IN THE ODISHA REAL ESTATE APPELLATE TRIBUNAL AT BHUBANESWAR

OREAT Appeal No.40/2024

M/s.Raja Rani Real Estate, Berhampur. ...Appellant
Represented through Pradip @
Pradeep Kumar Patro, Managing Partner

-Versus-

The Secretary, ORERA, Bhubaneswar ...Respondent

For the appellant : Mr.B.K.Badajena, Adocate.
For the respondent : Mr.B.Nayak, Advocate

CORAM :
Shri S.K.Rajguru, Judicial Member
Dr.B.K.Das, Tech./Admn.Member

O R D E R
21.8.2026

The appeal is taken up for final order.

2) In the captioned appeal, the appellant being aggrieved and dis-satisfied with the order dated 16.01.2024 passed by the learned Regulatory Authority in Suo Motu Complaint Case No.87 of 2022 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:-

A Suo Motu Complaint Case was initiated by learned ORERA against the present appellant (respondent in the Suo Motu Complaint Case), under Section 61 of the Real Estate (Regulation and

Development) Act, 2016, on the allegation that the promoter has violated Section 14(1) of the said Act.

Pursuant to the order dated 25.5.2022 of the learned Authority in SMCC No.87/2022, the enforcement wing of the ORERA comprising Sri U.C.Pani, Enforcement Officer and Er.A.K.Mishra, Empanelled Engineer of ORERA had inspected the residential project in the name and style "Raja Rani Residency", Plots No.196 and 198 in Khata No.113 of Mouza Lokanath Ghat in the district of Puri on 22.8.2023. The project according to the inspecting wing was developed by Sri Pradip Kumar Patro, Managing Partner of M/s.Raja Rani Real Estate (a registered Partnership firm), Kamapalli, Berhampur. Sri Dibrata Samal, Supervisor of the above said project was also present during the inspection. No documents such as DPR, land details, approved drawings, layout plans, agreement for sale, registered sale deeds etc were made available at site for perusal.

The Puri Konark Development Authority (PKDA) has granted permission under Sub Section (3) of Section 16 of ODA Act, 1982 in favour of Smt.Pratima Panigrahi and Sri Srikanta Dash, for construction of S+4 residential apartment building, having a total of 144 studio apartment units and 40 units of 1 BHK apartment, vide their letter no.226/PKDA dated 3.3.2015, which was valid up to 2.3.2018. In the said permission letter, there was an in principle specific permission for the construction of S+3 upper floors in the first phase, in respect of the above said plots and on completion of the construction of the structure of the said buildings as per the approved plan, without deviation and compliance to all other conditions, the plan for next floor shall be approved. The above said PKDA permission was not revalidated till the date of inspection, i.e 22.8.2023. Also, the above said project was registered with ORERA vide registration no.RP/26/2019/00256 with a validity period from 22.04.2019 to 31.10.2020, which was also not renewed by learned ORERA till the date of inspection.

The status of the project, as on the date of inspection i.e on 22.8.2023, were:

(a) Construction of S+4 storied residential apartment building was under progress, in two segments with complete deviations, from the original PKDA approved plan, which was noticed by the team, on verification with the plan available in ORERA office.

(b) Since the title of the project land has been transferred in favour of M/s.Raja Rani Real Estate, having Managing Partner, Smt. Bharati Panigrahi vide registered Sale deed dated 17.8.2015, the PKDA approval, in favour of promoter M/s.Raja Rani Real Estate is required.

(c) Construction of the 4th floor of the S+4 storied residential apartment building (left side of the segment) was found to have been completed, which is in contravention to the violation of the condition of PKDA approval.

(d) Additional 4 nos. of studio apartments beyond the approved apartments (40 units of one BHK and 4 units of studio apartment), in the right side segment were found to have been constructed up to 3rd floor then, leading to total 188 units in place of 184 nos. of unit, which was permitted by PKDA.

(e) all other ancillary stipulations like provision of stair cases, lift, DG set as back-up for lift and common area lighting etc were completed except the installation of STP (Sewage Treatment Plant) and installation of Fire Safety Equipments along with obtaining the fire safety certificate.

(f) In furtherance to the above, the project cost was also estimated by the inspecting team as Rs.42,78,86,096/- (Rupees Forty Two Crore Seventy Eight Lakhs Eighty Six Thousand Ninety Six) Only, which was @Rs.4,444/- per sqft. for the 96,284 sqft. of built up area of the project, even though no documents such as DPR, land details, approved drawings, lay out plan, agreement for sale, registered sale deeds etc were available at site for perusal, during their inspection.

