IN THE ODISHA REAL ESTATE APPELLATE TRIBUNAL AT BHUBANESWAR

OREAT Appeal No. 112/2024
(Arising out of S.M.C.C. No. 75 of 2024)

M/s Evos Buildcon Pvt. Ltd.
represented through Sri Kalinga Keshari Rath,
Managing Director. ...Appellant.

-Versus-

1)The Secretary, Odisha Real Estate Regulatory Authority, Bhubaneswar.
2)Puri Konark Development Authority, Puri through its Secretary.

...Respondents.

Counsel for the appellant :Mr. P.K.Rath, Senior Advocate
Counsel for the respondent no.1: Mr. B.Nayak, Advocate
Counsel for the respondent no.2 : None

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

O R D E R
16.10.2026

The appeal is taken up for final order.

2) Order dated 29.7.2024 passed by the Odisha Real Estate Regulatory Authority (hereinafter referred as the learned ORERA) in Suo Motu Complaint Case No.75 of 2024 is under challenge in this appeal. The appellant was the only respondent in the said complaint case initiated suo motu by the learned ORERA. Prayer has been made in this appeal to set aside the impugned order dtd. 29.7.2024 passed by the learned ORERA in S.M.C.C. No.75 of 2024.

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

Pursuant to a grievance petition filed by one Sri Jaganath Bastia, the enforcement wing of the ORERA inspected the project "Sea Roses" at Mouza-Sipasarubali under Puri Sadar Tahasil, District: Puri on 15.2.2024 developed by the respondent-promoter and found that, though permission was accorded in favour of the respondent by the PKDA, Puri for construction of a B+S/G+7 storied residential apartment building but a G+10 storied commercial-cum-residential building was under construction in which roof casting of the 10th floor had been completed and cement brick works and tile flooring works were under progress. The enforcement wing further found that the project had been registered with the ORERA under registration vide No.RP/26/2021/ 00530. Earlier the project had a provision for 249 units, but with the extended structure had 355 units without due intimation and modification of the ORERA registration. Apart from the aforesaid report regarding the status of the project structure, the enforcement wing also estimated the cost of the project on the basis of the local market rate, in absence of documents like DPR and Agreement for Sale etc., to be Rs. 1,66, 15,00,000/-. On receiving the report of the Enforcement officer and Empanelled engineer prepared on 16.2.2024, the learned ORERA initiated suo motu complaint case 75 of 2024 against the respondent- promoter for allegedly changing the project from residential category to commercial-cum-

residential category, without due intimation and modification of the ORERA registration and thereby violating section 14 (1) of the R.E (R&D)Act, 2016.

On being issued notice to show cause as to why he shall not be penalized u/sec. 61 of the Act, 2016, the respondent-promoted appeared before the learned ORERA on 27.3.2024 through his counsel and after taking time filed his written show cause to the allegations against him in the complaint on 10.4.2024. The respondent in his show cause took the plea that he has not changed the category of the project from residential to commercial-cum-residential and has therefore not violated either section 14 (1) of the Act, 2016 or the new Planning & Building Standards Rules, 2020. The respondent further contended that after getting the approval of the PKDA for construction of the B+S+7 storied residential apartment building on 13.4.2021, he applied for the registration of the project with the ORERA and accordingly got the registration certificate with registration No.RP/26/2021/00530. After starting construction of the apartment building the respondent designed a revised building plan for construction of a G+10 storied commercial-cum-residential building in accordance with the new Planning and Building Standard Rules, 2020 and submitted the same to PKDA, Puri on 1.11.2021 for approval. The revised building plan being placed before the 42nd BP committee of PKDA, the committee on going through the plan approved it with certain terms and conditions. The respondent after

fulfilling all the conditions and obtaining all the necessary approvals (NOCs) as required by the Planning Authority, submitted the same on 3.8.2023. The respondent claimed that as per rule, he had obtained the consent of 2/3rd of the allottees of the project for extension of construction and development of the project. The respondent further claimed that having obtained permission to sell flats in the 1st floor to 7th floor of the apartment building in accordance with the permission granted by the ORERA, he has sold only the flats of the said floors. Further asserting that he has neither applied to sell nor sold any flat beyond the ORERA approval limit, the respondent has claimed that his conduct has been transparent and all the official documents clearly show that the approach of the respondent is very clear and according to the proper procedure. With the aforesaid contentions, the respondent prayed to drop the suo motu complaint case initiated against him.

