IN THE ODISHA REAL ESTATE APPELLATE TRIBUNAL AT BHUBANESWAR

OREAT Appeal No.194/2024

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

... Appellant

-Versus-

The Secretary, ORERA, Bhubaneswar ...Respondent

For the appellant : Mr.S.C.Tripathy, Advocate.
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
12.10.2026

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.5,00,000/- for the alleged violation under Section 3 of the R.E. (R.D) Act, 2016 in Suo Motu Complaint Case No.464 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:

Pursuant to the order dated 22.3.2024 of the learned ORERA, the Enforcement Officer of ORERA on 12.04.2024 inspected the residential plotted project "SAI SMARANIKA", proposed to be developed by the appellant-promoter i.e M/s.Vasudhara Land and Developers Pvt. Ltd. at Mouza-Jenipur, Jagatpur, District-Cuttack. Smt.Damayanti Nayak, Managing Director of the Company accompanied the Enforcement Officer to the project site, wherein the company had reportedly acquired Ac.1.00 of land in Mouza- Jenipur, Jagatpur, Dist-Cuttack, so as to develop a plotted project having the plot size of 1200 sft. (30 feet x 40 feet). The photographs (enclosed with the report) of the Enforcement Officer, taken from the site on the date of inspection, reveal that, the project was yet to be developed and demarcated on the land, which were basically paddy fields. Further, as reported by the Enforcement Officer, Ms.Nayak could not also produce any document of that plotted project till 23.4.2024 i.e the date of preparation of the inspection report, even though she had assured to submit those in the office of the ORERA by 18.4.2024.

However, the Enforcement Officer collected and enclosed with his inspection report dated 23.4.2024, a coloured copy of the leaflet, claimed to be an advertisement by the appellant-promoter for the sale of plots of the aforesaid plotted project "SAI SMARANIKA", along with other similar projects of the same promoter. According to the Enforcement Officer, as the project had

not been registered with the ORERA by then, the appellant-promoter by publishing the aforesaid advertisement had violated the provision of Section 3 of the R.E (R & D) Act, 2016.

In absence of any formal DPR, approved drawing and land details etc, the Enforcement Officer has submitted the cost estimation of the project, on the basis of the information provided by Ms.Damayanti Nayak, Managing Director of the promoter-Company, and the information available in the leaflet, to be Rs.3,04,92,000.00/- (Rupees Three Crore Four lakh Ninety Two thousand) only

Basing on the above report, the present SMCC No.464/2024 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.4008 dated 7.6.2024 of ORERA the appellant-promoter entered his appearance in SMCC case No.464/2024 through his counsel and submitted his written objection to the complaint stating that he neither floated nor made any development work in the said residential project. He has further stated that he had neither made any advertisement nor received any booking amount nor also made any communication with any person for said project. Therefore, he has not applied for registration of the project with the ORERA as per the Act, 2016. The appellant accordingly prayed to dismiss

the Suo Motu Complaint Case against him as there was no cause of action for invoking the Act.

The Suo Motu complaint Case was heard from both the parties and was disposed of by the learned ORERA vide the 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.5,00,000/- (Rupees Five 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.*
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> *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 alleged residential plotted project "SAI SMARANIKA" at Mouza-Jenipur, District- Cuttack was neither ongoing nor was in existence by the time the RERA Act came into force in the year 2017.

(b) The appellant has neither made any advertisement nor received any booking amount nor made any communication with any person for sale of plots in the aforesaid residential plotted project after the enactment of R.E (R &D) Act i.e 1.5.2017.

(C) The appellant-promoter was not allowed to cross-examine the said Enforcement Officer so as to verify the truth behind his report and the Enforcement Officer did not give sufficient opportunity of hearing to the appellant for submission of relevant documents of the alleged project, resulting in violation of the principle of natural justice.

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 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.

The learned counsel for the Authority further submitted that the learned Authority has rightly imposed the penalty of Rs.5,00,000/- for selling the apartments/flats without registering its project which is a mandate of Section 3 and the violation of the said provision is punishable under Section 59 of the Act, which empowers the learned Authority to impose a penalty that may extend up to ten percent of the estimated cost of the real estate project.

