

OREAT Appeal No.113/2023

23) 24.02.2025

The appeal is taken up through hybrid mode.

2) Already heard Mr.B.K.Dash, learned counsel appearing for the appellant and Mr. P.P.Sahoo, Advocate appearing on behalf of Mr. B.P.Tripathy, learned senior counsel for the respondent -Authority. Notes of submission have been filed by the learned counsels for both the parties.

3) The appellant-promoter has preferred this appeal challenging the order dtd. 10.05.2023 of the respondent-Authority passed in Sou Motu Complaint Case No.254 of 2018 instituted by it. The appellant was the sole respondent in the said case.

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

Coming to know that the appellant-promoter had published an advertisement through whatsapp in mobile phone number 9937762238 for sale of flats of project 'Oxy-Green' at Samuka beach, Puri without registering the project u/sec. 3 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the RERA Act) with it, the respondent-Authority initiated Sou Motu complaint case No.254/2018 against the appellant for violating section 3 of the RERA Act. Notice of show cause was issued to the appellant-promoter asking it to explain as to why it should not be penalized for non-registration of the project. On 9.1.2019 the appellant-promoter appeared before the learned Authority and on 6.2.2019 it filed show cause through its counsel. On 30.5.2019 the appellant-promoter withdrew its written show cause dtd. 6.2.2019 by filing a 'not press' memo and filed a fresh show cause through its advocate. On the same day hearing of the case was concluded and order was passed on

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3.8.2019 by the respondent-Authority imposing a penalty of Rs.10,00,000/- upon the appellant-promoter and directing it for registration of the project with the respondent-Authority as per procedure after payment of the penalty as ordered and also to carry out the orders within 45 days from the receipt of the same. The aggrieved appellant preferred OREAT Appeal No.60 (T)/2020 against the respondent-Authority challenging the order dated 3.08.2019 before this Tribunal and vide order dtd.27.1.2023 this Tribunal set aside the order dtd. 3.8.2023 passed by the respondent-Authority in Complaint Case No. 254/2018. The matter was remitted back to the respondent-authority for fresh adjudication and disposal after examining the veracity of the completion certificate and occupancy certificate which according to respondent-Authority were not filed before it. The parties were directed to appear before the respondent-Authority on 22.02.2023 and to file documents for further consideration of the matter. On 28.3.2023 the advocate for the appellant appeared and filed documents with written note of submission. On 24.4.2023 hearing of the case was concluded and vide the impugned order dtd. 10.5.2023 the case was allowed with a direction to the appellant to deposit a penalty of Rs.10,00,000/- within a period of two months with a further order that the order shall be enforced and the penalty shall be realized as per law if the appellant-promoter fails to comply with the same.

5) In the hearing of the appeal, the learned counsel for the appellant has submitted that the sou motu Complaint Case no.254/2018 initiated on the basis of whatsapp publication in mobile no.9937762238 is illegal as the said mobile number does not belong to any office bearer or agent of the appellant's firm. It is further submitted that the

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respondent-authority has not taken into consideration the Government of Odisha Gazette Notification dated 17.11.2017 by virtue of which the project comes under a planning area i.e PKDA, Puri. It is further submitted that the respondent-authority has illegally thrown out the completion certificate 15.12.2015 issued by the registered architect and occupancy certificate dtd. 30.12.2017 issued by the Block Development Officer, who are competent authorities to issue the said documents. It is further submitted that the RERA Act came into force on 1.5.2017 and prior to that the project area was under the jurisdiction of the local authority i.e. Panchayat Samiti, Puri Sadar, Puri. It is further submitted that the respondent-authority has also erroneously determined the value of the project and therefore the imposition of a huge penalty amount like Rs.10,00,000/- on the appellant is also arbitrary and whimsical. The learned counsel for the appellant has drawn the attention of this Tribunal to the fact that the appellant has submitted all the required documents before the District Urban Development Agency, Puri for verification of layout plan for the purpose of registration under the Authority and further construction of other two blocks of the project after the RERA Act came into force and a number of communications have been made between the DUDA, Puri and the office of the Sadar Block, Puri in this respect. Stressing on the point that the learned Authority has committed grave error in holding the project to be an ongoing one as on 1.5.2017 and the impugned order dt. 10.5.2023 of the respondent-Authority is highly misconceived and illegal, the learned counsel for the appellant-promoter has prayed for setting aside the impugned order dtd. 10.5.2023 passed by

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the learned authority in sou motu complaint case No.254/2018.

