IN THE ODISHA REAL ESTATE APPELLATE TRIBUNAL AT BHUBANESWAR

OREAT Appeal No.195/2024

M/s.Vasundhara Land & Developers Pvt. Ltd.
Represented through Smt.Damayanti Nayak,
Managing Director and
Sri Kishore Chandra Jena, Director

... Appellants

-Versus-

The Secretary, ORERA, Bhubaneswar ...Respondent

For the appellants : Mr.S.C.Tripathy, 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
31.8.2026

The appeal is taken up for final order.

2) The appellant calls in question, the impugned order dated 30.7.2024 passed by Odisha Real Estate Regulatory Authority (in short the Authority) directing him to pay a penalty of Rs.10,00,000/- for the alleged violation under Section 3(1) of the R.E. (R.D) Act, 2016 in Suo Motu Complaint Case No.465 of 2024 on various grounds. He has accordingly prayed for setting aside the impugned order and dismissal of the SMCC as not maintainable.

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-promoter (respondent in the SMCC) for the alleged violation under Section 3 of the Real Estate (Regulation & Development), Act, 2016.

Pursuant to the order dated 23.4.2024 of the ORERA, the Enforcement Officer of ORERA inspected the plotted project" Swapna Puri" developed by the respondent-promoter i.e M/s.Vasudhara Land and Developers Pvt. Ltd. at Mouza-Harianta, District-Cuttack on 12.4.2024. Smt. Damayanti Nayak, Managing Director of the Company accompanied the Enforcement Officer to the project site, wherein the company had reportedly acquired Ac.3.00 of land in Mouza-Harianta, Dist-Cuttack, so as to develop a plotted project having the plot size of 1200 sft. (30 feet x 40 feet). The proposed project area, which was shown by Smt. Nayak were Paddy fields and were within the command area of irrigation field channel of Water Resources Department of Government of Odisha. Further, as reported by the Enforcement Officer, the project area has neither been demarcated nor bounded by any compound wall nor also has the approach road to the project site as on 12.4.2024. Ms.Nayak could not also produce any document of that plotted project till 23.4.2024, even though she has assured to submit those in the office of the ORERA by 18.4.2024.

However, the Enforcement Officer collected and enclosed in his inspection report dated 23.4.2024, a

coloured copy of the circulated leaflet already prepared by the appellant-promoter for the advertisement and sale of plots of the same plotted project “Swapna Puri” at Harianta along with other similar projects of the same promoter. As the project has not been registered with ORERA by then, it was construed to violate the provision of Section 3 of the R.E (R & D) Act, 2016.

The Enforcement Officer has further submitted the cost estimation of the project, calculated on the basis of the information provided by Ms.Damayanti Nayak, Managing Director of the Company, but in absence of any formal DPR, approved drawing and land details etc., to be Rs.9,14,76,000/- (Rupees Nine Crore Fourteen lakh Seventy-six thousand) only. The proposed project area of Ac.3.00 and the rate of Rs.1000/- per square feet as has been printed in the said advertised leaflet, were considered by the Enforcement Officer of ORERA for arriving at the above estimated cost.

Basing on the above report, the present SMCC No.465/2024 was initiated against the appellant-promoter under Section 35 read with Section 59 of the Act on the allegation that the promoter has violated Section 3 of the R.E (R&D) Act, 2016.

In response to notice no.4009 dated 7.6.2024 of ORERA the respondent entered his appearance in SMCC case No.465/2024 and submitted his written objection stating that the respondent neither made any advertisement nor received any booking amount nor

made any communication with any person for sale of plots in the said project, after the enactment of the R.E (R&D) Act, 2016.

The Suo Motu complaint Case was heard from both the parties and was disposed of by the learned ORERA vide impugned order dated 30.7.2024, 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 pay penalty of Rs.10,00,000/- (Rupees Ten lakhs) only within a period of two months from the date of the order, failing which the order shall be enforced and the penalty shall be realized as per law. The promoter is hereby directed to register the project under the RERA Act within a period of two months from the date of this order, failing which further legal action will be initiated against him as per law."*

4. The pleas of the appellant in the appeal are as follows:-

(a) The project was not ongoing by the time the RERA Act came into force in the year 2017. The appellant has neither made an advertisement nor received any booking amount nor made any communication with any person for sale of plots in the said residential plotted project "Swapnapuri" after enactment of R.E (R &D) Act i.e 1.5.2017.

(b) The appellant-promoter was neither served with the relied inspection report of the Enforcement Officer nor also was allowed to cross-examine the said

Enforcement Officer so as to verify the truth behind his report and thus the principle of natural justice has been grossly violated.

5. On the other hand, learned counsel for the respondent-Authority vehemently argued that the learned Authority has rightfully exercised its authority in initiating the matter suo motu complaint case and as such, the appeal is unwarranted. Prima facie, the project was a new one and therefore the developer was duty bound to apply for registration of the said project with the ORERA at the earliest and to obtain a certificate of registration from the learned Authority prior to proceeding with the construction work.

