

OREAT Appeal No.02/2024

18) 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-Regulatory Authority.

3) Aggrieved over the order dated 02.11.2023 passed by the Odisha Real Estate Regulatory Authority, Bhubaneswar (hereinafter referred to as 'learned Regulatory Authority') in Suo Motu Complaint Case No.124 of 2023 instituted by it, the appellant who was the respondent in the said case, has filed this appeal praying to set aside the said order, to direct the learned Regulatory Authority to provide a registration number and a Login ID as well as password to the appellant for accessing its website and also to create his webpage and fill details of the proposed project therein.

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

Finding that the appellant-promoter had sold flats of the project 'Sai Krishna Residency' at Nandapur and Pandiapada to buyers inspite of rejection of the application for grant of registration in respect of it vide order dated 29.9.2021 and thereby violating Section 3 (1) of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as the 'RERA Act'), the learned Regulatory Authority initiated Suo Motu Complaint Case No.124/2023 u/s 59 (1) of the RERA Act against the appellant vide order dtd. 12.04.2023. It is further submitted that the application for grant of registration in respect of the project was rejected vide ORERA letter no.3247 dtd.29.9.2021 as the building plan of the project was approved by the BDO but the promoter was unable to obtain its approval from the PD, DUDA, Khordha.

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In response to the notice issued, the appellant-promoter appeared before the learned Regulatory Authority on 22.05.2023 and subsequently filed a reply in the shape of a letter dtd. 24.7.2023 through its Managing Director Sri Shashi Shekar Garabadu stating therein that it has received the approval from the DUDA on 2.5.2023 vide letter no.223 dtd. 2.5.2023 but the approval letter could not be filed before the learned Regulatory Authority due to some medical issues in the family of the aforesaid Managing Director. In support of such claim, the appellant has also filed the copy of the letter No.223 dt. 2.5.2023 issued by the P.D, DUDA, Khordha.

The learned Regulatory Authority after hearing the appellant and taking into consideration the materials on record passed the impugned order dtd. 2.11.2023 directing the appellant to pay a penalty of Rs.20,00,000/- (Rupees twenty lakhs) only within a period of two months making it clear that, in the event of failure, the order shall be enforced and the penalty shall be realized as per law.

5) Learned counsel for the appellant during hearing of the appeal has submitted that the appellant had earlier applied for registration on 31.7.2017 before the learned Regulatory Authority for registration of the project 'Sai Krishna Residency' vide application no.MSL-48. On 30.8.2017, the learned Regulatory Authority sent a notice to the appellant indicating a deficiency in the list of documents. It was held by the learned Regulatory Authority that the building plan enclosed with the application for registration of the project was approved by the BDO, Bhubaneswar who was not competent to approve it. Though the initial notification no.4844 dtd. 15.02.2020 of the Government of Odisha in Housing and Urban Development Department allowing three months time to the promoters to submit the building plan/lay out plan approved by the

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BDOs/PRIIs before the P.D., DUDA of the district for scrutiny and disposal was extended till 31.12.2021, but as the appellant-promoter failed to intimate anything about the approval of his building plan by the concerned P.D, DUDA, he was noticed to appear on 24.9.2021 for a hearing. Though the appellant appeared before the learned Regulatory Authority and requested it to allow him more time to obtain the approved plan from the DUDA and to keep the application for registration pending till the receipt of the same, but the learned Regulatory Authority rejected the application for the reason that more than one and half year had passed since the date of the issuance of notification dtd. 15.02.2020 and it would not be wise to keep the application pending for a longer period when the learned Regulatory Authority could not grant registration certificate for the project in absence of the required documents as envisaged under Section 4 (2) (c) of the RERA Act. The appellant was however granted liberty to apply for the registration afresh after obtaining the plan approval from the competent local authority. It is contended that, such rejection after the statutory period of 30 days is not sustainable in the eye of law. On 2.5.2023 the appellant got the DUDA approval in respect of the project, but due to illness of his family member he had to go to hospital and as such could not produce the approval document before the learned Regulatory Authority. The learned counsel has alleged that, the learned Regulatory Authority did not consider the show cause of the appellant in the complaint case and passed the impugned order on 2.11.2023. The learned counsel for the appellant has claimed that the learned Regulatory Authority should have provided registration number and login ID as well as password to the appellant for accessing its website and to create his webpage to fill the details of the proposed project

