single sale deed in this regard has been produced and hence, the plea is not acceptable. This leads us to draw the inference that, some sales out of the 36 flats of the project must have been made after 01.05.2017. Section 3(1) of the Act provides as under.

“ No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate



project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act.”

Further, Section 59(1) of the Real Estate (Regulation and Development) Act, 2016 states that:

“If any promoter contravenes the provisions of section 3, he shall be liable to a penalty which may extend up to ten per cent. of the estimated cost of the real estate project as determined by the Authority.”

By selling the flats of the project without registration with the ORERA, the appellant has certainly contravened Section 3(1) of the Act and thereby liable to incur the penalty under Section 59 of it. During the entire appeal, the appellant has never disputed the cost of the total project which has been estimated at Rs.10,80,00,000/- by the Enforcement Officer of the learned Authority during his inspection to the project site on 14.3.2024.

11. In view of the discussions made in the paragraphs 6, 7, 8, 9 & 10, we are of the considered opinion that the impugned order suffers from no factual or legal infirmity so as to warrant our interference and accordingly the appeal being without any merit stands dismissed, on the contest against the respondent.

The appellant is accordingly directed to deposit the penalty amount of Rs.8,00,000/- (Rupees eight lakhs) before the learned ORERA and on submission of the



acknowledgement receipt of the ORERA before this Tribunal, he shall be refunded back the statutory amount deposited by him, together with the accrued interest thereon, on proper application and identification.

Send the authentic copy of this order, alongwith the record of the Complaint Case to the learned Regulatory Authority for information and necessary action. Also send a copy of this order to the appellant.

Shri S.K.Rajguru
(Judicial Member)

BB

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