6) On the other hand, the learned counsel for respondent-authority has submitted that the completion certificate and occupancy certificate filed by the appellant-promoter are not valid and the authority has come to this conclusion on a fresh adjudication of the matter and examination of the genuineness of the documents after remand of the case as per order dtd. 27.1.2023 passed by this Tribunal in OREAT Appeal No.60(T) of 2020. The learned counsel for the respondent-authority has categorically claimed that there has been no communication from the office of the PD, DUDA, Puri regarding approval of drawings and certificates and hence it cannot be said definitely that drawings have been regularized. The completion certificate and the occupancy certificate being not valid, the project is certainly an ongoing one. Asserting that the respondent-authority has rightly come to the conclusion that the appellant-promoter has violated section 3 of the RERA Act and that the project cost is 5,00,00,000/-, the learned counsel has justified the imposition of penalty of Rs.10,00,000/- as quite appropriate and termed the appeal to be unwarranted. The learned counsel for the respondent-authority has thus prayed for dismissal of the appeal.

7) The appellant-promoter has though contended that the institution of the sou motu Complaint Case no.254/2018 against it on the basis of whatsapp publication of the advertisement for sale of flats of the project in mobile phone no.9937762238 is illegal for the said number not belonging to any office bearer or agent of its firm, but its written show cause in the complaint case speaks otherwise. The appellant

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therein has admitted itself to be a registered company dealing with real estate matters and to have taken up the present project i.e. OXY-GREEN at Samuka beach, Puri after procuring the land from the original land owner for development by constructing apartments on it on sharing basis (22 % share of the land owner and 78% share of itself).

The appellant-promoter has alleged that the respondent-Authority has not taken into consideration the Government of Odisha Gazette Notification dtd.17.11.2017 by virtue of which the project comes under a planning area i.e. PKDA, Puri, but it is of no avail to his case in view of his own plea that it has obtained the plan approval relating to the project land from the Panchayat Samiti, Puri Sadar vide its letter no.2841 dt. 22.12.2012 i.e. much prior to 17.11.2017 for construction of three blocks i.e. Block-1 (Twin Tower), Block-2 (Khushi) and Block-3 (Sandeed) on the same.

It is the specific plea of defence of the appellant-promoter against the institution of the Sou Motu Complaint Case No.254 of 2018 that, it has already completed the construction of the Block-2 (Khushi) of the project which is an apartment of G+8 Floor in the year 2015 as per the approved plan and after completion of the said Block, it has obtained completion certificate on 15.12.20215 and occupancy certificate on 30.12.2017 from the competent authority. The appellant-promoter has further claimed that all the flats of the completed block have been allotted and sold out to different customers vide registered sale deeds and delivery of possession of the same have also been made observing all the required formalities before the RERA Act,2016 came into force. The plea needs a thorough analysis here. As regards the applicability of the RERA Act, the first proviso to section 3 (1)

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of it states that, application by the promoter for registration of the project within three months from the commencement of the Act is necessary, which are ongoing on the date of commencement of the Act. Section 3 (2) (b) of the Act provides that registration of the real estate project is not required where the promoter has received completion certificate for it prior to the commencement of the Act. In the case of **M/s. Newtech Promoters and Developers Pvt. Ltd. Vrs. State of U.P. 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 under Section 3 to prospectively follow the mandate of the Act, 2016. The Hon'ble Apex Court have 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. The learned Authority in the impugned order dtd.10.5.2023 referring to the definitions of 'competent authority', 'completion certificate' and 'local authority' as per the RERA Act has come to the conclusion that, in the instant case the Gram Panchayat being the local authority may issue plan approval for construction of a building, but the same power cannot be exercised by a Block Development Officer, who is the Executive of Panchayat Samiti. It is the categorical observation of the learned Authority with regard to the completion certificate dtd.15.12.2015 that, had it been a certificate issued by a Gram Panchayat, it would have some weight or importance for consideration, but the Block Development Officer is never

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empowered to provide such approval or certificate for construction of a building. Disapproving the authority of the Block Development Officer to approve the raising of a building in an area covered under the Gram Panchayat, the learned Authority has referred to the Notification no.4844 dtd. 15.2.2020 of the Government of Odisha, Housing & Urban Development Department, wherein the promoters have been instructed to regularize the plan approvals obtained from Grama Panchayats or Block Development Officers by the concerned P.D., DUDA.

