

**OREAT Appeal No.16/2024**

14) 9.04.2025

The appeal is taken up through hybrid mode.

2) Heard Mr.M.Agarwal, learned counsel appearing for the appellant, Mr. R.K.Satapathy, learned counsel appearing for the respondent no.1 and Mr. S.S.Mohapatra, advocate appearing on behalf of Mr. P.S.Nayak, learned counsel appearing for the respondent no.2-Regulatory Authority.

3) Aggrieved over the impugned order dtd. 26.4.2023 passed by the Odisha Real Estate Regulatory Authority in Complaint Case No.388/2022, the appellant who was the respondent in the said case has filed this appeal praying to set aside the said order and to remand the case for fresh adjudication giving reasonable opportunity of hearing to the appellant. The respondent no.1 of the appeal was the complainant in the aforesaid complaint case and the respondent no.2 is the learned Regulatory Authority who has passed the impugned order.

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

On 17.12.2022 the respondent no.1 filed the aforesaid complaint case against the present appellant alleging that the appellant-builder had stopped the construction work of the project 'Samaleswari Vatika' after completion of the 1<sup>st</sup> phase and a part of the 2<sup>nd</sup> phase inspite of promising to complete the project in three phases. It is further alleged that the builder has neither formed any registered society of the allottees under the Co-operative Society Act till date nor maintained the road and drain and has failed to construct the sub-station and landscaped garden/lawn as promised in the approved plan. It is further alleged that the builder has not yet handed over the common areas including the land of Mandir,

(II)

land of play ground, land of children's park and the land of bore-well to the respondent no.1, which has been formed by the allottees on their own. It is further alleged that the builder has not yet provided the occupancy-cum-completion certificate, roof top rain water harvesting system, fire safety measures and equipments and also no provision has been made for garbage disposal. The respondent no.1-maintenance committee accordingly prayed to the learned Regulatory Authority to issue necessary directions to the appellant-builder to fulfill their aforesaid claims.

The learned Regulatory Authority issued notice to the appellant fixing 24.1.2023 for filing of show cause to the complaint petition. On 24.1.2023 the appellant was found absent and as the postal tracking report confirmed that item had been delivered on the appellant on 2.1.2023, the service of notice was held to be sufficient and the appellant was set ex-parte. The case was taken up for ex-parte hearing which was concluded on 27.3.2023 and vide the impugned order dtd.26.4.2023 the appellant was directed to complete the project, to obtain completion/occupancy certificate from the local authority after completion of the project, to obtain registration certificate from the authority u/secs. 3 and 5 of the Real Estate (Regulation & Development) Act, 2016, to provide fire safety measures in the project, to provide roof top rain water harvesting system as per the terms of the agreement and to make provision for disposal of garbage. The appellant was further directed to comply with the order within a period of two months and it was made clear that in the event of its failure to comply with the order, the same shall be enforced as per law.

(III)

5) In the hearing of the appeal, the learned counsel for the appellant has submitted that the complaint case is defective as it has been filed against one Kripa Shankar Mahawar in his individual capacity whereas the agreement to sale and the sale deed in respect of the project were executed between the respondent no.1 (Complainant) and a company namely-M/s. Kirsten Tieup Pvt. Ltd., which is a distinct legal entity. It is further submitted that the consideration amount was paid by the respondent no.1 to the aforesaid company and not Kripa Shankar Mahawar and there being no contractual relationship between him and the respondent no.1, the impugned order is not executable. It is further submitted that though the company had received the completion certificate dtd. 10.7.2017 from the Architect who has certified that the project has been completed in June, 2015 and the same was supplied to the respondent no.1, but this fact has been suppressed in the complaint petition. It is further submitted that though the company had applied for occupancy certificate to the Sambalpur Development Authority on 13.7.2017, the said Development Authority has sat over the same. The company then moved the Vice-Chairman, Sambalpur Development Authority on 22.5.2018 to issue the occupancy certificate but the same has neither been granted nor has been rejected till date. The Occupancy Certificate is therefore deemed to have been granted on 23.7.2018 in accordance with Regulation 70 (2) of the Sambalpur Development Authority (Planning and Building Standards) Regulations, 2016. It is further submitted that the project being a S+4 storied structure below 15 meter height, fire safety provision is not required in respect of it. It is further submitted that the appellant has made adequate provision for

