

OREAT Appeal No.87/2023

27).18.06.2025

The appeal is taken up through hybrid mode.

2) Heard Ms. S.Mohapatra, learned counsel for the appellant and Mr.B.Nayak, advocate appearing on behalf of Mr. P.S.Nayak, learned counsel for the respondent-Authority.

3) Aggrieved over the order dated 28.04.2021 passed by the Odisha Real Estate Regulatory Authority, Bhubaneswar (hereinafter referred to as 'learned Regulatory Authority') in Suo Motu Complaint Case No.21 of 2020, the appellant, who was the sole respondent in the said case, has filed this appeal against the respondent-Regulatory Authority who had instituted the said case for the alleged failure to comply with its direction dated 19.1.2019. Prayer has been made in this appeal to set aside the said order of the learned Regulatory Authority.

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

As per order dtd. 5.2.2020 passed by the learned Regulatory Authority in Registration File No.RP/206/17 (M.Sl. No.192) relating to Project 'A-1 Mansion', at Ghatikia, the appellant-promoter M/s RDA Solutions Pvt. Ltd. at Plot No.N-1/A-15, IRC Village, Nayapalli, Near CRP Square, Bhubaneswar-751015 failed to comply with the direction of the learned Regulatory Authority made on 19.1.2019 to file the list of sale deeds inspite of taking several adjournments and even after service of a show-cause notice on it, thereby committing contravention under section 63 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as the 'RERA Act'). Accordingly, the aforesaid Sou Motu Complaint Case No.21/2020 was initiated by the learned ORERA against the appellant-promoter.

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Notice was issued to the aforesaid promoter (present appellant) asking it to show cause as to why it shall not be penalized under the provision of Section 63 of the RERA Act for the alleged non-compliance of the order. On 26.2.2020 the appellant appeared through its counsel and prayed for time to file show cause. The case was fixed to 18.4.2020 for filing of show cause, but due to Covid-19 pandemic and the resulting lock down by the Government, the record could not be put up on the date fixed and was put up on 12.6.2020. Case was then fixed to 5.8.2020 for filing of show cause by the appellant but due to the extra-ordinary situation for covid-19, it was again adjourned to 10.9.2020 for filing of show cause. The case was then adjourned form time to time and on 3.3.2021 finding the notice issued to the appellant through e-mail to have been received by it the service of notice was held to be sufficient and accordingly the appellant was set ex parte. The learned Regulatory Authority directed its Enforcement Officer to visit the project of the appellant at Ghatikia, Bhubaneswar and to submit a report before it on or before 25.3.2021. The learned Regulatory Authority received the report from the Enforcement Officer on 25.3.2021 and on 28.4.2021 the impugned order was passed directing the appellant to pay a penalty of Rs.4,27,000/- within a period of two months making it clear that the order shall be enforced by realization of the penalty in the event of failure in its compliance by the appellant.

5) In the hearing of the appeal the learned counsel for the appellant has submitted that though the appellant appeared before the learned Regulatory Authority and submitted his reply meeting all the deficiencies which the learned Regulatory Authority had required to comply, but the learned Regulatory Authority has not taken into consideration

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the reply of the appellant and instead initiated the sou motu complaint u/s 63 of the RERA Act alleging non-compliance with its order and imposed the penalty of Rs.4,27,000/-. It is further submitted that the appellant had previously applied before the learned Regulatory Authority for registration on 29.6.2018 and had replied to each and every objection raised by the learned Regulatory Authority in its office but unfortunately its application for registration was neither rejected nor accepted. In this regard, the learned counsel for the appellant has pointed out to Section 5 (2) of the RERA Act as per which any order after the statutory period of 30 days is not sustainable in the eye of law. However, instead of being issued registration number, the appellant was proceeded against with a sou motu complaint case. It is further stated that in the hearing of sou motu complaint case, the appellant could not participate as the Managing Director of the Company had some serious health issue. Accordingly, the appellant was set ex parte. Pointing out to the aforesaid provision of the RERA Act, the learned counsel for the appellant has submitted that the project is deemed to have been registered on 29.6.2018 and the learned Regulatory Authority should have provided registration number and login id as well as password to the appellant-promoter for accessing its website and to create its web page to fill therein the details of the proposed project. The learned Regulatory Authority instead of doing so has rejected the application for registration of the appellant in violation of Section 5 (2) of the RERA Act, which is illegal and arbitrary and therefore the impugned order is liable to be set aside.