Thus the Enforcement Team vide its inspection report dated 24.8.2023 construed that the construction of the project was in progress without the valid PKDA approval and valid registration certificate of ORERA as on the date of inspection i.e 22.8.2023.

Basing on the above report, the present SMCC Case No.87 of 2022 has proceeded against the appellant-promoter under Section 61 of the RERA Act for violation of Section 14(1) of the said Act.

Upon receipt of notice, from the learned ORERA, the appellant as the sole respondent in the SMCC Case No.87 of 2022 appeared and filed his written show cause in the form of letter No.795/2023 dated 15.11.2023 stating therein that he had already submitted the revised plan for its renewal for construction of the S+4 storied building at PKDA along with the deposit of Rs.89,225/- towards the renewal fees and a prayer to the Regulatory Authority to extend the period of registration.

The Suo Motu Complaint Case was heard from both the parties and was disposed of by the learned ORERA vide impugned order dated 16.1.2024, the operating portion of which is as follows:

> *"The case is allowed on contest against the respondent but without cost. The respondent is directed to deposit the penalty of Rs.8,00,000/- (Eight Lakhs) with this Authority within a period of two months, failing which the order shall be enforced as per law."*

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

(a) The learned Authority has not taken into consideration the fact that the proceedings under Section 59 of the RERA Act, was initiated without serving notice and without seeking explanation to that effect, from the present appellant, which is a complete contravention to the principles of natural justice.

(b) The learned ORERA has not taken into consideration of the fact that the appellant cannot be made liable for non-renewal of the project due to the inaction of PKDA, while the appellant had submitted the requisite application under Section 16 (7) and (8) of the ODA Act, 1982 before the Vice Chairman, PKDA and the decision or observation thereupon had not been communicated to the appellant.

(c) The appellant was also not given an opportunity to examine the report of the Enforcement Officer, so as to facilitate him for filing a satisfactory reply to the learned Authority, therefore, the proceeding conducted under Section 61 of the RERA Act were conducted behind the back of the appellant, which is illegal.

5. On the other hand, learned counsel for the respondent-Authority strenuously argued that the learned Authority has rightfully exercised its authority in taking upon the matter suo motu as such, the appeal is unwarranted.

Learned counsel for the respondent-Authority has categorically submitted that in the order dated 16.1.2024 of learned ORERA, it was observed by the Authority that the approved plan was valid till 2.3.2018 but was not renewed thereafter. The project was in progress without a valid approved plan. Therefore, such violation is punishable under Section 61 of the Real Estate (Regulation & Development) Act, 2016.

It is further submitted by the learned counsel for the respondent-Authority that the promoter had himself admitted vide his letter dated 20.11.2023 that the revised plans were submitted to PKDA for approval, which was valid up to 2.3.2018 and had also deposited the necessary fee i.e Rs.89,225/-. He had further requested for extension of period of registration. Subsequently, vide another letter dted. 5.12.2023 addressed to the Additional Secretary, ORERA, the promoter has provided the completion certificate dated 20.12.2019, issued by the registered Architect, reflecting the completion date as 20.12.2019, thereby justifying the project to be in progress beyond the validity period of the approved plan.

It is further submitted by the learned counsel for the respondent-Authority that the application for approval of plan was submitted at a belated stage and it was held un-acceptable by the Authority. Further, after expiry of the validity of the ORERA registration on 31.10.2020, no further steps were taken by the promoter towards the extension of the ORERA registration, which is a clear violation of the provision of RERA Act.

It is further submitted by the respondent-Authority that the appellant-promoter though was not privy to the report submitted by the Enforcement Officer in the proceedings initiated under Section 61 of the RERA Act, and claimed to have been precluded him from filing a proper reply, the fact remains that, the promoter has himself vide his reply admitted to the violation of the provisions of the Act and therefore, his plea of violation of natural justice does not hold good, as has been upheld by the Hon'ble Apex Court in the case of State of U.P Versus Sudhir Kumar Singh, 2021 (19) SCC 706.