6. In the rejoinder dated 22.4.2026, the learned counsel for the appellant-promoter categorically submitted that the residential plotted scheme, which was

developed, in shape of plots of size 30 feet X 40 feet, over a gross area of 9000 sqft., in toto having provisions of roads and other basic facilities, by the appellant-promoter, in the name and style of "Sai Smaranika" at Mouza-Jenipur, District-Cuttack, which was a rural area and was not coming under the Planning Authority. All the plots in the "Sai Smaranika" were sold by the year 2014.

The learned counsel for the appellant-promoter in his rejoinder has also disputed the estimated project cost of Rs.3,04,92,000.00/- (Rupees Three Crore Four lakhs Ninety-two thousand) only, on the basis of the extent of the gross project land, which according to him is Ac.0.57 instead of Ac.1.00 as assessed by the Enforcement Officer. He has also enclosed a copy of the sale deed dated 10.1.2014 of the Sub-Registrar, Jagatpur, Cuttack, executed in favour of Smt.Arundhati Dash by M/s.Vasundhara Land and Developers Pvt. Ltd. for a value of Rs.11,200/-

The appellant-promoter has also emphatically submitted that the project was a plotted scheme and was not at an ongoing project as on the date of inspection. Therefore, Section 3 of the Act does not apply and registration of the project with the learned Authority was not required. The appellant has further claimed that no advertising, marketing, selling, or booking of plot in the project has been done nor any constructional activities on the said plot has been taken up by the promoter, in the post RERA period.

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 then whether 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 to examine the same with respect to the facts and figures reflected therein in compliance with the principle of natural justice ?

8. First analysing the question at 7(A), it is 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, as per the above mentioned statutory provision the essentials of a plotted project so as to fall under the paradigm of real estate project are the development of land into plots, making material change of the land including the common areas by way of engineering or other operations, all improvements 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 therewith, the land in question as shown by Smt.Damayanti Nayak, Managing Director to the Enforcement Officer were paddy fields. Further, the Enforcement Officer has specifically reported that the project land was yet to be developed and demarcated.

The Enforcement Officer of ORERA did not produce any evidence, other than 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.1.00 in area and the appellant had intended to develop it to a plotted project.

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. The coloured leaflet submitted by the Enforcement Officer reflects no date of its publication.

Moreover, 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. Rather, his inspection report categorically reveals that the project is yet to be developed and demarcated. The learned Authority in the impugned order dated 30.7.2024 while arriving at the finding that the appellant-promoter had proceeded with the project work has however not made it clear as to what kind of activity in the project work the promoter was proceeding with at the time of inspection.

In view of the above discussed facts including those reported by the Enforcement Officer of the ORERA, we are of the opinion that the land inspected by the Enforcement Officer shall not be construed as a Real Estate Project prima facie, as on the date of inspection, in accordance with the basic definition reflected in Section 2(zn) of the RE (R & D) Act, 2016.

As the appellant has been proceeded against for the alleged violation of section 3 (1) of the R.E (R &D) Act, 2016,, the provision needs to be gone through. It reads as under.

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:

However, with the facts emerging from our above discussions, the alleged violation of Section 3(1) 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.

Therefore, further examination on the questions of completion or ongoing of the project and prejudice caused, if any, to the appellant on account of non-supply of the inspection report of the Enforcement Officer as 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 and violation of the principle of natural justice are not necessary at this juncture.

9. On the cumulative effect of facts as well as provisions of law discussed and also reasons stated in the foregoing paragraphs, we hereby set aside the impugned order dated 30.7.2024 in the SMCC No.464 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, in case, it is subsequently found that a plotted project is being developed by the appellant, at the inspected site for the purpose of sale of all or some of the plots so developed after 1.5.2017, and accordingly proceeding as per law may be initiated.

10. The statutory amount deposited by the appellant be refunded to him along with accrued interest on submission of proper application and identification.

Send the authentic copy of this order, along with the record of the Suo Motu Complaint Case No.464 of 2024 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)