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therein, but instead of complying with the aforesaid statutory provision, the learned Regulatory Authority rejected his application for registration in violation of Section 5 (2) of the RERA Act. It is submitted that as per the said provision the project namely 'Sai Krishna' is deemed to have registered on 31.8.2017.

With the above mentioned submissions, the learned counsel for the appellant has made the prayer as already mentioned in paragraph-3.

6) The learned counsel for the respondent-Regulatory Authority in his show cause to the memo of appeal has submitted that the suo motu complaint was initiated against the appellant-promoter u/sec. 35 of the Real Estate (Regulation & Development) Act, 2016 read with section 59 of the said Act for violation of Section 3 of the Act. It is contended that the appellant-promoter floated advertisement in respect of the project without prior registration in violation of Section 3(1) of the RERA Act. Though the appellant had obtained the building plan approval from the B.D.O, Bhubaneswar but it was invalid in view of the notification dtd.15.02.2020 of the Housing & Urban Development Department, Govt. of Odisha. It is further submitted that the report dtd.17.10.2023 of the Enforcement Officer of the Regulatory Authority shows that the appellant-promoter has proceeded with construction of the project and handed over possession of some flats without valid building plan. It is claimed by the learned counsel that, vide letter No.3065 dated 20.9.2021 the ORERA had communicated a list of defects to the appellant asking him to rectify the same for approval of registration and fixed 24.9.2021 for appearance of the appellant to submit the approved plan and drawing, but the appellant having failed to submit the said documents, the

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learned Regulatory Authority vide letter dtd. 29.9.2021 rejected the application for registration of the project. It is claimed by the learned counsel for the respondent-Regulatory Authority that though the appellant has obtained the plan approval from the DUDA, Khordha on 2.5.2023, but he having already ignored the authority's direction cannot avail the benefit of Section 5 (2) of the RERA Act. The learned counsel for the respondent-Regulatory Authority has accordingly prayed for dismissal of the appeal.

7) As already mentioned earlier the appellant has been proceeded against by the learned Regulatory Authority for the alleged selling of the flats of the project namely "Sai Krishna Residency" without its registration under section 3 (1) of the RERA Act. This provision provides that "no promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act:

XXX	XXX	XXX	XXX
XXX	XXX	XXX	XXX "

It reveals from the note sheet of the complaint case record that the appellant-promoter's application for registration of the project was rejected vide letter No.3247 dated 29.9.2021 of the ORERA and though the appellant was given liberty to apply afresh after obtaining plan approval from the competent local authority, but no such application was received by the ORERA till 27.3.2023 i.e. after a lapse of nearly one and half year from the date of rejection of the application for registration. In the notice sent by the learned Regulatory Authority to the appellant-promoter on 15.4.2023

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in the complaint case it was asked to show cause as to why it should not be penalised u/sec. 59 of the RERA Act for selling flats inspite of rejection of the application for registration of the project vide ORERA Letter no.3247 dated 29.9.2021 and thereby contravening Sec. 3 of the Act. It was categorically mentioned in the said notice that the rejection of application for registration was due to the inability of the promoter to obtain approval of the PD, DUDA to the building plan of the project approved earlier by the B.D.O.

As already mentioned earlier in para-4, the appellant in its show cause to the complaint has not disputed its alleged selling of flats in the project 'Sai Residency' at Nandapura and Pandiapada inspite of rejection of application for registration of the project by the ORERA vide its letter dtd. 29.9.2021. The appellant also did not dispute the fact in the notice dated 15.4.2023 that the rejection of the application for registration of the project was due to its inability to obtain approval of the DUDA to the building plan of the project which was earlier approved by the BDO.