On the basis of the materials before it leading to institution of the suo motu complaint case, the written show cause of the respondent-promoter and the documents relied on by him in support of the same and also on a detailed hearing of the suo motu complaint with the participation of the learned counsel for the respondent, the learned ORERA while allowing the complaint case on contest against the respondent directed the respondent to deposit a penalty of Rs. 90,00,000/- (Rupees ninety lakhs) before it, within a period of two months and, it was made clear that in the

event of the respondent's failure to comply with the direction the same shall be enforced as per law. Apart from this the learned ORERA also directed the PKDA to take suitable action for demolition of the unauthorized construction in accordance with the ODA Act, within two months from the date of the order, and to submit compliance to it.

4) In the hearing of the appeal, the learned counsel for the appellant has submitted that, the learned ORERA has committed a grave error by directing the PKDA to demolish the construction of the floors of the project beyond S+7 as the learned ORERA has no jurisdiction in this regard. The learned counsel for the appellant has emphasized on the fact that power to direct any Development Authority to demolish any building is not contemplated u/sec. 35 r.w.s 38 of the Act, 2016. The learned ORERA can only impose penalty or interest in regard to any contravention of the obligation under the Act or the rules or regulations made there-under, by the promoter. Learned counsel for the appellant has asserted that as per section 91 of the ODA Act, 1982 only a statutory authority can decide the proceeding initiated against a promoter and there cannot be a parallel order by another authority like ORERA to direct demolition. As the appellant is defending himself in a proceeding u/sec. 91 of the ODA Act before the PKDA, the impugned order directing the demolition of the structure beyond the 7th floor of the project amounts to pre-judging the said proceeding before the PKDA. It is further contended that,

the learned ORERA vide the impugned order has taken away the appellant's right to defend himself in the aforesaid proceeding before the PKDA and therefore apart from being illegal the order is also violative of the principle of natural justice. It is further contended that the impugned order is bad in law as the appellant though has filed his written reply to the complaint but has not been given an opportunity of hearing. With the aforesaid contentions, the learned counsel for the appellant has made the prayer as mentioned earlier in pargraph-2.

5) On the other hand, the learned counsel for the respondent no.1-Authority has not filed any written show cause to the appeal memo, but in his oral submission has defended the impugned order of imposition of the penalty of Rs.90,00,000/- on the appellant-promoter claiming that the unauthorized construction of the project beyond the 7th floor by the appellant is a fact apparent on the face of the record and also admitted by him. The learned counsel for the respondent no.1 has however admitted that the powers of the learned ORERA u/sec. 38 of the Act, 2016 do not include the power to direct any development authority to demolish a real estate project structure even if the same is constructed unauthorizedly. The learned counsel for the respondent no.1-ORERA has accordingly prayed for dismissal of the appeal for being devoid of any merit.

6) The respondent no.2-PKDA,Puri who has been subsequently impleaded as a party in the appeal has filed its written show cause to the appeal through its Secretary

stating that the appellant-promoter was granted approval of the building plan of the project vide letter No.329/PKDA dtd. 13.4.2021 for construction of a B+S+G+7 apartment building, but after being granted registration certificate by the ORERA with registration No.RP/26/2021/00530, the appellant applied for approval of a revised building plan to the PKDA on 28.10.2021. The PKDA in its committee meeting discussed on the revised building plan and informed the appellant-promoter vide letter no.674/PKDA dtd. 26.10.2022 to comply with certain points mentioned in the letter which included clearance from Airport Authority of India for construction of more stories above S+7 beyond the approved plan, revised NOC from Central Ground Water Board, revised NOC from State Pollution Control Board and Environmental Assessment Authority. However, the appellant without complying with the said statutory requirements started construction of the 8th, 9th and 10th floor of the project without approval of the PKDA. It is further submitted that the most important among the aforesaid four compliances is the first one i.e. clearance from the Airport Authority of India in view of the proposed Shree Jagannath International Airport, Puri, for which land acquisition is also vicinity of the project of the promoter. The Secretary, PKDA, Puri has alleged that inspite of being intimated vide the PKDA letter no.137/PKDA dtd. 4.6.2024 regarding the survey of the feasibility of the area by the multi-disciplinary team of the Airport Authority of India and to obtain clearance from the said Authority, the appellant-promoter went on with the

