

OREAT Appeal No.73/2023

19) 04.04.2025

The appeal is taken up through hybrid mode.

2) Heard Mr. J.R.Samantasinghar, learned counsel appearing for the appellant and Mr.S.S.Swain, advocate appearing on behalf of Mr. B.P.Tripathy, learned senior counsel for the respondent-Authority.

3) Aggrieved over the order dated 9.3.2023 of the Odisha Real Estate Regulatory Authority, Bhubaneswar (hereinafter referred to as the learned Authority) passed in Suo Motu Complaint Case No.248 of 2019 instituted by it, the appellant who was the respondent in the said complaint case has filed this appeal praying to set aside the said order and to direct the respondent-Authority to drop the complaint case in the interest of justice.

4) The facts and circumstances of the case leading to the filing of the present appeal are as follows :

On 25.11.2019 the respondent-Authority instituted Suo Motu Complaint Case No.248 of 2019 against the appellant-promoter for executing six sale deeds in respect of 'Keshari Eden' Apartment at Sampur without registering the project with the Authority and thereby violating Section 3 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as the RERA Act). On 27.4.2022 when the Complaint Case was posted for hearing, the counsel for the appellant filed a petition to dismiss the case as not maintainable on the ground that completion certificate in respect of the project was issued prior to the commencement of the RERA Act i.e. 1.5.2017. The petition was heard on the same day and vide order passed on 5.5.2022 it was rejected on the ground that no completion certificate in support of the claim was filed. The appellant-promoter challenged the order

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dtd.5.5.2022 of the learned Authority before this Tribunal in OREAT Appeal No.70 of 2022 on the ground that inspite of the filing of the completion certificate, the same was not taken into consideration and the petition challenging the maintainability of the case was illegally rejected. The appellant filed the copy of the completion certificate issued by Architect Nishan Suman dtd. 5.1.2016 vide Annexure-3, but as the same was not in the prescribed format, another copy of completion certificate dtd. 5.1.2016 was filed before this Tribunal on 15.11.2022. This Tribunal vide order dtd. 6.1.2023 set aside the order dtd.5.5.2022 of the learned Authority and remitted the matter back to it with a direction to the appellant-promoter to file the true copies of both the completion certificates for fresh consideration of the matter. After remand the matter was considered afresh and the impugned order dtd. 9.3.2023 rejecting the petition challenging the maintainability of the complaint case No.239 of 2019 was passed.

5) In the hearing of the appeal, the learned counsel for the appellant has contended that though section 20 of the ODA Act provides that completion certificate shall be issued by a registered Architect or Engineer or a person appointed by the Authority but there is no provision in the Act that the Architect must maintain a register for issuing completion certificate. It is further submitted that the completion certificate relied on by the appellant contains the date, seal and signature of the registered Architect and therefore, is a valid one. It is further submitted that the appellant has not been given any opportunity to adduce evidence showing despatch of the completion certificate to the Planning Member, B.D.A. Emphasizing on the fact that the completion certificate

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has been issued by a registered Architect and therefore cannot be said to have been manipulated or created for the purpose of this case, the learned counsel for the appellant has prayed to set aside the impugned order dtd. 9.3.2023.

6) On the other hand, the learned counsel for the respondent-Authority has submitted that the completion certificate filed by the appellant is not valid because no date has been mentioned by the empanelled Architect and it is also not in accordance with Form VI, Part-I of the O.D.A. Act. Drawing attention of this Tribunal to Section 3 (1) of the RERA Act which requires the promoter to make an application to the Authority for registration of the project which is ongoing and for which no completion certificate has been obtained on the date of commencement of the Act, the learned counsel for the Authority has asserted that the learned ORERA has rightfully exercised its power and passed the impugned order. Accordingly, the learned counsel for the respondent-Authority has prayed for dismissal of the appeal being unwarranted.

7) The learned Authority in rejecting the petition challenging the maintainability of the suo motu complaint case no.248/2019 vide the impugned order has observed that the completion certificate has been addressed to the Planning Member, Bhubaneswar Development Authority, but the serial number of the register, which the empanelled Architect must have maintained for issuing completion certificates to the Planning Member, and the date are not mentioned in the certificate and the register is also not produced. It is categorically held by the learned Authority that the register which the empanelled Architect is supposed to have maintained in due course of his official business is admissible under section 34 of the Indian Evidence Act and unless it is

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established that such a register is maintained, the completion certificate is not to be entertained in the court of law. The learned Authority has further observed that no oral or documentary evidence is produced showing the despatch of the completion certificate to the Planning Member, BDA and even there is no endorsement that such certificate has been received by the B.D.A. or its Planning Member. There is also no material whether the completion certificate after being received in the office of BDA has been processed for issuance of occupancy certificate. Further observing that the certificate has been procured for the purpose of this case and has never been produced before the BDA in proper form with payment of proper fee for issuance of occupancy certificate, the learned Authority has concluded that, the certificate which is issued in 2016 but produced in 2022 before the Authority gives rise to a strong presumption that it has been manipulated and created for the purpose of this case.

The learned Authority has referred to the case of Alfa Ventures (P) Ltd. vrs. State of Kerala and others decided on 10.6.2022 wherein the Hon'ble High Court of Kerala has observed that the Completion Certificate as mentioned in the Act should not be confused with the certificate granted by any person as per local rules. The learned Authority is of the opinion that, since occupancy certificate on the basis of completion certificate was not issued in the manner provided u/s 3 of the RERA Act, the Hon'ble High Court of Kerala came to hold that the project is an ongoing one within the meaning of section 3 of the Act.