In the present case, the appellant-promoter has furnished the copy of the completion certificate dtd.15.12.2015 (Annexure 3 of the complaint case) which shows it to have been issued by registered architect Chittaranjan Ray of Kharvel Nagar, Bhubaneswar. In the completion certificate the architect has certified that the construction of OXY GREEN, Block-2 multi-stored residential/commercial building of the appellant-promoter on the scheduled land has been supervised by him and has been completed on 15.12.2015. The Architect has further certified that the work has been completed to his best satisfaction, workmanship and all the materials (type and grade) have been used strictly in accordance with the general detailed specification. Annexure-6 of the complaint case (Copy of the Occupancy Certificate) shows that, basing on the aforesaid completion certificate of Architect, the Block Development Officer, Puri Sadar has issued the Occupancy Certificate dtd.30.12.2017 certifying that, on inspection he observed the erection undertaken with respect to the building to be is in accordance with the approved plan vide permission letter no.2841 dt.22.12.2012. The appellant-promoter has however

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not made it clear as to how the completion of construction of only Block-2 (Khushi) would be considered as the completion of the project when as per its own plea it had obtained the approved plan from the competent authority i.e. Panchayat Samiti, Puri Sadar vide its letter no.2841 dtd.22.12.2012 for construction of three blocks on the scheduled land. The appellant-promoter has never taken the plea that, approval of the B.D.O., Sadar block, Puri vide Letter No.2841 dated 22.12.2012 was accorded to develop the project in phases and that Block-2 (Khushi) being a separate phase is a stand-alone project.

In order to ascertain the validity of the completion certificate dated 15.12.2015, it is necessary to go through the Notification No.4844 dtd. 15.2.2020 of the Government of Odisha, Housing & Urban Development Department. The same reveals that the Panchayati Raj and Drinking Water Department vide Notification No.8714 dated 20.5.2016 has brought the Land and Building Development in rural areas into the fold of planned development specifying the guidelines for approval of plans (lay-out and building) outside the jurisdiction of the Development Authorities/Regional Improvement trusts/Special Planning Authorities which is subsequently superseded by Notification No.10866 dated 7.6.2018 with details of scrutiny fees/development fees, procedure of approval of Building Plans for land area exceeding 500 square meter and/or building above Ground +2 Floors and/or land sub-division lay out plans above 1.00 Acre. The aforesaid notification of the P.R. & D.W. Department sets guidelines for projects which have come up after 2016. But prior to 2016, in the absence of any instruction, approvals of Building Plan/Project in the rural areas have been accorded by

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BDOs/PRIIs and relying on the approvals accorded by BDOs and PRIIs housing projects have come up and public have bought their homes from various developers.

Subsequently, when the ORERA through their notification no.2504 dated 16.07.2018 made it obligatory for the developers to get the real estate projects registered under the ORERA and the real estate projects which were taken up in rural areas based on the approval by BDOs/PRIIs applied for registration with the ORERA, it was unable to grant registration to these projects since the approvals were accorded by the BDOs/PRIIs prior to the guidelines dated 20.5.2016/7.6.2018 of the P.R. & D.W. Department. However, on the request of the ORERA to issue orders to process the pending applications pertaining to the projects approved by the BDOs/PRIIs prior to the publication of notification by PR & DW Department, Government has chalked out the procedure to be followed to streamline registration of such projects with the ORERA. As per the said procedure, all the promoters of real estate projects shall submit the building plans or the layout sub-division plans, in case where the area of land proposed to be developed exceeds 500 square meter or the number of apartments proposed to be developed exceeds eight, for which approval have been granted by the BDOs/PRIIs up to 7.6.2018, in the office of P.D., DUDA of the respective districts in Form-I for scrutiny within a period of three months from the date of the Notification dated 15.2.2020. The procedure provides that after ascertaining the adherence of the plans to essential building safety norms i.e. the structural stability and fire safety norms with the assistance of District Town Planning Unit, the PD, DUDA shall issue approvals in Form-II. It is further provided in the procedure that the PD,