construction of additional three floors thereby rendering the whole structure unauthorized being violative of section 14 (1) of the RERA Act, 2016 and Section 91 (1) of the ODA Act, 1982. Terming the direction of the learned ORERA to the PKDA in the impugned order to initiate suitable action as per the ODA Act to be very much within the purview of the statutory authority under the Act, the respondent no.2 has prayed to allow the PKDA to act as per Section 91 (1) of the ODA Act, 1982.

7) The appellant-promoter has been proceeded against for allegedly changing the project "Sea Roses" at Shipasarubali, Puri from residential category to commercial-cum-residential category without due intimation and modification of the registration granted by the ORERA and thereby contravening section 14 (1) of the R.E. (R&D) Act, 2016. A penalty of Rs.90,00,000/- has been slapped on the appellant by the learned ORERA u/sec. 61 of the Act, 2016 for the aforesaid contravention. The provision u/sec. 14 (1) reads as under :

> ***14. Adherence to sanctioned plans and project specifications by the promoter:*** *(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.*

Admittedly, the appellant-promoter was granted permission u/sec. 16 (3) of the ODA Act, 1982 to construct the B+S/G+7 storied residential apartment project namely "Sea Roses" at mouza-Shipasarubali, Tehsil : Puri Sadar, District Puri, with a proposed 249

units therein, by the PKDA, Puri vide its letter no.329 dtd. 13.4.2021. The project has also been registered with the ORERA u/sec. 3 of the Act, 2016 and granted registration No.RP/26/2021/00530. An inspection of the project was conducted by the enforcement team of the ORERA on the grievance petition of one Sri Jagannath Bastia. The inspection report of the Enforcement Officer and the Empanelled Engineer of the ORERA dated 16.2.2024 reveals that during their inspection of project on 15.2.2024 they found it to be a G+10 storied commercial-cum-residential building with 355 units and under construction. The inspection report dated 16.2.2024 further reveals that roof casting of the 10th floor of the project had been completed while cement brick works and tile flooring works were under progress. The enforcement team observed that, the project had been changed from residential category to commercial-cum-residential category and the height of the project building had been increased from G+7 to G+10 storied with increase also in the number of units therein i.e. from 249 units to 355 units.

The appellant-promoter has denied the alleged contravention of section 14 (1) of the Act and has taken the plea that after obtaining the initial plan approval for construction of the B+S/G+7 storied residential apartment building from the PKDA, Puri on 13.4.2021 and registering the project with the ORERA vide project registration No.RP/26/2021/00530, he submitted a revised building plan under the new Planning and

Building Standards Rules, 2020 to the PKDA, Puri on 1.11.2021. The appellant has claimed that the revised building plan submitted by him for construction of G+10 storied commercial-cum-residential building on being placed before the 42nd BP committee of the PKDA, Puri on 2.9.2022 was approved with certain terms and conditions and accordingly approval letter no.674 dtd. 26.10.2022 was issued. The appellant has further claimed to have complied with all the conditions in the aforesaid letter dtd. 26.10.2022 of the PKDA, Puri and to have obtained all the necessary approvals as required by the said Authority with submission of his compliance to the PKDA vide letter dtd. 3.8.2023. The appellant has further claimed to have obtained consent of 2/3rd of the allottees of the project in respect of the extension of the construction and development of the project. The appellant has further claimed that he has sold only those flats of the project for which he had obtained permission to sell i.e. the flats existing on first to seventh floors.