6) On the other hand, the learned counsel for the respondent-Regulatory Authority has submitted that the appellant-promoter inspite of getting the letter of direction

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from the Regulatory Authority neither appeared nor engaged any counsel on its behalf to submit documents relating to the project on 26.2.2020 and accordingly was set ex parte on 3.3.2021. It is further submitted that the technical team of the ORERA made an assessment to determine the value of the project required u/sec. 35 of the RERA Act for violation of direction issued by the Regulatory Authority. The project was found to be a S+4 residential building consisting of 12 flats with a built up area of 13800 sq. ft. and price of Rs.1900/- per sq. ft. The approximate cost of the project was determined to be Rs.2,62,20,000/-. It is further submitted that in absence of any document provided by the appellant to the contrary, the project cost was accepted as aforesaid as provided by the technical team. It is further submitted that the appellant was found to have violated section 63 of the RERA Act and as this provision provides for a cumulative fine of 5% of the project cost, the Regulatory Authority has exercised its discretion and imposed the penalty at the rate of Rs.1000/- per day which amounts to Rs.4,27,000/- in total. Re-asserting that the Regulatory Authority has imposed the penalty in rightful exercise of its power and that the appeal is unwarranted, the learned counsel for the respondent has prayed for its dismissal.

7) As penalty has been imposed upon the appellant-promoter for its alleged failure to comply with the order dtd. 19.1.2019 of the Regulatory Authority passed in Registration File No. RP/206/2017 (M.SI. No.192) relating to the project 'A-1 Mansion', Ghatikia, the said file needs to be gone through. A perusal of the said file reveals that, on receipt of the application of the appellant-promoter for registration of the aforesaid project on 30.8.2017, certain deficiencies were noticed in the application accompanied with some documents

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and the list of such deficiencies were informed to the appellant-promoter for necessary compliance. In responding to the letter no.3634 dtd.5.10.2018 of the ORERA with regard to the deficiencies, the appellant-promoter submitted compliances wherein the appellant-promoter had mentioned that the project was completed and the date of completion of the project was 28.2.2017. The appellant-promoter had also mentioned that the customers were in physical possession of all the flats. The appellant-promoter was asked to submit occupancy certificate alongwith compliance of other deficiencies and to appear before the Chairperson, ORERA on 17.1.2019 at 10.45 A.M. On 18.1.2019 the appellant-promoter submitted a letter to the ORERA that project was completed and that the customers were in physical possession of the flats and accordingly direction was issued by the ORERA on 19.1.2019 asking the appellant to appear on 12.2.2019 at 4 Pm with the list of sale deeds executed in respect of the project. Note sheet dtd.12.2.2019 shows Rima Dhawan, the appellant-company's Director to have appeared and filed an application for time to file the details of the sale deeds. Date was fixed to 6.3.2019. Note sheet dtd. 6.3.2019 shows Director, Rima Dhawan to be again present and to have sought for time to file the details of the sale deed by the end of April, 2019. Time was given till 9.4.2019 for filing the details of the sale deeds. It is further seen that, Rima Dhawan had seen the note sheets dtd. 12.2.2019 and 6.3.2019 of the registration file with her signatures. Thereafter, the appellant-promoter was found to be absent on subsequent adjourned dates. On 3.7.2019 finding the appellant-promoter to have still not furnished the list of sale deeds executed in respect of the flats of the project inspite of direction having been issued on 19.1.2019, notice was issued to the appellant-promoter to