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DUDA shall ascertain the authenticity of the approvals accorded by the BDOs/PRIs by obtaining certificates from the respective Block Officers/Panchayat that the signatures of the officials endorsed upon the plans/drawings are authentic and such approvals have been accorded by such officers or PRIs in their official capacity. The procedure further provides that, the DUDAs shall undertake necessary scrutiny of the plans/drawings to ascertain that the architects and structural engineers who endorsed their signatures to the plans and drawings are competent to sign such documents and their signatures are genuine. The DUDAs will be competent to reject the lay-out/building plans in Form-III if the structural stability and fire safety norms applicable to the projects have been compromised or violated.

In the present case, it is the contention of the appellant-promoter that it has submitted all the required documents before the DUDA, Puri for verification of layout plan for the purpose of registration under the ORERA and further construction of the other two blocks i.e. Block No.1 and Block No.3 of the Project after coming into force of the RERA Act and in this respect a number of communications have been made between the DUDA, Puri and Office of the Sadar Block, Puri and the matter is still pending for approval. The impugned order does not refer to any communication between the DUDA, Puri and the office of the Sadar Block, Puri with regard to application for approval of the plan of the project. Annexure-7 series of the Complaint Case though show that a number of correspondences relating to procedures under the notification dated 15.2.2020 have been made between the P.D., DUDA, Puri and Sadar block, Puri from 17.12.2021 to 23.11.2022, but as admitted by the appellant-

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promoter the DUDA, Puri has not yet validated the plan approval of the project accorded by the B.D.O., Sadar Block, Puri vide letter No.2841 dated 22.12.2012. Therefore, the validity of the completion certificate dated 15.12.2015 which has been certified to be in accordance with the plan approved by the BDO, still remains not confirmed.

As it is the own plea of the appellant-promoter that, the plan approval vide letter no.2841 dated 22.12.2012 of the Puri Sadar Block was in respect of all the three blocks of the project and the copy of the said letter i.e. Annexure-2 of the Complaint Case also shows the approval in respect of the entire project land measuring Ac.1.570, the completion certificate dated 15.12.2015 also should have been in respect of all the three blocks and not in respect of Block-2 (Khushi) alone. So, on this point alone, the completion certificate dated 15.12.2015 in respect of Block-2 is to be held invalid even if the PD, DUDA, Puri validates the plan approval dated 22.12.2012 in future.

So, we are of the considered opinion that the project OXY-GREEN is not a completed one on the date of the commencement of the RERA Act i.e. 1.05.2017. It being an ongoing one certainly requires registration with the ORERA under Section 3 of the RERA Act. The observation of the respondent-Authority in para-4 of the first order dated 3.8.2019 that the promoter has sold 29 apartments of the project during the period from 5.5.2017 to 31.12.2017 has not been challenged by the Appellant. As the RERA Act was in force during this period, the apartments of only one block should not have been sold without construction of the other two blocks and grant of registration of the project by the ORERA. The Appellant-promoter while selling the apartments

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knew that the project as a whole was not completed by then and hence was under the fold of the RERA Act. So, he has definitely violated Section 3 of the RERA Act to incur the penalty under section 59. The cost of the project calculated on the basis of the cost of the apartments also in para-4 of the order dated 3.8.2019 and relied on in the impugned order dated 10.5.2023 though appears to be not on the basis of the estimation by an expert, but the amount of penalty imposed by the learned Authority on the Appellant-promoter is also not arbitrary.

8) In view of the discussions made in the preceding paragraph, the imposition of penalty on the Appellant-promoter, by the learned Authority for violation of Section 3 of the RERA Act is correct in facts as well as law. However, considering the fact that, the Appellant-promoter has at least taken steps for validation of the plan by the PD, DUDA, Puri by filing the required application with documents, we take a liberal view and reduce the penalty amount from Rs.10,00,000/- to Rs.3,00,000/- which the appellant-promoter shall pay within two months of this order.

With the aforesaid modification, the appeal is disposed of on contest against the respondent.

The appellant is accordingly directed to deposit the penalty amount of Rs.3,00,000/- before the ORERA and on submission of the acknowledgement receipt before this Tribunal, he shall be refunded back the statutory amount deposited by him together with the accrued interest thereon, on proper application and identification.

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)