(IV)

rain water harvesting and garbage disposal. The learned counsel for the appellant has also drawn the attention of this Tribunal to the fact that though the registered address of the company had been changed w.e.f. 26.1.2022 and the Registrar of Companies, Kolkata had changed the address accordingly on the basis the filing of Form No.INC-22 by the Company, but the complaint case has been filed against the appellant in the previous address of the company. As a result, the company did not receive the summons from the learned Authority and ex-parte order has been passed. Asserting that the impugned order is a violation of the principle of natural justice for having been passed without service of notice on the appellant, the learned counsel for the appellant has made the prayer as mentioned earlier in paragraph-3.

6) On the other hand, the learned counsel for respondent no.1 has stuck to its claims and allegations in the complaint petition and has termed the impugned order dtd. 26.4.2023 of the learned Authority in complainant case No.388 of 2022 to be correct in facts as well as law for the appellant's failure to comply with the terms of brochure and statutory requirements in respect of the project. Attributing the cause of ex-parte hearing to the appellant's intentional lapse in appearance and participation in hearing, the learned counsel for the respondent no.1 has prayed for dismissal of the appeal for being not maintainable and without cause of action.

7) As the impugned order has been passed against the appellant in an ex-parte hearing and the appellant has alleged violation of principle of the natural justice for being denied the opportunity of hearing due to non-service of summons upon it, it will be appropriate to first look into the said point before delving into the points of merit. It is claimed

(V)

by the appellant that the registered address of the builder-company i.e. Kirsten Tieup Pvt. Ltd. has been changed from 12, Ho Chi Minh Sarani, Kolkata, 700071 to 63/3B, Sarat Bose Road, Kolkata-700025 w.e.f. 26.1.2022. The appellant has further claimed to have filed Form No. INC-22 before the Registrar of Companies, Kolkata and to have changed the address accordingly. Annexure-6 comprised of the Ministry of Corporate Affairs Receipt (G.A.R. 7) dated 3.2.2022 in respect of a total fee of Rs.600/- paid towards e-filing of Form No. INC-22 and the notice of change in registered office in Form No. INC-22 (four pages in total) supports the claim of the appellant with regard to change in the address of the registered office of the builder-company. Annexure-6 also confirms the fact that the change in the builder company's registered office from 12, Ho Chi Minh Sarani, Sutanuti Building, 1<sup>st</sup> floor, Kolkata to 63/3 B, Sarat Bose Road, Kolkata-700025 is effective from 26.1.2022. It is a fact on record that complaint case No.388/2022 has been filed on 17.12.2022 by the respondent no.1 against the appellant in the previous address of the builder company i.e. 12, Ho Chi Minh Sarani, Kolkata-700071. Notice to the appellant in the complaint case was certainly issued in this address on 17.12.2022 when the registered office of the builder company had already changed to 63/3B, Sarat Bose Road, Kolkata, 700025 w.e.f. 26.1.2022 i.e. more than 10 months back and therefore was certainly not delivered in the correct address. The postal tracking report confirming item delivery on 2.1.2023 at 16:50:49 hours is therefore erroneous. Accordingly, the learned Authority's order dtd. 24.1.2023 setting the appellant ex-parte, the ex parte hearing of the complaint case taken up on 27.3.2023 and the impugned

(VI)

order passed on 26.4.2023 are also erroneous and illegal. The disposal of the complaint case on merit with directions for various compliances to the appellant in his absence when notice was not duly served on it also amounts to violation of the principle of natural justice as well as fair adjudication.

8) For the reasons stated in the preceding paragraph, the impugned order dtd. 26.4.2023 passed in Complaint Case No.388 of 2022 is hereby set aside and the complaint case is hereby remanded back to the learned Regulatory Authority for fresh hearing after providing opportunity to the appellant to file his show cause to the complaint petition. The appellant is directed to appear before the learned Regulatory Authority positively on 23.4.2025. The appeal is accordingly allowed against the respondents on contest. Pending I.A. is disposed of accordingly.

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 each to the appellant and the respondent no.1.

Justice P.Patnaik  
Chairperson

Shri S.K.Rajguru  
(Judicial Member)

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

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