As disclosed from the impugned order dtd. 29.7.2024, the learned ORERA on ascertaining from the inspection report dtd. 16.2.2024 of the Enforcement Officer and Empanelled Engineer that the appellant had changed the project from residential category to commercial-cum-residential category and the structure of the building from G+7 to G+10 storied and had also increased the number of units in the project from 249 to 355, called for a detailed report from the PKDA regarding the revised plan approval of the project and its present

status. In response, the PKDA vide its letter no.128/PKDA dtd. 10.5.2024 informed the learned ORERA that no final approval had been given to the revised plan submitted by the promoter as the promoter could not comply with the points mentioned in the letter no.674 dtd.26.10.2022 of the PKDA. The PKDA clearly mentioned in its detailed report dtd. 10.5.2024 that the promoter having not furnished the NOC from the Airport Authority of India with respect to Shree Jagannath International Airport, Puri, it had not issued final approval u/sec. 16 (3) of the ODA Act, 1982 for construction of S+10 storied residential apartment. The PKDA in its letter dtd.10.5.2024 to the learned ORERA had categorically stated that the promoter without its approval had constructed the S+10 storied building. The learned ORERA taking note of the report dtd.16.2.2024 of the Enforcement Team and the letter dtd.10.5.2024 of the PKDA arrived at the conclusion that the promoter had not got approval from the PKDA to his revised plan and accordingly by constructing the S+10 storied building of the project "Sea Rose" had made a clear violation of section 14 (1) of the Act, 2016. Resultantly, the learned ORERA finding the project cost to be Rs.1,66,15,00,000/- from the report of the Enforcement Team imposed the penalty of Rs.90,00,000/- on the promoter for the aforesaid violation.

In support of his claim that, after approval of the revised building plan by the 42nd BP Committee of the PKDA subject to certain terms and conditions, he had fulfilled all the conditions and had also obtained all the

necessary approvals (NOCs) and accordingly had submitted the compliance letter to the PKDA on 3.8.2023, the appellant has relied on the copy of the said letter addressed to the Planning Member, PKDA, Puri, which shows the appellant claiming to have submitted as many as 13 documents including the clearance from Airport Authority, revised NOC from Central Ground Water Board and environmental clearance from the State Environmental Impact Assessment Authority. However, it is also seen from the aforesaid letter of the appellant that NOC from the State Pollution Control Board had not obtained as only application for it had been made with the deposit of required fee. Though the appellant had mentioned in his letter dtd. 3.8.2023 to have submitted clearance from Airport Authority, but has not produced the proof of such clearance. Rather, the copy of the letter dtd. 12.6.2024 of the appellant to the PKDA in reply to its letter dtd. 4.6.2024 and also the copy of the appellant's letter dtd. 28.6.2024 to the Airport Authority of India filed with the appeal memo clearly show that the required NOC as per the letter dtd. 26.10.2022 of the PKDA had not been obtained by the appellant.

The PKDA, Puri was not a party in the Suo Motu complaint case before the learned ORERA, but as already mentioned earlier the learned ORERA in the impugned order has referred to the status report dated 10.5.2024 of the PKDA wherein it has confirmed that, the applicant (promoter) has not yet furnished the NOC from the Airport Authority with respect to Shree Jagannath

International Airport, Puri. The PKDA has further confirmed in the said report that it has not issued any final approval letter u/sec. 16 (3) of the ODA Act, 1982 in favour of the applicant (promoter) regarding the revised S+10 storied residential apartment, but in the meantime the applicant has already constructed the S+10 storied building. As already mentioned earlier in paragraph-6, PKDA, Puri in its pleading in the appeal has claimed that vide its letter dtd. 26.10.2022, it had asked the appellant to comply with certain points mentioned in the said letter including clearance from the Airport Authority of India, revised NOC from Central Ground Water Board, revised NOC from State Pollution Control Board and Environmental Assessment Authority. It is the categorical plea of the respondent no.2-PKDA, Puri that despite its intimation vide letter dtd. 4.6.2024 regarding the survey of the Airport Authority of India to ascertain the feasibility of the area and a clear instruction to obtain clearance from the said Authority, the appellant-promoter without complying with the said requirement went on with the construction of the 8th, 9th and 10th floors of the project. As already mentioned above, the appellant's claim of compliance with all the conditions contained in the letter dtd 26.10.2022 of the PKDA is found to be not correct as clearance from the Airport Authority of India and NOC from the State Pollution control Board have not been obtained which is apparent from the contents of the appellant's letter dtd. 28.6.2024 to the Airport Authority of India and letter dtd. 3.8.2023 to the PKDA. Nowhere in his

entire appeal memo, the appellant has challenged the observation of the learned ORERA in the impugned order that, the promoter having not got his revised plan approved by the PKDA and constructed the S+10 storied building in the project "Sea Rose" has violated section 14 (1) of the Act, 2016.