As regards the applicability of the RERA Act, Section 3 (1) of it provides that application by the promoter for registration of the projects within three months from the

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commencement of the Act is necessary which are ongoing on the date of commencement of the Act. Under Section 3 (2) (b) of the Act registration of the real estate project is not required where the promoter has received completion certificate prior to the commencement of the Act. In the case of **M/s Newtech Promoters & Developers Pvt. Ltd. vrs. State of UP and others** decided on 11.11.2021, the Hon'ble Supreme Court of India have made it clear that, projects already completed and to which completion certificate has been granted before the commencement of the Act are not under its fold. At the same time, it will apply after getting the ongoing projects registered u/s 3 to prospectively follow the mandate of the Act, 2016. The Hon'ble Apex Court has further observed in the said case that, all ongoing projects that commenced prior to the Act and in respect to which completion certificate has not been issued are covered under this Act. So both as per the RERA Act and the decision of Hon'ble Supreme Court in Newtech Promoters case (Supra), it is the issuance of completion certificate which is the deciding factor for applicability of RERA Act to a project.

In the present case, the appellant has claimed completion of the project in question prior to the commencement of the RERA Act and in support of its contention has produced the true copy of the completion certificate dtd.5.01.2016 issued by registered Architect Nishant Suman and therefore, the validity of the completion certificate has to be analyzed as per the existing law at the relevant time i.e. section 20 of the Odisha Development Authorities Act, 1982. Completion Certificate under the ODA Act is submitted u/s 20 by a registered Architect or an Engineer or a person approved by the Authority in the forms prescribed by

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regulations. As per section 20A of the ODA Act, on receipt of completion certificate under section 20, the Authority shall consider for grant of occupancy certificate in such form for authorizing occupation of the building or the premises in part or full, on payment of such fees and on such terms and conditions as may be prescribed. Section 124 of the ODA Act, 1982 empowers the Authority to frame regulations in consultation with the State Government. The present project is covered under the Bhubaneswar Development Authority (Planning & Building Standards) Regulations, 2008. Regulation 15 of it provides that the Authority shall permit an empanelled Architect/Engineer to certify completion of residential buildings on a plot size upto 500 sq. meters. Regulation 15 further provides that, the empanelled Architect/Engineer will serve a notice of completion certificate in Form VI (part I and Part II) to the Authority that the building has been completed in all respects as per the approved plan. Regulation 67 provides that in submitting the notice in Form VI (Part I & Part II) regarding completion of multi-storied buildings to the Authority, the following particulars shall accompany it:

- A. Three copies of plan of the completed building.
- B. A fee of Rs.5000/-.
- C. Record of Rights (ROR) relating to ownership.
- D. Evidence to the effect of all public utility services, and in particular sewerage, drainage, water supply and electricity have been linked to the main public utility system.
- E. No Objection Certificate from the Fire Prevention Officer.

On perusal of the completion certificate dtd.5.1.2016, it is found to be addressed to the Planning Member, Bhubaneswar Development Authority, Bhubaneswar, whereas the prescribed completion certificate as per Form VI, Part-I of the BDA (Planning & Building Standards) Regulations, 2008 shows that it should have been addressed to the Vice

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Chairman, Bhubaneswar Development Authority, Bhubaneswar. The contents of the certification in the completion certificate dtd.5.1.2016 are not exactly the same as in the prescribed certificate under Form VI, Part-I of the Regulations, 2008 as the date of completion and the number as well as date of the sanctioned plan which are required to be mentioned in the prescribed Form VI are not there in the completion certificate dtd.5.1.2016. Apart from these, the completion certificate dtd.5.1.2016 does not show that the required particulars under A to E of Regulation 67 were sent alongwith it to the BDA. As pointed out by the learned Authority, no evidence has been adduced by the appellant-promoter to show that the completion certificate dtd. 5.1.2016 was in fact despatched to the BDA, Bhubaneswar alongwith necessary particulars for issuance of occupancy certificate. There is also no evidence that the completion certificate dtd.5.1.2016 with necessary particulars was received in the office of the BDA, Bhubaneswar. So when the completion certificate relied on by the appellant is not as per the prescribed format and there is no evidence of its despatch with the required particulars as per Regulations, 2008 and also there is no evidence with regard to its receipt in the office of the BDA, Bhubaneswar, it cannot be held to be a valid one.

As regards the learned Authority's reliance on the Alfa Venture Case to form the opinion that, only the competent authority under section 2 (p) of the RERA Act is entitled to issue completion certificate, we are of the considered opinion that, unless the empowerment of registered Architects or Engineers by the Development Authorities to issue completion certificates under section 20 of the ODA Act, 1982 in respect of projects claimed to have been completed prior to the

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commencement of the RERA Act, is declared invalid, it cannot be conclusively held that only the competent authority as per section 2 (p) of the RERA Act is entitled to issue the completion certificate dt.5.1.2016. So, Alfa Venture case relied on by the learned Authority does not persuade as to conclude that registered Architect Nishant Suman was not entitled to issue the completion certificate dtd.5.1.2016.

8) The completion certificate dtd. 5.1.2016 relied on by the appellant being found to be not valid, the project 'Keshari Eden' is to be treated as an ongoing one as on the date of commencement of the RERA Act i.e. 1.5.2017 and is therefore under its fold. Accordingly, the Suo Motu Complainant Case No.248/2019 pending before the learned Authority is maintainable and the impugned order dtd. 9.3.2023 of the learned Authority does not warrant any interference by this Tribunal.

In the result, the appeal being devoid of any merit stands dismissed on contest against the respondent.

Apart from uploading this order in the official website of the OREAT, today itself, office is directed to send an authentic copy of this order alongwith the record of the complaint case to the learned Authority for information and necessary action. Also send a copy of this order to the appellant.

Justice P.Patnaik
Chairperson

Shri S.K.Rajguru
(Judicial Member)

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