6. In the rejoinder dated 6.4.2026, the learned counsel for the appellant-promoter categorically disputed the estimated project cost of Rs.9,14,76,000/- (Rupees Nine Crore Fourteen lakh Seventy-six thousand) only, by way of relying upon the copy of the sale deed dated 21.1.2010, executed by one Sri Kishore Chandra Jena on behalf of the appellant-promoter in favour of one Sri Jayanta Kumar Nayak for the developed homestead plot measuring an area of Ac.0.05.5 for a sale price of Rs.38,500/-

Further, learned counsel for the appellant-promoter submitted that they had developed and sold the land during the year 2013-14 in shape of plots of size 30feet x 40 feet for a total area of Ac.0.21. Since the plotted scheme was in a rural area under Harianta mouza, which was not coming under any planning

authority at that time, they did not obtain any approval or completion certificate thereof from any planning authority. As such that being a pre-RERA period they did not feel it necessary to register their project with ORERA subsequently.

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 alleged plotting project is/was a real estate project within the meaning of Section 2(zn) of the Act ?

(B) If it is a real estate project on the basis of materials available in the record (whether produced by the ORERA or admitted by the promoter), then if it is a completed project prior to 1.5.2017 or an ongoing one as on that date ?

C) Whether the appellant (respondent in the complaint case) was provided with the report of the Enforcement Officer of the ORERA and thus was given an opportunity in compliance with the principle of natural justice to examine the same with respect to the facts and figures reflected therein ?

8. In order to advert to the aforesaid question at 7(A), it is first necessary to go through Section 2(zn) of the Real Estate (Regulation & Development) Act, 2016, which reads as follows:

> *"real estate project" means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;*

Therefore, the essentials of a plotted land project so as to fall under the paradigm of real estate project are the development of land into plots, along with making the material change of the land by way of engineering or other operations, which includes the common areas, all improvement and all easements etc.

As revealed from the inspection report dated 23.4.2024 of the Enforcement Officer of the ORERA and the photographs enclosed there upon, the land in question as shown by Smt.Damayanti Nayak, Managing Director to the Enforcement Officer was a paddy filed within the command area of an irrigation field Channel, constructed by the Water Resources Department of the Government of Odisha. Further, the Enforcement Officer has reported that project land is yet to be developed and it has neither been demarcated nor has any approach road as on 12.4.2024.

The Enforcement Officer of ORERA did not adduce any more evidence, except a coloured leaflet and that too without any information being collected from the reflected contact numbers thereon. He could

have obtained materials like the plot numbers, khata numbers, the extent of areas thereof and the mouza where they are located together with copy of the sale deeds if any, from the office of the Sub-Registrar so as to justify his claim that the land inspected by him was Ac.3.00 in area and the appellant had intended to develop it to a plotted project.

Moreover, the Enforcement Officer of ORERA has also not produced any evidence relating to the intended sale or actual sale of plots, after the enactment of the R.E. (R & D) Act,2016.

During hearing of the appeal on 27.7.2026, the learned counsel for the appellant has admitted that the alleged violation has been committed by the appellant-promoter but he disputed the estimated cost of the project as according to him the same should have been only Rs.1,50,000/- as against Rs.9,14,76,000/- which has been assessed by the Enforcement Officer and accepted by the learned ORERA. Further, the learned counsel for the appellant has emphatically placed that there has been no sale or intent of sale by way of any advertisement or booking for sale after the enactment of the R.E (R & D) Act, 2016 i.e after 1.5.2017. However, it is to be noted that, the Enforcement Officer in his inspection report has not at all stated about any step taken by the appellant for the development of the land inspected by him to plots for sale. The learned Authority in the impugned order dated 30.7.2024 has also not substantiated his finding by making it clear as to what

kind of activity in the project work the promoter was proceeding with.

In view of the above discussed facts including those reported by the Enforcement Team of the ORERA, we are of the opinion that the land inspected by the enforcement team shall not be construed as a Real Estate Project prima facie, as per the basic definition reflected in Section 2(zn) of the RE (R & D) Act, 2016. Thus, section 3 (1) of the R.E (R &D) Act, 2016, which reads as follows, can not be attracted at this stage without any evidence to show that the land in question was developed for sale or intended sale by the promoter by way of advertisement, booking etc. after 1.5.2017 i.e the commencement of the Act, 2016.

Section 3(1).

> *(1)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:*

Therefore, further examination on the completion or ongoing of the project as has been mentioned in (B) and (C) of aforesaid Para (7), so as to determine the applicability of Section 3 of the R.E (R & D) Act, 2016 are not necessary at this juncture.

9. On the cumulative effect of facts discussed and reasons stated in the foregoing paragraphs, we hereby set aside the impugned order dated 30.7.2024 in the SMCC No.465 of 2024, and accordingly allow the

appeal on contest against the respondent. However, liberty is granted to the learned ORERA to conduct field enquiry afresh in the light of the Standard Operating Procedure, if any, prepared by the ORERA, pursuant to the judicial direction vide order dated 6.3.2026 of this Tribunal in OREAT Appeal No.21 of 2024 and in case, it is subsequently found that a plotted project is being developed by the appellant, for the purpose of sale of all or some of the plots so developed after 1.5.2017, then proceeding as per law may be initiated.

10. The statutory amount deposited by the appellant be refunded to him along with accrued interest on submissions of 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)

BB

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