The appellant having not been able to prove his claim of obtaining approval from the PKDA to his construction of the 8th, 9th and 10th floors of the project, has certainly not developed the project in accordance with the sanctioned plan approved by the Competent Authority i.e. the PKDA, Puri vide its letter no.329 dtd. 13.4.2021 and has thereby violated section 14 (1) of the Act, 2016. He is therefore liable to pay penalty u/sec. 61 of the Act which may extend upto five percent of the estimated project cost. The project cost estimated to be Rs.166,15,00,000/- by the Enforcement Officer and Empanelled Engineer of the ORERA on the basis of the local market rate of 1 BHK and 1 RK Studio, has not been challenged by the appellant. Hence, the penalty of Rs.90,00,000/- imposed on the appellant by the learned ORERA, which is approximately 0.54% of the project cost, is certainly not arbitrary.

8) Coming to the other part of the impugned order i.e. the learned ORERA's direction to the PKDA to take suitable action for demolition of the unauthorized construction in accordance with the ODA Act, 1982, the appellant, as already mentioned earlier, has vehemently objected to the same on the ground that the learned

ORERA has absolutely no power to issue such direction in view of the provisions contained u/sec. 35 read with section 38 of the Act, 2016. The further plea of the appellant in assailing the direction for demolition is that the same amounts to pre-judging the proceeding initiated against the appellant by the PKDA u/sec. 91 of the ODA Act, 1982 and taking away of the appellant's right of defending himself in the said proceeding. It is true that the powers conferred upon the learned ORERA in Secs. 35,36, 37 and 38 of the Act, 2016 nowhere prescribe or include the power to direct a Development Authority to demolish an unauthorized construction of real estate project. For the contravention of section 14 (1) of the Act there can only be grant of compensation u/sec. 18 (3) or imposition of penalty u/sec. 61 of the Act. Granting of compensation being not within the scope of power of the learned Regulatory Authority, it can only impose a penalty u/sec. 61 exercising its power u/sec. 38 (1) of the Act. In the present case, contravention u/sec. 14 (1) of the Act having been established against the appellant-promoter, he has been rightly imposed the penalty of Rs. 90,00,000/- by the learned ORERA. But the direction to the PKDA to demolish the unauthorized construction of the project is not only beyond the powers of the learned ORERA u/secs. 35 to 38 of the Act, but also is not an action prescribed under Sec. 61 of it.

It is notable to mention here that the respondent no.2-PKDA in its written show cause to the appeal memo has prayed to allow it to act as per Sec. 91

(1) of the ODA Act on the ground the appellant-promoter has violated the Act by going on with the construction of additional three floors of the project unauthorizedly. However, during hearing of the appeal the learned counsel for the appellant submitted the copy of the permission letter dtd. 21.5.2026 of the PKDA, Puri permitting the regularization of the project i.e. the existing G+10 storied apartment-cum-commercial building of the appellant u/sec. 16 (3) of the ODA Act, 1982 on payment of a compounding fee of Rs.14,43,510/- and other fees amounting to Rs.3,27,74,457/-. As regards regularization of unauthorized constructions, the Hon'ble Supreme Court of India in a catena of decisions have categorically held that illegality of unauthorized construction cannot be perpetuated. If the construction is made in contraventions of Acts or Rules, it would be construed as illegal or unauthorised construction, which has to be necessarily demolished. The Hon'ble Apex Court in the case of **M.I. Builders (P) Ltd. Vrs. Radhey Shyam Sahu reported in (1999) 6 SCC 464** has held in clear terms that, there is no alternative to the construction which is unauthorized and illegal to be dismantled. In **Esha Ekta Apartments Cooperative Housing Society Limited vrs. Municipal Corporation of Mumbai reported in (2013) 3 Supreme Court cases (Civil) 89,** the Hon'ble Apex Court has observed as follows :

> *"56.We would like to reiterate that no authority administrating municipal laws and other similar laws can encourage violation of the sanctioned plan. The courts are also expected to retrain from exercising equitable*

jurisdiction for regularisation of illegal and unauthorized constructions else it would encourage violators of the planning laws and destroy the very idea and concept of planned development of urban as well as rural areas."