The complaint case record also reveals that, pursuant to the order of the learned Regulatory Authority dtd. 23.8.2023, Sri U.C.Pani, Enforcement Officer, ORERA conducted an inspection of the project "Sai Krishna Residency" and submitted his inspection report on 17.10.2023. In the said report the Enforcement Officer has submitted that on his inspection of the project on 12.10.2023, he found Sri Shashi Sekhar Garabadu, Managing Director of the promoter-company to have developed a residential-cum-commercial project in the name 'Sai Krishna Residency' on a plot area of 20,456.8591 square meter in mouza Nandapur and Pandiapada of the district of Khordha. The plan of the project was approved by the B.D.O., Bhubaneswar vide letter no.1850

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dated 21.4.2005 for construction of 15 blocks having 642 numbers of flats and 12 numbers of commercial units. The report further discloses that, as per the file No.57/2017 of the registration branch of ORERA the promoter has not obtained approval of P.D, DUDA as required under the notification No.4844 dated 15.2.2020 of the H & UD Department, Government of Odisha. It is further revealed from the report that, construction of the project started in the year 2005 and two blocks i.e. 'Saraswati' and 'Sindhu' have been completed with possession given to the allottees. Frame structure had been completed in 'Kaberi' complex and construction was at foundation stage in 'Daya' complex and 'Bhargabi' complex. It is categorically reported by the Enforcement Officer that, the promoter has sold out flats of 'Saraswati' and 'Sindhu' complexes without obtaining registration certificate from ORERA and his application having been rejected vide letter no.3247 dated 29.9.2021 for his failure to submit approval of the PD, DUDA within a reasonable time, there is a clear violation of Sec. 3 of the RERA Act. In absence of DPR, Land details etc., the project cost based on local rate enquiry has been shown to be Rs.225,90,00,000/- in the report by the Enforcement Officer.

The correctness of the contents of the Inspection Report of the Enforcement Officer has not been rebutted by the appellant in any manner.

The plea of the appellant that the application for registration of the project made by it on 31.7.2017 having neither been granted nor been rejected within a period of thirty days of its receipt, the project is deemed to have been registered as per Sec. 5 (2) of the RERA Act on 31.8.2017, is not acceptable in view of the fact that the grant of registration u/sec. 5 (1) (a) is subject to the provisions of the Act and the

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rules and regulations made there under and the ORERA vide its notice dated 30.8.2017 to the appellant-promoter while pointing out certain deficiencies in the application for registration had asked it to rectify the same within a period of 30 days from the date of issue of the notice. The appellant-promoter has not made it clear if it had rectified those deficiencies or not. So, the appellant's application for registration of the project which was initially found to be deficient in many aspects was subsequently rejected by the ORERA vide its correspondence dated 29.9.2021 due to the inability of the appellant to obtain the approval of the P.D, DUDA, Khurdha to the building plan of the project, approved earlier by the B.D.O, as required under the notification dtd. 15.2.2020 of the H & UD Department, Govt. of Odisha. The appellant inspite of knowing this fact has made construction of 'Daya' and 'Bhagrabi' complexes and sold flats in 'Sindhu' and 'Saraswati' complexes and thereby has made a serious violation of the Section 3(1) of RERA Act. Hence considering the estimated project cost determined by the Enforcement Officer, we are of the considered opinion that the penalty amount of Rs.20,00,000/- imposed by the learned Regulatory Authority on the appellant is quite appropriate. The impugned order of the learned Regulatory Authority therefore needs no interference from this Tribunal.

8) The appeal is accordingly dismissed on contest against the respondent.

The appellant is accordingly directed to deposit the penalty amount of Rs.20,00,000/- 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.

(IX)

Send an authentic copy of this order alongwith the record of the complaint case to the learned Regulatory 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)

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