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appear before the Regulatory Authority on 24.7.2019 at 3 PM to show cause as to why she shall not be penalised under section 63 of the RERA Act for her failure to comply with the direction of the Regulatory Authority. On 24.7.2019 the promoter was found absent and no steps was also taken on her behalf. Case was posted to 5.8.2019 and on that day inspite of finding the notice issued to the appellant-promoter to have been delivered on it on 12.7.2019, order was passed to issue fresh notice to it. On 7.9.2019, the appellant-promoter represented by its advocate prayed for time to file the reply to the notice and it was allowed till 14.10.2019. Advocate for the appellant-promoter then continued to apply for time to file the reply and finding the appellant to have not submitted the same and absent on 6.1.2020, the Regulatory Authority issued fresh notice to it fixing 27.1.2020 at 3 PM. On 27.1.2020 no response was received from the appellant-promoter and no steps was also taken on its behalf. It was however found that the e-mail notice had been read a day after it was sent and the postal item was also delivered as per the tracking report. On 5.2.2020 the appellant-promoter was again found absent and no step was taken on its behalf. Finding that its direction made on 19.1.2019 to the appellant promoter to file the list of sale deeds executed by it in respect of the project was still not complied with in spite of taking of several adjournments by the appellant-promoter and service of the notice to show cause on it, the Regulatory Authority finally decided to initiate the present Suo Motu complaint case together with a notice to the appellant-promoter as to why it shall not be penalized u/sec. 63 of the RERA Act. While passing the aforesaid order dtd. 5.2.2020, the Regulatory Authority rejected the application for registration of the project

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on the ground that the appellant-promoter was no more interested to proceed with the registration of the Project.

The appellant-promoter who was set ex parte in the proceedings of the complaint case has claimed in the present appeal memo that it had submitted all the documents including the sale deeds dtd. 30.8.2017, 11.6.2018, 30.6.2018, 6.8.2018, 21.8.2018, 5.10.2018 and 26.10.2018 as required by the ORERA in Registration File No.RP/206/17 and has alleged that the ORERA without verification of these documents again insisted upon it to produce the same. However, neither the copy of the said list of sale deeds nor the copies of the sale deeds have been produced by the appellant in support of its claim. The pleas of the appellant that it had applied previously for registration before the ORERA on 29.6.2018 and had replied to each and every objection raised by the ORERA and that the application for registration has neither been rejected nor been accepted, are not at all relevant to its alleged non-compliance of the direction of the Regulatory Authority made on 19.1.2019.

8) The appellant having not taken the plea of non-applicability of the RERA Act to the project in this appeal and also having not produced the completion certificate showing completion of the project prior to the commencement of the RERA Act, the project is certainly covered under it.

Section 63 of the RERA Act provides that, "If any promoter, who fails to comply with, or contravenes any of the orders or directions of the Authority, he shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to five per cent, of the estimated cost of the real estate project as determined by the Authority." It is clear from the developments relating to the project as mentioned in the preceding paragraphs that, after

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the appellant was directed by the Regulatory Authority on 19.1.2019 to submit the list of sale deeds executed by it relating to the flats of the project, the Director of the appellant-company inspite of personally appearing before the Regulatory Authority on 12.2.2019 and 6.3.2019 and seeing the note sheets on the said days and subsequently taking several adjournments has certainly failed to comply with the said direction. In this context, the contention of the learned counsel for the appellant during hearing that the appellant had not seen the e-mail sent to the company and the postal item had not been delivered at the office of the appellant-company, are immaterial. The appellant is therefore liable to pay penalty as contemplated u/sec. 63 of the RERA Act. Due to the inability of the Director of the promoter-company to produce the DPR, approved BDA drawing, occupancy certificate etc., the Enforcement Officer and the Empanelled Ex-Executive Engineer of the ORERA on their joint inspection of the project on 15.3.2021 pursuant to the order dated 3.3.2021 of the Regulatory Authority have estimated the cost of the project as Rs.2,62,20,000/-. The appellant-promoter has not produced any material to rebut this fact. The maximum penalty which can be imposed u/sec. 63 of the RERA Act in the present case is therefore Rs.13,11,000/-, However, considering the nature of the non-compliance, a penalty of Rs.500/- per day from 11.2.2020 i.e. the date of institution of the Suo Motu complaint case till 28.4.2021 i.e. the date of the impugned order (443 days in total) will be appropriate and payable by the appellant.

9) In the result, the appeal with the aforesaid modification in the penalty amount but having no merit stands dismissed on contest against the respondent-Regulatory Authority.

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Accordingly, the appellant-promoter shall deposit the penalty amount of Rs.2,21,500/- before the Regulatory Authority within a period of two months and on filing the receipt relating to such deposit, it shall be refunded the statutory amount of Rs.1,28,100/- with accrued interest thereon, on proper identification.

Send an authentic copy of this order alongwith 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.

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