The learned counsel for the respondent-Authority has thus claimed that, the appellant-promoter having clearly violated the provisions of the Section 14(1) of the Act is liable to pay penalty under Section 61 of the Act. Thus the Authority has rightly held the promoter liable to pay a penalty of Rs.8,00,000/-

6. In the rejoinder affidavit dated 20.11.2024, the appellant-promoter has submitted that in pursuance to the revised office order No.7238/HUD, dated 26.4.2022 , the transfer of planning functions to the Urban Local Bodies from the Development Authorities have been effected and therefore, the Puri Municipality, Puri has approved the regularisation of Stilt+4 storied building vide its letter No.65 dated 5.10.2024 and the occupancy certificate thereafter has been issued by the Puri Municipality, Puri vide its letter no.67 dated 21.10.2024.

7. In the narration of the above facts as revealed from the impugned order, appeal memo, show cause reply to the appeal memo and the rejoinder thereupon, the questions which fall for consideration before this Tribunal are:

(A) *Whether the present appellant can be fastened with any liability for developing the real estate project, as a promoter, wherein, the construction is not in accordance with the building plan, duly approved by PKDA, and that too progressing with the construction of the project,* *beyond the validity period of the approved plan and beyond the validity of ORERA registration ?*

(B) Whether the appellant was supplied with the report of the Enforcement Team of the ORERA and was given opportunity to examine the same so as to facilitate him to file a satisfactory reply in the proceedings before the learned Authority under Section 61 of the RERA Act ?

8. In order to analyse the available evidence on the aforesaid question at (A) of Para (7), it is first necessary to go through Section 14(1) of the RERA Act, which is as under :-

> 14.*(1) The proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities.*

The learned ORERA has relied upon the report of the enforcement team on the inspection conducted by them on 22.8.2023 wherein, the enforcement team had categorically recorded the following vide Sl. No.1, 2, 3, 6 & 9 of the " Status of the project":

(1) Construction of S+4 storied residential apartment building was under progress, in two segments with complete deviations from the original PKDA approved plan, which was noticed by the team, on verification with the plan available in ORERA office.

(2) Since the title of the project land has been transferred in favour of M/s.Raja Rani Real Estate, having Managing Partner, Smt. Bharati Panigrahi vide registered Sale deed dated 17.8.2015, the PKDA approval, in favour of promoter M/s.RajaRani Real Estate is required.

(3) Construction of the 4th floor of the S+4 storied residential apartment building (left side of the segment) was found to have been completed, which is in

contravention to the violation of the condition of PKDA approval.

(6) Additional 4 nos. of studio apartments beyond the approved apartments (40 units of one BHK and 4 units of studio apartment), in the right side segment were found to have been constructed up to 3rd floor then, leading to total 188 units in place of 184 nos. of unit, which was permitted by PKDA.

(9) all other ancillary stipulations like provision of stair cases, lift, DG set as back-up for lift and common area lighting etc were completed except the installation of STP (Sewage Treatment Plant) and obtaining of the Fire Safety Equipments along with fire safety certificate.

Even though the appellant-promoter did not admit to have seen the exact inspection report, but has admitted the constructional deviations, by way of applying for renewal of the revised plan for S+4 residential apartment building, which he has reflected in his show cause vide letter no.795/2023 dated 15.11.2023 filed before the learned ORERA, in response to the proceeding in SMCC No.87 of 2022.

The aforesaid fact has also been substantiated in the final permission of regularisation of Stilt+4 storied studio apartment building, issued vide letter no.65 dated 5.10.2024 of Puri Municipality, Puri, which has been submitted by the appellant-promoter himself vide Annexure-R/8 to his rejoinder dated 22.11.2024. This document clearly reveals that constructional deviations of 86.52 sq.meter., in each of the floors up to 4th floor, beyond the stilt floor, have been made. This must have been within the knowledge of the appellant-promoter himself.

In view of the above mentioned status of the project found by the inspecting team of the ORERA, which remain unassailed, and the facts revealed from R/8 to the rejoinder filed by the appellant, we are of the opinion that, the Completion Certificate dated 20.12.2019 issued by the registered Architect namely Ar.Srinivasan.M. and relied upon by the appellant-promoter as Annexure-6 to the appeal memo, which records the development of the project to have been in strict adherence to the sanctioned plan, issued vide letter no.226/PKDA, Puri dated 3.3.2015, is a misleading one.

