

OREAT Appeal No.192/2023

17. 21.03.2025 The appeal is taken up through hybrid mode.

2) Heard Mr.S.Sastry, learned counsel appearing for the appellant, Mr.P.P.Sahoo, learned counsel appearing on behalf of Mr.B.P.Tripathy, learned senior counsel for the respondent no.1-Authority and Mr.S.Baug, learned counsel appearing for the respondent no.2.

3) Aggrieved and dissatisfied with the impugned order dt.30.10.2023, passed by the Odisha Real Estate Regulatory Authority, Bhubaneswar in Complaint Case No.158/2023, the instant appeal has been preferred by the Managing Director of the company praying inter-alia for setting aside the issues and grounds of the order framed by the learned Odisha Real Estate Regulatory Authority, Bhubaneswar.

4) The facts leading to filing of this appeal is that the respondent no.2 being the complainant, filed Complaint Case No.158/2023 before the learned Authority, impleading the present appellant as respondent praying for the following reliefs:

(i) to direct the respondents to allocate and hand over physical possession of complainant's 25% share of super built-up area along with proportionate undivided share of land as per the terms and condition of construction agreement at Apartment project "SERENE" at Mouza-Ranasinghpur, Bhubaneswar within a stipulated period.

(ii)

(ii) to direct the respondents to clear up all the statutory requirement under law for the said project "SERENE" at the earliest.

(iii) to direct the respondents to pay Rs.50,000/- rupees fifty thousand towards various legal consultations and litigation fees to the complainant.

5) The facts borne out from the Complaint Case is that the complainant purchased a piece of land under Mouza-Ranasinghpur of district Khordha measuring a area of Ac.0.180 dec. and the said plot is adjacent to the lands of other land owners including the respondent no.2. Since the respondent no.2 has developed a project in the name and style "SERENE", the complainant being known to the respondent no.2 gave his land measuring Ac.0.180 dec. for construction of the project. In the complaint case, the respondent nos.3 & 4 are the Directors. As per the construction agreement dt.9.3.2011, the complainant-respondent no.2 is entitled to 25% of the super-built up area as per Clause-10(A) of the share agreement. The project, as per the said agreement, was to be completed within 24 months. Since the respondent-company did not complete the project as per the agreement and the construction continued even after coming into effect of the RERA Act, coupled with the fact that there was dispute between the respondent no.2 with respondent nos.3 & 4, the complainant-

respondent no.2 was constrained to file the complaint with the aforesaid prayer.

6) The appellant filed the show cause reply. In the show cause reply the appellant has candidly supported the contention of the complainant-respondent no.2 and the appellant is also agreeable to the share of the complainant as per the construction agreement but it appears from the show cause filed by respondent nos.3 & 4 in the Complaint Case that some civil dispute has been pending before the learned Civil Judge(Senior Division), Bhubaneswar. On the basis of the rival contention, issues were framed by the learned Authority and the learned Authority after discussing vividly about the respective contentions by giving emphasis on the construction agreement, has been pleased to direct the respondents to give share of 25% of the complainant (respondent no.2) of the super built-up area along with undivided land share of the project within a period of three months. Further direction has been made to register the project under the provisions of the RERA Act within a period of one month.

7) In the instant appeal contentions have been raised by the appellant that the learned Authority has erred in holding that there was dispute between the appellant-father, respondent no.2 and the children the respondent nos.3 & 4 with regard to the giving of shares of the land owners who have given their land of the project on sharing basis. It has been contended

that disputes arose owing to the opening of a new account of the company in Indusind Bank, Khandagiri Branch, thereby using the forged signature of respondent no.3 before the Authority. The disputes pertain to sale of flat no.304 of another project of appellant's company without the knowledge of respondent nos.3 & 4. Further it has been alleged that dispute arose due to producing of some counterfeit Board Meeting document/s of the company which was never ever conducted in reality.

Another ground has been taken in the appeal that the appellant is in hand in gloves with the respondent no.2 in supporting his case as a result of which the order passed by the learned Authority is not tenable in the eye of law. It has further been submitted that the show cause filed by the respondent nos.3 & 4 has not been properly appreciated by the learned Authority, resulting in passing of a whimsical order which is liable to be set aside. Further, it has been contended that the learned Authority has grossly erred by using derogatory sentence that the complainant was the servant of respondent no.2 and both of them have colluded in making construction, which is not valid in the eye of law. The observation made by the learned Authority is not correct if the show cause reply filed by respondent nos.3 & 4 are to be scanned through properly. Further it has been contended that the learned Authority has overlooked the documents filed by the appellant

and the pendency of C.S.No.644 of 2023 in the Court of Civil Judge (Senior Division), Bhubaneswar. Further, it has been contended that the learned counsel for the present respondent no.2 before the Authority is also the counsel in the Court of Civil Judge (Senior Division), Bhubaneswar in C.S.No.644/2023, wherein the suit is filed against the present appellant for defamation. Further, the respondent no.2 before the learned Authority has filed another C.S.No.1379/2023 as the Managing Director of S.S.Envirionics Pvt. Ltd, against the present appellant before the Court of Civil Judge (Senior Division), Bhubaneswar, wherein the counsel for the present respondent no.2 is also the counsel for the appellant. Therefore, the order passed by the learned Authority without considering the vital points raised by the appellant has resulted in passing of an illegal, improper and unjust order.

