

25. 21.02.2025

OREAT APPEAL No.43/2023

Heard Mr.R.K.Rout, learned counsel appearing for the appellants and Mr.S.Samal, learned counsel appearing for the respondent no.s.1 & 2 and Mr.A.K.Pattnaik, learned counsel for the respondent no.3.

2) This appeal is being preferred by the appellants inter alia assailing the order dt. 23.12.2022 passed in complaint case No.139/2021, with further prayer to revoke the registration which was granted in favour of the respondent no.1, by the Real Estate Regulatory Authority. The appellants being the complainants had filed Complaint Case No.139 of 2021 before the learned Odisha Real Estate Regulatory Authority, Bhubaneswar against the respondents under section 31 of the Real Estate (Regulation & Development) Act, 2016 with a prayer for revocation of the registration certificate granted under section 7 of the RERA Act, 2016. The learned Authority after hearing the parties at length vide order dt. 23.12.2022 dismissed the complaint on contest. Being aggrieved & dissatisfied with the said order, the instant appeal has been filed.

3) During course of hearing, learned counsel for the appellants fairly submits that there is a dispute between the appellant and respondent nos.1 & 2 with respect to plot no.294 where the appellants have claimed right, title and interest over the said land for which a Civil Suit No.684 of 2005 is pending before the Additional Civil Judge (Senior Division), Bhubaneswar. As the civil suit is pending between the parties, the learned ORERA has illegally issued the registration certificate in favour of the builder-promoter for construction the project. Accordingly, in the instant appeal, the appellants have sought for revocation of registration under Section 7 of the Act. Learned counsel for the appellants submit that

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the registration granted under section 7 of the Act which depends upon the final out-come of Civil Suit No.684 of 2005. However, learned counsel for the appellants fairly submits that with regard to plot no.295 the appellants do not have any dispute with the respondents. Hence, it is submitted that the present appeal may be disposed of accordingly.

4) Learned counsel for the respondent nos.1 & 2 has clearly submitted that the learned authority has issued registration certificate on 6.4.2021 vide Project Registration Number MP/19/2021/00449 by according permission to the promoter to construct the project 'Lifestyle Galaxia' over plot No.295 which plot is not the subject matter of the civil suit and it is the admitted fact that there is no dispute between the parties over plot No.295. It is further submitted that due permission has also been accorded to the promoter from the BDA for the project to be constructed over plot no.295 Accordingly, after due verification of all the relevant documents, the learned Authority has rightly accorded permission to the promoter. Hence, there is no illegality committed by the learned Authority while rejecting the complaint of the complainants (appellants in the present appeal) with regard to revocation of registration which has been granted earlier. Hence, it is submitted that the impugned order does not suffer from any irregularity and infirmity to warrant interference of this Tribunal. Learned counsel for the respondent nos.1 & 2 submits that the disputed plot No.294 in fact belongs to respondent nos.1 & 2, which is being disputed by learned counsel for the appellant.

5) Learned counsel for the respondent no.3 vociferously submitted that respondent nos.1 and 2 who are lawful owner and absolute title holder of plot no.295

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having exclusive possession over the said plot entered into a development agreement with the respondent no.3 and accordingly, the B.D.A. granted building plan approval and the ORERA has granted registration certificate of the project. It has been further contended that the appeal filed by the appellants is not maintainable since the appellant is not an aggrieved person as per section 31 of the Real Estate (Regulation & Development) Act, 2016. Moreover, the appellants neither the allottees with respect to the project constructed over plot no.295 nor they are the owner of the plot No.295. Learned counsel for the appellant further submits that the appellants being strangers to the project, the learned Authority has rightly dismissed the complaint filed by the appellants.

6) Learned counsel for the respondents during course of hearing submits that the learned Authority has vividly gone through the respective averments in the complaint and has arrived at a just finding which is neither illegal nor erroneous to be interfered with in this appeal. Further, it is submitted that the present appeal has no bearing upon the decision of Civil Suit No.684/2005 and the decision to be rendered in the Civil Suit No.684/2005 is not binding upon the present appeal, as the civil suit relates to a different plot i.e. plot No.294 whereas the registration has been accorded by the learned Authority over Plot No.295.

7) On perusal of the case records, it is found that title over plot no.294, mouza-Chandrasekharapur Khata No.449 is in dispute and the same is pending adjudication in Civil Suit No.684/2005 in which the respondent nos.1 and 2 are the defendants. Bhubaneswar Development Authority vide his letter No.16762 dt.9.10.2020 has accorded permission to Anam Behera,

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Benudhar Behera both are sons of late Ratnakar Behera for grant of construction of one Basement+Ground +13 multistoried residential apartment with commercial building proposed over Plot No.295 of Khata No.449 of mouza-Chandrasekharpur. Consequent upon said permission, the learned ORERA has granted registration under section 5 of the Real Estate (Regulation & Development) Act, 2016 on 6.4.2021 in respect of project namely 'LIFESTYLE GALAXIA' in favour of M/s Lifestyle Properties Pvt. Ltd. vide Project Registration No.MP/19/2021/00449. Said registration certificate further clarifies that the project "Lifestyle Galaxia" is a residential-cum-commercial project, B+G+13, No. of Units Residential-93 & Commercial-8 over plot No.295 of Khata No.449 of Mouza-Chandrasekharpur of Tahasil-Bhubaneswar in the district of Khordha, Odisha. The said certificate also reveals that the promoter shall comply all the conditions imposed by the Planning Authority in the building plan approval letter no.16762 dt. 9.10.2020. However, the registration certificate is being challenged by the appellant in the complaint case and prayed that the same shall be revoked as per Section 7 (1) (c) of the Real Estate (Regulation & Development) Act, 2016. Section 7 (1) (c) of the said Act provides that the Authority may, on receipt of a complaint or suo motu in this behalf or on the recommendation of the competent authority, revoke the registration granted under section 5, after being satisfied that- (c) the promoter is involved in any kind of unfair practice or irregularities. It is the admitted fact between the parties that there are differences amongst them over plot no.294 and to bring home the allegations against the respondents, the appellant has to prove that the promoter have involved themselves in unfair practice or irregularities over plot no.295, upon

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which plot permission has been granted by the BDA and registration certificate has been issued by the ORERA. However, on perusal of the documents it is clear that the parties have no dispute over plot no.295 i.e. the project land and after through verification of all the records and documents, the BDA and ORERA have granted permission/registration to the promoter for construction. The appellant has also fairly admitted the fact that the project is over plot no.295 and they have no dispute over the said plot. There is nothing on record that the builder-promoter by way of malpractice or fraud has obtained the registration from the authority in order to attract section 7 of the RERA Act. Hence, the Authority has rightly passed the order in rejecting the complaint which we approve of and accord imprimatur.

8) After hearing learned counsel for the respective parties and on perusal of the documents available with the case record, we find the impugned order dt.23.12.2022 passed by the learned Authority in Complaint Case No.139 of 2021 does not suffer from any patent illegality to warrant our interference.

Accordingly, the appeal being devoid of any merit stands dismissed on contest.

Records of the learned Authority be returned forthwith.

Justice P.Patnaik
Chairperson

Shri S.K.Rajguru
(Judicial Member)