The appellant in his show cause to the complaint had taken the plea that he had already submitted revised plan for its renewal to PKDA for construction of the project and to this effect had deposited an amount of Rs.89,225/- towards renewal fee. Further, in this appeal memo he has taken the plea that he can not be made liable for non-renewal of the project as the decision on his application under Section 16(1) of the ODA Act, 1982 having not been communicated to him by the Authority, the permission for renewal is deemed to have been granted under Section 16(8) of the said Act. This plea of the appellant is not acceptable in view of the fact that Section 16 (8) of the ODA Act relate to the Application for permission under Section 16(1) i.e for initial permission only. The permission for Renewal/Revalidation of a plan has to be sought for under Section 20 of the ODA Act. The said provision prescribes that, "*Every permission granted under this Chapter shall remain valid up to three years during which period completion certificate from a reregistered 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*".

The appellant has however not adduced any evidence to show that his application for revalidation of the permission under Section 20 of the ODA Act before the expiration of the stipulated period of three years as provided therein had been granted and the building plan of the project was revalidated as on the date of institution of the SMCC case. Unlike Section 16(8) there is no provision under Section 20 that, if decision is not taken by the Authority on the application for revalidation, the same shall be deemed to have been revalidated.

Thus, in the absence of renewal of the approved plan, the progress of the construction of the project beyond the validity period of the initial approved plan which has been reflected vide observation no.5 of the inspection report dated 24.08.2023 of the enforcement team is certainly illegal being violative of Section 14(1) of the RERA Act.

9. As regard to the question no.(B) of Para(7) i.e whether the appellant was given sufficient opportunity to examine the report of the enforcement team during the proceeding of the SMCC No.87 of 2022 by the learned Authority or not ? , the following analysis are made:

As mentioned earlier in para-3, the appellant-promoter being the sole respondent after appearance before the learned Authority had relied on his letter no.795 dated 15.11.2023 wherein he had admitted that the renewal of the revised plan for construction of S+4 storied building at PKDA was submitted to PKDA after the deposit of Rs.89,225/- towards the renewal fee. Thus it can be safely concluded that the revised plan so prepared and submitted by the appellant-promoter had accommodated the deviations in the original plan, which were also pointed out by the inspection team of the learned ORERA. In view of the above, we are of the opinion that the appellant was well aware of the constructional deviations so pointed out by the inspection team, prior to their inspection on 22.08.2023 and had applied to regularise the deviations prior to 2.3.2018. This further goes to show that the non-supply of the report dated 24.8.2023 of the inspecting team of the ORERA to the appellant has caused no prejudice to him in the proceedings of the complaint case.

10. In view of above discussions made in the preceding paragraphs No.7 , 8 & 9, we are of the opinion that the impugned order of the learned ORERA, so far as it relates to the finding that the appellant-

promoter has violated the Section 14(1) of the R.E (R.D) Act., by not adhering to the approved plan in the construction of the project, suffers from no factual or legal infirmity. Thus, the penal provision under Section 61 of the Act, for such violation of Section 14(1) of the Act is certainly attracted.

Section 61 of the Real Estate (Reg. & Devp.) Act, 2016 reads as follows:

Penalty for contravention of other provisions of this Act.

> *If any promoter contravenes any other provisions of this Act, other than that provided under Section 3 or section 4, or the rules or regulations made there under, he shall be liable to a penalty which may extend up to five per cent. of the estimated cost of the real estate project as determined by the Authority.*

11. As has been reflected in Para 3 (f) of this order,, the inspection team of learned ORERA had categorically recorded that even though no documents such as DPR, land details, approved drawings, lay out plan, agreement for sale, registered sale deeds etc were available to them at the site for perusal during their inspection, the project cost was estimated to be Rs.42,78,86,096/-. This was calculated on the basis of floorwise total built up area and the cost of each studio apartment thereof i.e @ Rs.14,00,000/- per each unit, having 315 square feet of super built up area, after consultation with the supervisor of the project namely Sri Dibrata Samal. This estimation of the project cost has not been objected to by the appellant-promoter in his appeal memo with any reliable rebuttal evidence.

Considering this aspect and also the fact that the project S+4 storied building consisting of 188 units, has been constructed on a land area of 3579.53 square meter, the penalty of Rs.8,00,000/- appears to be not disproportionate to the alleged violation.

12. On the cumulative effect of facts discussed and, reasons stated in the foregoing paragraphs, we accord our imprimatur to the findings of the learned Authority in the impugned order dated 16.1.2024 passed in the SMCC No.87 of 2022 in imposing a penalty of Rs.8,00,000/- on the appellant.

13. The appellant is accordingly directed to deposit the penalty amount of Rs.8,00,000/- (Rupees eight lakhs) only before the Authority (ORERA) and on submission of the acknowledgement receipt of the Authority 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, along with the record of the Suo Motu 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)

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