It has also been contended that the learned Authority has erred in not mentioning the specific e-mails dt.17.12.2022, 18.1.2023, 21.02.2023 and 14.2.2023 along with other emails. From the said e-mails it would be evident that respondent no.2 has neither cooperated nor given his consent. It has further been submitted that the show cause filed by respondent no.3 wherein they have tried to explain through sufficient documentary evidences that the complainants have collusively along with the Managing Director of the developer company,

intentionally filed case against the Company. Therefore, the delay caused in completion of project and subsequent action is due to the conduct of respondent no.2.

8) Mr.S.Sastry, learned counsel for the appellant during course of hearing reiterated the grounds urged in the appeal. Learned counsel for the appellant vehemently submitted that the observation made by the learned Authority is neither tenable in the eye of law nor acceptable to the appellant. Learned counsel for the appellant submits that the respondent nos.1 and 2 in the show cause have supported the case of the complainant (present respondent no.2) which proves the collusion between the present respondent no.2 with the appellant. Learned counsel for the appellant though has candidly submitted that with regard to the operative portion of order, the appellant does not have any dispute, however the grievance of the appellant is with regard to certain observations made by the learned Authority, which according to the appellant, has tarnished the dignity and image of the appellants. It is argued by the learned counsel for the appellant that the complaint before the RERA was a collusive one, where the Managing Director of respondent company before them was not in the forefront. Therefore, the present appellants have come independently to this Hon'ble Tribunal with no board resolution as the M.D. has never supported them.

9) Show cause has been filed by the respondent no.2 Biraja Prasanna Mishra, stating therein that as the appellants have not impleaded the Managing Director of the company, who is a necessary and proper party to the appeal and he was also the respondent no.2 in the complaint case before the learned Authority, the present appeal is not maintainable in the eye of law and the same is liable to be dismissed for non-joinder of necessary party. The respondent no.2 further stated in his show cause reply that the managing Director of the company had approached the present respondent no.2 to provide his land for the project on sharing basis for construction of apartment and the company did not provide him his 25% share out of the said apartment since 14 years and as such the company and its M.D. are accountable to the present respondent no.2. It has been further stated in the show cause that when the project has already been completed the learned Authority has rightly passed the order directing the respondents of complaint case No.158/2023 to give share of 25% of the super built up area along with undivided land share to the complainant within three month of the order. Therefore, there is no illegality in the impugned order as the respondent is not responsible for delay but the appellants who have deliberately and negligently delayed the project. Furthermore when all the allegations have been levelled against M.D. of the company, then in his absence the appeal is

not maintainable. It has been further contended that if the said order dt.30.10.2023 passed by the learned authority is set aside, then the land owners shall be deprived of from getting their share as land owners in the project and they shall sustain irreparable loss and injury which cannot be compensated otherwise. Furthermore, the said order has been passed against all respondents including the respondent nos.1 & 2 in the complaint case before the learned authority and the present appeal has been preferred by the respondent nos.3 & 4 only which is not consonance with the provisions of law. Therefore, the present appeal is liable to be dismissed being devoid of merit.

10) Mr.B.Baug, learned counsel for the respondent no.2 during course of hearing has vociferously submitted that the Managing Director of the company, who is respondent no.2 in the complaint case, has filed show cause admitting the claim of the present respondent no.2 land-owner. Learned counsel for the respondent no.2 further submits that there is no irregularity or illegality in the order passed by the learned Authority since the Authority has passed the order considering the clauses of sharing agreement and land owners contribution in the project and the land owner respondent no.2 is entitled to get his share under the provisions of law and in the meantime execution case has been adjudicated in favour of respondent no.2. Under the above

circumstances the appeal is liable to be dismissed being devoid of any merit.

11) We have heard the learned counsel for the respective parties at length and perused the appeal, show cause reply, and notes of submissions filed by the respective parties. On going through the construction agreement dt.09.03.2011 executed by the complainant in favour of the respondent no.1-company, irrevocable GPA executed by the complainant in favour of the respondent no.1-company dt.9.3.2011, more particularly Clause-10(A) of the said agreement, the share of the respondent no.2 is 25% of the super-built up area as per the BDA approved plan constructed over the scheduled land. Therefore, there is no gain-saying of the fact that the respondent no.2 is entitled to 25% of the super built up area, which is undisputed. But the appellant in the present appeal has raised certain grounds with regard to certain observation which according to the appellants are not palatable rather impinges on the image of the appellants.

12) This Tribunal after going through the show cause filed by respondent nos.1 and 2 in the Complaint Case No.158/2023, indisputably, unquestionably and unequivocally supports the case of the complainant (the respondent no.2 herein in the appeal). Therefore, this Tribunal does not find any of the observations made by the learned Authority to be not in consonance with the

stand taken by the respondent no.1 in the complaint case.

13) On the cumulative effect of the facts and reasons, we are inclined to hold that the impugned order dt.30.10.2023 pertaining to allotment of 25% of the share complainant is justified. Accordingly, the impugned order does not suffer from any patent illegality or is manifestly erroneous to warrant our interference and hence the appeal being devoid of any merit is dismissed on contest.

Pending I.A. is accordingly disposed of.

The records of the learned Authority be returned back forthwith.

Justice P.Patnaik
Chairperson

Shri S.K.Rajguru
(Judicial Member)