In the case of **Rajendra Kumar Barjatya and Another Vrs. U.P. Avas Evam Vikash Parishad & Ors (Civil Appeal No. 14604 of 2024) decided on 17.12.2024**, the Hon'ble Apex Court in deciding two civil appeals involving the issue of unauthorized construction has made the following detailed observation :

"20. *In the ultimate analysis, we are of the opinion that construction(s) put up in violation of or deviation from the building plan approved by the local authority and the constructions which are audaciously put up without any building planning approval, cannot be encouraged. Each and every construction must be made scrupulously following and strictly adhering to the Rules. In the event of any violation being brought to the notice of the Courts, it has to be curtailed with iron hands and any lenience afforded to them would amount to showing misplaced sympathy. Delay in directing rectification of illegalities, administrative failure, regulatory inefficiency, cost of construction and investment, negligence and laxity on the part of the authorities concerned in performing their obligation(s) under the Act, cannot be used as a shield to defend action taken against the illegal/unauthorized constructions. That apart, the State Governments often seek to enrich themselves through the process of regularisation by condoning/ratifying the violations and illegalities. The State is unmindful that this gain is insignificant compared to the long-term damage it causes to the orderly urban development and irreversible adverse impact on the environment. Hence, regularization schemes must be brought out only in exceptional circumstances and as a onetime measure for residential houses after a detailed survey and*

considering the nature of land, fertility, usage, impact on the environment, availability and distribution of resources, proximity to water bodies/rivers and larger public interest. Unauthorised constructions, apart from posing a threat to the life of the occupants and the citizens living nearby, also have an effect on resources like electricity, ground water and access to roads, which are primarily designed to be made available in orderly development and authorized activities. Master plan or the zonal development cannot be just individual centric but also must be devised keeping in mind the larger interest of the public and the environment. Unless the administration is streamlined and the persons entrusted with the implementation of the act are held accountable for their failure in performing statutory obligations, violations of this nature would go unchecked and become more rampant. If the officials are let scot-free, they will be emboldened and would continue to turn a nelson's eye to all the illegalities resulting in derailment of all planned projects and pollution, disorderly traffic, security risks, etc."

In view of the above mentioned settled position of law relating to regularization of unauthorized constructions as per the above mentioned case laws, the legality of the permission dtd.21.5.2026 of the respondent no.2-PKDA regularizing the existing S+10 structure of the project shall be subject to its conformity with the same.

9) In view of the discussions made in paragraph-7 & 8, the impugned order dtd. 29.7.2024 passed by the learned ORERA imposing the penalty of Rs.90,00,000/- on the appellant-promoter u/sec. 61 of the Act, 2016 for contravention of section 14 (1) being absolutely correct as per the facts on record and the existing law, is hereby

confirmed. However, the impugned direction of the learned ORERA to the PKDA, Puri to take suitable action for demolition of the unauthorized construction of the project in accordance with the ODA Act, 1982 being not within the scope of its power u/secs. 35 to 38 of the Act, 2016, is hereby set aside.

With the above directions, the appeal is partly allowed on contest against the respondents.

Pending I.As, if any, stand disposed of accordingly.

Send a copy of this order together with the record of SMCC No.75/2024 to the Learned ORERA for information and necessary action. Also send a copy of this order, each to the appellant and the respondent no.2.

The appellant is directed to deposit the penalty amount of Rs.90,00,000/- before the learned ORERA and on production of the payment receipt thereof, he shall be entitled for refund of the statutory amount alongwith accrued interest thereon, on proper application and identification.

Shri S.K.Rajguru
(Judicial Member)

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

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